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CHAPTER 346

ESTRAYS; ANIMALS, DOING DAMAGE, AT LARGE

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ESTRAYS

346.01 WHO MAY TAKE UP. No person shall take up any estray, except horses or mules, unless such estray shall be found on lands owned or occupied by him in the town wherein he resides.

[R. L. s. 2769] (7267)

346.02 FINDER TO GIVE NOTICE; PENALTY. Every finder of an estray, within seven days thereafter, shall notify the owner thereof, if to him known, and request him to pay all reasonable charges and take such estray away; but, if such owner be to him unknown, he shall within ten days file a notice with the town clerk. The clerk shall transmit a copy thereof to the register of deeds, who shall record the same in a book designated "estrays book." If the estray is of less value than \$5, the finder shall give posted notice thereof in said town, but, if the value exceeds \$5, he shall give four weeks' published notice thereof. The notice shall briefly describe the estray, giving its marks, natural and artificial, as nearly as practicable, naming the residence of the finder, and specifying the town, section, and time when taken up. For failure to give such notice, the finder shall be liable to the owner of the estray in double the amount of damages sustained by him thereby.

[R. L. s. 2770] (7268)

346.03 APPRAISEMENT. Every finder of an estray of the value of \$10 or more at the time of taking up shall also, within one month thereafter, cause the same to be appraised by a justice of the peace of such town, and the certificate of such appraisalment shall be filed with the town clerk. The finder shall pay the justice 50 cents for such certificate, and six cents per mile for each mile necessarily traveled to make the same.

[R. L. s. 2771] (7269)

346.04 CHARGES FOR KEEPING. The person entitled to the possession of any such estray, at any time within one year after such notice is filed with the town clerk, may have the same restored to him upon proving his right thereto and paying all lawful charges that occur in relation to the same. If such person and the finder cannot agree as to the amount of such charges, or upon what should be allowed for the use of such estray, either party, on notice to the other, may apply to a justice of the peace of such town to settle the same, who for that purpose may examine witnesses on oath. If any amount shall be found due to the finder, over the value of the use of such estray, the same, with costs, shall be a lien upon such estray, and the costs of such adjudication shall abide the decision of the justice.

[R. L. s. 2772] (7270)

346.05 SALE OF ESTRAY. If no claimant for such estray shall cause its return to him as before provided, and if such estray shall not have been appraised at more than \$10, the finder shall thereupon become the owner thereof; but, if such appraised value exceeds \$10, the estray shall be sold at public auction by any constable of the county on the request of the finder. Notice thereof shall be given and the sale conducted and the same fees allowed as in case of sales upon

justice's execution. The finder may bid at such sale, and at the time thereof shall deliver to such officer a statement, in writing, of his charges. After deducting such charges, if reasonable, and the costs of sale, the officer shall deposit the remainder of the money, together with the written statement and a statement of the costs of sale, with the county treasurer, taking his receipt therefor. If the finder of any such estray shall fail to cause the sale to be made, he shall pay to the town the value of the estray, to be recovered in an action by the town.

[R. L. s. 2773] (7271)

346.06 MONEY, HOW DISPOSED OF. If the money so deposited be not claimed by the former owner of the estray within one year after such sale, the same shall be paid by the county treasurer into the public school fund.

[R. L. s. 2774] (7272)

346.07 REMOVAL OF ESTRAY; NEGLECT TO GIVE NOTICE. If any person, without the consent of the finder, shall take away any estray taken up pursuant to this chapter, without first paying all lawful charges incurred in relation to the same, he shall be liable to the finder for the value of the estray; and, if any person taking up the estray shall neglect to comply with the provisions of this chapter, he shall be precluded from acquiring any right of property in such estray and from receiving any charges or compensation in relation thereto.

[R. L. s. 2775] (7273)

ANIMALS DOING DAMAGE

346.08 DISTRAINT OF ANIMALS DOING DAMAGE. The owner or occupant of lands may distrain any beast doing damage thereon, either while upon the premises or upon immediate pursuit of such beast escaping therefrom, and before returning to the enclosure or immediate care of the owner or keeper, and keep such beast upon his premises, or in some public ground in his town, until his damages shall be appraised, as hereinafter provided.

