

No. 539, S.]

[Published July 9, 1955.]

CHAPTER 366

AN ACT to repeal, renumber and amend various provisions of the statutes and to repeal certain obsolete session laws, for the purpose of correcting errors, supplying omissions, clarifying language, correcting and clarifying references, renumbering for better location, eliminating duplications and obsolete provisions, reconciling conflicts and correcting titles of schools, officers and organizations.

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

SECTION 1. 14.49 (2) of the statutes is repealed and 14.49 (1) is renumbered 14.49.

SECTION 2. 17.22 (2) (b) and (c) of the statutes are amended to read:

17.22 (2) (b) In the office of the county highway commissioner, by appointment by the county * * * *highway* committee. A person so appointed shall hold office until the first Monday of January next succeeding his appointment, and his successor shall be appointed by the county board at its first regular meeting next succeeding such appointment and shall take office on the Tuesday following the first Monday of January next succeeding and shall hold office for term as prescribed in sub. (1).

(c) In the office of a member of the county * * * *highway* committee, by the chairman of the county board for the residue of the unexpired term.

SECTION 2a. 32.195 of the statutes, as created by chapter 298 (Bill 408, A), laws of 1955, is amended to read:

32.195 An easement for public use acquired by gift or purchase or by condemnation under this chapter shall not be deemed abandoned on the

grounds of nonuser thereof for any period less than that prescribed in the applicable statutes of limitations in ch. 330. *Nothing contained in this section shall be presumed to adversely affect any highway right possessed by the state or any county or municipality thereof.*

SECTION 3. 35.30 (10) of the statutes is repealed; and 35.30 (4), (5) and (6) are amended to read:

35.30 (4) Of the annual transactions of the * * * *Wisconsin welfare council*, not more than 2,000 copies, containing not more than 250 pages;

(5) Of the annual proceedings of the association of * * * *Wisconsin county hospitals*, not more than 500 copies, containing not more than 250 pages each;

(6) Of the annual proceedings of the Wisconsin * * * *education* association, not more than 5,000 copies, containing not more than 250 pages each;

SECTION 4. 35.37 (2) of the statutes is amended to read:

35.37 (2) Wisconsin Session Laws, * * * *in buckram, hand or machine* sewed; and acts passed at a special session shall be bound with those passed at a general session of the same legislature whenever the stage of the work of binding at the time the special session is called will permit their consolidation, but a separate title page for each session shall be provided; and whenever the laws of any session occupy more than 1,000 pages, they may, in the discretion of the director of purchases, be bound in 2 volumes;

SECTION 5. 35.37 (5) (last 4 lines) of the statutes are amended to read:

35.37 (5) (last 4 lines)

Transactions of the * * * *Wisconsin welfare council*, 500 copies.

Proceedings of * * * *association of Wisconsin county hospitals*, 500 copies.

Proceedings of the Wisconsin * * * *education* association, 2,000 copies.

SECTION 6. 35.84 (6) (a) of the statutes is amended by deleting the words "superintendent of poor."

SECTION 7. 35.84 (11) (last sentence) of the statutes is amended to read:

35.84 (11) (last sentence) Every such list filed by the state horticultural society, the Wisconsin agricultural experiment association, the state dairymen's association, the * * * *Wisconsin welfare council*, the association of * * * *Wisconsin county hospitals*, the Wisconsin * * * *education* association, the Wisconsin live stock breeders association, or the Wisconsin cheesemakers association shall be accompanied with the necessary postage for the required carriage by mail, and unless so accompanied shall not be used.

SECTION 8. 41.57 (1) of the statutes is amended by deleting the words "and domestic science" in the reference to "county schools of agriculture and domestic science."

SECTION 9. 43.39 (1) of the statutes is repealed; and 43.39 (2) and (3) are renumbered (1) and (2) and amended to read:

43.39 LIBRARY AND MUSEUM FUNDS; EXPENDITURES. (1) * * * *Public library and public museum* funds appropriated to said institutions by the common council shall not be used or appropriated, directly or indirectly, for any purpose other than the maintenance and increase, payment of the salaries of the librarian or custodian and employees, pur-

chase of fuel, supplies, furniture and fixtures, or incidental repairs of said institutions, respectively.

(2) All moneys * * * *appropriated* for the purposes of said institutions shall be paid over to the city treasurer and credited to said funds, respectively. Each board of trustees shall provide for all necessary expenditures from each said fund, * * * and all disbursements * * * shall be made on orders of the president and secretary of the board, countersigned by the city comptroller; but, except as expressly provided otherwise, the board shall not in any one year expend or incur any liability for any sum in excess of the amount * * * *allocated to each such fund by the common council.*

SECTION 10. 43.44 (6) of the statutes is repealed.

