

CHAPTER 174

DOGS

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174.001 Definitions. As used in this chapter, unless the context indicates otherwise:

- (1) "Collar" means a band, strip or chain placed around the neck of a dog.
- (2) "Department" means the department of agriculture, trade and consumer protection.
- (2g) "Domestic animal" includes livestock, dogs and cats.
- (2j) "Intergovernmental commission" means an intergovernmental commission formed by contract under s. 66.0301 (2) by all of the municipalities in a county with a population of 500,000 or more for the purpose of providing animal control services.
- (3) "Livestock" means any horse, bovine, sheep, goat, pig, llama, alpaca, domestic rabbit, farm-raised deer, as defined in s. 95.001 (1) (ag), or domestic fowl, including any farm-raised game bird, as defined in s. 169.01 (12m).
- (4) "Officer" has the meaning designated under s. 95.21 (1) (b).
- (5) "Owner" includes any person who owns, harbors or keeps a dog.

History: 1979 c. 289 ss. 8m, 17; 1983 a. 451; 1995 a. 79, 316; 1997 a. 35; 2001 a. 16, 56; 2003 a. 133.

The casual presence of a dog on someone's property does not make that person a "keeper." "Harboring" a dog means to afford it lodging, to shelter it, or give it refuge; it does not include the transient presence in one's home of another's dog. *Pattermann v. Pattermann*, 173 Wis. 2d 143, 496 N.W.2d 613 (Ct. App. 1992).

There is a distinction between "keeping" and "harboring." Keeping generally requires exercising some measure of care, custody, or control over the dog, while harboring is often defined as sheltering or giving refuge to a dog. Thus, harboring lacks the proprietary aspect of keeping. However, the concepts of "harbor" and "keep" are similar, and the liability of one who harbors a dog and one who keeps a dog is the same. *Pawlowski v. American Family Mutual Insurance Co.* 2009 WI 105, 322 Wis. 2d 21, 777 N.W.2d 67, 07-2651.

(1) KILLING A

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- (a) Except as provided in s. 13.92, a person who kills a dog that causes serious bodily harm by the dog and:
1. Other restraining actions were tried and failed; or
 2. Immediate action is necessary.
- (b) A person may intentionally kill a dog if a domestic animal that is owned or in the custody of the person is threatened with serious bodily harm by the dog and the dog is on property owned or controlled by the person and:
1. Other restraining actions were tried and failed; or
 2. Immediate action is necessary.
- (2) INAPPLICABLE TO OFFICERS, VETERINARIANS, AND PERSONS KILLING THEIR OWN DOG. This section does not apply to an officer acting in the lawful performance of his or her duties under s. 29.921 (7), 95.21, 173.23 (1m) (c), (3), or (4), or 174.02 (3), or to a veterinarian killing a dog in a proper and humane manner, or to a person killing his or her own dog in a proper and humane manner.
- (3) LIABILITY AND PENALTIES. A person who violates this section:
- (a) Is liable to the owner of the dog for double damages resulting from the killing;
 - (b) Is subject to the penalties provided under s. 174.15; and
 - (c) May be subject to prosecution, depending on the circumstances of the case, under s. 951.02.

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218; 1979 c. 289; 1981 c. 285; 1983 a. 451; 1987 a. 332 s. 64; 1997 a. 192, 248; 1999 a. 32; 2005 a. 162.

Within the meaning of the 4th amendment, domestic animals are effects and the killing of a companion dog constitutes a seizure, which is constitutional only if reasonable. *Viilo v. Eyre*, 547 F.3d 707 (2008).

174.02 Owner's liability for damage caused by dog; penalties; court order to kill a dog.

- (1) LIABILITY FOR INJURY.
- (a) *Without notice.* Subject to s. 895.045 and except as provided in s. 895.57 (4), the owner of a dog is liable for the full amount of damages caused by the dog injuring or causing injury to a person, domestic animal or property.
 - (b) *After notice.* Subject to s. 895.045 and except as provided in s. 895.57 (4), the owner of a dog is liable for 2 times the full amount of damages caused by the dog biting a person with sufficient force to break the skin and cause permanent physical scarring or disfigurement if the owner was notified or knew that the dog had previously, without provocation, bitten a person with sufficient force to break the skin and cause permanent physical scarring or disfigurement.
- (2) PENALTIES IMPOSED ON OWNER OF DOG CAUSING DAMAGE.
- (a) *Without notice.* The owner of a dog shall forfeit not less than \$50 nor more than \$2,500 if the dog injures or causes injury to a person, domestic animal, property, deer, game birds or the nests or eggs of game birds.
 - (b) *After notice.* The owner of a dog shall forfeit not less than \$200 nor more than \$5,000 if the dog injures or causes injury to a person, domestic animal, property, deer, game birds or the nests or eggs of game birds, and if the owner was notified or knew that the dog previously injured or caused injury to a person, domestic animal, property, deer, game birds or the nests or eggs of game birds.
 - (c) *Penalties in addition to liability for damages.* The penalties in this subsection are in addition to any other liability imposed on the owner of a dog.
- (3) COURT ORDER TO KILL A DOG.
- (a) The state, any municipality, or a person who is injured by the dog, whose minor child was injured by the dog, or whose domestic animal is injured by the dog may commence a civil action to obtain a judgment from a court ordering an officer to kill a dog. The court may grant the judgment if the court finds both of the following:
 1. The dog caused serious injury to a person or domestic animal on 2 separate occasions off the owner's property, without reasonable cause.
 2. The owner of the dog was notified or knew prior to the 2nd injury, that the dog caused the first injury.
 - (b) Any officer enforcing a judgment under this subsection shall kill a dog in a proper and humane manner.
- (4) LAW ENFORCEMENT DOGS.
- (a) In this subsection, "law enforcement agency" has the meaning given in s. 165.83 (1) (b).

