CHAPTER 289.

LIENS.

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289.01 Contractors' liens. (1) DEFINITION. In this chapter unless the context or subject matter otherwise requires:

(a) "Contractor" means a person, other than a laborer, who enters into a contract with the owner of land to improve it or who takes over from a contractor his uncompleted contract; and includes an architect, professional engineer and surveyor employed by the owner.

(b) "Improvement" includes any building, structure, erection, fixture, demolition, alteration, excavation, filling, grading, tiling, planting, clearing, landscaping, built, erected, made or done on or to land for its permanent benefit. This enumeration is an extension of the meaning and scope of improvement.

(c) "Owner" means the owner of any interest in land who enters into a contract for the improvement thereof.

(2) EXTENT AND CHARACTER OF LIEN. (a) Every contractor who performs any work or procures its performance or furnishes any materials or plans or specifications for the improvement of land shall have a lien therefor upon the interest of the owner in such land. Such lien is limited to one acre, in municipalities, and to forty acres elsewhere, unless the improvement, as a unit or continuous thing, extends over or across larger areas in which case said limitation of area shall not apply.

(b) Such lien shall be prior to any lien which originates subsequent to the visible commencement in place of the work of improvement, except as otherwise provided by sections 215.22 and 235.70. The lien shall also be prior to any unrecorded mortgage given prior to the commencement of the improvement, but of which the lienor has no notice.

(c) In case the purchaser of machinery which becomes a fixture shall not own a sufficient interest in the premises to afford the vendor a lien thereon such vendor shall have a lien upon the machinery and in default of payment, may remove such machinery, leaving the premises or building in as good condition as before the machinery was placed in or on the same.

(3) STREET WORK. When made at the instance of a private owner any improvement for which a lien is given by this section shall consist of the grading, filling or leveling of land or the grading, graveling or making of any street, alley, roadway or gutter thereon

upon more than one acre then the limitation as to area shall not apply but the contractor shall have a lien on all the land upon which said improvement is made, and he may make and file a single claim for lien on all of the same.

(4) EXPRESS AGREEMENT OF OWNER. This section does not give a lien upon the interest of any owner in land unless there is an express agreement between him and the contractor whereby such owner agrees to pay for or become responsible for the payment of the improvement.

(5) ASSIGNMENT OF LIEN, GARNISHMENT. An assignment of his claim or right to a lien or any part thereof by the contractor or garnishment by his creditor shall not operate to compel the owner to pay the assignee or creditor until the claims of subcontractors and employes under section 289.02 shall either have matured by notice or have expired. If claims under said section become liens the owner shall be compelled to pay such assignee or creditor only what may remain due in excess of such liens.

Cross Reference: See 235.701 providing for the use of the proceeds of mortgages by the owner, contractor or subcontractor for the payment of claims, and providing that misuse of such funds is embezzlement.

Actual use of material as a prerequisite to a mechanic's lien. 1960 WLR 350.

289.02 Subcontractors', materialmen's and laborers' liens. (1) NOTICE TO OWNER, TO MATERIALMEN. Every person, other than the contractor who furnishes labor or materials in any of the cases enumerated in s. 289.01, shall have the lien and remedy provided by this chapter, if before or within 120 days after furnishing the first labor or materials he gives notice in writing to the owner either by personal service on the owner or his agent or by mailing a copy thereof addressed to such owner or his agent at his last known post-office address stating that he has been engaged to furnish labor or materials, describing the real estate upon which the same is to be furnished by legal description, mail address, or otherwise, so that the owner is not misled or deceived thereby, and further stating in effect that he is giving such notice pursuant to the Wisconsin mechanics' lien law and will claim a lien against such real estate in the event he is not paid by the contractor for such labor and materials. If the owner complains of any insufficiency of such notice the burden of proof shall be upon him to show that he has been misled or deceived by such insufficiency. In case there is more than one owner, giving such notice in the manner herein provided to any such owner, or his agent, shall be sufficient. Every contractor and subcontractor, at the time he purchases or contracts for any materials to be used in any of the cases enumerated in s. 289.01, shall deliver to the 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) REMEDY, LIEN CLAIM. Every person, other than the contractor, who furnishes any labor or materials in any of the cases enumerated in s. 289.01, to preserve his lien shall within 120 days after the date of furnishing the last labor or the last materials file in the office of the clerk of the circuit court of the county in which said real estate is situated a copy of such notice and a claim for lien, setting forth that he has been employed by the contractor or a subcontractor to furnish, and has furnished, labor or materials, with a statement thereof, the amount owing therefor from such contractor or subcontractor, and that he claims the lien given by this chapter.

(3) EXEMPTION AS TO NOTICE. The notice herein required to be given to the owner by subsection (1) need not be given by any laborer or mechanic employed by any contractor or subcontractor.

(4) THEFT BY CONTRACTORS. The proceeds of any mortgage on land, paid to any principal contractor or any subcontractor for improvements upon the mortgaged premises and all moneys paid to him by any owner for improvements, constitute a trust fund in the hands of any such contractor or subcontractor to the amount of all claims due and to become due or owing from such contractor or subcontractor for labor and materials used for such improvements until all such claims have been paid; and the use of any of such moneys by any contractor or subcontractor for any other purpose until all claims, except those which are the subject of a bona fide dispute, have been paid in full, or pro rata in cases of a deficiency, is theft of moneys so misappropriated.