SECTION 11. 59.13 (1) (g) and (3) of the statutes are amended to read:

59.13 (1) (g) Register of deeds, * * * in counties containing *less than* 150,000 population * * *, \$3,000, with 2 or more sureties. In counties containing * * * *150,000* or more population, not less than \$3,000, with 2 or more sureties, conditioned for the accuracy of his work and the faithful, correct and impartial performance of his duties, and in addition thereto a bond * * * of not less than \$10,000, with 2 or more sureties, conditioned for the faithful accounting for and paying over to the county treasurer all moneys which may come into his hands as such officer, or into the hands of his deputy or assistants for him.

(3) Each such bond shall be guaranteed by the number of personal sureties prescribed by law, or if not prescribed, by the number fixed by the county board within the limitations, if any, prescribed by law, or by a surety company as provided by s. 204.07. In the case of the county clerk, county treasurer and county abstractor the county board may by resolution require them to furnish bonds guaranteed by surety companies and direct that the premiums * * * *be paid as provided in s. 19.01 (8).*

SECTION 12. 59.43 of the statutes is repealed.

SECTION 13. 60.29 (26) (c) of the statutes is amended to read:

60.29 (26) (c) There is imposed upon all towns in which under * * * this * * * *subsection*, highways, streets or alleys are to be graded, paved or otherwise improved, all of the powers vested in cities under s. 62.21, and all of the duties by such section imposed upon the common council and board of public works, mayor, city clerk and city treasurer, shall be performed by the town board, town chairman, town clerk and town treasurer, and such bonds shall be signed by the town chairman and attested by the town clerk; and where notice is required to be published * * *, and there * * * *is* no newspaper published in said town, such notices may be given by posting 5 copies thereof in 5 public places in said town.

SECTION 14. 62.22 (5) (c) of the statutes is amended to read:

62.22 (5) (c) The cost of each condemnation shall be paid out of the general city fund, except * * * the cost of condemnation for * * * purposes as to which there are special funds shall be paid out of such * * * *funds*, and all special taxes levied and collected on account of any condemnation shall be credited to the fund out of which the cost of the condemnation is paid.

SECTION 15. 66.05 (7) of the statutes is repealed; and 66.05 (6) is amended to read:

66.05 (6) * * * In any * * * *town, city or village* in any county having a population of 500,000 or more * * * *no* excavation for building pur-

poses, whether or not completed, * * * *shall* be left open for more than 6 months without proceeding with the erection of a building thereon. In the event any such excavation * * * remains open for more than 6 months, the inspector of buildings or other designated officer in such town, village or city shall order that the erection of a building on the excavation begin forthwith or in the alternative that the excavation be filled to grade. The order shall be served upon the owner of the land or his agent and upon the holder of any incumbrance of record * * * *as* provided in sub. (1). If the owner of the land fails to comply with the order within 15 days after service thereof upon him, the inspector of buildings or other designated officer * * * shall cause the excavation to be filled to grade and the cost shall be charged against the real estate * * * *as* provided in sub. (2). * * * Subsection (3) shall also apply to orders issued under this subsection. * * * This shall not be construed to impair the authority of any city or village to enact ordinances in this field.

SECTION 16. 66.912 (1) (g) of the statutes is amended, as of July 1, 1955, to read:

66.912 (1) (g) Determine the length of prior service from such information as is available. Any such determination shall be conclusive as to any such period of service unless within 2 years of the issuance of the first individual statement to any employe the board * * * *reconsiders* any such case and * * * *changes* the determination. * * *

SECTION 17. 71.14 (6) of the statutes is amended to read:

71.14 (6) The entire taxable income of every person deriving income from within and without the state or from within different political subdivisions of the state, * * * *regardless of whether* such person resides within the state, shall be combined and aggregated for the purpose of determining the proper rate of taxation. The department of taxation or the assessor of incomes, as the case may be, shall compute the tax on the combined taxable income of such person. The income so computed * * * shall be apportioned, in the manner provided in s. 71.07, to the several towns, cities and villages in proportion to the respective amounts of income derived from each, counting that part of the income of *residents of Wisconsin* derived from without the state when taxable as having been derived from the town, city or village in which said person resides. The tax on the combined taxable income shall be apportioned to the various towns, cities and villages in proportion to the respective amounts of taxable income so attributed to each.