[R. L. s. 2776] (7274)

346.09 ANIMALS DOING DAMAGE. Subdivision 1. **Notice, appraisers.** The person distraining shall give notice to the owner of such beast, if known to him, within 24 hours if he resides in the same town, and within 48 hours if he resides in another town in the same county, Sundays excepted; specifying in the notice 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 stated therein, which shall not be less than 12 hours after the service of the notice, nor more than three days after such distress, he will apply to a designated justice of the peace of the county for the appointment of appraisers to appraise the damages. If the owner be unknown, or does not reside in the county, the distraining person shall apply for the appointment of such appraisers within 24 hours after such distress without notice. Upon such application the justice shall appoint in writing three disinterested freeholders of such town to appraise the damages, for which the justice shall receive a fee of 50 cents.

Subd. 2. **Owners right to appraisal.** If the distraining person fails to apply for appointment of appraisers within the time designated in subdivision 1, the owner of the beasts distrained may in the same manner apply for appointment of appraisers.

[R L s 2777; 1953 c 8 s 1] (7275)

346.10 APPRAISEMENT; PROCEDURE. The appraisers, immediately after their appointment, shall be sworn and view the damage done. They may take the evidence of any witnesses of the facts and circumstances necessary to enable them to ascertain the extent of such damage, and the insufficiency of any line fence on the premises where the damage was done, if any dispute shall arise touching the same, and may administer oaths to such witnesses. They shall certify, under their hands, the amount of such damages, and the costs of keeping such beasts to that time, with their fees, not exceeding \$1 per day each; and their determination as to such damages, and the sufficiency of such fence, if in dispute, shall be conclusive.

[R. L. s. 2778] (7276)

346.11 TENDER BY OWNER; EFFECT. At any time before proceedings are begun for such appraisement, or before action is brought for the recovery of damages, the owner or his agent may tender, to the person aggrieved by the depreciation of such animal, the amount of damages which such owner may believe has

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been sustained. If the tender be accepted, no further damages shall be recovered in any way; if refused, and the person aggrieved fails to substantiate or recover as damages a sum greater than that tendered, no costs, disbursements, or expenses shall be collected or recovered in his favor, but he shall pay the costs and disbursements of such owner.

[R. L. s. 2779] (7277)

346.12 IMPOUNDMENTS. Unless the damages so ascertained, together with the fees of the appraisers and justice, shall be paid within 24 hours after appraisal, the person distraining shall cause the beasts to be put into the nearest pound of the same town, if there be one; and, if not, then in some secure enclosure therein, where the same shall remain until sold, as hereinafter directed, or until the damages, fees, and the costs of keeping the beasts after appraisal shall be paid, or until otherwise seized or discharged according to law. From the time of seizure until discharged or sold, such beasts shall be furnished with suitable food, the expense of which, after the appraisal, shall be added thereto as additional costs; and, if the beasts be put in a pound, the certificate of appraisal shall be delivered to the keeper thereof.

[R. L. s. 2780] (7278)

346.13 POUNDMASTER; CUSTODY; SALE; TIME; NOTICE. The poundmaster shall receive and keep in the public pound any beasts so delivered to him; and, unless seized or discharged according to law within six days, shall sell the same or as many as shall be necessary to pay such damages, fees, and costs, at public auction, giving three days posted notice thereof, and posting one such notice on the pound.

[R. L. s. 2781] (7279)

346.14 SALE OF ANIMAL NOT IMPOUNDED. If, by reason of there being no pound within such town, such beasts shall be kept within some other enclosure, and shall not be discharged therefrom 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 may be necessary to pay such damages, fees, and costs of keeping, upon the same notice as is required in sales of personal property, on execution.

[R. L. s. 2782] (7280)

346.15 REDEMPTION. The purchaser of any animal sold under sections 346.13 and 346.14 shall keep the same at least two months, during which time the owner may redeem such animal by paying all costs and charges of keeping, and the amount paid therefor at the sale, with interest thereon at 12 percent per annum.

