An appraisement of damages done must not include those done at some previous time. Proof of unauthorized appraisement is admissible to invalidate a sale to pay the damages in a suit between the purchaser and original owner to determine the right of possession. Warring v. Cripps, 23 W 460.

173.03 History: R. S. 1858 c. 51 s. 4, 5; 1861 c. 229; R. S. 1878 s. 1633; Stats. 1898 s. 1633; 1923 c. 291 s. 3; Stats. 1923 s. 173.03; 1967 c. 276; 1969 c. 87.

173.04 History: 1852 c. 29 s. 4; R. S. 1858 c. 51 s. 5; 1861 c. 229 s. 2; R. S. 1878 s. 1634; Stats. 1898 s. 1634; 1923 c. 291 s. 3; Stats. 1923 s. 173.04.

173.05 History: 1852 c. 29 s. 6; R. S. 1858 c. 51 s. 6; 1861 c. 229 s. 2; R. S. 1878 s. 1635; Stats. 1898 s. 1635; 1923 c. 291 s. 3; Stats. 1923 s. 173.05.

173.06 History: 1852 c. 29 s. 7 to 9; R. S. 1858 c. 51 s. 7 to 9; R. S. 1878 s. 1636; Stats. 1898 s. 1636; 1923 c. 291 s. 3; Stats. 1923 s. 173.06; 1967 c. 276; 1969 c. 87.

173.07 History: R. S. 1849 c. 24 s. 24; R. S. 1858 c. 17 s. 24, 25; 1872 c. 3; R. S. 1878 s. 4506; Stats. 1898 s. 4506; 1925 c. 4; Stats. 1925 s. 346.59; 1955 c. 696 s. 192; Stats. 1955 s. 173.07.

173.31 History: 1909 c. 40; Stats. 1911 s. 1636r; 1919 c. 359 s. 1; 1923 c. 291 s. 3; Stats. 1923 s. 175.03; 1949 c. 262; 1955 c. 696 s. 38; Stats. 1955 s. 173.31; 1969 c. 459.

The officer or other person caring for a neglected animal has a lien thereon, for the value of such care, and, by implication, a right of action against the owner therefor, but such action cannot be maintained by the humane society. 6 Atty. Gen. 120.

Neglected animals may be taken from the owner and cared for by a humane officer. The costs for feed and care are protected by lien, and the animals may be sold to satisfy such lien. 11 Atty. Gen. 201.

CHAPTER 174.

Dogs.

174.01 History: 1850 c. 284; 1852 c. 383; R. S. 1858 c. 48 s. 1, 2; 1871 c. 67 s. 8; R. S. 1878 s. 1619; Stats. 1898 s. 1619; 1903 c. 328; Supl. 1906 s. 1619; 1915 c. 512; 1923 c. 291 s. 3; Stats. 1923 s. 174.01; 1949 c. 121.

The common-law rule as to injuries caused by domestic animals has been changed only so far as it affects the dog. Kocha v. Union T. Co. 188 W 133, 205 NW 923.

A dog is not a "domestic animal," within 174.01, Stats. 1931, authorizing a person to kill any dog found killing, wounding or worrying any horses, cattle, sheep or "other domestic animals." The common-law right to kill a dog in protection of property generally is not affected or limited by statutes conferring the right to kill a dog in defense of specific animals. Skog v. King, 214 W 591, 254 NW 354.

A dog which had sheep on the run and which had been chasing them for a distance of about 300 feet when it was shot was "worrying" the sheep. Bass v. Nofsinger, 222 W 480, 269 NW 303.

Chickens are included within the term "other domestic animals" as found in 174.01, Stats. 1931. 31 Atty. Gen. 201.

174.02 History: 1852 c. 383 s. 2; R. S. 1858 c. 48 s. 3; 1871 c. 67 s. 8; R. S. 1878 s. 1620; Stats. 1898 s. 1620; 1923 c. 291 s. 3; Stats. 1923 s. 174.02; 1965 c. 235.

The owner of a dog which has injured a child is not relieved from liability because at the time it was bitten the child was not acting with the prudence of a person of mature years, if it was using such care as is common to children of its age. Meibus v. Dodge, 38 W 300.

