

CHAPTER 174.

DOGS.

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174.01 Dogs may be killed. Any person may kill any dog, that he knows is affected with the disease known as hydrophobia, or that may suddenly assault him while he is peacefully walking or riding and while being out of the inclosure of its owner or keeper, and may pursue to and upon the premises of the owner or elsewhere, and kill any dog found killing, wounding or worrying any horses, cattle, sheep, lambs or other domestic animals. Any such dog is a public nuisance which may be proceeded against as provided in chapter 280. The judgment that the nuisance be abated shall include a provision that the dog be killed by a public officer in a humane manner.

174.02 Owner's liability. The owner or keeper of any dog which shall have injured or caused the injury of any person or property or killed, wounded or worried any horses, cattle, sheep or lambs shall be liable to the person so injured and the owner of such animals for all damages so done, without proving notice to the owner or keeper of such dog or knowledge by him that his dog was mischievous or disposed to kill, wound or worry horses, cattle, sheep or lambs.

The evidence established that the plaintiff, lawfully on the defendant's premises, was jumped on and bitten by the defendant's dog without any apparent provocation, and that the plaintiff merely kicked the dog in self-defense to ward off the attack, warranting the jury's finding that the act of the dog was vicious or mischievous, and rendering the defendant liable for the plaintiff's injuries, regardless of the care exercised by the defendant tying the dog. *Tatreau v. Buecher*, 256 W 252, 40 NW (2d) 509.

174.025 Injury to animal by dog. (1) Any owner or keeper of a dog, who, negligently or otherwise, allows or permits such dog to leave his enclosure and which dog shall have killed, wounded, or worried any horse, cattle, sheep or lamb, in addition to being liable in damages therefor according to law, shall be punished by a fine of not less than \$10 nor more than \$25.

(2) The owner or keeper of any dog which shall have worried, wounded or killed any horse, cattle, sheep or lamb, who shall have verbal or written notice of the fact given him, shall, if such dog again worry, wound or kill any such animal, in addition to being liable in damages therefor according to law, be punished by a fine of not less than \$25 nor more than \$50, and in default of the payment thereof be committed to the county jail until payment is made, for not exceeding 20 days.

History: 1955 c. 696 s. 118.

174.03 Double damages. If any dog shall worry, wound or kill any horses, cattle, sheep or lambs, and the person owning or harboring such dog shall not keep such dog confined after being notified of such worrying, wounding or killing, such owner or keeper shall be liable to pay damage in double the value of any horses, cattle, sheep or lambs which may be thereafter killed or injured by such dog, to be recovered in an action by the owner of such animals; and any person may kill any such dog if found out of the inclosure or immediate care of its owner or keeper after twenty-four hours from the time of such notice.

174.04 Treble damages. Any person suffering personal injury by any dog in the manner set forth in the first section of this chapter may give notice to the owner or keeper of the act done, and if after such notice such dog shall injure any person, or wound or kill any horses, cattle, sheep or lambs, or do any other mischief or injury the owner or keeper shall be liable to pay to the person injured thereby treble damages.

174.05 Dog license tax. Every owner of a dog more than six months of age on January first of any year (the word "owner" when used in chapter 174 in relation to property in, or possession of, dogs shall include every person who owns, harbors or keeps

a dog) shall annually, at the time and in the manner provided by law for the payment of personal property taxes, pay his dog license tax and obtain a license therefor. Such dog license tax shall not be less than one dollar for each male dog, and spayed female dog, and two dollars for each female dog; provided that the governing body of any county may by a majority vote of the members present at any regular meeting raise any or all such minimum dog license taxes. The license year shall commence on the first day of January and end on the thirty-first day of the following December.