SECTION 18. 80.38 of the statutes is amended to read:

80.38 The town board of any town within which * * * *is* situated any village or other plat duly certified and recorded and not included within the limits of any incorporated village * * * may make an order to be recorded by the town clerk declaring such streets and alleys in such village or other plat as they * * * deem necessary for the public use to be public highways, without any other survey or description than that made in * * * *the* recorded plat; provided, that when any 6 or more freeholders residing within the limits of such village or other plat shall wish any street or streets in * * * *the* plat to be so declared public highways and opened to public use, * * * *they* may apply to the town board * * * for that purpose in the manner provided in s. 80.02, upon which application * * * *the* town board shall make and file an order, within 10 days, declaring such streets to be public highways or refusing so to do; and in either case any person considering himself aggrieved by * * * *the* order may appeal to the circuit court for the same county by filing with the town clerk * * * a notice of appeal, specifying the grounds of appeal, within 20 days from the filing of the * * * order, together with a written under-

taking of the appellant, with one or more sufficient sureties, to be approved by * * * *the* town clerk for the payment of all costs that may be awarded against the appellant, and paying to * * * *the* clerk * * * \$5 for state tax and \$1 for making return to the appeal. Within 20 days thereafter * * * *the* town clerk shall deliver to the clerk of the circuit court * * * all the papers in the case, together with the notice of appeal, with the date of service indorsed thereon, and pay to him * * * \$5 state tax; whereupon * * * *the* clerk of the circuit court shall enter an action in his court record in which the appellant shall be plaintiff and the town shall be defendant. The issues as shown by the papers and the appeal * * * shall be tried without further pleading, the same as in personal actions in * * * circuit court, and judgment rendered and enforced as in other actions in which persons and municipal corporations are parties.

SECTION 19. 84.27 of the statutes is amended to read:

84.27 The appropriation made by s. 20.49 (2) may be expended for improving highways forming the most convenient connection between the university, state colleges * * * *and* state charitable or penal institutions, and the state trunk highway system, or to construct roadways under or over state trunk highways that pass through the grounds * * * *thereof*, or to construct and maintain all drives and roadways on * * * *such* grounds * * * *or the grounds of* the state capitol * * *. Within the limitations and for the purposes of this section, funds may be allotted by and work performed by or under the supervision or authority of the state highway commission, upon the request for such work filed by the board of regents of the university, the board of regents of the state colleges * * * or the state boards, commissions, departments or officers, respectively, as to such work in connection with the institution controlled by them.

SECTION 20. 108.14 (12) (a), (b) and (c) and (13) of the statutes are amended to read:

108.14 (12) (a) Consistently with the provisions of pars. (8) and (9) of s. 303 (a) of Title III of the federal social security act, all moneys received in the administration fund from * * * *any* federal * * * *agency* under * * * *said* Title III * * * shall be expended solely for the purposes and in the amounts found necessary by said * * * *agency* for the proper and efficient administration of this chapter.

(b) Consistently with said provisions of said Title III, any such moneys, received prior to July 1, 1941, and remaining unincumbered on said date or received on or after said date, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by said * * * *agency* for the proper administration of this chapter, shall be replaced within a reasonable time. This paragraph is the declared policy of this state, as enunciated by the 1941 legislature, and shall be implemented as further provided in this subsection.

(c) If it is believed that any amount of money thus received has been thus lost or improperly expended, the commission on its own motion or on notice from said * * * *agency* shall promptly investigate and determine the matter and shall, depending on the nature of its determination, take such steps as it may deem necessary to protect the interests of the state.

(13) The commission may, with the advice of its state advisory committee on this chapter, by general rule modify or suspend any provision of this chapter if and to the extent necessary to permit continued certification of this chapter under Title III of the federal social security act and under ss. * * * 3303 and * * * 3304 of the federal unemployment tax act.

SECTION 21. 108.16 (9) (a) (intro. par.) of the statutes is amended by substituting "3305" for "1606" and by substituting "3301" for "1600"; 108.16 (9) (a) 1 is amended by substituting "3304" for "1603"; 108.16 (9) (a) 2 is amended by substituting "3305" for "1606"; 108.19 (3) is amended by substituting "3302 (c) (1)" for "1601 (c)"; 108.19 (4) is amended by substituting "3304" for "1603"; and 108.23 is amended by substituting "3302" for "1601".

SECTION 22. 132.03 (2) of the statutes is repealed.

