

CHAPTER 105

AN ACT to amend 289.54 to 289.66 of the statutes, relating to liens for horseshoeing.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

289.54 to 289.66 of the statutes (last printed in 1933) are amended to read:

289.54 BLACKSMITH LIENS. Any person who \* \* \* shoes \* \* \* any horse \* \* \* or other animal shall have a lien upon \* \* \* the animal \* \* \* for the amount due or to become due for \* \* \* his services, which lien shall take precedence of all other claims, liens or incumbrances thereon made or filed after the \* \* \* performance of the service.

289.55 PETITION. No debt \* \* \* for such \* \* \* services shall become a lien upon the animals \* \* \* shod unless a petition \* \* \* is \* \* \* signed and verified by the claimant \* \* \* or by some one in his behalf \* \* \*, setting forth the nature of the debt \* \* \*, the amount claimed to be due, a description of the \* \* \* animal upon which such lien is claimed and an averment that the petitioner claims a lien thereon pursuant to law. \* \* \* The petition shall be filed in the office of the clerk of the circuit court of the county in which the owner of \* \* \* the animal \* \* \* resides within 6 months after the performance of \* \* \* the services. \* \* \* The services shall be deemed continuous notwithstanding a change of ownership \* \* \* of the animal. The clerk with whom \* \* \* the petition \* \* \* is filed shall \* \* \* be paid \$1 for filing the same.

289.56 ADDITIONAL CLAIMS. Any person may file successive liens upon the same animal for charges for shoeing the same, and he may include in any one claim of lien his charges for any number of times of shoeing such animal; \* \* \* but no lien shall be had for any shoeing of any animal done more than 6 months prior to the filing of the notice of lien.

289.57 ACTIONS TO ENFORCE LIEN. (1) \* \* \* Actions to enforce \* \* \* the lien may be brought before any \* \* \* county court or justice of the peace having jurisdiction of the amount claimed in the county in which \* \* \* the petition is filed. Actions may be commenced to enforce and foreclose \* \* \* the lien \* \* \* immediately after the filing of the petition if the amount owing for \* \* \* the services \* \* \* is then \* \* \* due \* \* \*. \* \* \* The claim for \* \* \* services shall cease to be a lien on the \* \* \* animal described in \* \* \* the petition unless an action to foreclose \* \* \* the lien \* \* \* is commenced within 4 months after the filing of \* \* \* the petition.

(2) If the claim \* \* \* is not due at the time of filing \* \* \* the petition the time when the same \* \* \* will become due shall be stated therein, and in such case \* \* \* the claim shall not cease to be a lien on the \* \* \* animal described in the petition until 30 days after the claim \* \* \* has become due; \* \* \* but the claim shall continue a lien upon the \* \* \* animal so described in all cases for 4 months after the filing of \* \* \* the petition.

(3) Where the \* \* \* animal has been \* \* \* taken from the county where \* \* \* the work was done, the person in whose favor \* \* \* the lien exists may bring an action to foreclose \* \* \* it in any county where \* \* \* the animal may be found. In all foreclosure actions \* \* \* the person \* \* \* liable for the payment of \* \* \* the claim shall be made the party defendant. \* \* \* Any person claiming \* \* \* any interest in \* \* \* the animal may be also made a defendant, but shall not be held personally liable for any

costs unless he defends the action. In actions appealed from \* \* \* *county* or justice court no change of venue shall be allowed for prejudice of the judge or of the people.

289.58 ATTACHMENT; AFFIDAVIT; UNDERTAKING; WRIT; PUBLICATION. (1) The plaintiff in \* \* \* *an action in county or municipal justice court* may \* \* \* *attach* the \* \* \* *animal* upon which the lien is claimed as in personal actions. \* \* \* . \* \* \* *The attachment may be issued, served and returned and like proceeding had thereon, including the release of any attached \* \* \* animal, upon giving an undertaking in such sum as may be fixed by the court or judge for the payment of the amount which may be finally determined to be a lien on the \* \* \* animal. The affidavit for the attachment must state that the defendant \* \* \* who is personally liable setoffs, for \* \* \* services \* \* \* performed \* \* \* which entitle the plaintiff \* \* \* is indebted to \* \* \* plaintiff in the sum named, \* \* \* above all \* \* \* to a lien \* \* \*, describe the \* \* \* animal on which it is claimed \* \* \* the services were performed and \* \* \* that the plaintiff has filed his petition for a lien pursuant to law; but no other fact need be stated therein.*

(2) No undertaking upon such attachment or security for costs in actions hereunder before \* \* \* *county or municipal justice courts* \* \* \* need be given unless upon application of some defendant \* \* \* showing by affidavit that he has a \* \* \* valid defense to the plaintiff's claim, and no order shall be made by any circuit court or any judge thereof requiring the giving of an undertaking or security for costs except upon 10 days' notice to the plaintiff. The writ of attachment shall direct the officer to whom it is issued to attach the \* \* \* *animals* described or so \* \* \* *many* thereof as \* \* \* *is* necessary to satisfy the sum claimed to be due thereon and to hold the same subject to further proceedings in the action.

