

No. 139, A.]

[Published August 20, 1915.]

CHAPTER 548.

AN ACT to repeal subsections 2, 3 and 5 of section 172—36 and to amend subsections 1 and 4 of section 172—36 of the statutes, appropriating money for state aid to highways and for the highway commission.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Subsections 2, 3 and 5 of section 172—36 of the statutes are repealed.

SECTION 2. Subsections 1 and 4 of section 172—36 of the statutes are amended to read: (Section 172—36.) 1. There is annually appropriated from *any moneys in the general fund not otherwise appropriated* * * * *seven hundred and eighty-five thousand dollars* to the state highway commission as state aid for highways. * * *

* * * 2. There is appropriated on July 1, * * * 1915 and annually thereafter, * * * *sixty-five thousand dollars*, payable from any moneys in the general fund not otherwise appropriated, to the state highway commission for carrying out the powers, duties and functions provided by law for the said commission.

SECTION 3. This act shall take effect upon passage and publication.

Approved August 17, 1915.

No. 295, A.]

[Published August 20, 1915.]

CHAPTER 549.

AN ACT to repeal section 3315 of the statutes; to create a new section of the statutes to be numbered section 3315; and to amend sections 3315a and 3318 of the statutes, relating to liens for labor or materials performed or furnished on buildings or other improvement and the filing thereof, and providing a penalty.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section 3315 of the statutes is repealed, but such repeal shall not affect any rights vested or contracts entered into prior to the passage and publication of this act.

SECTION 2. There is added to the statutes a new section to be numbered and to read: Section 3315. 1. Every person, firm, corporation or association other than a principal con-

tractor, who performs any work or labor or furnishes any materials in any of the cases enumerated in the preceding section, shall within thirty days after performing the first work or labor or furnishing the first materials give notice in writing to the owner of the property upon which such work or labor is being performed or to which such materials are being furnished either by personal service on the owner or his agent or by letter addressed to such owner or his agent at the last known post-office address of such owner or agent, with postage duly prepaid, stating that he has been employed to perform work or labor or to furnish materials, describing the real estate upon which the same is to be performed or furnished with reasonable certainty so that the owner will not be misled or deceived thereby. In the event that the owner of the property shall complain of any insufficiency of such notice should a lien be afterward claimed against said real estate, the burden of proof shall be upon such owner to show that he has been misled or deceived by such insufficiency thereof. In case the property to be affected by such notice is owned jointly or in common by two or more persons, the giving of such notice in the manner herein provided to any one of such owners, or his agent, shall be sufficient. Every contractor, whether as principal contractor or otherwise, at the time he purchases or contracts for any materials to be used in any of the cases enumerated in section 3314 of the statutes, shall deliver to such materialman a description of the real estate upon which the materials are to be used and the name of the owner thereof and his agent, if any.

2. Every person, firm, corporation or association, other than the principal contractor, who performs any work or labor or furnishes any materials in any of the cases enumerated in the preceding section shall have the lien and remedy given by this chapter, if he shall have given to the owner the notice provided in subsection 1 hereof, and if within sixty days after the date of performing the last work or labor or of the furnishing of the last of such materials he shall file in the office of the clerk of the circuit court of the county in which said real estate is situated, together with a copy of such notice, a claim for lien, setting forth that he has been employed by such principal contractor or subcontractor to perform or furnish, and has performed or furnished, such work, labor or materials, with a statement of the labor performed or the materials furnished, the amount owing therefor from such principal contractor or subcontractor, and that he claims the lien given by this chapter. The thirty-day notice herein required to be given to the owner by any person, firm, corporation or association other than the

principal contractor who performs any work or labor or furnishes any materials shall not be construed to mean that any laborer or mechanic employed by any principal contractor or subcontractor shall be required to give said notice, and such laborer or mechanic may have such right or lien provided by this chapter, if he shall within sixty days after the performance of the last work or labor file in the office of the clerk of the circuit court of said county his claim for a lien in the manner herein provided.

3. All moneys paid by the owner to the principal contractor shall be and constitute a trust fund in the hands of such principal contractor, to the amount of all claims due from or owing by such principal contractor for work, labor and materials or to become due from or owing by such principal contractor for such work, labor and materials to persons entitled to a lien under this chapter against said owner and his property until all such claims have been paid; the using of such moneys by such principal contractor for any purpose other than the payment of such claims, until all such claims, except those which may be in dispute, have been paid, is hereby declared to be an embezzlement of said moneys punishable as provided by law in case of embezzlement.

4. In all cases where a lien shall be filed under the provisions of this chapter by any person other than the principal contractor, it shall be the duty of such principal contractor to defend any action brought thereupon at his own expense, and during the pendency of such action the owner may withhold from the contractor the amount of money for which such lien shall be filed and an amount sufficient to defray the costs and expenses of said action; and in case of judgment against the owner or his property upon the lien he may deduct from any amount due by him to the contractor the amount of such judgment, and if he shall have settled with the contractor in full, may recover from him any amount so paid for which the contractor was originally liable.

5. And any contractor or any person furnishing materials under him who shall purchase materials on credit and represent at the time of making the purchase that the same are to be used in a designated building or other improvement and shall thereafter use or cause to be used the said material in the construction of any building or improvement other than that designated, without the written consent of the person from whom the materials were purchased, shall be punished by imprisonment in the county jail for not more than three months or by a fine not exceeding three hundred dollars.

6. The provisions of this section shall also apply to all cases where improvements are being placed upon real estate by any person holding such land under any contract of lease, demise, or contract for the purchase or sale thereof, but in that case the lien shall attach only to the interest of such person in said real estate unless the owner of such property shall authorize or approve of the same.

SECTION 3. Sections 3315a and 3318 of the statutes are amended to read: Section 3315a. The lien given by section 3315 of these statutes shall be valid, any stipulation contained in the contract between the owner and the principal contractor or between any other persons who may have a lien thereunder to the contrary notwithstanding.

Section 3318. No lien hereby given shall exist and no action to enforce the same shall be maintained unless within *sixty days in all cases provided for in section 3315 and within six months in all other cases* from the date of the last charge for performing such work and labor or of the furnishing of such materials a claim for such lien shall be filed as hereinafter provided in the office of the clerk of the circuit court of the county in which the lands affected thereby lie and such action be brought and summons and complaint filed within one year from such date, unless within thirty days next preceding the expiration of such year the person who filed the lien or his agent, attorney or assignee shall make and annex to the instrument on file an affidavit setting forth the interest which the lien claimant has by virtue of such lien in the property therein mentioned, upon which affidavit the clerk shall indorse the time of its filing. The effect of such affidavit shall not continue beyond one year from the time when such lien would otherwise cease to be valid, and action shall not be maintained after said additional period of one year unless action be brought and summons and complaint filed within the said period. Such claim for lien may be filed and docketed within such six months notwithstanding the death of the owner of the property affected thereby or the person with whom the original contract was made, with like effect as if he were then living.

SECTION 4. This act shall take effect upon passage and publication.

Approved August 17, 1915.