

# HOUSE BILL No. 4920

June 5, 1991, Introduced by Reps. Clarke and DeMars and referred to the Committee on Judiciary.

A bill 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:**

1 Section 1. Sections 5, 6, 11, and 12 of Act No. 229 of the  
2 Public Acts of 1887, being sections 426.5, 426.6, 426.11, and  
3 426.12 of the Michigan Compiled Laws, are amended to read as  
4 follows:

5 Sec. 5. Any person or persons, or the assignee of any  
6 person or persons, having a lien upon or against any of the  
7 ~~said~~ products FILED IN ACCORDANCE WITH JURISDICTIONAL LIMITS  
8 may enforce the same by attachment against any of such products  
9 in the circuit, ~~and justice courts of the county~~ DISTRICT, OR  
10 MUNICIPAL COURT OF THE JUDICIAL DISTRICT OR MUNICIPALITY in which  
11 ~~said~~ THE products, or any portion of the same, may be situated  
12 at the time of commencement of suit. ~~, and such suit~~ SUIT may

1 be commenced to enforce such liens, if the same be due,  
2 immediately after the filing of such statement, and such lien  
3 claim shall cease to be a lien upon the property named in such  
4 statement unless suit be commenced within 3 months after the  
5 filing of such statement. In all such suits the person, company,  
6 or corporation liable for the payment of such debt or claim shall  
7 be made the party defendant.

8       Sec. 6. The attachment shall require the sheriff or other  
9 proper officer to attach and safely keep the property or products  
10 described in the writ or so much thereof as is necessary to sat-  
11 isfy the claim of the plaintiff, with all costs and disburse-  
12 ments, charges, and expenses, and ~~said~~ THE attachment shall  
13 also require the ~~said~~ sheriff or other proper officer, to sum-  
14 mons the defendant therein named to appear before ~~said~~ THE  
15 court at the time and place therein specified, the same as ordi-  
16 nary writs of attachment in THE circuit, ~~and justice's courts~~  
17 DISTRICT, OR MUNICIPAL COURT, and any such attachment or other  
18 process issued out of ~~said~~ THE courts of this state in pursu-  
19 ance of the provisions of this act, may be served in any county  
20 of this state, and if the defendant in ~~said~~ THE attachment is  
21 not the owner of the property or products described in ~~said~~ THE  
22 writ, then the officer executing ~~said~~ THE writ shall serve or  
23 cause to be served a copy of ~~said~~ THE attachment on or before  
24 the return day mentioned in ~~said~~ THE writ upon the owner of  
25 ~~said~~ THE products, or any of them, their proper agent or attor-  
26 ney, if such owner, agent, or attorney be known to him OR HER,  
27 and residing in this state: Provided, That no sheriff or other

1 officer shall seize upon and detain any such property or products  
2 when in transit from the place where banked or deposited for  
3 shipment on the railroad, or for floatage in the stream or  
4 streams, or for transportation on the waters of this state, when  
5 such place of destination is within this state, but in case such  
6 products are in transit, or are in possession of any booming com-  
7 pany, or other person or corporation for the purpose of being  
8 driven or sorted and delivered to the owners, or to satisfy any  
9 statutory lien, then levy an attachment of ~~said~~ THE property or  
10 products may be made by serving a copy of ~~said~~ THE attachment  
11 upon the person or corporation driving or holding the same, who  
12 shall, from the time of such service, be deemed to hold the same  
13 both on their own behalf and in behalf of ~~said~~ THE sheriff or  
14 other officer, to the extent of ~~said~~ THE attachment lien, until  
15 the same can be driven and sorted out; and when driven or sorted  
16 out, and sheriff or other officer may receive ~~said~~ THE products  
17 from ~~said~~ THE person or corporation, and the statutory lien of  
18 ~~said~~ THE person or corporation shall not be released by the  
19 holding of ~~said~~ THE sheriff or other officer; and in case of  
20 sale by the sheriff or other officer on execution, and when the  
21 proceeds of sale shall not be sufficient to satisfy all liens in  
22 full, then such proceeds shall be distributed pro rata to all  
23 parties in interest, under the special order and direction of the  
24 court having jurisdiction in ~~said~~ THE attachment: Provided,  
25 further, If the owner of ~~said~~ THE products or any person in  
26 their behalf shall make, execute, and file with the clerk of the  
27 ~~circuit~~ court ~~or before the justice of the peace~~ where ~~said~~

