

PROTECTION OF LOGS AND TIMBER (EXCERPT)
Act 238 of 1879

426.160 Logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties, or fence posts; removal from island, bank, shore, or land; damages; arbitration; judgment; appeal; bonds; forfeiture; sworn statement; public auction; notice; certificate; filing; affidavit; lien.

Sec. 10.

Whenever any logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties, or fence posts, in rafts or otherwise shall be drifted or float upon any island in any of the waters or streams in this state, or upon the banks or shores of the waters or lands adjacent to the waters, the owner of the logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties, or fence posts, or any person or corporation entitled to possession, may at any time within 18 months remove the same upon paying or tendering to the owner or occupant of the bank, shore, or lands, the reasonable damages as may have been caused by the occupancy and removal. If the amount of the damages cannot be agreed upon by the owner or occupant of the bank, shore or land, and the owner, person or corporation entitled to the logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties, or fence posts, either of them may elect to have the amount of the damages left to arbitration in the manner following: The party or parties so electing, or their authorized agent or attorney, shall serve a written notice by mail or otherwise, upon the other party or parties, reciting the fact that they elect to have the damages left to arbitration, and that they will meet the persons, their agents or attorneys, at the district or municipal court of the judicial district or municipality in which the island, bank, shore, or land, is situated, at a time in the notice mentioned, not less than 6 days nor more than 20 days from the time of the service of the notice, at which time and place the parties or their authorized agents or attorneys shall meet to choose the arbitrators in the manner following: The party giving notice, or his, her, or their authorized agent or attorney shall select 1 person to act as 1 of the arbitrators, and the party so notified, his, her, or their authorized agent or attorney, shall choose another, and these 2 shall select a third. All persons chosen under the provisions of this act, shall be chosen from among those residing in the township, or an adjoining township where the island, bank, shore, or land is situated. If the parties, his, her, or their authorized agents or attorneys cannot agree upon the selection of the persons as arbitrators, then either or any of the parties may certify the fact or facts, to the judge who shall upon the receipt of the certificate proceed at once to make a list of the names of 18 residents of the township and adjoining townships, and the parties shall strike out, alternately, the plaintiff first striking out, 1 name from the list, until only 3 names remain, and the residents whose names so remain upon the list shall act as the arbitrators. The judge shall notify the persons so selected, who shall appear before the court at a day set by him or her, at a time not less than 3 nor more than 10 days from the service of the notice. At that time set for the meeting of the arbitrators, they shall appear and be sworn or affirmed to try all matters in relation to the damages, and shall proceed to hear testimony and decide the amount of the damages. The arbitrators shall have the right to view the island, bank, shore, or land, the occupancy of which is in controversy. The arbitrators shall have all the powers usual to arbitrators. When the arbitrators shall have determined the amount of damages, they shall, if chosen by the interested parties as first provided in this section, certify the same to the district or municipal court judge who shall enter a judgment against the owner, person, or corporation entitled to the logs, timber, boards, planks or floatables, and execution shall issue thereon, as in other cases in that district or municipal court. If the arbitrators shall have been designated from any list of names as provided in this section, they shall certify the amount of damages to the district or municipal judge, and he or she shall in like manner enter judgment. Should either party complain of the award the party may appeal to the circuit court of the county where the island, bank, shore, or land is situated, by giving bonds for the amount of the award and costs. If the logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties or fence posts shall not be removed within said 18 months under the provisions of this section, the owner shall be deemed to have forfeited all right thereto, and the owner or occupant of the lands may make out a sworn statement containing a description of the lands on which the logs, timber, boards, planks, or floatables are lying, the number of logs, and the amount of timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties or fence posts as nearly as may be, and the marks thereon if any, and the length of time the same have remained on the land, and upon delivering the statement to any sheriff, deputy sheriff, or constable, the officer shall proceed and make sale of the logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties or fence posts, at public auction, at some convenient and public place in the vicinity thereof. Immediately on making the sale, the officer shall pay over to the owner or occupant of the lands, the proceeds of the sale, less his or her fees for making the same, which fee shall be the same as upon levy and sale upon execution. No sale shall be made without giving 10 days' notice to the owner of the logs, if known; and if not known, then the officer shall give like notice as he or she would be required to give on sale of personal property on execution, and when the sale shall have been made he or she shall thereupon make his or her certificate, stating the time and place of sale the number or amount of logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties, or fence posts, sold and the marks thereon, if any, and the name of the

purchaser or purchasers, the amount paid and the disposition of the same. He or she shall at once annex the sworn statement to the certificate and file it in the office of the county clerk of the county in which the sale was made. When the property mentioned in section 1 of this act, shall be or lie upon any improved farming lands of this state, adjoining any of the waters mentioned in section 1, if the owner or occupant of the lands shall make the affidavit required in this section, and shall cause a copy of the affidavit to be personally served on the owner or agent of the owner of the property mentioned in the affidavit, if the agent or owner be known to the owner or occupant of the lands, but if not known to the owner or occupant, then he or she shall cause a copy of the affidavit to be published in 1 or more newspapers in the county in which the land is situated for 3 successive weeks, if there be one, but if not, in 1 of an adjoining county, and a copy of the same shall be sent to the office of the booming or log-running company having the property in charge or doing business on the streams if known by the owner or occupant, said notice to be sent by mail or otherwise, which the notice shall require the owner or agent to remove the property mentioned in the the affidavit, within 30 days after the receipt of the notice. If the owner shall neglect or refuse to remove the property, and pay all reasonable damages and charges then the owner or occupant may remove the same to the adjoining stream, or to the banks thereof, and if the same is not claimed by the owner within 6 months thereafter, and all reasonable charges and damages are not paid, the owner or occupant of the land is empowered to sell the same at public auction to the highest bidder by giving the same notice as required by law in sales of personal property by sheriffs and constables. The sale to be conducted as provided for the sale of logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties or fence posts, having lain for 18 months upon the land and the proceeds applied in the same way as provided in case of the sale of the logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties or fence posts. All reasonable damages and expenses incurred and suffered by the owner or occupant of the lands shall be a lien upon the logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties, or fence posts until paid.

History: 1879, Act 238, Eff. Aug. 30, 1879 ;-- How. 2058 ;-- Am. 1885, Act 142, Eff. Sept. 19, 1885 ;-- CL 1897, 5098 ;-- CL 1915, 6673 ;-- CL 1929, 8767 ;-- CL 1948, 426.160 ;-- Am. 1990, Act 224, Imd. Eff. Oct. 8, 1990

Compiler's Notes: Sections 9 and 10 of chapter 292 of Howells' annotated statutes, referred to in this section, were superseded by former MCL 645.9 and 645.10.