

CHAPTER 51

S.B. No. 20

AN ACT

relating to the disposition of estrays and to certain fence and range restrictions.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Chapter 142, Agriculture Code, is amended to read as follows:

CHAPTER 142. ESTRAYS

Sec. 142.001. *DEFINITIONS. In this chapter:*

- (1) "Estray" means stray livestock.
- (2) "Livestock" means a horse, stallion, mare, gelding, filly, colt, mule, hinny, jack, jennet, hog, sheep, goat, or a head of any species of cattle.
- (3) "Person" does not include the government or a governmental agency or subdivision.

Sec. 142.002. *RIGHTS OF OCCUPANT OTHER THAN OWNER. A person has the rights of an owner of property under this chapter if he is a part owner, a lessee, an occupant, or a caretaker of land or premises, but an owner and an occupant of the same property may not recover for the same damage.*

Sec. 142.003. *DISCOVERY OF ESTRAY; NOTICE. (a) If an estray, without being herded with other livestock, roams about the property of a person without that person's permission or roams about public property, the owner of the private property or the custodian of the public property, as applicable, shall, as soon as reasonably possible, report the presence of the estray to the sheriff of the county in which the estray is discovered.*

*(b) After receiving a report under Subsection (a) of this section that an estray has been discovered on private property, the sheriff or the sheriff's designee shall notify the owner, if known, that the estray's location has been reported.*

*(c) After receiving a report under Subsection (a) of this section that an estray has been discovered on public property, the sheriff or the sheriff's designee shall notify the owner, if known, that the estray's location has been reported, except that if the sheriff or his designee determines that the estray is dangerous to the public, he may immediately impound the estray without notifying the owner. If the owner does not immediately remove the estray, the sheriff or the sheriff's designee shall proceed with the impoundment process prescribed by Section 142.009 of this code.*

Sec. 142.004. *REDEMPTION. (a) The owner of the estray may redeem the estray from the owner or occupant of private property by the payment of fees and damages as provided by this chapter.*

*(b) If the owner of the estray does not redeem the estray within a reasonable time after notification, the sheriff or the sheriff's designee shall, at the request of the property owner, proceed immediately with the impoundment process prescribed by Section 142.009 of this code. During that period, the estray may not be used for any purpose by the owner or occupant of the property.*

Sec. 142.005. *COLLECTION FEE. (a) If the sheriff or the sheriff's designee is present at the time of the collection of the estray, the sheriff or the sheriff's designee*

may require the owner of the estray to pay before the estray is removed a collection fee in an amount set by the sheriff not to exceed \$25.

(b) A person who disagrees with the amount of the fee set by the sheriff under Subsection (a) of this section may petition the justice court in the manner provided by Section 142.007 of this code and may appeal the justice court decision as provided by Section 142.008 of this code.

*Sec. 142.006. AMOUNT OF REDEMPTION PAYMENT.* (a) A person on whose property an estray is found is entitled to receive from the owner of the estray the payment of a reasonable amount for maintenance and damages, if the original notice of the discovery of the estray was given to the sheriff not later than the fifth day after the date of discovery.

(b) The owner of the property may:

(1) accept payment in an agreed amount from the owner of the estray; or

(2) file a petition under Section 142.007 of this code in the justice court having jurisdiction and have the amount of the payment determined by the justice of the peace.

(c) If the owner of the property files a petition under Subdivision (2) of Subsection (b) of this section, the owner of the estray is entitled to remove the estray.

*Sec. 142.007. JUSTICE COURT PETITION.* A petition seeking a justice court determination of the amount of a redemption payment or the amount of a collection fee must contain the following information:

(1) the name of the owner of the estray;

(2) a description of the estray;

(3) the number of days the estray was trespassing;

(4) the name of the owner of the property;

(5) the purpose for which the land on which the trespass occurred is used; and

(6) a statement that the estray owner and the property owner are unable to agree on the amount of the payment.

*Sec. 142.008. APPEAL OF COURT AWARD.* (a) If either the owner of the estray or the owner of the property disagrees with a justice's assessment of the payment amount under Subdivision (2) of Subsection (b) of Section 142.006 of this code or the payment amount under Subsection (b) of Section 142.005 of this code, the amount in question shall be finally determined according to the procedure prescribed by this section.

(b) The complainant begins the appeal by filing a petition that gives the information listed in Section 142.007 of this code.

(c) The justice of the peace shall appoint three disinterested persons familiar with livestock and agriculture who reside in the county as special commissioners to determine the amount owed, if any, to the owner of the property or the sheriff, taking into account the time of the notice of discovery given by the property owner.