1 THE attachment is pending a good and sufficient bond in a sum  
 2 double the amount claimed in ~~said~~ THE writ, signed by 2  
 3 ~~freeholders~~ PERSONS and approved by ~~said~~ THE clerk, ~~or by~~  
 4 ~~said justice of the peace,~~ running to the plaintiff in ~~said~~  
 5 THE writ and conditioned for the payment of all damages, costs,  
 6 charges, disbursements, and expenses that may be recovered by  
 7 ~~said~~ THE plaintiff against defendant that may be found to be a  
 8 lien upon or against the products described in ~~said~~ THE writ,  
 9 and upon the approval and filing of ~~said~~ THE bond, the ~~said~~  
 10 clerk ~~or justice, as the case may be,~~ shall issue an order to  
 11 the officer having in charge such products, directing their  
 12 release, and upon the service of a copy of ~~said~~ THE order upon  
 13 ~~said~~ THE officer, he OR SHE shall release the same.

14       Sec. 11. All writs of attachment issued under the provi-  
 15 sions of this act by any ~~of the circuit or justice courts~~ COURT  
 16 of this state shall be served and returned as ordinary writs of  
 17 attachment are served and returned in ~~said courts respectively~~  
 18 THAT COURT, except as herein otherwise provided; and the plead-  
 19 ings and all subsequent proceedings shall be the same as in other  
 20 cases of attachment, except as herein otherwise provided. The  
 21 declaration in all suits brought under this act may be in the  
 22 following form:

23                               TITLE OF COURT AND CAUSE

24 County of ....., ss.

25       Whereas, ....., the defendant herein, has been  
 26 duly summoned to appear in this cause to answer the plaintiff  
 27 herein in an action of assumpsit for labor and services done and

1 performed by ..... plaintiff for said defendant, in  
 2 manufacturing, cutting, skidding, scaling, falling, hauling,  
 3 banking, driving, running, rafting, or booming (as the case may  
 4 be) the following described property to wit: (here insert the  
 5 same description of property as set forth in writ) for which  
 6 ~~said~~ THE labor and services there is now due ~~said~~ THE plain-  
 7 tiff the sum of ....., for which ~~said~~ THE amount a claim of  
 8 lien has been duly filed with the clerk of the county of  
 9 ....., being the county in which ~~said~~ THE labor was per-  
 10 formed, and the ~~said~~ defendant on the ..... day of  
 11 ....., ~~18....~~ 19...., in consideration of the premises  
 12 undertook and promised the plaintiff to pay him OR HER the ~~said~~  
 13 sums of money on request; yet the ~~said~~ defendant has neglected  
 14 so to do, or any part thereof, to the plaintiff's damage of  
 15 ..... and therefore he OR SHE brings suit, etc., and claims  
 16 a lien upon ~~said~~ THE described property for ~~said~~ THE amount.

17       Sec. 12. In all suits on attachments prosecuted under the  
 18 provisions of this act, the court ~~—~~ OR jury ~~—~~ ~~or justice of~~  
 19 ~~the peace~~ who shall try the same or make an assessment of dam-  
 20 ages therein, or make an inquest therein, shall in addition to  
 21 finding the sum due the plaintiff, also find that the same is due  
 22 for labor and services performed upon the products described in  
 23 the declaration, and is a lien upon the same, and the court ~~or~~  
 24 ~~justice of the peace, as the case may be,~~ shall render judgment  
 25 in accordance with such finding, and execution shall issue there-  
 26 for, and such execution, in addition to the commands in ordinary  
 27 executions, shall command that the ~~said~~ products, or so much

1 thereof as shall be necessary for that purpose, be sold to  
 2 satisfy such judgment and all costs, charges and disbursements:  
 3 Provided however, That if the court ~~,~~ OR jury ~~,~~ ~~or justice of~~  
 4 ~~the peace~~ shall find that the amount due the plaintiff is not a  
 5 lien upon the property described in the declaration, the plain-  
 6 tiff shall not be ~~non-suited thereby~~ NONSUITED, but shall be  
 7 entitled to judgment as in other civil actions; but in such case  
 8 ~~said~~ THE plaintiff shall not recover or tax any costs arising  
 9 from the filing of the statement of lien, nor for officers' fees,  
 10 or expenses arising from the service of said writ of attachment,  
 11 or expenses incurred relative to the property seized; and in  
 12 those cases where the amount due is found to be a lien upon the  
 13 property ~~(~~ or any portion of it ~~)~~ mentioned in plaintiff's  
 14 declaration, the finding or verdict may be in the following  
 15 form:

16 (the court ~~,~~ ~~justice~~ or jurors, as the case may be)  
 17 ..... say ..... that there is due the plain-  
 18 tiff the sum of ..... dollars from ~~said~~ THE defendant,  
 19 and that the same is due for work and labor performed by  
 20 ..... in manufacturing, cutting, skidding, scaling, driv-  
 21 ing, running, hauling, banking, rafting, or booming (as the case  
 22 may be) the property mentioned in plaintiff's declaration (or a  
 23 portion of it, specifying the same) and the plaintiff has a lien  
 24 upon ~~said~~ THE described property for ~~said~~ THE amount.