One who has kept a dog off and on for 3 or 4 years, who has fed him, been followed by him and at whose house he was when the injury was done, is a keeper of such dog. Schaller v. Connors, 57 W 321, 15 NW 389.

The owner is liable for damages caused by biting and frightening a team of horses and causing them to run away. Meracle v. Down, 64 W 323, 25 NW 412.

Each owner of a dog which is concerned in killing, wounding, or worrying any sheep under sec. 1620, Stats. 1911, is liable for the whole damage done, even though other dogs are also concerned. Johnson v. Lewis, 151 W 615, 139 NW 377.

Allegation and proof of scienter is unnecessary in the case of injuries to persons by a vicious dog as well as in the case of such injuries to other domestic animals. Legault v. Malacker, 156 W 507, 145 NW 1081.

Sec. 1620, Stats. 1913, does not impose absolute liability for injury. Harris v. Hoyt, 161 W 498, 154 NW 842.

Sec. 1620, Stats. 1911, does not apply to the case of a dog affected by rabies. Liability for injuries in such a case depends upon the owner's or keeper's misconduct or negligence. Legault v. Malacker, 166 W 58, 163 NW 476.

Dogs are property and the owner's rights are protected the same as other property rights. To be a "keeper" of a dog one must harbor it in the sense of protecting it and controlling its actions. Hagenau v. Millard, 182 W 544, 195 NW 718.

The owner or keeper of a dog is absolutely liable for any injuries to any person caused by it, irrespective of the care exercised by the owner or keeper. Janssen v. Voss, 189 W 222, 207 NW 279.

At common law the owner of a dog was not liable for its vicious acts unless he had prior knowledge of its vicious propensities. Under 174.02, Stats. 1925, however, such knowledge is not necessary to a prima facie case of liability, but the owner may avoid liability by showing the contributory negligence of the injured person. Schrader v. Koopman, 190 W 459, 209 NW 714.

An owner of a dog, though having no previous knowledge of the dog's vicious propensity, was liable for trespass by a dog which killed rabbits. Matthews v. Schannell, 201 W 381, 230 NW 53.

One purpose of the statute is to protect domestic animals from injury by dogs by whomsoever the dogs are kept or harbored, and to make a person who keeps or harbors a dog responsible for all injuries inflicted by it on

animals, and the same is true respecting injury done to persons under the circumstances contemplated by the statute. The keeper of a dog is responsible for injuries inflicted by it even if the dog is under the control of another at the immediate time the injuries are inflicted. The keeper of a dog, under evidence that the injury to the plaintiff resulted from an innocent act of the dog in running into the plaintiff, is not liable in the absence of evidence showing negligence on his part. The keeper is not responsible for the injury merely because the dog had no license; there being no causal connection between the want of a license and the injury. Koetting v. Conroy, 223 W 550, 270 NW 625, 271 NW 369.

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.

On the historical basis for a dog owner's liability and the comparative negligence statute see Nelson v. Hansen, 10 W (2d) 107, 102 NW (2d) 251.

When the action is grounded on 174.02 the negligence of the owner is established when it is proved he kept a vicious or mischievous dog without proving knowledge on his part. Negligence can be established independently of this section, but both types still state but one cause of action. Wurtzler v. Miller, 31 W (2d) 310, 143 NW (2d) 27.

Refusal of the trial court to give the instruction in conformity with 174.02 (which obviates proof or a finding of the element of scienter before recovery can be had in a dog-bite case), if error, was harmless, where negligence of the defendants as to 2 of the children was established, and in the case of the third child there was no finding of damages, and hence there would be no recovery even if negligence were found. Dawson v. Jost, 35 W (2d) 644, 151 NW (2d) 717.

Liability of owners for dog bites. 1961 WLR 673.

174.025 History: 1891 c. 218; Stats. 1898 s. 4445c; 1915 c. 512; 1925 c. 4; Stats. 1925 s. 343.473; 1955 c. 696 s. 118; Stats. 1955 s. 174.025.

174.03 History: R. S. 1858 c. 48 s. 4; R. S. 1878 s. 1621; Stats. 1898 s. 1621; 1923 c. 291 s. 3; Stats. 1923 s. 174.03.

If a dog has killed or worried sheep, and its owner has been notified of the fact for 24 hours, any person may kill the dog if thereafter found out of the inclosure or immediate care of its owner or keeper; and a written notice to the owner is not required. Miller v. Spaulding, 41 W 221.

