

HOUSE BILL No. 4927

June 5, 1991, Introduced by Rep. Bouchard and referred to the Committee on Judiciary.

A bill 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:

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

4 Sec. 3. Whenever any such officer or person shall seize and
5 take into his OR HER possession any animal under the preceding
6 sections, such animal shall be received and kept in such pound,
7 if there shall be one, and if not the same may be kept by any
8 such officer or person in any other suitable place, and if such

1 animal shall not be claimed, and the fees hereinafter provided
2 for, paid within 2 days thereafter, ~~said~~ THE pound-master or
3 other person in charge of ~~said~~ THE pound, if such animal shall
4 have been received at such pound; and if not, then the person by
5 whom such animal was seized or taken into custody shall make
6 immediate complaint in writing, stating the name of the owner of
7 such animal, if known to him OR HER, and the facts, to the
8 ~~recorder or to any justice of the peace of any such city or vil-~~
9 ~~lage, and such recorder or justice shall thereupon have~~ DISTRICT
10 OR MUNICIPAL COURT HAVING jurisdiction to hear and determine such
11 matter and shall thereupon proceed in the same manner as in civil
12 action, except as especially changed in this act, and shall
13 forthwith issue a summons, ~~under his hand,~~ directed to the
14 owner if he OR SHE shall have been named in said complaint, and
15 stating the fact that such seizure has been made, and requiring
16 the owner of such animal, or any party having an interest in the
17 same, to show cause before ~~such recorder or justice~~ THE COURT,
18 at a time and place to be specified in such summons, why such
19 animal should not be sold and the proceeds applied as directed by
20 this act, and such time shall not be less than 6 nor more than 12
21 days from the issuing of such summons. The ~~said~~ summons may be
22 served by any marshal, deputy marshal, or constable of ~~said~~ THE
23 city or village, or by any elector thereof authorized so to do by
24 the ~~said recorder or justice~~ THE COURT in writing thereon.
25 Such service shall be made by delivering a copy thereof to the
26 owner, if named in ~~said~~ THE summons and if he OR SHE can be
27 found in ~~said~~ THE city or village 6 days before the return day

1 thereof, and if the owner shall not be named in ~~said~~ THE
2 summons, or if he OR SHE cannot be found then ~~said~~ THE summons
3 shall be served by posting copies thereof in at least 3 public
4 and conspicuous places in ~~said~~ THE city or village, at least 5
5 days before the return day thereof, and 1 of ~~said~~ THE places
6 shall be in the office of the ~~recorder or~~ clerk of such city or
7 village. At the time and place appointed for the return of
8 ~~said~~ THE summons, the officer or person by whom such complaint
9 was made, shall appear, and any party or persons owning or having
10 an interest in ~~said~~ THE animal shall be allowed by ~~said~~
11 ~~recorder or justice of the peace~~ THE COURT to appear in ~~said~~
12 THE proceeding, and on his OR HER filing with ~~said recorder or~~
13 ~~justice~~ THE COURT, an answer under oath, subscribed by him OR
14 HER or by his OR HER agent, denying any or all of the facts in
15 ~~said~~ THE complaint, an issue shall be deemed joined in the
16 ~~said~~ proceeding, and the subsequent proceedings shall be as in
17 civil actions so far as they can be except as otherwise provided
18 in this act, and it is hereby made the duty of the city or vil-
19 lage attorney of all cities and villages included within this
20 act, to appear and conduct all proceedings under this act on
21 behalf of the person making such complaint. If no one shall
22 appear to show cause and the ~~said~~ summons shall be returned
23 duly served, or if the jury, or ~~recorder or justice~~ JUDGE shall
24 find, after a trial that no sufficient cause is shown why such
25 sale should not be made, as directed by this act, then ~~said~~
26 ~~recorder or justice~~ THE JUDGE shall issue his OR HER warrant
27 under his OR HER hand, directed to any marshal, deputy marshal,

1 or constable of the ~~said~~ city or village, commanding him OR HER
2 to sell the ~~said~~ animal at public auction for the best price he
3 OR SHE can obtain therefor, and make return thereof to the ~~said~~
4 ~~recorder or justice~~ COURT at a time and place therein specified,
5 not less than 10 nor more than 20 days thereafter. The ~~said~~
6 sale shall be on the like notice as on constable's sale on civil
7 process, and the ~~said~~ sheriff, deputy sheriff or constable
8 shall make return as required by the ~~said~~ warrant, and pay the
9 proceeds of ~~said~~ THE sale to ~~said recorder or justice~~. The
10 ~~said recorder or justice~~ THE COURT. THE COURT shall thereupon
11 adjudge the costs of ~~said~~ THE proceedings, the same amounts
12 being allowed as in civil actions, and in addition, he OR SHE
13 shall allow to the officer or person making such seizure, for
14 every horse, mule or colt, 1 dollar; for every cow, calf or other
15 cattle, each 50 cents, and for every goat, sheep, or swine, 25
16 cents, together with the actual damages sustained by such person
17 by reason of the trespass or breaking of such animal into his OR
18 HER premises, and compensation to such person or officer for the
19 care and keeping of such animals from the time of the seizure
20 thereof to the sale at the rate specified in the next section of
21 this act, ~~and the said recorder or justice shall be allowed the~~
22 ~~sum of 1 dollar for each animal so sold,~~ and the marshal, deputy
23 marshal, or constable, the same fees as for service of a summons
24 and execution in civil actions. If, after paying the sums afore-
25 said, there shall be any surplus of the proceeds of ~~said~~ THE
26 sale, the ~~said recorder or justice~~ JUDGE shall pay the same to
27 the owner or person establishing before him OR HER, on the return