174.06 Assessment; levy; collection. Dog license taxes shall be collected in the same manner as provided in section 74.11 for the collecting of personal property taxes. Every assessor shall annually ascertain by diligent inquiry the dogs owned, harbored or kept within his assessment district. Every person shall answer frankly and fully all questions which shall be put to him by such assessor relative to the ownership or keeping of dogs within the assessor's district. The assessor shall enter in his blotter or other record for personal property assessments all dogs in his district subject to tax, to whom they are assessed, the name, number, sex, spayed or unspayed, breed and color of each such dog. The assessor shall make in triplicate a list of the owners of all dogs assessed as shown on the assessment record and shall deliver said copies to the town, village or city clerk at the time of delivery of the assessment roll. He shall make in triplicate a list of the names of persons owning and operating kennels and the number of dogs kept in each. The term "kennel" shall mean any establishment wherein or whereon dogs are kept for the purpose of breeding, sale, or sporting purposes. Any person who keeps or operates a kennel may in lieu of the license tax for each dog required by this chapter apply to the town, city or village treasurer for a kennel license for the keeping or operating of such kennel. For such kennel he shall pay a license tax of \$20 for the license year. With such kennel license the treasurer shall issue a number of metal tags equal to the number of dogs authorized to be kept in the kennel. Such tags shall be made in a form so that they may be readily distinguishable from the individual license tags for the same year. The licensee of a kennel shall at all times keep one of such tags attached to the collar of each dog over 6 months old kept by him under a kennel license. Such tags may be transferred from one dog to another within the kennel whenever any dog is removed from the kennel. No dog bearing any tag shall be permitted to stray or to be taken anywhere outside the limits of the kennel unless he is in leash or temporarily for the purposes of hunting, breeding, trial or show. The department of agriculture shall furnish county clerks with suitable kennel tags and blank licenses for distribution to the several town, village and city treasurers. Unless clearly inapplicable, all the provisions of this chapter relating to the individual dog license tax, licenses and tags shall apply to the kennel license tax, licenses and tags. The town, village or city clerk shall deliver one copy of such list to the county clerk, one copy to the town, village or city treasurer, and retain one copy for his files.

174.07 Dog licenses and collar tags. (1) Upon payment of the required dog license tax on any dog the collecting officer shall execute and issue to the taxpayer a license for such dog which shall be in the form prescribed by the state department of agriculture and shall state the date of its expiration, shall bear a serial number, the owner's name and address, and the name, sex, spayed and unspayed, breed and color of the dog licensed, and a duplicate copy of the license shall be kept on file. At the same time he shall deliver to the licensee a metal tag which shall bear the same serial number as the license, the name of the county in which issued and the license year. In counties having a population of 500,000 or more, the tag shall also bear the name and address of the owner. The department shall contract for and have prepared and furnished annually to the county clerk of each county a sufficient number of such metal tags. The cost of making and furnishing such tags and the cost of printing all forms shall be paid by the several counties out of the dog license fund.

(2) The several county clerks shall distribute said tags and license blanks to the several town, village and city treasurers or other tax collecting officials in proper amounts together with blank license receipts. The licensee shall securely attach the tag to a collar and this collar with the tag attached shall at all times be kept on the dog for which the license is issued. A new tag with a new number shall be furnished to the licensee by the town, village or city treasurer or his deputy in place of the original tag upon presentation of the license and proof of the loss of the original tag. The treasurer or his deputy shall then indorse the new tag number on such license and shall keep a record thereof upon the register.

(3) Every town, village or city treasurer or other tax collecting officer shall at the time of issuing a license and before delivering the same make a complete duplicate thereof upon the stub portion of the license blank. Said officer shall annually at the time provided by law for returning to the county treasurer delinquent personal property taxes

return to his county clerk all unused tags of the preceding license year, together with license books therefor and all duplicate licenses of the preceding year and the said county clerk shall carefully check said returned tags, duplicate licenses, and license blanks to ascertain whether all tags and license blanks which were furnished by the county clerk have been accounted for, and to enable the county clerk to do that he shall charge each town, village or city treasurer or other tax collecting officer with all tags and blank licenses furnished or delivered to him and credit him with those returned. In case of discrepancy, the county clerk shall notify the state department of agriculture thereof.

(4) In cities of the first, second and third class, and in villages located in counties having a population of 500,000 or more and having a police department, the duties imposed by ss. 174.05 to 174.12 upon local assessors shall, and in other cities and villages by action of the governing body may, be performed by the police force under the direction of the chief of police. In every such city and village, a license shall be necessary for the keeping of any dog over 6 months of age, and in every such city or village the chief of police and the police force shall on February 1 of each year and from time to time thereafter check the dogs therein and cause to be disposed of as provided by law all unlicensed dogs which are required to be licensed; and all moneys received or collected by any policeman in the enforcement of said law shall be by him paid to the city or village treasurer and by the treasurer credited to the police pension fund, if there is such police pension fund.

