

# HOUSE BILL No. 4759

May 3, 1989, Introduced by Rep. Honigman and referred to the Committee on Judiciary.

A bill to amend section 10 of Act No. 238 of the Public Acts of 1879, entitled

"An act to protect logs, lumber and timber, while floating upon the waters in this state, or lying upon the banks or shores thereof, and to repeal consecutive sections number 2009, 2010, 2011, 7627 and 7628 of the Compiled Laws of 1871, relating to the same subject,"

being section 426.160 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 10 of Act No. 238 of the Public Acts of  
2 1879, being section 426.160 of the Michigan Compiled Laws, is  
3 amended to read as follows:

4 Sec. 10. Whenever any logs, timber, boards, planks, spars,  
5 boomsticks, spiles, shinglebolts, railroad ties, or fence posts,  
6 in rafts or otherwise shall be drifted or float upon any island  
7 in any of the waters or streams in this state, or upon the banks  
8 or shores of ~~such~~ THE waters or lands adjacent ~~thereto~~ TO THE

1 WATERS, the owner of ~~such~~ THE logs, timber, boards, planks,  
2 spars, boomsticks, spiles, shinglebolts, railroad ties, or fence  
3 posts, or any person or corporation entitled to ~~the~~ possession,  
4 ~~thereof,~~ may at any time within 18 months remove the same upon  
5 paying or tendering to the owner or occupant of ~~such~~ THE bank,  
6 shore, or lands, ~~such~~ THE reasonable damages as may have been  
7 caused by ~~such~~ THE occupancy and removal. ~~, but if~~ IF the  
8 amount of ~~such~~ THE damages ~~can not~~ CANNOT be agreed upon by  
9 the owner or occupant of ~~such~~ THE bank, shore or land, and  
10 ~~such~~ THE owner, person or corporation entitled to ~~such~~ THE  
11 logs, timber, boards, planks, spars, boomsticks, spiles, shingle-  
12 bolts, railroad ties, or fence posts, either of them may elect to  
13 have the amount of ~~said~~ THE damages left to arbitration in the  
14 manner following: The party or parties so electing, or their  
15 authorized agent or attorney, shall serve a written notice by  
16 mail or otherwise, upon ~~such~~ THE other party or parties, recit-  
17 ing the fact that they elect to have ~~such~~ THE damages left to  
18 arbitration, and that they will meet ~~such~~ THE persons, their  
19 agents or attorneys, at the ~~office of some~~ of the justices of  
20 ~~the peace of the township, where such~~ DISTRICT OR MUNICIPAL  
21 COURT OF THE JUDICIAL DISTRICT OR MUNICIPALITY IN WHICH THE  
22 island, bank, shore, or land, is situated, at a time in ~~said~~  
23 THE notice mentioned, not less than 6 days nor more than 20 days  
24 from the time of the service of ~~said~~ THE notice, at which time  
25 and place ~~such~~ THE parties or their authorized agents or attor-  
26 neys shall meet to choose ~~such~~ THE arbitrators ~~as aforesaid,~~  
27 in the manner following: The party giving notice, or his, her,

1 or their authorized agent or attorney shall select 1 person to  
2 act as 1 of ~~said~~ THE arbitrators, and the party so notified,  
3 his, her, or their authorized agent or attorney, shall choose  
4 another, and these 2 ~~thus chosen~~ shall select a third.  
5 ~~Provided, That all~~ ALL persons chosen under the provisions of  
6 this act, shall be chosen from among ~~the freeholders~~ THOSE  
7 residing in the township, or an adjoining township where ~~such~~  
8 THE island, bank, shore, or land is situated. ~~And if said~~ IF  
9 THE parties, his, her, or their authorized agents or attorneys  
10 cannot agree upon the selection of ~~said~~ THE persons as arbitra-  
11 tors, then either or any of ~~such~~ THE parties may certify ~~such~~  
12 THE fact or facts, to ~~1 of the justices of the peace of such~~  
13 ~~township as aforesaid~~ THE JUDGE who shall upon the receipt of  
14 ~~such~~ THE certificate proceed at once to make a list of the  
15 names of 18 ~~freeholders who shall be, either residents of such~~  
16 ~~township, or of such~~ RESIDENTS OF THE township and adjoining  
17 townships, and the parties ~~aforesaid~~ shall strike out, alter-  
18 nately, the plaintiff first striking out, 1 name from the ~~said~~  
19 list, until only 3 names remain, and the ~~freeholders~~ RESIDENTS  
20 whose names so remain upon the list shall act as ~~such~~ THE  
21 arbitrators. ~~Said justice of the peace~~ THE JUDGE shall notify  
22 ~~said~~ THE persons so selected, who shall appear before ~~such~~  
23 ~~justice~~ THE COURT at a day set by him OR HER, at a time not less  
24 than 3 nor more than 10 days from the service of ~~said~~ THE  
25 notice. At ~~such~~ THAT time ~~so~~ set for the meeting of ~~said~~  
26 THE arbitrators, they shall appear and be sworn or affirmed to  
27 ~~justly and equitably~~ try all matters in relation to ~~such~~ THE

