

No. 403, S.]

[Published August 20, 1945.]

CHAPTER 543.

AN ACT to repeal 304.21, to revise 289.53 and to create 267.22, 289.535, 289.536 and 304.21 of the statutes, relating to garnishment proceedings against the state and political subdivisions thereof and to simplify procedure and promote the speedy administration of justice.

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

SECTION 1. 304.21 is repealed.

SECTION 2. 267.22 is created to read:

267.22 GARNISHMENT OF SALARIES AND WAGES OF PUBLIC OFFICERS AND EMPLOYES. (1) (a) A judgment creditor (but no one else) may maintain a garnishment action against the state or any political subdivision thereof in the manner provided in this section to reach the unexempt wages or salary of the judgment debtor.

(b) This section does not apply or extend to money due to an officer or employe to reimburse him for expenditures made by him in the discharge of his duties.

(2) (a) The garnishee summons and complaint shall be served upon the garnishee by delivering a copy thereof to its secretary or clerk. Service on the judgment debtor shall be made in the manner and within the time provided by section 267.06 for service upon a defendant.

(b) Section 267.04 does not apply to proceedings under this section but otherwise the practice shall be that prescribed by this chapter.

(3) The complaint must contain an allegation that the plaintiff believes that the garnishee is indebted to the defendant for wages or salary and that such debt is not exempt under section 272.18.

(4) Within 20 days after such service upon him, the secretary or clerk of the garnishee shall answer the complaint by delivering or mailing to the court his certificate of the amount owed by the garnishee to the judgment debtor for wages and salary at the time of such service; and his answer as to the amount owing shall be conclusive in the garnishment action.

(5) (a) The regular checks or vouchers for the salary or wages of the judgment debtor shall issue and continue to issue in due course as though no garnishment action were pending, but they

shall be delivered to the court until the court notifies the garnishee's secretary or clerk that the garnishment action has been dismissed or the judgment therein satisfied.

(b) The court may order such pay checks and vouchers cashed by its clerk and the proceeds held by him and disbursed as the court orders. The nonexempt portion of such proceeds shall be applied on the creditor's judgment.

(c) The court may in a summary manner, upon the application of the judgment debtor and with reasonable notice to the creditor, determine the exemptions to which the debtor is entitled and the amount thereof shall be paid to him and credited to the garnishee.

(d) Any proceeds of such checks and vouchers remaining in the custody of the court after the demands of such creditor as determined by the court are satisfied shall be ordered paid to the judgment debtor.

(e) Other judgment creditors of the judgment debtor may intervene in the garnishment action.

(6) A judgment under this section shall have precedence over an assignment by the debtor filed with the garnishee subsequent to the service of the garnishee summons.

SECTION 3. 289.53 is revised to read:

289.53 PUBLIC IMPROVEMENTS; LIEN ON CONTRACTOR; DUTY OF OFFICIALS; TRUST FUNDS. (1) Any person furnishing labor or materials to be used or consumed in making public improvements or performing public work (including fuel, lumber, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electrical energy, gasoline, motor oil, lubricating oil, greases, premiums for workmen's compensation insurance and the contributions for unemployment compensation) to any contractor (except in cities of the first class) shall have a lien on the money or bonds or warrants due or to become due the contractor therefor; provided the lienor, before payment is made to the contractor, gives written notice to the debtor state, county, town or municipality of his claim. It shall withhold a sufficient amount to pay the claim; and when it is admitted by the contractor or established as provided in subsection (3), shall pay the same and charge it to the contractor. Any officer violating the duty hereby imposed shall be liable on his official bond to the claimant for the damages

resulting from such violation. There shall be no preference between the lienors serving such notices.

(2) Service of the notice provided for in subsection (1) shall be made upon the clerk of the municipality or in his absence, upon the treasurer. In case any of the money due the contractor is payable by the state the notice aforesaid may be served by registered mail upon the state department, board or commission having jurisdiction over the work.

(3) If the contractor disputes the claim, the right to a lien and to the moneys in question shall be determined in an action brought by the lien claimant or the contractor in the circuit court. If the action is not brought within 3 months from the time the notice required by subsection (1) is served, and notice of bringing such action filed with the officer with whom the claim is filed, such lien rights are barred.

(4) (a) When the total of such lien claims exceeds the sum due the contractor, the rights of the lien claimants shall be determined in an action brought by lien claimants or the contractor in the circuit court. The state may be made a defendant if money is due from it.

(b) All lien claimants shall be made parties and such action shall be commenced within 3 months after acceptance of the work by the proper public authority except as otherwise hereinafter provided.

(c) Within 10 days after the filing of a certified copy of judgment in any such action with the officers with whom the notice authorized by subsection (1) is filed, the money due the contractor shall be paid to the clerk of court to be distributed in accordance with the judgment.

(d) If no action is commenced within the times hereinbefore provided, the officer, board, department or commission with whom the claims are filed shall determine who is entitled to said money and notify all claimants and the contractor in writing of the determination. Except as otherwise provided by subsection (3), unless an action is commenced by a claimant or by the contractor, within 20 days after the mailing of said notice, the money shall be paid out in accordance with the determination, and the liability of the state, county, town or municipality to any lien claimant shall cease.