25 Section 2. Section 3 of Act No. 263 of the Public Acts of  
 26 1861, being section 426.53 of the Michigan Compiled Laws, is  
 27 amended to read as follows:

1       Sec. 3. Any person, company, or corporation, claiming any  
2 lien as aforesaid, may bring an action of assumpsit IN THE COURT  
3 OF PROPER JURISDICTION against the owner of such property to  
4 determine and satisfy the amount of such lien. ~~If the amount~~  
5 ~~claimed shall not exceed 300 dollars, the action shall be com-~~  
6 ~~menced before any justice of the peace of the county in which the~~  
7 ~~property, or any part thereof, may be situated, and if the amount~~  
8 ~~claimed shall exceed 300 dollars, then the action shall be~~  
9 ~~brought in the circuit court for such county.~~ The proceedings in  
10 such action shall be in accordance with the practice of the  
11 ~~courts in which such action is commenced,~~ COURT in actions of  
12 assumpsit; and the property so held may be levied upon and sold  
13 to satisfy any judgment which may be rendered against such owner,  
14 together with all costs of such suit, including the costs and  
15 expenses of providing for the care and safety of such property.

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

19       Sec. 38. The person having such lien may commence a suit  
20 for the recovery of such charges ~~, by summons in the usual form,~~  
21 ~~before any justice of the peace of the city or township~~ IN THE  
22 DISTRICT OR MUNICIPAL COURT OF THE JUDICIAL DISTRICT OR  
23 MUNICIPALITY in which he OR SHE resides ~~, or in any court, as~~  
24 ~~the case may require,~~ against the person liable for the payment  
25 thereof.



1 Section 4. Section 5 of Act No. 116 of the Public Acts of  
2 1911, being section 570.335 of the Michigan Compiled Laws, is  
3 amended to read as follows:

4 Sec. 5. The person having such lien may commence a suit for  
5 the recovery of such charges ~~, by summons in the usual form,~~  
6 ~~before any justice of the peace of the city or township~~ IN THE  
7 DISTRICT OR MUNICIPAL COURT OF THE JUDICIAL DISTRICT OR  
8 MUNICIPALITY in which he OR SHE resides against the person liable  
9 for the payment thereof.

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

13 Sec. 7. The person having such lien may commence a suit for  
14 the recovery of such charges ~~, by summons, in the usual form,~~  
15 ~~before any justice of the peace of the township or city~~ IN THE  
16 DISTRICT OR MUNICIPAL COURT OF THE JUDICIAL DISTRICT OR  
17 MUNICIPALITY in which he OR SHE resides, or in any court, as the  
18 case may require, against the person liable for the payment  
19 thereof.

20 Sec. 12. In all suits or attachments prosecuted under the  
21 provisions of this act, the court ~~, OR jury or justice of the~~  
22 ~~peace~~ who shall try the same or make an assessment of damages  
23 therein, shall, in addition to finding the sum due the plaintiff,  
24 also find that the same is due for the cost of shoeing the horse,  
25 mule, ox, or other animal described in plaintiff's declaration  
26 and is a lien upon the same: Provided, however, That if the  
27 court ~~, OR jury or justice of the peace~~ shall find that the

1 amount due the plaintiff is not a lien upon the property  
2 described in the plaintiff's declaration, the plaintiff shall not  
3 be ~~non-suited~~ NONSUITED thereby, but shall be entitled to judg-  
4 ment as in other civil actions; but in such case ~~said~~ THE  
5 plaintiff shall not recover or tax any costs other than those  
6 allowed and taxable in such case; and in those cases where the  
7 amount due is found to be a lien upon the property mentioned in  
8 plaintiff's declaration, the finding or verdict may be in the  
9 following form: (The court ~~—~~ OR jurors, ~~or justice,~~ as the  
10 case may be) say that there is due the plaintiff the sum of  
11 ..... dollars from the ~~said~~ defendant, and that the same  
12 is due for his OR HER reasonable charges for shoeing the animal  
13 mentioned in plaintiff's declaration (giving a description suffi-  
14 cient for identification of the animal), and that the plaintiff  
15 has a lien upon ~~said~~ THE animal for ~~said~~ THE amount.

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