(5) CONTRACTORS TO DEFEND LIEN ACTIONS. Where a lien shall be filed under this chapter by any person other than the contractor, he shall defend any action thereon at his own expense, and during the pendency of such action the owner may withhold from the contractor the amount for which such lien shall be filed and sufficient to defray the costs of said action; and in case of judgment against the owner he may deduct from any amount due to the contractor the amount of such judgment, and if the judgment exceeds the amount so due, the owner may recover the difference from the contractor.

(6) WRONGFUL USE OF MATERIALS. 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 im-

provement and shall thereafter use or cause to be used said materials in the construction of any improvement other than that designated, without the written consent of the seller, shall be punished by imprisonment in the county jail not more than three months or by a fine not exceeding $300.

289.03 Lien valid notwithstanding stipulation. The lien given by section 289.02 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.

289.04 Claims assignable; notice; prior payment. All claims for liens and right to recover therefor under this chapter are assignable. Notice in writing of such assignment may be served upon the owner of the property affected and all payments made by him before service of such notice shall discharge his debt to the amount paid. The assignee may file petitions for such liens and may bring an action in his own name to enforce the same.

289.05 Taking note not a waiver. A promissory note or other evidence of debt given for any lienable claim shall not discharge or defeat the lien unless expressly received as payment and so specified therein.

289.06 Filing claim and beginning action. No lien shall exist and no action to enforce the same shall be maintained unless within 120 days in all cases provided for in s. 289.02 and within 6 months in all cases provided for in s. 289.01 from the date of furnishing the last labor or materials a claim for such lien shall be filed 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 2 years from the date of filing such claim for lien. Such claim for lien may be so filed and docketed 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.

289.07 Docket of liens. Every clerk of the circuit court shall keep a separate docket, to be entitled "lien docket," in which shall be entered the proper entries, under the appropriate headings herein specified, relative to each claim for lien filed with him, immediately upon its filing, opposite the names of the persons against whom the lien is claimed, which names shall be entered therein alphabetically, or an alphabetical index thereof shall be kept as judgment dockets are required by law to be kept. Each page of such docket shall be divided into eight columns, with written or printed headings to the respective columns, as follows:

Name of person against whom lien is claimed.	Name of claimant or assignee.	Attorney for claimant.	Last date of performance of labor or furnishing materials.	Date of filing petition.	Description of property.	Amount claimed.	Satisfaction.
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....

Such docket shall be presumptive evidence of the correctness of the entries therein made.

289.08 Claim for lien. Such claim for lien shall contain a statement of the contract or demand upon which it is founded, the name of the person against whom the demand is claimed, the name of the claimant or assignee, the last date of the performance of labor or furnishing of materials, a description of the property affected thereby, a statement of the amount claimed and all other material facts in relation thereto. It shall be signed by the claimant or by his attorney, and need not be verified, and may be amended, in case of action brought, by order of the court as pleadings may be.

289.085 Release of lien; undertaking. (1) The person against whom a lien is claimed may file with the clerk of the court in whose office the claim for lien is filed, an undertaking, executed by two or more sufficient sureties to the effect that the person against whom the lien is claimed shall pay the amount of such claim and all costs and damages which may be awarded against him on account of such lien or in lieu thereof deposit with the clerk of the court a sum of money, certified check or negotiable United

States government bonds in par value equal to the sum of 125 per cent of the claim for lien. The court in which any action to foreclose the lien may be brought shall determine any question of sufficiency of the sureties if exception be taken thereto by the lien claimant within 10 days after notice of the filing of such undertaking or deposit of other security and may upon notice and upon motion of any party, order any sum of money deposited to be invested. The depositor of such sums shall be entitled to any interest, earnings, dividends, profit or income upon or from the investments, certified check or negotiable United States government bonds deposited and the clerk shall pay and deliver the same to the depositor without order, as and when received, or, in the case of coupons, as the same become due and payable.

(2) If an undertaking is furnished it shall be accompanied by the affidavits of the sureties in which each shall state that he is worth, over and above all his debts and liabilities in property within this state not exempt from execution an amount in the aggregate equal to 125 per cent or more of the amount of such claim for lien.

(3) The person against whom the lien is claimed shall cause to be served upon the lien claimant a notice of the filing of such undertaking or deposit of other security, and if an undertaking, a copy thereof, which notice shall state where and when the same was filed.

(4) Any action brought after the furnishing of such security or pending at the time of the furnishing thereof in accordance with the provisions of this section shall proceed as if no security had been furnished, except that after the time within which exceptions may be taken to such security, or pursuant to order of the court upon any such exception so taken, the clerk shall satisfy said claim for lien of record and discharge any lis pendens filed in the manner provided by the statute, and except that such lien shall thereupon attach to such security and the amount adjudged due in the proceeding for foreclosure thereof shall be satisfied out of the security.

