

Act No. 142
Public Acts of 1991
Approved by the Governor
November 22, 1991
Filed with the Secretary of State
November 25, 1991

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1991**

Introduced by Rep. Bouchard

ENROLLED HOUSE BILL No. 4927

AN ACT to amend sections 3, 4, and 6 of Act No. 248 of the Public Acts of 1879, entitled "An act to prevent animals from running at large in certain cities and villages within this state," being sections 433.53, 433.54, and 433.56 of the Michigan Compiled Laws; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Sections 3, 4, and 6 of Act No. 248 of the Public Acts of 1879, being sections 433.53, 433.54, and 433.56 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 3. Whenever any such officer or person shall seize and take into his or her possession any animal under the preceding sections, such animal shall be received and kept in such pound, if there shall be one, and if not the same may be kept by any such officer or person in any other suitable place, and if such animal shall not be claimed, and the fees hereinafter provided for, paid within 2 days thereafter, the pound-master or other person in charge of the pound, if such animal shall have been received at such pound; and if not, then the person by whom such animal was seized or taken into custody shall make immediate complaint in writing, stating the name of the owner of such animal, if known to him or her, and the facts, to the district or municipal court having jurisdiction to hear and determine such matter and shall thereupon proceed in the same manner as in civil action, except as especially changed in this act, and shall forthwith issue a summons, directed to the owner if he or she shall have been named in said complaint, and stating the fact that such seizure has been made, and requiring the owner of such animal, or any party having an interest in the same, to show cause before the court, at a time and place to be specified in such summons, why such animal should not be sold and the proceeds applied as directed by this act, and such time shall not be less than 6 nor more than 12 days from the issuing of such summons. The summons may be served by any marshal, deputy marshal, or constable of the city or village, or by any elector thereof authorized so to do by the court in writing thereon. Such service shall be made by delivering a copy thereof to the owner, if named in the summons and if he or she can be found in the city or village 6 days before the return day thereof, and if the owner shall not be named in the summons, or if he or she cannot be found then the summons shall be served by posting copies thereof in at least 3 public and conspicuous places in the city or village, at least 5 days before the return day thereof, and 1 of the places shall be in the office of the clerk of such city or village. At the time and place appointed for the return of the summons, the officer or

person by whom such complaint was made, shall appear, and any party or persons owning or having an interest in the animal shall be allowed by the court to appear in the proceeding, and on his or her filing with the court, an answer under oath, subscribed by him or her or by his or her agent, denying any or all of the facts in the complaint, an issue shall be deemed joined in the proceeding, and the subsequent proceedings shall be as in civil actions so far as they can be except as otherwise provided in this act, and it is hereby made the duty of the city or village attorney of all cities and villages included within this act, to appear and conduct all proceedings under this act on behalf of the person making such complaint. If no one shall appear to show cause and the summons shall be returned duly served, or if the jury, or judge shall find, after a trial that no sufficient cause is shown why such sale should not be made, as directed by this act, then the judge shall issue his or her warrant under his or her hand, directed to any marshal, deputy marshal, or constable of the city or village, commanding him or her to sell the animal at public auction for the best price he or she can obtain therefor, and make return thereof to the court at a time and place therein specified, not less than 10 nor more than 20 days thereafter. The sale shall be on the like notice as on constable's sale on civil process, and the sheriff, deputy sheriff or constable shall make return as required by the warrant, and pay the proceeds of the sale to the court. The court shall thereupon adjudge the costs of the proceedings, the same amounts being allowed as in civil actions, and in addition, he or she shall allow to the officer or person making such seizure, for every horse, mule or colt, 1 dollar; for every cow, calf or other cattle, each 50 cents, and for every goat, sheep, or swine, 25 cents, together with the actual damages sustained by such person by reason of the trespass or breaking of such animal into his or her premises, and compensation to such person or officer for the care and keeping of such animals from the time of the seizure thereof to the sale at the rate specified in the next section of this act, and the marshal, deputy marshal, or constable, the same fees as for service of a summons and execution in civil actions. If, after paying the sums aforesaid, there shall be any surplus of the proceeds of the sale, the judge shall pay the same to the owner or person establishing before him or her, on the return of such summons, or at such other time as he or she shall appoint, the right to the same. If no person shall claim the surplus within 1 year after such seizure, the court shall pay the same to the treasurer of such city or village for the benefit of the contingent fund. If such owner or person interested, shall not appear and demand such surplus within the year, he or she shall be forever precluded from recovering any part of such moneys, and the receipt of the treasurer of the city or village, given at any time after the expiration of the year, shall be a full discharge to the court for the same.

Sec. 4. The owner of any animal which shall have been seized or impounded under and pursuant to the foregoing provisions, may at any time before the making of the complaint hereinbefore provided for, demand and shall be entitled to the possession of such animal upon the payment to the pound-master or the person in charge of such pound, if such animal shall have been impounded, and if not, then upon payment to the person or officer who shall have seized or taken such animals into his or her possession, the fees provided for in the preceding sections for the seizure of such animal; and if such animal shall have been impounded, the farther fee of 50 cents for every horse, mule, colt, cow, calf, or other cattle, and 25 cents for every goat, sheep, or swine, which fee shall belong to such pound-master or person in charge of such pound, and the farther sum of 1 dollar per day as compensation for keeping every such horse, mule, or colt, and 75 cents per day for every cow, calf, or other cattle, and 50 cents per day for every goat, sheep, or swine for each day since and including the day such animal was seized, impounded, or taken into possession as aforesaid. At any time after the making of the complaint and before the sale of the animal, the owner thereof may make demand and claim for such animal before the district court or municipal court at which the proceedings shall have been commenced; and upon making satisfactory proof of ownership of the animal and upon paying the fees and compensation for keeping such animal as provided for in this section, and other fees and expenses that shall have accrued up to the time of making such demand and proof, he or she shall be entitled to the custody and possession of such animal. The court shall fix and determine the amount of the fees, expenses, and compensation in accordance with the provisions of this act, and shall pay the same to the officer or person entitled thereto.

Sec. 6. An appeal may be taken by either party who shall have appeared and contested in the proceeding to the circuit court for the county, and the jurisdiction, powers, and duties of circuit courts, to hear and determine such appeals, and the proceedings therein shall be applicable to appeals under this act, so far as the same can be applied and are consistent with this act. But such appeal can only be taken from the finding or determination that cause exists or does not exist for the sale aforesaid; and such appeal when made by the claimant shall not be effectual for any purpose unless the bond required on appeals to the circuit court contains a clause that in case the finding or determination shall be affirmed, the claimant will pay all such sums as the court shall determine and adjudge for the costs, penalties, and allowances, so as aforesaid authorized to be made. In case of appeal by a claimant as aforesaid, and after the approval by the district or municipal court of such bond, the judge shall forthwith direct the sale not to be had, and shall order the animal to be delivered to the appellant, if it shall appear to him or her that the appellant is the owner, or is entitled to the possession thereof.

Section 2. Sections 11 and 12 of chapter 125 of the Revised Statutes of 1846, being sections 433.111 and 433.112 of the Michigan Compiled Laws, are repealed.

This act is ordered to take immediate effect.

.....
Clerk of the House of Representatives.

.....
Secretary of the Senate.

Approved.....

.....
Governor.