

Act No. 159
Public Acts of 1991
Approved by the Governor
December 6, 1991
Filed with the Secretary of State
December 9, 1991

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

Introduced by Reps. Clarke and DeMars

ENROLLED HOUSE BILL No. 4920

AN ACT to amend sections 5, 6, 11, and 12 of Act No. 229 of the Public Acts of 1887, entitled "An act establishing a lien for labor and services upon lumber, shingles, logs, timber, cedar posts, telegraph poles, railroad ties, bark, shingle-bolts, stave-bolts, staves, cord-wood, pulp-wood, hop-poles, hoop-poles, veneering wood and all other forest products, and to repeal Act No. 145 of the Session Laws of 1881, entitled "An act establishing a lien for labor and services upon logs, timber, cedar posts, telegraph poles, railroad ties, tanbark, shingle-bolts and staves, and to repeal Act No. 185 of the Session Laws of 1873, entitled 'An act establishing a lien for labor and services upon logs and timber, as amended by Act No. 253 of the Public Acts of 1879' ", being sections 426.5, 426.6, 426.11, and 426.12 of the Michigan Compiled Laws; section 3 of Act No. 263 of the Public Acts of 1861, entitled "An act to provide for the floating of logs and timber in the streams of this state," being section 426.53 of the Michigan Compiled Laws; section 38 of chapter 126 of the Revised Statutes of 1846, entitled "Of the lien of mechanics and others," being section 570.188 of the Michigan Compiled Laws; section 5 of Act No. 116 of the Public Acts of 1911, entitled as amended "An act to establish a lien upon hay, grain, seed and other products for pressing, threshing or hulling the same, to provide the manner of enforcing such lien, and prescribing a penalty for the selling, secreting or otherwise disposing of property subject to such lien," being section 570.335 of the Michigan Compiled Laws; and sections 7 and 12 of Act No. 160 of the Public Acts of 1897, entitled "An act to establish a lien upon horses and other animals for the cost of shoeing the same," being sections 570.357 and 570.362 of the Michigan Compiled Laws, to harmonize provisions of law relating to the abolished office of justice of the peace in regard to liens; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

Section 1. Sections 5, 6, 11, and 12 of Act No. 229 of the Public Acts of 1887, being sections 426.5, 426.6, 426.11, and 426.12 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 5. Any person or persons, or the assignee of any person or persons, having a lien upon or against any of the products filed in accordance with jurisdictional limits may enforce the same by attachment against any of such products in the circuit, district, or municipal court of the judicial district or municipality in which the products, or any portion of the same, may be situated at the time of commencement of suit. Suit may be commenced to enforce such liens, if the same be due, immediately after the filing of such statement, and such

lien claim shall cease to be a lien upon the property named in such statement unless suit be commenced within 3 months after the filing of such statement. In all such suits the person, company, or corporation liable for the payment of such debt or claim shall be made the party defendant.

Sec. 6. The attachment shall require the sheriff or other proper officer to attach and safely keep the property or products described in the writ or so much thereof as is necessary to satisfy the claim of the plaintiff, with all costs and disbursements, charges, and expenses, and the attachment shall also require the sheriff or other proper officer, to summons the defendant therein named to appear before the court at the time and place therein specified, the same as ordinary writs of attachment in the circuit, district, or municipal court, and any such attachment or other process issued out of the courts of this state in pursuance of the provisions of this act, may be served in any county of this state, and if the defendant in the attachment is not the owner of the property or products described in the writ, then the officer executing the writ shall serve or cause to be served a copy of the attachment on or before the return day mentioned in the writ upon the owner of the products, or any of them, their proper agent or attorney, if such owner, agent, or attorney be known to him or her, and residing in this state: Provided, That no sheriff or other officer shall seize upon and detain any such property or products when in transit from the place where banked or deposited for shipment on the railroad, or for floatage in the stream or streams, or for transportation on the waters of this state, when such place of destination is within this state, but in case such products are in transit, or are in possession of any booming company, or other person or corporation for the purpose of being driven or sorted and delivered to the owners, or to satisfy any statutory lien, then levy an attachment of the property or products may be made by serving a copy of the attachment upon the person or corporation driving or holding the same, who shall, from the time of such service, be deemed to hold the same both on their own behalf and in behalf of the sheriff or other officer, to the extent of the attachment lien, until the same can be driven and sorted out; and when driven or sorted out, and sheriff or other officer may receive the products from the person or corporation, and the statutory lien of the person or corporation shall not be released by the holding of the sheriff or other officer; and in case of sale by the sheriff or other officer on execution, and when the proceeds of sale shall not be sufficient to satisfy all liens in full, then such proceeds shall be distributed pro rata to all parties in interest, under the special order and direction of the court having jurisdiction in the attachment: Provided, further, If the owner of the products or any person in their behalf shall make, execute, and file with the clerk of the court where the attachment is pending a good and sufficient bond in a sum double the amount claimed in the writ, signed by 2 persons and approved by the clerk, running to the plaintiff in the writ and conditioned for the payment of all damages, costs, charges, disbursements, and expenses that may be recovered by the plaintiff against defendant that may be found to be a lien upon or against the products described in the writ, and upon the approval and filing of the bond, the clerk shall issue an order to the officer having in charge such products, directing their release, and upon the service of a copy of the order upon the officer, he or she shall release the same.