(d) At the request of the special commissioners for their proceedings, the justice of the peace may compel the attendance of witnesses and the production of testimony, administer oaths, and punish for contempt. The commissioners' decision as to the amount of any payment is final.

*Sec. 142.009. IMPOUNDMENT OF ESTRAY.* (a) The sheriff or the sheriff's designee shall impound an estray and hold it for disposition as provided by this chapter if:

(1) the owner of the estray is unknown;

(2) the sheriff or the sheriff's designee is unable to notify the owner;

(3) the estray is dangerous to the public;

(4) the estray is located on public property and after notification is not immediately removed by the owner; or

(5) the estray is located on private property and is not redeemed within a reasonable time after notification.

(b) After impounding an estray, the sheriff or sheriff's designee shall prepare a notice of estray stating at least:

- (1) the name and address of the person who reported the estray to the sheriff;
- (2) the location of the estray when found;
- (3) the location of the estray until disposition; and
- (4) a description of the animal, including its breed, if known, color, sex, age, size, markings of any kind, including ear markings and brands, and other identifying characteristics.

(c) The sheriff or sheriff's designee shall file each notice of estray in the estray records in the office of the county clerk.

(d) If the owner of the estray is unknown, the sheriff or the sheriff's designee shall make a diligent search for the identity of the owner of the estray, including a search in the county register of recorded brands, if the animal has an identifiable brand. If the search does not reveal the owner, the sheriff shall advertise the impoundment of the estray in a newspaper of general circulation in the county at least twice during the 15 days after the date of impoundment and shall post a notice of the impoundment on the public notice board of the courthouse.

**Sec. 142.010. RECOVERY OF IMPOUNDED ESTRAY BY OWNER.** (a) The owner of an estray may recover possession of the estray at any time before the estray is sold under this chapter if:

- (1) the owner has provided the sheriff or the sheriff's designee with an affidavit of ownership under this section;
- (2) the sheriff or the sheriff's designee has approved the affidavit of ownership;
- (3) the approved affidavit of ownership has been filed in the estray records of the county clerk;
- (4) the owner has paid all estray handling expenses under this section;
- (5) the owner has executed an affidavit of receipt of estray under this section and delivered it to the sheriff; and
- (6) the sheriff has filed the affidavit of receipt of estray in the estray records of the county clerk.

(b) An affidavit of ownership must contain at least the following information:

- (1) the name and address of the owner;
- (2) the date the owner discovered that the animal was an estray;
- (3) the property from which the animal strayed;
- (4) a description of the animal, including its breed, color, sex, age, size, markings of any kind, including ear markings and brands, and other identifying characteristics; and

(5) a sworn statement that the affiant is the owner or caretaker of the animal.

(c) The owner of the estray shall pay the expenses incurred by a person or by a sheriff, sheriff's designee, or the county in impounding, handling, seeking the owner of, or selling the estray. The sheriff is also entitled to a collection fee as provided by Section 142.005 of this code. The total amount of the payment is determined by the sheriff.

(d) A person who disagrees with the amount of the payment set by the sheriff in Subsection (c) of this section may petition the justice court in the manner provided by Section 142.007 of this code and may appeal the justice court decision as provided by Section 142.008 of this code.

(e) An affidavit of receipt of estray must contain at least the following information:

- (1) the name and address of the person receiving the estray;

- (2) the date of receipt of the estray;
- (3) the method of claim to the estray, either previous owner or purchaser at sale;
- (4) if purchased at sale, the amount of the gross purchase price of the estray;
- (5) the estray handling expenses paid; and
- (6) the net proceeds of any sale of the estray.

Sec. 142.011. *USE OF ESTRAY.* During the period an estray is held by the sheriff, the estray may not be used for any purpose.

Sec. 142.012. *ESCAPE OR DEATH OF IMPOUNDED ESTRAY.* If the animal dies or escapes while impounded, the sheriff shall make a written report of the death or escape and file the report with the county clerk for placement in the county estray records.

Sec. 142.013. *SALE OF IMPOUNDED ESTRAYS.* (a) If the ownership of an estray is not determined before the third day after the date of the final advertisement under this chapter or if the estray is not redeemed before the 18th day after the date of impoundment, the county has title to the estray and the sheriff shall cause the estray to be sold at a sheriff's sale or public auction licensed by the United States Department of Agriculture. Title to the estray is considered vested in the sheriff or the sheriff's designee for purposes of passing good title, free and clear of all claims, to the purchaser at the sale.