1 damages, and shall proceed to hear testimony and decide the  
2 amount of ~~said~~ THE damages. The ~~said~~ arbitrators shall have  
3 the right to view the ~~said~~ island, bank, shore, or land, the  
4 occupancy of which is in controversy. The ~~said~~ arbitrators  
5 shall have all the powers usual to arbitrators. When the ~~said~~  
6 arbitrators shall have determined the amount of damages, they  
7 shall, if chosen by the interested parties as first provided in  
8 this section, certify the same to ~~+~~ ~~of the justices of the peace~~  
9 ~~in the township where the said island, bank, shore, or land is~~  
10 ~~situated, who shall thereupon enter a judgment in his docket for~~  
11 ~~such award against such~~ THE DISTRICT OR MUNICIPAL COURT JUDGE  
12 WHO SHALL ENTER A JUDGMENT AGAINST THE owner, person, or corpora-  
13 tion entitled to ~~such~~ THE logs, timber, boards, planks or floa-  
14 tables, and execution shall issue thereon, as in other cases in  
15 ~~justices courts. But if~~ THAT DISTRICT OR MUNICIPAL COURT. IF  
16 the arbitrators shall have been designated from any list of names  
17 as provided in this section, they shall certify the amount of  
18 damages to the ~~justice of the peace making such list~~ DISTRICT  
19 OR MUNICIPAL JUDGE, and he OR SHE shall in like manner enter  
20 judgment. ~~, and execution shall issue thereon the same as in~~  
21 ~~other cases in justices courts.~~ Should either party complain of  
22 ~~such~~ THE award ~~such~~ THE party may appeal to the circuit court  
23 of the county where ~~such~~ THE island, bank, shore, or land is  
24 situated, by giving bonds for the amount of ~~such~~ THE award and  
25 costs. ~~, but such appeal shall not be allowed except for rea-~~  
26 ~~sons as set forth in sections 9 and 10, chapter 292 of Howells~~  
27 ~~annotated statutes.~~ If ~~such~~ THE logs, timber, boards, planks,

1 spars, boomsticks, spiles, shinglebolts, railroad ties or fence  
2 posts shall not be removed within said 18 months under the provi-  
3 sions of this section, the owner ~~thereof~~ shall be deemed to  
4 have forfeited all right thereto, and ~~such~~ THE owner or occu-  
5 pant of ~~said~~ THE lands may make out a sworn statement contain-  
6 ing a description of the lands on which ~~said~~ THE logs, timber,  
7 boards, planks, or floatables are lying, the number of logs, and  
8 the amount of timber, boards, ~~plank~~ PLANKS, spars, boomsticks,  
9 spiles, shinglebolts, railroad ties or fence posts as nearly as  
10 may be, and the marks thereon if any, and the length of time the  
11 same have remained on ~~said~~ THE land, and upon delivering ~~such~~  
12 THE statement to any sheriff, deputy sheriff, or constable,  
13 ~~such~~ THE officer shall proceed and make sale of ~~such~~ THE  
14 logs, timber, boards, planks, spars, boomsticks, spiles, shingle-  
15 bolts, railroad ties or fence posts, at public auction, at some  
16 convenient and public place. ~~in the vicinity thereof.~~  
17 Immediately on making ~~such~~ THE sale, ~~such~~ THE officer shall  
18 pay over to the owner or occupant of ~~such~~ THE lands, the pro-  
19 ceeds of ~~such~~ THE sale, less his OR HER fees for making the  
20 same, which fee shall be the same as upon levy and sale upon  
21 execution. ~~— Provided, That no~~ NO sale shall be made without  
22 giving 10 days' notice to the owner of ~~such~~ THE logs, if known;  
23 and if not known, then ~~such~~ THE officer shall give like notice  
24 as he OR SHE would be required to give on sale of personal prop-  
25 erty on execution, and when ~~such~~ THE sale shall have been made  
26 he OR SHE shall thereupon make his OR HER certificate, stating  
27 the time and place of sale the number or amount of logs, timber,

