

1980

c 247 Live Stock Community Sales Act

Ontario

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Bibliographic Citation

Live Stock Community Sales Act, RSO 1980, c 247

Repository Citation

Ontario (1980) "c 247 Live Stock Community Sales Act," *Ontario: Revised Statutes*: Vol. 1980: Iss. 4, Article 22.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1980/iss4/22>

CHAPTER 247

Live Stock Community Sales Act

1. In this Act,

Interpre-
tation

(a) "Board" means the Agricultural Licensing and Registration Review Board under the *Ministry of Agriculture and Food Act*;

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(b) "community sale" means a sale or offering for sale of live stock by public auction held at an established place of business where live stock is assembled for the purpose;

(c) "Director" means the Director of the Veterinary Services Branch of the Ministry of Agriculture and Food;

(d) "inspector" means an inspector appointed for the purposes of this Act;

(e) "licence" means a licence under this Act;

(f) "live stock" means cattle, goats, horses, sheep or swine, or the young thereof;

(g) "Minister" means the Minister of Agriculture and Food;

(h) "operator" means a person engaged in the business of operating community sales;

(i) "premises" means the land, buildings and structures at the place of business of an operator;

(j) "regulations" means the regulations made under this Act;

(k) "veterinarian" means a person registered under the *Veterinarians Act*. R.S.O. 1970, c. 253, s. 1; R.S.O. 1980, c. 522
1971, c. 50, s. 53 (1); 1972, c. 1, s. 1; 1976, c. 46, s. 1;
1978, c. 100, s. 12 (1).

2. This Act does not apply to,

Where Act
does not
apply

(a) a sale at a stock yard operated by the Ontario Stock Yards Board;

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c. 158

(b) a sale of live stock by a local board under the *Farm Products Marketing Act*;

(c) a sale of pure bred live stock that is or is of a class that is designated by the regulations;

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c. 91

(d) a sale of cattle by a co-operative corporation to which the *Co-operative Corporations Act* applies where,

(i) one of the objects of the corporation is to operate sales of cattle on a consignment basis,

(ii) at least three-quarters of the shareholders or members of the corporation are producers of cattle, and

(iii) the corporation operates not more than four sales in any calendar year; or

(e) a sale of live stock held at the established place of business of an operator where,

(i) the sale is held for the purpose of dispersing an established herd in whole or in part,

(ii) only live stock of the herd owner is offered for sale, and

(iii) the herd has not been assembled by a dealer in live stock for the purpose of resale.
R.S.O. 1970, c. 253, s. 2; 1973, c. 104, s. 1 (2);
1976, c. 46, s. 2.

Licence

3. No person shall engage in the business of operating community sales without a licence therefor from the Director.
R.S.O. 1970, c. 253, s. 3.

Issue of
licence

4.—(1) The Director shall issue a licence to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of opinion that,

(a) the applicant or, where the applicant is a corporation, its officers or directors, is or are not competent to engage in the business of operating community sales;

(b) having regard to the applicant's financial position, the applicant cannot reasonably be expected to be

financially responsible in the conduct of the business of operating community sales;

- (c) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors, affords reasonable grounds for belief that the business of operating community sales pursuant to the licence will not be carried on in accordance with law and with honesty and integrity;
- (d) the applicant does not possess or will not have available all premises, facilities and equipment necessary to engage in the business of operating community sales in accordance with this Act and the regulations; or
- (e) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations.

(2) Subject to section 5, the Director shall renew a licence ^{Renewal} on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee. 1971, c. 50, s. 53 (2), *part.*

5.—(1) The Director may refuse to renew or may suspend ^{Refusal to renew, suspension and revocation} or revoke a licence if, after a hearing, he is of opinion that,

- (a) the licensee is not or has not been financially responsible in the conduct of the business of operating community sales pursuant to the licence;
- (b) the premises, facilities and equipment used in the business of operating community sales pursuant to the licence do not comply with this Act and the regulations;
- (c) there are reasonable grounds for belief that the business of operating community sales pursuant to the licence is not carried on in accordance with honesty and integrity;
- (d) the licensee or, where the licensee is a corporation, any officer, director or servant thereof has contravened or has permitted any person under his control or direction in connection with his business of operating community sales to contravene any provision of this Act or the regulations or of any other Act or the regulations thereunder or of any

law applying to the carrying on of the business of operating community sales and such contravention warrants such refusal to renew, suspension or revocation of the licence; or

- (e) any other ground for refusal to renew, suspension or revocation specified in the regulations exists.