(b) The sheriff shall receive the proceeds of the sale and shall allocate those proceeds in the following order of priority:

- (1) payment of the expenses of sale;
- (2) payment of the impoundment fee and other charges due the sheriff; and
- (3) if applicable, payment of any amount for maintenance and damages due the owners of the private property from which the estray was impounded.

(c) The sheriff shall execute a report of sale of impounded livestock and file the report in the estray records of the county clerk.

(d) If there are sale proceeds remaining from the sale of an impounded estray after all expenses have been paid, the sheriff shall pay the balance to the owner, if known. If the owner is still unknown, the sheriff shall pay the balance to the county official charged with collecting and disbursing county funds, who shall deposit any payment received to the credit of the jury fund of the county for the uses made of that fund, subject to claim by the original owner of the estray.

Sec. 142.014. *RECOVERY BY OWNER OF PROCEEDS OF SALE.* Within one year after the date of sale of an estray under this chapter, the original owner of the estray may recover the net proceeds of the sale if:

- (1) the owner has provided the sheriff with an affidavit of ownership containing the information prescribed by Subsection (b) of Section 142.010 of this code;
- (2) the sheriff has approved the affidavit;
- (3) the approved affidavit has been filed in the estray records of the county clerk; and
- (4) the sheriff has signed a county voucher directing the payment.

[CHAPTER 142. — ESTRAYS

~~[Sec. 142.001. PURPOSE. The purpose of this chapter is to provide a method for finally disposing of an estray.~~

~~[Sec. 142.002. DEFINITION. In this chapter, "estray" means a stray horse, stallion, mare, gelding, filly, colt, mule, hinny, jack, jennet, hog, sheep, goat, or head of any species of cattle.~~

~~[Sec. 142.003. DISCOVERY AND IMPOUNDMENT. (a) A person who discovers an estray on that person's property or on public property shall report the presence of the animal to the sheriff of the county in which the animal is discovered. The person shall make the report as soon as reasonably possible.~~

~~[(b) After receiving a report under Subsection (a) of this section, the sheriff or the sheriff's designee shall impound the animal and hold it for disposition as provided by this chapter.~~

~~[Sec. 142.004. NOTICE OF ESTRAY; ESTRAY RECORDS. (a) After impounding an estray, the sheriff shall prepare a notice of estray stating at least:~~

- ~~[(1) the name and address of the person who reported the estray to the sheriff;~~
- ~~[(2) the location of the estray when found;~~
- ~~[(3) the location of the estray until disposition; and~~
- ~~[(4) a description of the animal, including its breed, if known, color, sex, age, size, markings of any kind, and other identifying characteristics.~~

~~[(b) The sheriff shall file each notice of estray in the estray records in the office of the county clerk.~~

~~[Sec. 142.005. ADVERTISEMENT. If an estray has been impounded, the sheriff or the sheriff's designee shall make a diligent search for the owner of the estray in the county register of recorded brands. If the search does not reveal the owner, the sheriff or the sheriff's designee shall advertise the impoundment of the estray in a newspaper of general circulation in the county at least twice during the next 15 days and post a notice of the impoundment on the public notice board of the courthouse.~~

~~[Sec. 142.006. RECOVERY OF ESTRAY BY OWNER. (a) The owner of an estray may recover possession of the estray at any time before the estray is sold under this chapter if:~~

- ~~[(1) the owner has provided the sheriff or the sheriff's designee with an affidavit of ownership under this section;~~
- ~~[(2) the sheriff or the sheriff's designee has approved the affidavit of ownership;~~
- ~~[(3) the approved affidavit of ownership has been filed in the estray records of the county clerk;~~
- ~~[(4) the owner has paid all estray handling expenses under this section;~~
- ~~[(5) the owner has executed an affidavit of receipt of estray under this section and delivered it to the sheriff; and~~
- ~~[(6) the sheriff has filed the affidavit of receipt of estray in the estray records of the county clerk.~~

~~[(b) An affidavit of ownership must contain at least the following information:~~

- ~~[(1) the name and address of the owner;~~
- ~~[(2) the date the owner discovered that the animal was an estray;~~
- ~~[(3) the property from which the animal strayed; and~~
- ~~[(4) a description of the animal, including its breed, color, sex, age, size, markings of any kind, and other identifying characteristics.~~

~~[(c) The owner of the estray shall pay the expenses incurred by a person or by a sheriff, sheriff's designee, or the county in impounding, handling, seeking the owner of, or selling the estray.~~

~~[(d) An affidavit of receipt of estray must contain at least the following information:~~