1 boards, planks, spars, boomsticks, spiles, shinglebolts, railroad  
2 ties, or fence posts, sold and the marks thereon, if any, and the  
3 name of the purchaser or purchasers, the amount paid and the dis-  
4 position of the same. He OR SHE shall at once annex ~~such~~ THE  
5 sworn statement to ~~said~~ THE certificate and file ~~the same~~ IT  
6 in the office of the county clerk of the county in which the sale  
7 was made. ~~Provided, further, That when~~ WHEN the property men-  
8 tioned in section 1 of this act, shall be or lie upon any  
9 improved farming lands of this state, adjoining any of the waters  
10 mentioned in ~~said~~ section 1, if the owner or occupant of ~~such~~  
11 THE lands shall make the affidavit ~~hereinbefore~~ required IN  
12 THIS SECTION, and shall cause a copy of ~~said~~ THE affidavit to  
13 be personally served on the owner or agent of the owner of the  
14 property mentioned in ~~said~~ THE affidavit, if ~~said~~ THE agent  
15 or owner be known to the owner or occupant of ~~said~~ THE lands,  
16 but if not known to ~~said~~ THE owner or occupant, then he OR SHE  
17 shall cause a copy of ~~said~~ THE affidavit to be published in 1  
18 or more newspapers in ~~said~~ THE county in which ~~said~~ THE land  
19 is situated for 3 successive weeks, if there be one, but if not,  
20 in 1 of an adjoining county, and a copy of the same shall be sent  
21 to the office of the booming or log-running company having ~~such~~  
22 THE property in charge or doing business on ~~such~~ THE streams if  
23 known by ~~said~~ THE owner or occupant, said notice to be sent by  
24 mail or otherwise, which ~~said~~ THE notice shall require ~~said~~  
25 THE owner or agent to remove ~~said~~ THE property mentioned in the  
26 ~~said~~ THE affidavit, within 30 days after the receipt of ~~said~~  
27 THE notice. If ~~said~~ THE owner shall neglect or refuse to

1 remove the ~~said~~ property, and pay all reasonable damages and  
2 charges ~~thereon~~ then ~~said~~ THE owner or occupant may remove  
3 the same to the adjoining stream, or to the banks thereof, and if  
4 the same is not claimed by the owner ~~thereof~~ within 6 months  
5 thereafter, and all reasonable charges and damages are not paid,  
6 the owner or occupant of ~~said~~ THE land is empowered to sell the  
7 same at public auction to the highest bidder by giving the same  
8 notice as required by law in sales of personal property by sher-  
9 iffs and constables. ~~→, said~~ THE sale to be conducted as  
10 ~~hereinbefore~~ provided for the sale of logs, timber, boards,  
11 planks, spars, boomsticks, spiles, shinglebolts, railroad ties or  
12 fence posts, having lain for 18 months upon ~~such~~ THE land and  
13 the proceeds applied in the same way as provided in case of the  
14 sale of ~~such~~ THE logs, timber, boards, planks, spars, boom-  
15 sticks, spiles, shinglebolts, railroad ties or fence posts. →  
16 ~~And provided further, That all~~ ALL reasonable damages and  
17 expenses incurred and suffered by the owner or occupant of ~~such~~  
18 THE lands shall be a lien upon ~~such~~ THE logs, timber, boards,  
19 ~~plank~~ PLANKS, spars, boomsticks, spiles, shinglebolts, railroad  
20 ties, or fence posts until paid.