

# HOUSE BILL No. 5249

November 1, 1989, Introduced by Reps. Law, DeMars and Nye and referred to the Committee on Judiciary.

A bill to amend Act No. 236 of the Public Acts of 1961, entitled as amended  
"Revised judicature act of 1961,"  
as amended, being sections 600.101 to 600.9947 of the Michigan Compiled Laws, by adding sections 2954, 2955, 2956, 2957, and 2958.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Act No. 236 of the Public Acts of 1961, as  
2 amended, being sections 600.101 to 600.9947 of the Michigan  
3 Compiled Laws, is amended by adding sections 2954, 2955, 2956,  
4 2957, and 2958 to read as follows:

5       SEC. 2954. AS USED IN SECTIONS 2955 TO 2958, "LANDOWNER'S  
6 LIABILITY ACTION" MEANS AN ACTION TO RECOVER FOR INJURY OR DAMAGE  
7 INCURRED WHILE ON THE LAND OF ANOTHER, WHICH INJURY OR DAMAGE IS

1 ALLEGED TO HAVE BEEN CAUSED BY THE ACTIONS OR OMISSIONS OF THE  
2 OWNER OF THE LAND.

3 SEC. 2955. (1) IN BRINGING A LANDOWNER'S LIABILITY ACTION,  
4 THE PLAINTIFF SHALL STATE IN THE COMPLAINT THAT THE PLAINTIFF  
5 BELIEVES THAT THE DEFENDANT IS NOT IMMUNE FROM LIABILITY UNDER  
6 THE LANDOWNER'S LIABILITY ACT.

7 (2) IN DEFENDING AGAINST A LANDOWNER'S LIABILITY ACTION, THE  
8 DEFENDANT, IF HE OR SHE INTENDS TO CLAIM IMMUNITY FROM LIABILITY  
9 UNDER THE LANDOWNER'S LIABILITY ACT, SHALL STATE IN THE ANSWER  
10 THAT THE ACTION IS SUBJECT TO THAT ACT.

11 SEC. 2956. (1) IF AN OWNER OF LAND WHO IS THE DEFENDANT IN  
12 A LANDOWNER'S LIABILITY ACTION PLEADS IMMUNITY FROM LIABILITY  
13 PURSUANT TO THE LANDOWNER'S LIABILITY ACT, A PRESUMPTION ARISES  
14 THAT THE IMMUNITY EXISTS, AND THE BURDEN IS ON THE PLAINTIFF TO  
15 OVERCOME THE PRESUMPTION BY CLEAR AND CONVINCING EVIDENCE TO THE  
16 CONTRARY.

17 (2) THE FACT THAT THE DEFENDANT IN A LANDOWNER'S LIABILITY  
18 ACTION OWNS A POLICY OF INSURANCE PROTECTING THE OWNER AGAINST  
19 LIABILITY FOR INJURY OR DAMAGE TO PERSONS OR PROPERTY WHILE ON  
20 THE DEFENDANT'S LAND DOES NOT INDICATE THAT THE DEFENDANT DOES  
21 NOT HAVE A DEFENSE BASED ON THE LANDOWNER'S LIABILITY ACT, AND  
22 MAY NOT BE INTRODUCED AS EVIDENCE TO SHOW CONTROL OVER THE LAND  
23 OR FOR ANY OTHER REASON.

24 SEC. 2957. (1) AT ANY TIME DURING A LANDOWNER'S LIABILITY  
25 ACTION, THE COURT, UPON MOTION OR ITS OWN INITIATIVE, MAY FIND  
26 THAT THE DEFENDANT IS IMMUNE FROM LIABILITY UNDER THE LANDOWNER'S  
27 LIABILITY ACT, AND DISMISS THE ACTION ON THAT BASIS.

1 (2) WHEN THE COURT DISMISSES AN ACTION UNDER THIS SECTION,  
2 THE COURT SHALL MAKE A FINDING ON THE RECORD AS TO WHETHER THE  
3 ACTION WAS FRIVOLOUS OR WAS BROUGHT FOR MALICIOUS PURPOSES. IF  
4 THE COURT FINDS THAT THE ACTION WAS FRIVOLOUS OR WAS BROUGHT FOR  
5 MALICIOUS PURPOSES, THE COURT SHALL AWARD REASONABLE COSTS AND  
6 ATTORNEY FEES TO THE DEFENDANT.

7 SEC. 2958. IN A LANDOWNER'S LIABILITY ACTION, THE PLAINTIFF  
8 SHALL JOIN AS DEFENDANTS ALL PERSONS WHO HAVE AN OWNERSHIP INTER-  
9 EST IN THE LAND. THE COURT MAY ORDER THE JOINDER REQUIRED UNDER  
10 THIS SECTION AS ALLOWED BY COURT RULES.

11 Section 2. This amendatory act shall not take effect unless  
12 all of the following bills of the 85th Legislature are enacted  
13 into law:

14 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
15 no. 02847'89).

16 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_ (request  
17 no. 02847'89 b).