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Public policy does not prohibit insurance coverage for statutorily imposed multiple damages. *Cieslewicz v. Mutual Service Cas. Ins. Co.* 84 Wis. 2d 91, 267 N.W.2d 595 (1978).

Doubling of damages under s. 174.02 (1) (b) operates only after application of the laws of comparative negligence. *Sprague v. Sprague*, 132 Wis. 2d 68, 389 N.W.2d 823 (Ct. App. 1986).

To be a "keeper" of a dog within the definition of "owner" under this statute, the person must exercise some measure of custody, care, or control. An "owner" injured while in control of the dog may not use the statute to hold another owner liable. *Armstrong v. Milwaukee Mutual Insurance Co.* 202 Wis. 2d 258, 549 N.W.2d 723 (1996), 93-1918.

A landlord does not become a harbinger of a tenant's dog by merely permitting the tenant to keep the dog. *Malone v. Fons*, 217 Wis. 2d 746, 580 N.W.2d 697 (Ct. App. 1998), 96-3326.

Armstrong has no application when one who is neither an owner or keeper of the dog is injured. Sub. (1) imposes strict liability on an owner when the person injured is neither the dog's owner or keeper. *Fifer v. Dix*, 2000 WI App 66, 234 Wis. 2d 117, 608 N.W.2d 740, 99-1717.

An owner may sue a keeper for contribution when an innocent 3rd-party has been injured. *Fire Insurance Exchange v. Cincinnati Insurance Company*, 2000 WI App 82, 234 Wis. 2d 314, 610 N.W.2d 98, 99-1094.

A keeper of a dog may not recover under this section, notwithstanding an allegation that the actual owner was negligent. While the keeper may pursue a common law negligence claim, sub. (1) (b) and its provision of double damages are not applicable to that action. *Malik v. American Family Mutual Insurance Co.* 2001 WI App 82, 243 Wis. 2d 27, 625 N.W.2d 640, 00-1129.

A dog owner does not have notice under sub. (1) (b) because the owner knows that the dog as a puppy chewed on household items in the course of normal teething behavior. *Gasper v. Parbs*, 2001 WI App 259, 249 Wis. 2d 106, 637 N.W.2d 399, 00-2476.

Courts may utilize the traditional 6 public policy factors, formerly referred to as proximate cause, to limit liability in appropriate cases under this section. *Fandrey v. American Family*, 2004 WI 62, 272 Wis. 2d 46, 680 N.W.2d 345, 02-2628.

Public policy does not preclude a police officer from suing for injuries received because of a dog attack that occurred during the course of the officer's duties. *Cole v. Hubanks*, 2004 WI 74, 272 Wis. 2d 539, 681 N.W.2d 147, 02-1416.

Under s. 174.001 (5), "owner" includes anyone who keeps or harbors a dog. The concepts of "harbor" and "keep" are similar, and the liability of one who harbors a dog and one who keeps a dog is the same. When a homeowner has become a statutory owner by virtue of the dog's living in her residence for several months, that status does not vary on a minute-to-minute basis, depending on which person controls the dog. The homeowner's status as a harbinger of the dog is not extinguished when the dog's legal owner takes momentary control of the dog. *Pawlowski v. American Family Mutual Insurance Co.* 2009 WI 105, 322 Wis. 2d 21, 777 N.W.2d 67, 07-2651.

Mere ownership of the property on which a dog resides is not sufficient to establish that an individual is an owner of a dog under this section. The totality of the circumstances determines whether the legal owner of the property has exercised the requisite control over the property to be considered a harbinger and thus an owner under the statute. *Augsburger v. Homestead Mutual Insurance Company*, 2014 WI 133, 359 Wis. 2d 385, 856 N.W.2d 874, 12-0641.

Recent changes in the statutory liability of Wisconsin dog owners: How expensive is fido? *Eiche*. WBB April 1984.

Unleashed: Wisconsin's Dog Statute. *Mullaney*. Wis. Law. June 2006.

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