

## 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 the beasts escaping therefrom and before returning to the enclosure of or to the immediate care of the owner or keeper, and may keep the beasts upon his premises or in some public pound in his town, city or village until his damages are appraised. If the owner of the beasts is known to the person distraining and resides within the same town, city or village the person distraining shall give a written notice to the owner within 24 hours, but if he resides in the same county, but not in the same town, city or village, within 48 hours, Sundays excepted, specifying therein the time when and the place where distrained, the number of beasts and the place of their detention, and that at a time and place, which shall not be less than 12 hours after the serving of the notice nor more than 3 days after such distress, he will apply to the town chairman, village president or city mayor or manager of the municipality where found for the appointment of 3 disinterested freeholders of the town, city or village to appraise the damages; but if the owner is unknown or does not reside in the county he shall apply for the appointment of appraisers without notice and within 24 hours after such distress; and upon application, the chairman, president, mayor or manager shall appoint in writing 3 disinterested freeholders of the town, city or village to appraise the damages, and shall receive 50 cents therefor.

**173.02 Appraisal.** 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 chairman, president or mayor, have been paid within 24 hours after the 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 is one, and if not, then in some secure enclosure, where they shall remain until sold as hereinafter directed, or until the damages, fees and the costs of keeping the beasts after appraisal are paid or until otherwise seized or discharged according to law. The 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 the beasts are put in a pound the certificate of appraisal shall be delivered to the keeper of the 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 enclosure 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

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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 the sale the person making it shall retain his fees which shall be the same as are allowed to constables upon sales of personal property on execution, and the cost of keeping the beasts; and he shall pay to the person who distrained the beasts the damages so certified, with the fees of the appraisers and chairman, president or mayor, and pay the surplus, if any, to the owner of the beast, if known. If no owner appears at the time of sale or within one week thereafter and claims the surplus it shall be paid to the treasurer

of the town, city or village. If the money is not 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 applies therefor and gives proper proof of ownership within 6 years after its receipt by such treasurer it shall be paid over to such owner, deducting 2% for fees.

**173.07 Injuring, or taking animal from, pound.** Any person who shall wilfully injure any public pound maintained by any town, city or village or shall wrongfully and forcibly take, drive or release therefrom any animal lawfully confined therein shall be punished by imprisonment in the county jail not more than 3 months or by fine not exceeding \$50.