1 of such summons, or at such other time as he OR SHE shall
2 appoint, the right to the same. If no person shall claim ~~said~~
3 THE surplus within 1 year after such seizure, the ~~said recorder~~
4 ~~or justice~~ COURT shall pay the same to the treasurer of such
5 city or village for the benefit of the contingent fund. If such
6 owner or person interested, shall not appear and demand such sur-
7 plus within ~~said~~ THE year, he OR SHE shall be forever precluded
8 from recovering any part of such moneys, and the receipt of the
9 treasurer of ~~said~~ THE city or village, given at any time after
10 the expiration of ~~said~~ THE year, shall be a full discharge to
11 ~~said recorder or justice~~ THE COURT for the same.

12 Sec. 4. The owner of any animal which shall have been
13 seized or impounded under and pursuant to the foregoing provi-
14 sions, may at any time before the making of the complaint herein-
15 before provided for, demand and shall be entitled to the posses-
16 sion of such animal upon the payment to the pound-master or the
17 person in charge of such pound, if such animal shall have been
18 impounded, and if not, then upon payment to the person or officer
19 who shall have seized or taken such animals into his OR HER pos-
20 session, the fees provided for in the preceding sections for the
21 seizure of such animal; and if such animal shall have been
22 impounded, the farther fee of 50 cents for every horse, mule,
23 colt, cow, calf, or other cattle, and 25 cents for every goat,
24 sheep, or swine, which ~~said~~ fee shall belong to such
25 pound-master or person in charge of such pound, and the farther
26 sum of 1 dollar per day as compensation for keeping every such
27 horse, mule, or colt, and 75 cents per day for every cow, calf,

1 or other cattle, and 50 cents per day for every goat, sheep, or
2 swine for each day since and including the day such animal was
3 seized, impounded, or taken into possession as aforesaid. At any
4 time after the making of ~~said~~ THE complaint and before the sale
5 of ~~said~~ THE animal, the owner thereof may make demand and claim
6 for such animal before the ~~recorder or justice, before whom~~
7 ~~said~~ DISTRICT COURT OR MUNICIPAL COURT AT WHICH THE proceedings
8 shall have been commenced; and upon making satisfactory proof of
9 ownership of ~~said~~ THE animal ~~before said recorder or justice,~~
10 and upon paying ~~to him~~ the fees and compensation for keeping
11 such animal ~~hereinbefore~~ AS PROVIDED FOR in this section,
12 ~~provided for,~~ and other fees and expenses that shall have
13 accrued up to the time of making such demand and proof, he OR SHE
14 shall be entitled to the custody and possession of such animal.
15 ~~And the said recorder or justice~~ THE COURT shall fix and deter-
16 mine the amount of the fees, expenses, and compensation in
17 accordance with the provisions of this act, and shall pay the
18 same to the officer or person entitled thereto.

19 Sec. 6. An appeal may be taken by either party who shall
20 have appeared and contested in ~~said~~ THE proceeding ~~before such~~
21 ~~recorder or justice~~ to the circuit court for the county, and
22 ~~all the laws relating to appeals from judgments of justices'~~
23 ~~courts and~~ the jurisdiction, powers, and duties of circuit
24 courts, to hear and determine such appeals, and the proceedings
25 therein shall be applicable to appeals under this act, so far as
26 the same can be applied and are consistent with this act. But
27 such appeal can only be taken from the finding or determination

1 that cause exists or does not exist for the sale aforesaid; and
2 such appeal when made by the claimant shall not be effectual for
3 any purpose unless the bond required on appeals to the circuit
4 court contains a clause that in case the finding or determination
5 shall be affirmed, the claimant will pay all such sums as the
6 court shall determine and adjudge for the costs, penalties, and
7 allowances, so as aforesaid authorized to be made. In case of
8 appeal by a claimant as aforesaid, and after the approval by the
9 ~~recorder or justice~~ DISTRICT OR MUNICIPAL COURT of such bond,
10 ~~said recorder or justice~~ THE JUDGE shall forthwith direct the
11 sale not to be had, and shall order the ~~said~~ animal to be
12 delivered to the appellant, if it shall appear to him OR HER that
13 ~~said~~ THE appellant is the owner, or is entitled to the posses-
14 sion thereof.

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