Sec. 11. All writs of attachment issued under the provisions of this act by any court of this state shall be served and returned as ordinary writs of attachment are served and returned in that court, except as herein otherwise provided; and the pleadings and all subsequent proceedings shall be the same as in other cases of attachment, except as herein otherwise provided. The declaration in all suits brought under this act may be in the following form:

TITLE OF COURT AND CAUSE

County of, ss.

Whereas,, the defendant herein, has been duly summoned to appear in this cause to answer the plaintiff herein in an action of assumpsit for labor and services done and performed by plaintiff for said defendant, in manufacturing, cutting, skidding, scaling, falling, hauling, banking, driving, running, rafting, or booming (as the case may be) the following described property to wit: (here insert the same description of property as set forth in writ) for which the labor and services there is now due the plaintiff the sum of, for which the amount a claim of lien has been duly filed with the clerk of the county of, being the county in which the labor was performed, and the defendant on the day of, 19...., in consideration of the premises undertook and promised the plaintiff to pay him or her the sums of money on request; yet the defendant has neglected so to do, or any part thereof, to the plaintiff's damage of and therefore he or she brings suit, etc., and claims a lien upon the described property for the amount.

Sec. 12. In all suits on attachments prosecuted under the provisions of this act, the court or jury who shall try the same or make an assessment of damages therein, or make an inquest therein, shall in addition to finding the sum due the plaintiff, also find that the same is due for labor and services performed upon the products described in the declaration, and is a lien upon the same, and the court shall render judgment in accordance

with such finding, and execution shall issue therefor, and such execution, in addition to the commands in ordinary executions, shall command that the products, or so much thereof as shall be necessary for that purpose, be sold to satisfy such judgment and all costs, charges and disbursements: Provided however, That if the court or jury shall find that the amount due the plaintiff is not a lien upon the property described in the declaration, the plaintiff shall not be nonsuited, but shall be entitled to judgment as in other civil actions; but in such case the plaintiff shall not recover or tax any costs arising from the filing of the statement of lien, nor for officers' fees, or expenses arising from the service of said writ of attachment, or expenses incurred relative to the property seized; and in those cases where the amount due is found to be a lien upon the property or any portion of it mentioned in plaintiff's declaration, the finding or verdict may be in the following form:

(the court or jurors, as the case may be) say that there is due the plaintiff the sum of dollars from the defendant, and that the same is due for work and labor performed by in manufacturing, cutting, skidding, scaling, driving, running, hauling, banking, rafting, or booming (as the case may be) the property mentioned in plaintiff's declaration (or a portion of it, specifying the same) and the plaintiff has a lien upon the described property for the amount.

Section 2. Section 3 of Act No. 263 of the Public Acts of 1861, being section 426.53 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 3. Any person, company, or corporation, claiming any lien as aforesaid, may bring an action of assumpsit in a court of competent jurisdiction against the owner of such property to determine and satisfy the amount of such lien. The proceedings in such action shall be in accordance with the practice of the court in actions of assumpsit; and the property so held may be levied upon and sold to satisfy any judgment which may be rendered against such owner, together with all costs of such suit, including the costs and expenses of providing for the care and safety of such property.

Section 3. Section 38 of chapter 126 of the Revised Statutes of 1846, being section 570.188 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 38. The person having such lien may commence a suit for the recovery of such charges in a court of competent jurisdiction against the person liable for the payment thereof.

Section 4. Section 5 of Act No. 116 of the Public Acts of 1911, being section 570.335 of the Michigan Compiled Laws, is amended to read as follows:

Sec. 5. The person having such lien may commence a suit for the recovery of such charges in a court of competent jurisdiction against the person liable for the payment thereof.

Section 5. Sections 7 and 12 of Act No. 160 of the Public Acts of 1897, being sections 570.357 and 570.362 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 7. The person having such lien may commence a suit for the recovery of such charges in a court of competent jurisdiction against the person liable for the payment thereof.

Sec. 12. In all suits or attachments prosecuted under the provisions of this act, the court or jury who shall try the same or make an assessment of damages therein, shall, in addition to finding the sum due the plaintiff, also find that the same is due for the cost of shoeing the horse, mule, ox, or other animal described in plaintiff's declaration and is a lien upon the same: Provided, however, That if the court or jury shall find that the amount due the plaintiff is not a lien upon the property described in the plaintiff's declaration, the plaintiff shall not be nonsuited thereby, but shall be entitled to judgment as in other civil actions; but in such case the plaintiff shall not recover or tax any costs other than those allowed and taxable in such case; and in those cases where the amount due is found to be a lien upon the property mentioned in plaintiff's declaration, the finding or verdict may be in the following form: (The court or jurors, as the case may be) say that there is due the plaintiff the sum of dollars from the defendant, and that the same is due for his or her reasonable charges for shoeing the animal mentioned in plaintiff's declaration (giving a description sufficient for identification of the animal), and that the plaintiff has a lien upon the animal for the amount.

Section 6. Sections 9 and 10 of Act No. 229 of the Public Acts of 1887, being sections 426.9 and 426.10 of the Michigan Compiled Laws, are repealed.