Provisional suspension, etc.

(2) Notwithstanding subsection (1), the Director, by notice to a licensee and without a hearing, may provisionally refuse to renew or may suspend the licensee's licence where in the Director's opinion it is necessary to do so for the immediate protection of the safety or health of any person or animal or of the interests of persons consigning animals for sale to the licensee and the Director so states in such notice giving his reasons therefor, and thereafter the Director shall hold a hearing to determine whether renewal of the licence should be refused or whether the licence should be further suspended or revoked under this Act or the regulations.

Continuation of licence pending renewal

(3) Subject to subsection (2), where within the time prescribed therefor or, if no time is prescribed, before expiry of his licence, a licensee has applied for a renewal of his licence and paid the prescribed fee and observed or carried out the provisions of this Act and the regulations, his existing licence shall be deemed to continue until he has received the decision of the Director on his application for renewal. 1971, c. 50, s. 53 (2), *part.*

Notice of hearing

6.—(1) The notice of a hearing by the Director under section 4 or 5 shall afford the applicant or licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence.

Examination of documentary evidence

(2) An applicant or licensee who is a party to proceedings in which the Director holds a hearing shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 1971, c. 50, s. 53 (2), *part.*

Variation of decision by Director

7. Where the Director has refused to issue or renew or has suspended or revoked a licence pursuant to a hearing he may, at any time of his own motion or on the application of the person who was the applicant or licensee, vary or rescind his decision, but the Director shall not vary or rescind his decision adversely to the interests of any person without holding a rehearing to which such person is a party and may make

such decision pursuant to such rehearing as he considers proper under this Act and the regulations. 1971, c. 50, s. 53 (2), *part*.

8.—(1) Where the Director refuses to issue or renew or suspends or revokes a licence, the applicant or licensee may, by written notice delivered to the Director and filed with the Board within fifteen days after receipt of the decision of the Director, appeal to the Board.

(2) The Board may extend the time for the giving of notice by an applicant or licensee under subsection (1), either before or after expiration of such time, where it is satisfied that there are *prima facie* grounds for appeal and that there are reasonable grounds for applying for the extension.

(3) Where an applicant or licensee appeals to the Board under this section, the Board shall hear the appeal by way of a hearing *de novo* to determine whether the licence should be issued, renewed, suspended or revoked and may after the hearing confirm or alter the decision of the Director or direct the Director to do any act he is authorized to do under this Act and the regulations and as the Board considers proper and, for such purpose, the Board may substitute its opinion for that of the Director.

(4) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Director, unless the Director otherwise directs, the decision of the Director is effective until the appeal is disposed of. 1971, c. 50, s. 53 (2), *part*.

9.—(1) The Director, the appellant and such other persons as the Board may specify are parties to the proceedings before the Board under this Act.

(2) Members of the Board assigned to render a decision after a hearing shall not have taken part prior to the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Recording
of evidence

(3) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings
of fact

(4) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980,
c. 484

Only
members
at hearing
to participate
in decision

(5) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision. 1971, c. 50, s. 53 (2), *part*.

Appeal to
court

10.—(1) Any party to the hearing before the Board may appeal from the decision of the Board to the Divisional Court in accordance with the rules of court.

Minister
entitled to
be heard

(2) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

Record to
be filed
in court

(3) The chairman of the Board shall file with the Registrar of the Supreme Court the record of the proceedings before the Board which, together with a transcript of the evidence before the Board if it is not part of the Board's record, shall constitute the record in the appeal.