History: 1955 c. 462.

174.08 License fees paid to county treasurer. Every town, village or city treasurer or other tax collecting officer shall pay all dog license taxes received by him, and not before paid, to the county treasurer at such time as settlement is made with the county treasurer for collections of personal property taxes, and shall at the same time report in writing to the county clerk the licenses issued. Such report shall be in the form prescribed by the state department of agriculture, which forms shall be furnished by the several county clerks.

174.09 Dog license fund; how disposed of and accounted for. (1) The dog license taxes so paid to the county treasurer shall be kept in a separate account and shall be known as the "dog license fund" and shall be appropriated and disbursed for the purposes and in the manner following: Within 30 days after receipt of the same the county treasurer shall pay into the state treasury 5 per cent of the minimum tax as provided for under section 174.05 of all dog license taxes which shall have been received by the county treasurer.

(2) Expenses necessarily incurred by the county in purchasing and providing books, forms and other supplies required in the administering of the dog license law shall be paid out of said dog license fund. The amount remaining thereafter in said fund shall be available for and may be used as far as necessary for paying claims allowed by the county to the owners of domestic animals on account of damages done by dogs during the license year for which the taxes were paid. Any surplus in excess of \$1,000 or such greater sum as may be determined by the county board, which may remain from the dog license taxes of any license year, shall on March 1 of the succeeding year belong and be credited and paid by the county treasurer to the towns, villages and cities of his county for their use in the proportion in which said towns, villages and cities shall have contributed and paid to the fund out of which said surplus arises. In cities having police pension funds the money so credited shall belong to such funds. In all other cases it shall be used as the governing body of the town, village or city shall determine.

174.10 Unlicensed dogs to be impounded; without a collar, presumed to be unlicensed. (1) The fact that a dog is without a license attached to a collar shall be presumptive evidence that the dog is unlicensed. No action shall be maintained for an injury to or the destruction of a dog without a tag, unless it shall appear affirmatively that the dog is duly licensed and that a tag had been properly attached to the collar of the dog and had been lost or removed without the knowledge or consent of the owner, or that the dog is not required to be licensed. The sheriff and his deputies, any marshal or constable or other police officer or a duly authorized humane society shall seize, impound or restrain any dog for the keeping of which no license has been issued and for which one is required or seize, impound or restrain any dog found running at large and any such officer may enter the premises of the owner to seize such dog. Any officer who shall seize, restrain, impound or kill any dog found in any place without a license as required under sections 174.05 to 174.12, inclusive, upon delivery of such dog or carcass and the proper disposal of the carcass and after making a report to the village, town or city treasurer of the village, town or city in which the dog was seized or killed, showing that the dog did not have a license, shall receive therefor a payment of two dollars, the same to be made from any funds in the village, town or city treasury not otherwise appropriated. Any dog unaccompanied by its owner or keeper which enters the field,

pasture, meadow or farm inclosure of another shall constitute a private nuisance and the owner or tenant of such field, pasture, meadow or farm inclosure may seize, impound or restrain such dog while therein without liability or responsibility of any nature therefor. Any person may kill a dog, whether licensed or unlicensed, if found killing or worrying any domestic animal.

(2) It shall be unlawful for any person to harbor or permit to remain about his premises any dog for which no license exists and for which one is required. Any person who shall kill a dog not his own or not in his keeping shall forthwith report such fact in writing to the town, village or city clerk of the town, village or city in which the killing occurred. Such report shall state the name and address of the person who killed the dog, the time, place and circumstances of such killing, and the disposition made of the carcass. Any person who shall have seized or impounded a dog with or without license under s. 174.10 shall deliver such dog to the humane officer of the village, town or city, if such officer exists; or if there be no such officer to the constable, village marshal, or the town, village or city police officer. The officer to whom the dog is delivered shall notify the owner personally or through the United States mail, if such owner be known to the officer or can be ascertained with reasonable effort. Such officer shall carefully read the "lost and found" column of local daily newspapers having general circulation in the community to determine whether or not a dog is therein advertised which answers the description of any such impounded dog, and shall promptly communicate with the advertiser thereof if such be found. If such owner be unknown or cannot be ascertained, then the officer shall post written notice in 3 public places in his town, giving a description of the dog, stating where it is impounded and the conditions for its release within 48 hours, Sundays excepted, after such officer shall have taken such dog into his possession. If after 7 days the owner does not claim such dog such officer shall dispose of the dog in a proper and humane manner.