SECTION 23. 132.09, 132.10 and 132.12 of the statutes are renumbered 132.031, 132.032 and 132.033, and 132.032 as renumbered is amended to read:

132.032 Any person who shall for himself or on behalf of any other person, association or union procure the filing of any label, trade-mark, term, design, device or form of advertisement under * * * s. 132.01 by making any false or fraudulent representations or declarations, verbally or in writing, or by any other fraudulent means shall be liable for any damages sustained in consequence thereof, to be recovered by or on behalf of the party injured thereby, and shall also be punished as provided by law.

SECTION 24. 201.18 (3) of the statutes is amended to read:

201.18 (3) The requirements of this section as to unearned premium or reinsurance reserve and the requirements of * * * *the statutes* as to return premium shall not apply to a policy fee which is charged as such for the issuance of a policy of fire or windstorm insurance and is not in excess of \$2.50.

SECTION 25. 201.25 (1) (hm) of the statutes is amended to read:

201.25 (1) (hm) In interest-bearing notes of any mutual insurance company organized under * * * ch. 202 * * * .

SECTION 26. 201.39 (6) (4th sentence) of the statutes is amended to read:

201.39 (6) (4th sentence) In no case shall the reserves required be less than the reserves required of other insurers by the statutes of this state, including the provisions of ss. 201.18 * * * and 204.28 and any membership fee, policy fee or application fee shall be included in the deposit and charges against which reserves must be carried as provided herein.

SECTION 27. 209.04 (7) (d) of the statutes is amended to read:

209.04 (7) (d) The ticket-selling agent of a railroad or steamship company, carrier by air or public bus carrier, who * * * *acts* as agent * * * in the sale of accident insurance tickets to individuals, insurance on personal effects against loss or damages while being carried as baggage incident to the sale of a passenger's transportation ticket.

SECTION 28. 220.05 (6) of the statutes is amended to read:

220.05 (6) * * * Any bank or trust company holding any property in trust or in any fiduciary capacity or as custodian or bailee shall pay in addition to said fees *and* assessments provided for in subs. (2) * * * and (4) * * * the actual reasonable cost of any and all examinations (whether or not they are in excess of 2 in any one year) conducted by the banking department of the books, records and business of said bank or trust company in so far as they relate to said property held in trust or other fiduciary capacity or as custodian or bailee, said cost to include a fair charge for time of assistants and office overhead and to be determined

by the commissioner within a reasonable time after each said examination has been completed. A statement of such charge shall be promptly sent to said bank or trust company. Each such bank or trust company shall pay such charge within 10 days after receipt of such statement. Said cost shall include the cost of furnishing copy to the bank or trust company. If an examination or part thereof is charged and fully paid for under * * * sub. (4) * * * such examination or part thereof shall not be again charged for under * * * this subsection.

SECTION 29. 220.065 of the statutes is amended to read:

220.065 The commissioner of banks shall not be subject to any civil liability or penalty, nor to any criminal prosecution, for any error in judgment or discretion made in good faith and upon reasonable grounds in any action taken or omitted by him in his official capacity under the provisions of chs. 220 to * * * 224.

SECTION 30. 241.39 (2) (b) 2 of the statutes is amended to read:

241.39 (2) (b) 2. Gives value after said period, and who in either event before filing also obtains delivery of goods from a trustee shall hold the subject matter of his purchase free of the entruster's security interest; but a transferee in bulk can take only under * * * *this subdivision*.

SECTION 31. 245.10 (5) (2d par.) of the statutes is amended to read:

245.10 (5) (2d par.) I, ----- (name of physician), being a physician, legally licensed to practice medicine and surgery in the state of -----, my credentials being filed in the office of ----- in the city of -----, county of -----, state of -----, do certify that ----- (name of person) was given the Wassermann or other standard blood test for syphilis at ----- (name of laboratory) from blood taken by ----- on the ___ day of -----, 19___ and that the result of such test was negative.

----- (Signature of physician * * *).

SECTION 32. 262.13 (2) is amended to read:

262.13 (2) Service of the summons by publication shall consist of its publication in a newspaper, published in this state, likely to give notice to the defendant once a week for 3 *successive* weeks, and in case the defendant's post-office address is known or can with reasonable diligence be ascertained, by mailing him a copy of the summons and complaint, or a notice of the object of the action, as the case may require. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence.