Powers of
court on
appeal

(4) An appeal under this section may be made on any question that is not a question of fact alone and the court may confirm or alter the decision of the Board or direct the Director to do any act he is authorized to do under this Act or may refer the matter back to the Board for reconsideration by the Board as the court considers proper and the court may substitute its opinion for that of the Director or the Board.

Effect of
decision of
Board
pending
disposal of
appeal

(5) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Board, unless the Board otherwise directs, the decision of the Board is effective until the appeal is disposed of. 1971, c. 50, s. 53 (2), *part*.

Conditions
of licence

11. Every licence is subject to the conditions that the operator,

(a) maintains the security required by the regulations ;

- (b) is in possession of premises that have at least one building for the stabling of the live stock that is assembled for the purpose of sale; and
- (c) complies with this Act and the regulations and any other condition that is imposed by the regulations. R.S.O. 1970, c. 253, s. 4.

12. No operator shall hold a community sale unless,

Require-
ments for
premises

- (a) every building in which live stock is kept is subdivided into areas so that each class of live stock may be kept separately and so that the live stock that is designated for sale for purposes other than slaughter may be kept separate from the live stock that is designated for sale for slaughter;
- (b) facilities for watering live stock are provided in each separate area in which live stock is kept;
- (c) every floor of every building used for keeping live stock and every passageway over which live stock passes has a reasonable smooth and impermeable surface;
- (d) every wall, partition, barrier, fence, manger, trough and other structure or part thereof with which live stock may come into contact is free from sharp projections and obstructions that may injure live stock;
- (e) a room is provided in a convenient location for the use of an inspector as an office and as a laboratory equipped with such facilities as are required by him in the course of his duties under this Act and the regulations; and
- (f) a set of scales with a weighing capacity of at least 1,361 kilograms is installed and maintained in good operating condition. R.S.O. 1970, c. 253, s. 5; 1976, c. 46, s. 3; 1978, c. 87, s. 8.

13. No operator shall assemble live stock for a community sale in greater numbers than may be kept, fed, watered and otherwise cared for on the premises without overcrowding or risk of injury. R.S.O. 1970, c. 253, s. 6.

14.—(1) No operator shall commence a community sale until an inspector,

Conditions
precedent
to sale

- (a) has inspected the premises at which the sale is to be held; and
- (b) has carried out such duties as are prescribed in the regulations to be completed before the commencement of a community sale.

Idem

(2) No operator shall offer live stock for sale at a community sale unless such live stock has been inspected on the premises by an inspector before being offered for sale. 1976, c. 46, s. 5.

Cleaning of premises before sale

15. Every operator shall, at least twelve hours before any live stock is received on his premises for the purpose of a community sale, clean and disinfect the premises in such manner as the regulations prescribe. R.S.O. 1970, c. 253, s. 9.

Records

16. Every operator shall keep for at least twelve months after each community sale a record of the sale showing,

- (a) the names and addresses of the sellers and buyers of the live stock;
- (b) the dates of arrival at and departure from his premises of the live stock;
- (c) an identification or description of the live stock;
- (d) the sale price of the live stock; and
- (e) where the live stock is sold by weight, the weight thereof. R.S.O. 1970, c. 253, s. 10.

Inspectors

17.—(1) The Minister shall appoint a chief inspector who is a veterinarian and such other inspectors as he considers necessary and, notwithstanding any other Act, such inspectors have exclusive authority to initiate proceedings to enforce the provisions of this Act and the regulations.

Certificate of appointment

(2) The production by an inspector of a certificate of his appointment purporting to be signed by the Minister is admissible in evidence as *prima facie* proof of his appointment without further proof of the signature or authority of the Minister.