(2m) Every officer to whom a dog is delivered under sub. (2) shall keep a record of every dog sold or otherwise disposed of, describing the dog with reasonable certainty of identification and listing the name and address of the party to whom sold or delivered or the manner of otherwise disposing of the dog. In addition, any person to whom such dog is sold or delivered must sign a statement to that effect giving his name, address and the date of delivery or receipt of such dog.

(3) Any dog found or discovered off the premises of its owner between sunset and sunrise and unaccompanied by its owner or some person in control of it shall be considered an unlicensed dog and a private nuisance and may be seized, restrained, impounded and disposed of as provided by this section by any one during said time and before it returns to the control or premises of its owner.

(3a) The county board may provide a pound for all stray or unwanted dogs in the county. The expense of such pound, or the expense incurred for collecting, caring for and disposing of stray or unwanted dogs, or both, may be paid out of the dog license fund before the distribution of any surplus as authorized under section 174.09 (2).

(4) Any person who shall violate any of the provisions of this chapter shall be liable to a penalty of not less than \$50, nor more than \$500, and to imprisonment up to 60 days, or both.

History: 1951 c. 470; 1953 c. 512.

Unless it appears affirmatively that the dog was duly licensed and that a tag had been properly attached to its collar and had been lost or removed without the knowledge or consent of the owner, or that the dog was not required to be licensed, no civil or criminal action may be maintained for its destruction. *State v. Garbe*, 256 W 36, 39 NW (2d) 743.

The provision that no action shall be maintained for an injury to or destruction of an unlicensed dog, did not preclude

the owner of a dog from recovering for its death from an express company, where the dog was approaching death when it arrived at its owner's home on delivery by the carrier, and died when the owner still had nearly 3 weeks within which he was required to obtain the license. *Laridaen v. Railway Express Agency, Inc.* 259 W 178, 47 NW (2d) 727.

See note to 947.10, citing *State v. Surma*, 263 W 388, 57 NW (2d) 370.

174.11 Claims for damage by dogs to domestic animals; payable, when, from dog license fund; appeals. (1) The owner of any domestic animals (including poultry) attacked, chased, worried, injured or killed by a dog or dogs may within 10 days in counties of a population of 500,000 or more and in other counties within 2 days after the owner shall have knowledge or notice thereof, file a written claim for damages with the clerk of the town, village or city in which the damage occurred. The form of such claim may be prescribed by the state department of agriculture. Upon presentation of such claim the supervisors of the town, the board of trustees of the village, or the common council of the city, or a committee appointed for that purpose by the supervisors, the board of trustees or the common council shall promptly investigate said claim and may subpoena witnesses, administer oaths and take testimony relative thereto and shall within 30 days after the filing of said claim make, certify and return to the county clerk

said claim, a report of the investigation, the testimony taken and the amount of damages suffered by the owner of said animals, together with the assessed valuation of same as shown on the last assessor's blotter or record for personal property assessments or if there be none, then the assessed value of similar animals on such blotter or record.

(2) The form of the report and certification may be prescribed by the state department of agriculture, and shall be subscribed by the supervisors, board or committee making the same. The county clerk shall lay before the county board at its first meeting, following the receipt of any such claim, all claims so filed and reported and the same shall be acted upon and determined by the county board as other claims are determined and acted upon, and the county board shall equalize the values and claims between and within the various towns of the county. The amount of damages filed and reported to the county clerk shall be prima facie proof of the actual damages sustained, but evidence may be taken before the county board relative to the claims as in other cases and appeals from the action of the county board shall lie as in other cases. On appeal from the action of the county board, said trial shall be by the court without a jury.