SECTION 33. 266.03 (3) of the statutes is amended to read:

266.03 (3) An action may be maintained and a writ of attachment issued on a demand not yet due in any case mentioned in this section, except the cases mentioned in * * * *sub. (1) (e), (f) and (g)* and the same proceedings in the action shall be had and the same affidavit shall be required as in actions upon matured demands except that the affidavit shall state that the debt is to become due; but the bond specified in s. 266.06 shall be conditioned in 3 times the amount demanded. In case an attachment * * * *is* issued before the maturity of the debt and a traverse to such attachment is sustained the court shall render a judgment for damages and costs against the plaintiff.

SECTION 34. 272.31 (1) of the statutes is amended to read:

272.31 (1) The time and place of holding any sale of real estate on execution shall be publicly advertised by posting a written notice describ-

ing the real estate to be sold with reasonable certainty in 3 public places in the town or municipality where such real estate is to be sold at least 3 weeks prior to the date of sale; and also in 3 public places of the town or municipality in which the real estate is situated, *if it is not in the town or municipality where the sale is to be held.*

SECTION 35. 289.19 of the statutes is amended to read:

289.19 No demand for such services shall become a lien unless a petition therefor shall be signed and verified by the claimant or by someone in his behalf setting forth the nature of the demand, the amount claimed, a description of the property upon which * * * *the* lien is claimed and that the petitioner claims a lien thereon. * * * *The* petition shall be filed in the office of the clerk of the circuit court of the county in which * * * *the* services or some part thereof were performed within 30 days after the last day of performing continuous services, and * * * *the* services shall be deemed continuous notwithstanding a change of ownership in the property on which * * * *the* lien is claimed. The clerk shall receive * * * \$1 for filing the petition.

SECTION 36. 289.40 (2) of the statutes is amended to read:

289.40 (2) Such wages shall become a lien upon the property and material mentioned in this section upon filing with the clerk of the circuit court of the county in which such labor is performed within 60 days after the first of * * * *the* services shall be rendered, a petition signed by the claimant and verified by him or by someone in his behalf under oath, setting forth the nature of the debt for which the lien is claimed, the amount claimed, a description of the property upon which * * * *the* lien is claimed and that the petitioner claims a lien thereon pursuant to law. The clerk shall receive * * * \$1 for filing the petition.

SECTION 37. 298.03 of the statutes is amended to read:

298.03 The party aggrieved by the alleged failure, neglect or refusal of another to perform under a written agreement for arbitration, may petition any court of record having jurisdiction of the parties or of the property for an order directing that such arbitration proceed * * * *as* provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made * * * *as* provided by law for the service of a summons. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the arbitration agreement or the failure, neglect or refusal to perform the same * * * *is* in issue, the court shall proceed summarily to the trial thereof. If no jury trial * * * *is* demanded the court shall hear and determine such issue. Where such an issue is raised, either party may, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue * * * to a jury called and impaneled * * * *as* provided * * * *in s. 270.15.* If the jury * * * *finds* that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury * * * *finds* that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

SECTION 38. 301.24 of the statutes is amended to read:

301.24 If the defendant, on the return day of the process and before any proceedings are had on his part, makes oath that, from prejudice,

he believes the justice will not decide impartially in the action and pays to the justice * * * \$1 for making a copy of his docket and transmitting the papers, then the justice shall immediately transmit all the papers in the action to the nearest justice in the same county who can be found, who shall proceed in the action as if the said action had been commenced before him. This section shall not extend to a second removal.

SECTION 39. 301.245 of the statutes is amended to read:

301.245 In counties having a population of less than 500,000, and in which a small claims court or a civil, municipal, superior or county court empowered to exercise civil jurisdiction has been established, the defendant in any action brought in justice court may, on the return day of the process, transfer the cause to the small claims court or to such civil, municipal, superior or county court of said county. Upon receipt of such a request, accompanied by a fee of * * * \$1, the justice shall forthwith transmit all the papers in * * * *the* cause to the clerk of said court.

SECTION 40. 306.12 (1) of the statutes is amended to read:

306.12 (1) Within 10 days after any appeal is perfected, the justice shall make a return to the appellate court of the testimony, proceedings and judgment and pay to the clerk the state tax and the * * * \$5 clerk's fees. If any return is defective the appellate court may order a further or amended return.

SECTION 41. Chapter 439 of the laws of 1951 is repealed.

SECTION 42. Chapter 592 of the laws of 1953 is repealed.

SECTION 43. This act shall take effect on the day after its publication, except that SECTION 16 shall take effect on July 1, 1955.

Approved June 29, 1955.