Powers of inspector

(3) Subject to subsections (4), (5) and (6), the Director or an inspector may, for the purpose of carrying out his duties under this Act,

(a) enter any premises and any truck or other conveyance thereon and inspect the premises, truck or other conveyance and any live stock therein;

(b) require the production or furnishing by the owner or custodian thereof of any books, records or documents, or of extracts therefrom, of persons licensed under this Act or relating to any live stock assembled or sold at a community sale;

(c) in accordance with the regulations, seize, remove, detain and provide for the disposal of any live stock where,

(i) he believes on reasonable and probable grounds that there is a contravention of this Act or the regulations in respect thereof, or

(ii) it appears to him that the live stock is diseased, injured or shows evidence of any other abnormal condition;

(d) order live stock mentioned in subclause (c) (ii) to be destroyed,

(i) with the consent of the owner, or

(ii) where a veterinarian has examined the live stock and has advised the Director or inspector in writing that the live stock is diseased, injured or suffers from any other abnormal condition and, in his opinion, is incapable of being so cured, healed or treated as to live thereafter without suffering.

(4) Except under the authority of a warrant under section 142 of the *Provincial Offences Act*, the Director or an inspector shall not enter any part of a dwelling without the consent of the occupant.

No entry without consent or warrant
R.S.O. 1980,
c. 400

(5) Where the Director or an inspector requires the production or furnishing of books, records, documents or extracts therefrom, the person having custody thereof shall produce or furnish them to the Director or inspector and the Director or inspector may detain them for the purpose of making copies therefrom and thereafter return them to the person who produced or furnished them.

Production of records, etc.

(6) Where a copy of a book, record, document or extract is made under subsection (5) and is certified by a person there-

Certification of copy

unto authorized, it is admissible in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way. 1976, c. 46, s. 6.

Obstruction

18. No person shall hinder or obstruct the Director or an inspector in the course of his duties, or refuse to permit him to inspect any premises or any truck or other conveyance thereon or any live stock therein, or furnish him with false information, or refuse to furnish him with information. 1976, c. 46, s. 7.

Offence

19. Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction is liable for a first offence to a fine of not more than \$500 and for a second or subsequent offence to a fine of not more than \$1,000. R.S.O. 1970, c. 253, s. 13; 1976, c. 46, s. 8.

Regulations

20. The Lieutenant Governor in Council may make regulations,

- (a) establishing classes of community sales and limiting the application of any regulation to any such class;
- (b) providing for the issue, renewal, refusal to grant or renew, suspension and revocation of licences;
- (c) prescribing grounds for the refusal to renew, suspension or revocation of licences in addition to those grounds mentioned in clauses 5 (1) (a), (b), (c) and (d);
- (d) designating sales or classes of sales of pure bred live stock for the purpose of clause 2 (c);
- (e) prescribing additional conditions to those mentioned in section 11;
- (f) prescribing the fee payable for a licence and for the renewal thereof;
- (g) requiring the bonding of operators and prescribing the amount and form of such bonds, the classes of securities that are acceptable as collateral security, the period that bonds shall subsist, the condition upon which bonds may be forfeited, and respecting all matters subsequent to forfeiture;
- (h) prescribing the powers and duties of inspectors or any class thereof;

- (i) respecting the times of delivery of live stock to premises and the hours for holding community sales;
- (j) respecting the conditions under which live stock shall be assembled or offered for sale at community sales;
- (k) prescribing the manner in which premises shall be cleaned and disinfected;
- (l) designating diseases and providing for the disposal of live stock found infected with any such disease;
- (m) prescribing forms and providing for their use;
- (n) governing the seizure, removal, detention and disposal of live stock for the purposes of clause 17 (3) (c);
- (o) governing the destruction of live stock for the purposes of clause 17 (3) (d);
- (p) prescribing standards for the health, welfare and care of live stock, or any class thereof, in connection with community sales;
- (q) prohibiting the sale of live stock affected with any disease or other abnormal condition and providing for the disposal of such live stock;
- (r) prescribing the terms and conditions upon which live stock affected with any disease or other abnormal condition may be offered for sale and sold;
- (s) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 253, s. 14; 1971, c. 50, s. 53 (4); 1976, c. 46, s. 9.

