

# SENATE BILL No. 414

May 3, 1989, Introduced by Senator V. SMITH 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, at a time  
18 and place to be specified in such summons, why such animal should  
19 not be sold and the proceeds applied as directed by this act, and  
20 such time shall not be less than 6 nor more than 12 days from the  
21 issuing of such summons. The ~~said~~ summons may be served by any  
22 marshal, deputy marshal, or constable of ~~said~~ THE city or vil-  
23 lage, or by any elector thereof authorized so to do by the ~~said~~  
24 ~~recorder or justice~~ THE COURT in writing thereon. Such service  
25 shall be made by delivering a copy thereof to the owner, if named  
26 in ~~said~~ THE summons and if he OR SHE can be found in ~~said~~ THE  
27 city or village 6 days before the return day thereof, and if the

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

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

1 such summons, or at such other time as he OR SHE shall appoint,  
2 the right to the same. If no person shall claim ~~said~~ THE sur-  
3 plus within 1 year after such seizure, the ~~said recorder or~~  
4 ~~justice~~ COURT shall pay the same to the treasurer of such city  
5 or village for the benefit of the contingent fund. If such owner  
6 or person interested, shall not appear and demand such surplus  
7 within ~~said~~ THE year, he OR SHE shall be forever precluded from  
8 recovering any part of such moneys, and the receipt of the trea-  
9 surer of ~~said~~ THE city or village, given at any time after the  
10 expiration of ~~said~~ THE year, shall be a full discharge to ~~said~~  
11 ~~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 AT WHICH THE proceedings shall have been  
8 commenced; and upon making satisfactory proof of ownership of  
9 ~~said~~ THE animal ~~before said recorder or justice,~~ and upon  
10 paying ~~to him~~ the fees and compensation for keeping such animal  
11 ~~hereinbefore~~ AS PROVIDED FOR in this section, ~~provided for,~~  
12 and other fees and expenses that shall have accrued up to the  
13 time of making such demand and proof, he OR SHE shall be entitled  
14 to the custody and possession of such animal. ~~And the said~~  
15 ~~recorder or justice~~ THE COURT shall fix and determine the amount  
16 of the fees, expenses, and compensation in accordance with the  
17 provisions of this act, and shall pay the same to the officer or  
18 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.