174.04 History: R. S. 1858 c. 48 s. 5; R. S. 1878 s. 1622; Stats. 1898 s. 1622; 1923 c. 291 s. 3; Stats. 1923 s. 174.04.

174.05 History: 1919 c. 527; Stats. 1919 s. 1623; 1921 c. 438 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 174.05; 1929 c. 183; 1935 c. 196; 1935 c. 550 s. 413; 1939 c. 79; 1957 c. 182; 1961 c. 165, 381; 1961 c. 622 s. 51.

On exercises of police power see notes to sec. 1, art. I.

A town ordinance prohibiting the keeping of more than 2 dogs over the age of 3 months within any residential district, defined as a district in which 2 or more residences are occupied within a distance of 1000 feet of each other, is not invalid as unreasonable. The ordinance is not void as in contravention of 174.05 (1) since that statute does not confer the right to keep dogs and does not, especially in view of 174.12 (3), limit the existing right of municipalities to pass ordinances governing the keeping and regulating of dogs. State v. Mueller, 220 W 435, 265 NW 103.

Delinquent dog license taxes, payable pursuant to 174.05 to 174.10, are not returnable to the county treasurer as part of the animal tax settlement. 29 Atty. Gen. 168.

174.055 History: 1959 c. 217; Stats. 1959 s. 174.055.

174.056 History: 1967 c. 94; Stats. 1967 s. 174.056.

174.06 History: 1919 c. 527; Stats. 1919 s. 1624; 1921 c. 438 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 174.06; 1935 c. 196; 1935 c. 550 s. 413; 1939 c. 79; 1941 c. 57; 1957 c. 129; 1961 c. 381; 1969 c. 433.

174.07 History: 1919 c. 527; Stats. 1919 s. 1625; 1921 c. 438 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 174.07; 1931 c. 228; 1935 c. 550 s. 413; 1939 c. 79; 1943 c. 229, 296; 1947 c. 289; 1955 c. 462; 1957 c. 129; 1959 c. 362; 1961 c. 381; 1969 c. 276 s. 583 (1); 1969 c. 396.

174.08 History: 1919 c. 527; Stats. 1919 s. 1626; 1921 c. 438 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 174.08; 1935 c. 550 s. 413; 1939 c. 79; 1943 c. 229; 1957 c. 182; 1969 c. 276 s. 583 (1).

174.09 History: 1919 c. 527; Stats. 1919 s. 1627; 1921 c. 438 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 174.09; 1935 c. 196; 1939 c. 79; 1947 c. 522.

Funds to pay damages are available only out of the fees for the license year. 9 Atty. Gen. 309.

174.10 History: 1919 c. 527; Stats. 1919 s. 1628; 1921 c. 438 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 174.10; 1937 c. 225, 244; 1949 c. 577; 1951 c. 470; 1953 c. 512; 1961 c. 381; 1969 c. 459.

The legislative declaration in 174.10 (3), that a dog found under certain conditions shall be considered a private nuisance, does not preclude municipalities from prohibiting the keeping of dogs under other conditions so detrimental to public health, safety and welfare as to likewise constitute nuisances. State v. Mueller, 220 W 435, 265 NW 103.

No action can be maintained for the destruction of an unlicensed dog which is required by law to be licensed. Bass v. Nofsinger, 222 W 480, 269 NW 303.

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.

The purpose of the provision in 174.10 (1), Stats. 1951, that "no action" shall be maintained for injury to or destruction of a dog without a tag unless it appears affirmatively that the dog was duly licensed and that a tag had been properly attached to its collar, etc., was to penalize the dog owner who fails to purchase a license, and not to relieve from criminal liability the person who cruelly maims or tortures a dog, and the words "no action" as used therein refer to civil actions only, so that such provision does not preclude a criminal prosecution under 343.47 for maliciously maiming and killing a dog although the dog did not have a license tag affixed to its collar at the time of the commission of the offense. (State v. Garbe, 256 W 86, overruled so far as construing 174.10 (1) as applying to criminal as well as to civil actions.) State v. Surma, 263 W 388, 57 NW (2d) 370.

