

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.

Note: A dog is not a "domestic animal," within this section, 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 three hundred feet when it was shot was "worrying" the sheep. *Bass v. Nofsinger*, 222 W 480, 269 NW 303.

Rabbits are not included in the words "any horses, cattle, sheep, lambs or other domestic animals." 20 Atty. Gen. 461.

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.

Note: 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 im-

mediate 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, 271 NW 369.

270 NW 625.

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. [1935 c. 196, 550 s. 413; 1939 c. 79]

Note: A town ordinance prohibiting the keeping of more than two dogs over the age of three months within any residential district, defined as a district in which two or more residences are occupied within a distance of one thousand 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 county treasurer as part of annual tax settlement. 29 Atty. Gen. 168.

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. [1935 c. 196, 550 s. 413; 1939 c. 79; 1941 c. 57]

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 department of agriculture and markets and shall state the date of its expiration, shall bear a serial number, the owner's name and address, and the name, sex, spayed or unspayed, breed and color of the dog licensed. 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. The department of agriculture and markets shall contract for and have prepared and furnished annually to the county clerk of each county a sufficient number of such metal tags, and a sufficient supply of suitable blank licenses to be bound in books of proper size and perforated so that a duplicate of each license may be kept upon the stub thereof. The cost of making, printing and furnishing said tags and blank license receipts 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 pro-

vided 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 department of agriculture and markets thereof.

(4) In cities of the first, second and third class, and in villages located in counties having a population of five hundred thousand or more and having a police department, the duties imposed by sections 174.05 to 174.12, of the statutes, upon local assessors shall be performed by the police force under the direction of the chief of police. In every such city and such village, a license shall be necessary for the keeping of any dog over six months of age, and in every such city or such village the chief of police and the police force shall on February first 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. [1931 c. 228; 1935 c. 550 s. 413; 1939 c. 79]

Note: Under (4) only money collected by and third classes is paid into police pension police department in cities of first, second fund. 20 Atty. Gen. 252.

174.08 License fees paid to county treasurer monthly. 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 department of agriculture and markets, which forms shall be furnished by the several county clerks. [1935 c. 550 s. 413; 1939 c. 79]

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 thirty days after receipt of the same the county treasurer shall pay into the state treasury five per cent 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 one thousand dollars which may remain from the dog license taxes of any license year shall on March first 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. [1935 c. 196; 1939 c. 79]

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 section 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, but if such owner be unknown or cannot be ascertained, then the officer shall post written notice in three public places in his town, giving a description of the dog, stating where it is impounded and the conditions for its release within forty-eight hours, Sundays excepted, after such officer shall have taken such dog into his possession. If after five days the owner does not claim such dog such officer shall dispose of the dog in a proper and humane manner.

(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 of a county containing a population of five hundred thousand or more 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 subsection (2) of section 174.09.

(4) Any person who shall violate any of the provisions of chapter 174 of the statutes shall be liable to a penalty of not less than five dollars nor more than fifty dollars for such violation. [1937 c. 225, 244]

Note: The legislative declaration in (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.

Under (1) no criminal or civil action is maintainable against person killing unlicensed dog, except for failure to report killing as required by (2). 26 Atty. Gen. 434.

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 ten 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 department of agriculture and markets. 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 thirty 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 department of agriculture and markets, 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 eighty 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 fifty 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 one hundred dollars. [1935 c. 550 s. 413; 1937 c. 92; 1939 c. 79]

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

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

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.