(3) Such claims shall be solely against the dog license fund and shall create no other liability on the part of the county. When said claims shall be finally determined, the claimant shall be paid 90 per cent thereof out of the dog license fund.

(4) The amount allowed by the county board upon any such claim shall in no case exceed 50 per cent more than the assessed valuation of such personal property as shown on the last assessor's blotter or other record for personal property assessments. When any assessable personal property for which claim is made does not appear on such assessor's blotter or record it shall be deemed to be of the same value as the assessed valuation of similar personal property upon such blotter or record in the town, city or village in which the claim arose. Provided, that whenever the claimant shall furnish conclusive evidence as to the ownership of the dog or dogs doing the damage the claimant shall be paid the full market value of the damaged property; and for each horse or mule for which such claim is made the county board shall allow not to exceed \$100. No claim shall be paid to any person who has failed or neglected to pay a dog tax on an assessable dog.

History: 1951 c. 491.

A person making a claim for damage statute. The county board has no authority done by dogs must comply strictly with the to waive defects in a claim. 44 Atty. Gen. 14.

174.12 Actions against owners. (1) The allowance by the county of any claim for damages done by dogs shall work an assignment to the county of the cause of the action of the claimant for which the claim is filed and the county may sue and recover from the owner of the dog or dogs doing the damages the full amount thereof and which shall not be limited to the sum paid the claimant by the county. Before any claim shall be allowed by the county on account of damages done by dogs, the claimant shall furnish satisfactory proof that the damage was not done in whole or in part by any dog owned, kept or harbored by him.

(2) No claim shall be allowed by the county board at less than the amount so certified and reported, unless the claimant shall first be notified that such action is contemplated and shall have been given a reasonable opportunity to be heard and to offer further evidence in support of his claim.

(3) The provisions of chapter 174 of the statutes shall not in any way limit the existing right or authority of any town, village or city to pass ordinances for the keeping and regulating of dogs, or repeal or annul any existing statute or ordinance or local regulation governing the keeping and regulating of dogs; but on and after July 1, 1920, no town, village or city shall pass any ordinance for the licensing of dogs, and all town, village or city ordinances and local regulations licensing dogs then in force shall be null and void.

(4) No person except the owner or his authorized agent shall remove any license tag from a dog collar or remove any collar with a license attached thereto from any dog. No person shall keep or harbor a dog wearing a fictitious, altered or invalid license tag, or a license tag not issued in connection with the licensing or keeping of the dog wearing the same. No license or license tag issued for one dog shall be transferrable to another dog. Every town, village or city treasurer shall notify the district attorney of his county of every refusal or failure of an owner to obtain a license for keeping his dog and it shall be the duty of the district attorney to institute proceedings against such owner and against every owner within his county who has violated any of the provisions of the dog license law.

(5) Dogs brought into the state temporarily for a period not to exceed thirty days if kept confined or in leash shall be exempt from the provisions of chapter 174 of the statutes.

(6) The provisions of this chapter of the statutes relating to the licensing of dogs and the provisions for the payment of claims out of the dog license fund for damages done

by dogs are severable and the provisions relating to such payment of claims are not an inducement to the enactment of any other provisions of said chapter.

174.13 Humane use of dogs for diagnosis and treatment. (1) The public health and welfare of this state as expressed by existing statutes is protected and promoted by permitting the humane use of animals for diagnosis and treatment, thereby aiding in the advancement of veterinary, dental, medical and biological sciences, and in the testing, improvement and standardization of laboratory specimens, biological products, pharmaceuticals and drugs. It is the purpose of this section to assure that there shall be an adequate supply of dogs for these purposes.