SECTION 4. 289.535 is created to read:

289.535 JUDGMENT CREDITORS, ATTACHMENT OF

FUNDS DUE TO PUBLIC CONTRACTORS. (1) **LIMITATIONS.** This section does not apply to cases covered by section 267.22. Demands covered by section 289.53 have priority over judgments filed under this section. The remedies afforded by section 289.53 and by this section are complementary. The former is a remedy for creditors who have lienable claims against public contractors; and the latter is a garnishee remedy for judgment creditors against public contractors.

(2) **CERTIFIED COPIES OF JUDGMENTS FILED.** As used in this section, municipality includes city, village, county, town, school district and any quasi municipal corporation. When the state or any municipality is indebted to any contractor, the owner of a judgment against him may attach such debt by filing a certified copy of his judgment in the manner and subject to the conditions and limitations provided by this section. If the debt is owed by the state upon a contract for public improvements, the certified copy shall be filed with the officer, board, department or commission having jurisdiction over the work. Otherwise the copy shall be filed with the secretary of state. If the debt is owed by a municipality, the copy shall be filed with the municipal clerk or corresponding officer. The judgment creditor shall promptly notify the judgment debtor of such filing, within the time and in the manner provided by section 267.06 for service upon the defendant.

(3) **PAYMENT TO JUDGMENT CREDITOR; EXCEPTION.** Except as to contractors on public works, the proper officers of the state or municipality shall pay the judgment out of moneys due the contractor or which become due to him from time to time. But no payment shall be made until 30 days after the director has filed with such officers proof that the contractor had been notified of such filing of a copy of the judgment against him.

(4) **SAME; FUNDS DUE PUBLIC CONTRACTORS.** When the state or a municipality is indebted to a contractor for public improvements, payment shall not be made to the judgment creditor until 3 months after final completion and acceptance of the public work and then only out of moneys due the contractor in excess of unpaid lienable claims having priority under section 289.53.

(5) **ADJUSTMENT OF LIEN CLAIMS.** (a) For the purpose of administering this section, sworn statements of the contractor setting forth the unpaid lien claims, filed or fileable under section 289.53, may be accepted by the proper officer, board, depart-

ment or commission, unless the judgment creditor or other interested person gives written notice that an action is pending in circuit court to determine whether specified lien claims were incurred in performing the public work and the amount thereof, or to determine priorities; in which event payments shall await the result of such action.

(b) Within 10 days after the filing of the certified copy of judgment under subsection (2), the contractor shall file the sworn statement above mentioned, in duplicate, with the proper officer, board, department or commission, who shall immediately furnish the judgment creditor with one of said statements, and said judgment creditor shall have 10 days from the receipt thereof in which to serve the notice of pendency of the circuit court action as aforesaid.

(6) PAYMENTS TO JUDGMENT CREDITOR. After the expiration of said 3 months' period, the moneys due the contractor, in excess of unpaid lienable expenses and claims incurred in performing the public work, shall be paid to the judgment creditor, but not exceeding the amount due on his judgment.

(7) PRIORITY OF JUDGMENTS OVER ASSIGNMENTS: Any judgment so filed under this section has priority over an assignment made by the contractor after the commencement of the action in which the judgment was obtained.

SECTION 5. 289.536 is created to read:

289.536 EMBEZZLEMENT BY CONTRACTORS. All moneys, bonds or warrants paid to, or to become due to any principal contractor or subcontractor for public improvements are a trust fund in his hands; and the use of such moneys by him for any purpose other than the payment of claims on such public improvement, before such claims have been satisfied, constitutes embezzlement.

SECTION 6. 304.21 is created to read:

304.21 GARNISHMENT OF PUBLIC EMPLOYEES. (1) A judgment creditor may garnish the wages or salary of any public officer or employe as provided in this chapter, subject to the limitations of this section.

(2) The garnishee summons may be served upon the secretary of state or upon the clerk or corresponding officer of the political subdivision from which such compensation is due.

(3) The officer so served shall, within 20 days after service, certify to the court the amount which was owing to the judg-

ment debtor at the date of service, and such certification shall, for the purposes of the garnishee action, be conclusive.

(4) A certified copy of the judgment in the garnishee action, and an affidavit that no appeal from the judgment is pending, filed with the secretary of state or such clerk or corresponding officer, entitle the judgment creditor (if the garnishee judgment is in his favor) to a warrant on the proper treasury for payment of the amount so certified as owing to the debtor (less personal exemptions) for salary or wages or so much thereof as will satisfy the judgment; and the payment shall be conclusive upon him, and a discharge to that extent of the public liability.

(5) This section does not apply or extend to money due to an officer or employe to reimburse him for expenditures made by him in the discharge of his duties.

(6) The repeal of section 304.21 of the statutes of 1943 shall not affect the rights or remedy of a judgment creditor who had theretofore commenced a quasi garnishment proceeding under said section by filing a transcript of judgment. His rights and remedy shall continue in force under such repealed section the same as though it had not been repealed, but the effect of such filing shall expire 5 years after he filed his transcript. He may also proceed by garnishment the same as other judgment creditors.

Approved August 17, 1945.

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CHAPTER 544.

AN ACT to create 304.231 of the statutes, relating to garnishment and property in safe deposit boxes.

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

304.231 of the statutes is created to read:

304.231 PROPERTY IN SAFE DEPOSIT BOX. Property in a safe deposit box in any bank or safe deposit company is not property in the possession or control of such bank or safe deposit company within the meaning of this chapter.

Approved August 17, 1945.