

CHAPTER 173.

ANIMALS DOING DAMAGE.

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173.01 Animals distrained; proceedings. The owner or occupant of any lands may distrain any beast doing damage on his premises, either while upon the premises or upon immediate pursuit of such beasts escaping therefrom and before returning to the inclosure of or to the immediate care of the owner or keeper, and may keep such beasts upon his premises or in some public pound in his town, city or village until his damages shall be appraised as hereinafter provided. If the owner of such beasts be known to the person distraining and resides within the same town, city or village the person distraining shall give a written notice to such owner within twenty-four hours, but if he shall reside in the same county, but not in the same town, city or village, within forty-eight hours, Sundays excepted, specifying therein the time when and the place where distrained, the number of such beasts and the place of their detention, and that at a time and place, which shall not be less than twelve hours after the serving of such notice nor more than three days after such distress, he will apply to some justice of the peace of the county (naming him) for the appointment of three disinterested freeholders of such town, city or village to appraise the damages; but if such owner be unknown or does not reside in the county he shall apply for the appointment of such appraisers without notice and within twenty-four hours after such distress; and upon such application such justice of the peace shall appoint in writing three disinterested freeholders of such town, city or village to appraise the damages, and shall receive fifty cents therefor.

173.02 Appraisalment. Such freeholders shall be immediately notified and shall immediately repair to the place and view the damages done, and they may take evidence of any witnesses of the facts and circumstances necessary to enable them to ascertain the extent of such damages and the sufficiency of any line fence on the premises where such damage was done, if any dispute shall arise touching the same, and for such purpose may administer oaths to such witnesses. They shall certify under their hands the amount of such damages and the cost of keeping such beasts to that time, with their fees for services, not exceeding one dollar per day each, and their determination as to the sufficiency of such fence, if in dispute, and their decision as to such damages and sufficiency shall be conclusive.

173.03 Impounding; care; expense. Unless the damages so ascertained, together with the fees of the appraisers and justice, shall have been paid within twenty-four hours after such appraisal the person distraining shall cause the beasts distrained to be put into the nearest pound of the same town, city or village, if there be one, and if not, then in some secure inclosure therein, where the same shall remain until sold as herein-after directed, or until such damages, fees and the costs of keeping such beasts after appraisal shall be paid or until otherwise seized or discharged according to law. Such beasts shall be furnished with suitable food from the time of seizure until discharged therefrom or sold; and the expense thereof, after the appraisal, shall be added thereto and paid as additional costs; and if such beasts be put in a pound the certificate of appraisal shall be delivered to the keeper of such pound.

173.04 Time and notice of sale. The poundmaster of any such pound shall receive and keep any beasts so delivered to him and unless seized or discharged according to law within six days shall sell such beasts or so many as shall be necessary to pay such damages, fees and costs, at public auction, giving two days' notice of such sale by notice posted upon such pound and at three public places in such town, city or village.

173.05 Sale of animal not impounded. If in consequence of there being no pound within such city, town or village such beasts shall be kept in some other inclosure and if the same shall not be discharged in the manner hereinbefore provided within six days after being placed therein, the sheriff or any constable of the county shall sell such beasts or so many as shall be necessary to pay such damages, fees and costs of keeping, upon the same notice as is required in case of a constable's sale of personal property taken by execution.

173.06 Proceeds of sale. From the proceeds of such sale the person making it shall retain his fees therefor, which shall be the same as are allowed to constables upon sales of personal property on execution, and the cost of keeping such beasts; and he shall pay to the person who distrained such beasts the damages so certified, with the fees of the appraisers and justices, and pay the surplus, if any, to the owner of such beast, if known. If no owner appear at the time of sale or within one week thereafter and claim such surplus it shall be paid to the treasurer of such town, city or village. If such money shall not be applied for within one year thereafter the treasurer shall place the same in the town treasury, to be expended in the support of the poor; but if the owner shall apply therefor and make proper proof of ownership within six years after its receipt by such treasurer it shall be paid over to such owner, deducting two per cent for fees.