[R. L. s. 2783] (7281)

ANIMALS AT LARGE

346.16 RUNNING AT LARGE; DEFINED; PROHIBITED; TREBLE DAMAGES. The herding of any animal of the species of cattle, horse, ass, mule, sheep, swine, or goat upon any land over the protest and against the will of the owner shall be deemed a running at large.

It shall be unlawful for any owner or any person having the control of any such animal to permit the same to run at large in the state.

Any person who shall knowingly permit the running at large of any such domestic animal shall be liable to the person aggrieved for treble damages sustained by him, to be recovered in a civil action brought for that purpose.

[1913 c. 459 ss. 1, 2, 3] (7295) (7296) (7297)

346.17 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 constables on execution sales, and the costs of keeping such beasts, and he shall pay to the distrainer the damages so certified, with fees of the appraisers and justice; and the surplus, if any, shall be paid to the owner of the beasts, if known. If no one appears at the time of the sale, or within one week thereafter, who claims such surplus, the same shall be paid to the treasurer of the town, to be paid to the owner of the beasts, if claimed within one year after the distress. If not applied for within one year, the money shall be applied to the use of the town.

[R. L. s. 2784] (7282)

346.18 TAKING DISTRAINED BEASTS A MISDEMEANOR. If any person, without authority of law, and without first paying the damages and costs, takes

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any distrained beast out of the possession of the person making the distress, or that of the sheriff, constable, or poundmaster, as the case may be, without his consent, he shall be guilty of a misdemeanor, and shall also be liable to the person injured in double the amount of the damage done by such beasts.

[R. L. s. 2785] (7283)

346.19 CERTAIN MALE ANIMALS OR BREACHY CATTLE. Subdivision 1. **Running at large; penalty.** The owner of any stallion over the age of one year, bull over the age of nine months, boar or ram over the age of three months, or of any breachy cattle, who shall suffer the same to run at large in any town, shall forfeit to such town \$5 for each day any such animal shall be so at large. "Run at large" means any animal which is not picketed, confined in a corral or otherwise restricted by a properly constructed and maintained legal fence as defined by Minnesota Statutes 1945, Section 344.02.

Subd. 2. **Owner notified; proceedings; sale.** Upon notice that any such animal is running at large, the chairman of the town board shall forthwith notify its owner, and, if he does not immediately confine such animal, the chairman shall cause suit to be brought against him, in the name of the town, to recover the forfeiture, and the animal may be sold under execution in such action to pay the forfeiture and costs.

Subd. 3. **Disposal of proceeds.** After deducting the costs and expenses of suit, all such forfeitures collected shall be paid into the town treasury for the use of the road and bridge fund.

Subd. 4. **When owner not found.** If unable to find the owner of any such animal, the chairman shall cause it to be confined in the public pound, if there be one, and, if not, in some other enclosure, for three days; and, if not then claimed, he shall cause it to be sold, at public auction, upon five days' posted notice. From the proceeds of the sale he shall deduct the amount of the forfeiture and expenses, and deposit the balance with the town treasurer, which shall be paid to the owner of the animal if applied for within one year. If not so applied for, the same shall be paid into the town treasury for the use of the town.

Subd. 5. **Castration; limitation of liability in case of rams.** If, after being notified, the owner of any such stallion, bull, boar, or ram shall permit the same to continue or again to run at large, such chairman shall forthwith cause the same to be taken up and castrated in the usual manner, and shall have a lien on such animals for the expenses of so doing, and may also recover the amount of such expenses from the owner of the animal in a civil action brought in the name of the town; provided, that any such ram running at large may be castrated without liability for damages by any person among whose sheep he shall be found. Any chairman who shall refuse or neglect to perform any of the duties required by this section shall be guilty of a misdemeanor.

[R L s 2793, 2794, 2795, 2796; 1947 c 448 s 1] (7291, 7292, 7293, 7294)