(3) The officer executing \* \* \* *the writ* shall make return thereon \* \* \*, but it shall not be necessary for him to make and serve an inventory or appraisal of the \* \* \* *animals*. \* \* \*

289.59 ASSIGNMENT. When more than one person has a claim for a lien upon the same \* \* \* *animal* any person having such claim may have assigned to him in writing the \* \* \* claim of the other, subject to the set-offs to said claim against the original owner, and may file a petition for his own lien and for the claims for liens so assigned to him and bring an action to enforce the same in his own name; but such petition shall allege such assignment.

289.60 RETURN. The attachment issued by any *municipal justice* \* \* \* shall be returned as an ordinary summons and shall be approximately in the same form as prescribed in \* \* \* *s. 304.04*.

289.61 PROMISSORY NOTE. The taking of a promissory note or other evidence of debt for any such \* \* \* *services* \* \* \* shall not discharge the lien \* \* \* unless expressly received in payment therefor and so specified.

289.62 LIABILITY ON SALE, ETC. If any animal \* \* \* on which a lien is claimed \* \* \* *is* transported out of this state, secreted, killed, sold or incumbered *during the pendency of the claim therefor*, the owner of \* \* \* *the animal* and every purchaser thereof or person acquiring any interest therein during the pendency of \* \* \* *the claim* shall be liable to the lien claimant for the amount which may be adjudged to be due him, which amount may be recovered against any such person in a personal action; provided, the petition for a lien is filed in accordance with law and an action to foreclose the same is begun within the time limited therefor.

289.63 PLEADING. The complaint in any action to enforce a lien given upon animals shall in addition to ordinary allegations in actions upon contracts allege the filing of the petition for a lien as hereinbefore

provided, and such allegation shall be taken to be true unless expressly denied by the defendant or by some one in his behalf in an affidavit or verified answer, and shall contain a description of the \* \* \* *animal* upon which a lien is claimed, and if any part of the claim has been assigned to the plaintiff that part shall be alleged.

289.64 FINDINGS; COSTS; EXECUTION; RELEASE; JUDGMENT. The court or jury which tries any action hereunder shall \* \* \* *find* \* \* \* the sum due the plaintiff \* \* \*, that the same is due for the \* \* \* services performed or some part of \* \* \* *them* as alleged in the complaint, and that the same is a lien upon the \* \* \* *animals* or some \* \* \* *of them* described therein, and the judgment shall be in accordance with the findings. Costs shall be taxed and allowed as in personal actions, including an attorney's fee of 10 per cent of the claim, but in no case shall such fee exceed \$10. The execution, in addition to the directions and commands of ordinary executions upon judgments for money, shall direct that the \* \* \* *animals* upon which the lien is found to exist or so \* \* \* *many* thereof as may be necessary for such purpose be sold to satisfy said judgment, costs and attorney's fee, including the costs of sale. If the court or jury find that the amount due the plaintiff is not a lien upon any \* \* \* *animal* it shall be released from the attachment if it has been attached. The plaintiff shall, in such case, have judgment for the amount so found due, with costs, as in ordinary civil actions, but he shall not recover the costs of executing such attachment.

289.65 INTERVENTION; APPEAL. In any action for the enforcement of a lien upon any \* \* \* *animal* mentioned in s. 289.54 any person not a party thereto may, \* \* \* before an actual sale of the \* \* \* *animal* upon which a lien is claimed, become a party defendant by filing with the clerk of the court where such action is pending, or with the justice of the peace in actions pending in a justice court, an affidavit made by such person or in his behalf to the effect that he is the owner of or of some interest in the \* \* \* *animal* upon which a lien is claimed and verily believes that \* \* \* *the* claim for lien is unjust and invalid; upon filing such affidavit he may defend said action so far as a claim for a lien is concerned, and in case judgment has been previously rendered for a lien he may appeal within 20 days after the filing of such affidavit \* \* \* *but* his right to file an affidavit or take an appeal shall not extend beyond one year from the date of the rendition of the judgment.

289.66 UNDERTAKING BY INTERVENOR; PROCEDURE. (1) Such appeal shall not stay execution unless the appellant files an undertaking, with 2 or more sureties, who shall each justify in a sum equal to double the amount of the judgment, conditioned that if the plaintiff establish his right to a lien on \* \* \* *the animal* they will pay the amount of the judgment in his favor with costs; \* \* \* *the* undertaking shall be approved by the judge of the court to which the appeal is taken; and upon filing it all proceedings upon the judgment appealed from shall be stayed during the pendency of such appeal, and in case execution \* \* \* *has* been \* \* \* issued the same shall, upon presenting to the officer in whose custody it may be a certified copy of such affidavit and undertaking and certificate of the justice or clerk of the court that an appeal has been perfected, be returned, and all \* \* \* *animals* in which appellant \* \* \* *claims* an interest that may have been levied upon shall be released from such levy.

(2) If upon the trial in the appellate court the plaintiff \* \* \* *recovers* judgment of a lien upon such \* \* \* *animals* \* \* \* *the* judgment may be entered against the appellant and his sureties; but if the plaintiff does not establish his right to a lien the appellant shall recover judgment for costs.

When the judgment \* \* \* appealed from is rendered in justice's court and by reason of the death of the justice who rendered it or any other cause the affidavit and undertaking cannot be presented to him they may, with notice of appeal and affidavit upon appeal, be filed with the clerk of the court to which such appeal is taken within the time aforesaid.

Approved June 10, 1963.

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