(2) Notwithstanding any provisions of this chapter to the contrary, any humane officer, constable, village marshal, city police officer, or person or organization who by virtue of deputized authority or contract with a municipality has custody of an unclaimed or unredeemed live dog, as defined in section 174.10, shall dispose of the same to the university of Wisconsin, Marquette university, or to any other educational institution of higher learning chartered under the laws of the state and accredited to the university of Wisconsin, upon requisition thereof by such institution. Such requisition shall be in writing, shall bear the signature of an authorized agent, and shall state that such dog or dogs are requisitioned for scientific or educational purposes. If a requisition is made for a greater number of dogs than is available at a given time, the proper person shall supply those immediately available and shall withhold from other disposition all unclaimed and unredeemed dogs coming into his custody until the requisition has been fully discharged, excluding therefrom impounded dogs as to which ownership is established within a reasonable period. A dog left by its owner for disposition is not to be regarded as an unclaimed or unredeemed dog under this chapter. If operated by a municipality, the pound shall be entitled to the payment of \$1 for each dog so requisitioned. An institution making such requisition shall provide for the transportation of the dog or dogs secured by virtue thereof.

(3) Every person or organization having custody of unclaimed or unredeemed dogs shall maintain a record of all such impounded dogs, together with an identifying description of each such animal, the date impounded and the date disposed of in any manner. Such record shall be a public record. Any person having custody of unclaimed or unredeemed dogs under section 174.10, other than private individuals assuming the custody of such animals on their own premises, shall submit quarterly reports to the state board of health which shall show compliance with this section so as to permit the fulfillment of its purposes. The board shall have authority to inspect all records required by this section at the place in which they are usually kept, to make such investigation or inquiries as may be necessary to assure the carrying out of the purpose of this section, and may make any rules necessary to such end.

(4) It shall be unlawful for any person to take or send outside the state or to purchase or otherwise acquire in this state for the purpose of taking or sending outside the state, any living cat or dog to be used for any medical, surgical or chemical investigation, experiment or demonstration.

(5) Any humane society which fails or refuses to comply with the provisions of subsection (2) shall become immediately ineligible for any further public assistance or public funds under section 58.07 (5) or otherwise, from any county, city or village. Upon receipt of a sworn statement by any officer of any educational institution authorized by such institution to make such statement on its behalf, of noncompliance by any humane society with the provisions of subsection (2), it shall be unlawful for the treasurer of any municipality to pay any public funds to any such society until the complainant withdraws its statement of noncompliance or supplements it by a statement showing compliance. Any humane society, claiming that it has complied with the provisions of subsection (2) and deeming itself aggrieved by such denial of public funds, may have the matter judicially reviewed by commencing an action for that purpose in the county where it is located against the complaining educational institution and municipality or municipalities involved. Such proceedings for judicial review shall conform to chapter 227 so far as the same may be applicable. The failure of any humane society or other organization mentioned in subsection (2) to comply with the provisions thereof shall also constitute grounds for the revocation of its corporate charter in an action brought for that purpose by the attorney-general. If it appears on the complaint of any person that anyone, including a humane society, or any officer, employe or other agent of such society, is violating or failing to carry out any provision of this section, the attorney-general, or the district attorney of the proper county, may investigate, and may, in addition to any other remedies, bring action in the name and on behalf of the state of Wisconsin, against any such person or persons, or society, to enjoin the violation of this section and to require compliance herewith. Any contract between a municipality and a humane society, or

between a municipality and an officer, employe or agent of a humane society, which provides for the delegation or performance of any function under this section, or under section 174.10, shall be expressly conditioned upon compliance with both said sections.

History: 1951 c. 310.

174.13 (2), providing that any humane officer having custody of an unclaimed or unredeemed live dog as defined in 174.10, shall dispose of the same to certain educational institutions on requisition made therefor, is applicable by its terms to a humane officer, and is also applicable, by virtue of 174.13 (5) enacted in 1951, to a humane society; it is not void for uncertainty of the definition referred to; and it does not deprive the custodians to whom it is directed of "property" without due process of law but is a constitutional exercise of legislative power. *Regents v. Dane County Humane Society*, 260 W 486, 51 NW (2d) 56.

The capture and impounding of stray

dogs and the disposition of them is a proper exercise of the police power of the state, and it may impose the rules and conditions under which the power is exercised. The statutory custodian of an unclaimed dog does not have a "property right" to retain and dispose of it superior to that of the state when the interest of the state in the animal has been declared, as has been done by (2) and the state has specifically designated the disposition to be made of it. It is within the legislative power of the state to take for public purposes the dogs which no one owns or, at least, which the owner does not claim or redeem. *Regents v. Dane County Humane Society*, 260 W 486, 51 NW (2d) 56.