A private person may not kill a dog, not his own, though the dog be trespassing at night, but not in act of worrying or killing domestic animals. 9 Atty. Gen. 378.

Penalties collected must be paid to the state treasurer, and to the school fund under sec. 2, art. X. 10 Atty. Gen. 13.

174.11 History: 1919 c. 527; Stats. 1919 s. 1629; 1921 c. 438 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 174.11; 1929 c. 119; 1935 c. 550 s. 413; 1937 c. 92; 1939 c. 79; 1943 c. 229; 1949 c. 108; 1951 c. 491; 1957 c. 244; 1965 c. 146, 235; 1969 c. 276 s. 583 (1).

Proof of claim filed must trace claimed damage to injury by dogs. After claim filed reaches the county board for its consideration further evidence may be taken before the board relative to such claim. 18 Atty. Gen. 164.

Distribution of dog license fund among claimants for loss of animals by dogs within the license year is not made until close of license year. 20 Atty. Gen. 16.

A claimant for damage done by dogs who has received his just proportionate share of any moneys in the dog license fund for the year in which the loss was sustained, although such amount was less than the full amount of his claim as allowed, cannot collect his unpaid balance from license moneys collected in the ensuing year. 26 Atty. Gen. 191.

Since passage of ch. 79, Laws 1939, counties are not liable under 174.11 for loss of game birds kept in captivity which have been killed or injured by dogs. But they continue to be liable for such damage to pheasants raised as poultry on farms licensed under 29.574, although not liable for loss of pheasants raised for hunting on farms licensed under 29.573. 29 Atty. Gen. 357.

A rabbit of a variety not found in wild state and developed and used by man for purposes of food is a domestic animal within the meaning of 174.11. This section does not impose absolute liability upon owners of dogs injuring such animal, but makes provision for payment of claims by counties for injuries to animals in cases where owners of dogs causing such injuries are otherwise liable therefor. 32 Atty. Gen. 61.

A county board may allow a claim for damages filed under 174.11 even though the assessor's record does not contain the assessed valuation of the injured animals, or any similar animals. 35 Atty. Gen. 416.

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

Dogs "worry" domestic animals when they run after, chase, or bark at them, and need not attack or tear them with their teeth. 45 Atty. Gen. 39.

The owner of a dog attacked by other dogs may not properly file a claim for damages. 45 Atty. Gen. 113.

174.12 History: 1919 c. 527; Stats. 1919 s. 1630; 1921 c. 438 s. 2; 1923 c. 291 s. 3; Stats. 1923 s. 174.12.

The fact that domestic animals died from hydrophobia, standing alone, does not sufficiently establish that the death has been occasioned by dogs. 9 Atty. Gen. 516.

174.13 History: 1949 c. 577; Stats. 1949 s. 174.13; 1951 c. 310; 1969 c. 366 s. 117 (1) (j), (2) (a).

See note to sec. 1, art. I, on exercises of police power, citing Regents v. Dane County Humane Society, 260 W 486, 51 NW (2d) 56.

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. Regents v. Dane County Humane Society, 260 W 486, 51 NW (2d) 56.

See note to sec. 1, art. I, on exercises of police power, citing 56 Atty. Gen. 160.

CHAPTER 175.

Miscellaneous Police Provisions.

175.05 History: 1941 c. 106; Stats. 1941 s. 343.74; 1951 c. 261 s. 10; 1955 c. 696 s. 146 to 148; Stats. 1955 s. 175.05; 1965 c. 252; 1969 c. 500 s. 30 (2) (e).

175.09 History: 1923 c. 244; Stats. 1923 s. 175.08; Stats. 1927 s. 175.09; 1931 c. 328.

175.09 (1), enacted in 1923, was intended to establish for this state, not sun time, but U. S. central standard time, which now is one hour earlier than it was prior to an act of congress enacted in 1942, advancing the standard time of each time zone one hour for the duration of the war, and which therefore applies as to the closing hours prescribed by 176.06 for premises for which a liquor license has been issued. State v. Badolati, 241 W 496, 6 NW (2d) 220.

Under 175.09 (1), Stats. 1941, it was the legislative intention to establish U. S. standard central time as standard time in the state. 31 Atty. Gen. 15.

175.095 History: 1957 c. 6; approved by ref-