- ~~[(1) the name and address of the person receiving the estray;~~
- ~~[(2) the day of receipt of the estray;~~
- ~~[(3) the method of claim to the estray, either previous owner or purchaser at sale;~~
- ~~[(4) if purchased at sale, the amount of the gross purchase price of the estray;~~
- ~~[(5) the estray handling expenses paid; and~~
- ~~[(6) the net proceeds of any sale of the estray.~~

~~[Sec. 142.007. SALE OF ESTRAY. (a) If the ownership of an estray is not determined before the 3rd day following the day of the final advertisement under this chapter, the county has title to the animal and the sheriff or the sheriff's designee shall cause the animal to be sold at a sheriff's sale or public auction licensed by the United States~~

~~Department of Agriculture. Title to the animal shall be considered vested in the sheriff or the sheriff's designee for purposes of passing good title, free and clear of all claims, to the purchaser at the sale.~~

~~[(b) The purchaser of an estray at a sheriff's sale or public auction may take possession of the animal on payment of the purchase price.~~

~~[(c) The sheriff shall receive the proceeds of the sale of the animal and shall:~~

~~[(1) pay all estray handling expenses to those entitled to receive them;~~

~~[(2) execute a report of sale of impounded stock; and~~

~~[(3) cause the report of sale of impounded stock to be filed in the estray records of the county clerk.~~

~~[(d) The net proceeds remaining from the sale of an estray after all estray handling expenses have been paid shall be delivered by the sheriff to the county treasurer. The county treasurer shall deposit the net proceeds to the credit of the jury fund of the county for the uses made of that fund, subject to claim by the original owner of the estray as provided by this chapter.~~

~~[Sec. 142.008. RECOVERY BY OWNER OF PROCEEDS OF SALE. Within one year after the date of sale of an estray under this chapter, the original owner of the estray may recover the net proceeds of the sale if:~~

~~[(1) the owner has provided the sheriff with an affidavit of ownership containing the information prescribed by Section 142.006(b) of this code;~~

~~[(2) the sheriff has approved the affidavit; and~~

~~[(3) the approved affidavit has been filed in the estray records of the county clerk.~~

~~[Sec. 142.009. ESCHEAT OF SALE PROCEEDS. After the expiration of one year from the date of sale of an estray under this chapter, the sale proceeds escheat to the state.~~

~~[Sec. 142.010. USE OF ESTRAY. During the period an estray is held by a person who impounded the estray, the animal may not be used by the person for any purpose.~~

~~[Sec. 142.011. INJURY OR DEATH OF ESTRAY. A person who has impounded an estray is liable for any abuse or negligent injury of the animal. If the animal dies or escapes while held by the person who impounded it, the person shall report the death or escape to the sheriff or the sheriff's designee under oath. That report shall be filed in the estray records of the county clerk.]~~

SECTION 2. Subsection (b), Section 143.034, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a *Class C* misdemeanor [~~punishable by a fine of not less than \$5 nor more than \$50~~].

SECTION 3. Subsection (b), Section 143.082, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a *Class C* misdemeanor [~~punishable by a fine of not less than \$5 nor more than \$200~~].

SECTION 4. Subsection (b), Section 143.108, Agriculture Code, is amended to read as follows:

(b) An offense under this section is a *Class C* misdemeanor [~~punishable by a fine of not more than \$200~~].

SECTION 5. The following provisions of the Agriculture Code are repealed:

(1) Section 143.003;

(2) Section 143.004;

(3) Section 143.005;

(4) Section 143.029;

(5) Section 143.030;

(6) Section 143.031;

- (7) Section 143.032;
- (8) Section 143.078;
- (9) Section 143.079;
- (10) Section 143.080;
- (11) Section 143.081;
- (12) Section 143.105; and
- (13) Subchapter G, Chapter 143.

SECTION 6. (a) This Act takes effect September 1, 1987, and applies only to estrays that are discovered on or after that date. An animal that is an stray and that is discovered before the effective date of this Act is covered by the law in effect when the stray was discovered, and the former law is continued in effect for this purpose.

(b) A person who violates any provision listed in Section 5 of this Act before the date of this Act is covered by the law in effect when the violation occurred, and the former law is continued in effect for this purpose.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 17, 1987, by the following vote: Yeas 29, Nays 0; and that the Senate concurred in House amendment on April 27, 1987, by a viva-voce vote.

Passed the House, with amendment, on April 23, 1987, by a non-record vote.

Approved May 6, 1987.

Effective Sept. 1, 1987.