289.09 Foreclosure of lien; procedure; parties. In the foreclosure of liens mentioned in sections 289.01 and 289.02, the provisions of chapter 278 for the foreclosure of real estate mortgages shall control as far as applicable unless otherwise provided in this chapter. All persons having filed claims for liens in the cases mentioned in said sections may join as plaintiffs; and if any do not join they may be made defendants. All persons having liens subsequent to the lien sought to be foreclosed, and all purchasers of the premises subsequent to such lien may be joined as defendants. In case any person who is a proper party is not a party to such action he may, at any time before judgment, be made a defendant, and any person who after the commencement of such action shall obtain a lien or become a purchaser, may, at any time before judgment, be made a defendant.

289.12 Judgment. The judgment shall adjudge the amount due to each claimant who is a party to the action. It shall direct that the interest of the owner in the premises at the commencement of the work or furnishing the materials for which liens are given and which he has since acquired, or so much thereof as may be necessary, be sold to satisfy the judgment, and that the proceeds be brought into court with the report of sale to abide the order of the court. If the premises can be sold in parcels without injury to the parties the court may adjudge that the sale be so made. If the plaintiff fail to establish his lien upon the premises but does establish a right to recover for labor or materials he may have a judgment against the party liable.

289.13 Distribution of proceeds of sale. The several claimants whose liens were established in the action shall be paid without priority among themselves; and if the sum realized at such sale shall be insufficient, after paying the costs of the action and the costs of making the sale, to pay the liens in full then they shall be paid pro rata.

289.14 Sale; notice and report; deficiency judgment; writ of assistance. (1) All sales under such judgments shall be noticed and conducted and reported in the manner provided for the sale of real estate upon execution and shall be absolute and without redemption; and the deed given thereon, in case such sale is confirmed, shall be effectual to pass to the purchaser all the interest in the premises directed to be sold.

(2) If any deficiency arise upon such sale in the payment of the sums adjudged to be due to any lien claimant the court, upon confirming such sale, may render judgment therefor if demanded in the pleadings against the defendant legally liable to pay the same, which judgment may be docketed and enforced in the same manner that ordinary judgments are. And the purchasers at such sale shall be entitled to a writ of assistance to obtain possession of the premises sold in the manner provided in section 272.63.

289.15 Satisfaction of judgment or lien. Every lienor or the attorney who executed and filed a claim for lien on behalf of such lienor, who has received satisfaction or tender of such claim with the costs of any action brought thereon, shall, at the request of any person interested in the premises affected, and on payment of the costs of satisfying the same, execute and deliver the necessary satisfaction to such interested person; on filing such satisfaction with the clerk of the court he shall enter satisfaction of such claim on his lien docket. On failure to so execute and deliver such satisfaction or to satisfy such lien on the docket, the person so refusing shall be liable to pay to the person requiring such satisfaction a sum equal to one-half of the sum claimed in his claim for lien.

289.16 Public works, form of contract, bond, remedy. (1) All contracts with the state involving $2,500 or more and all other contracts involving $500 or more for the performance of labor or furnishing materials when the same pertains to any public improvement or public work of whatsoever kind shall contain a provision for the payment by the contractor of all claims for labor performed and materials furnished, used or consumed in making such public improvement or performing such public work, including, without limitation because of specific enumeration, fuel, lumber, building materials, machinery, vehicles, tractors, equipment, fixtures, apparatus, tools, appliances, supplies, electric energy, gasoline and other motor oil, lubricating oil, and greases, and the premiums for workmen's compensation insurance and the contributions for unemployment compensation; and no such contract shall be made unless the contractor gives a bond issued by a surety company licensed to do business in this state, the penalty of which shall not be less than the contract price, conditioned for the faithful performance of the contract, and the payment to every person entitled thereto of all the claims for labor performed, and materials furnished under such contract, to be used or consumed in making such public improvement or performing such public work as provided in such contract and as above specified, such bond in the case of the state to be approved by the governor, of a county by its district attorney, of a city or village by its mayor or president, of a town by its chairman, of a school district by the director or president and in case of any other public board or body by the presiding officer thereof. No assignment, modification, or change of the contract, or change in the work covered thereby, nor any extension of time for completion of the contract shall release the sureties on said bond. Neither the invitation for bids, nor the person having power to approve the contractor's bond, shall require that such bond be furnished by a specified surety company, or through a specified agent or broker.

(2) Any party in interest may, not later than one year after the completion of said contract, maintain an action in his own name against such contractor and the sureties upon such bond for the recovery of any damages he may have sustained by reason of the failure of said contractor to comply with said contract or with the contract between said contractor and subcontractors. If the amount realized on said bond be insufficient to satisfy all of the claims of the parties in full it shall be distributed among said parties pro rata.

(3) In an action by a county upon such bond all persons for whose protection it was given and who make claim thereunder may be joined in said action and the county highway commissioner may take assignments of all demands and claims for labor or material and enforce the same in said action for the benefit of the assignors, and the judgment may provide the manner in which such assignors shall be paid.

See note to 60.36, citing Smith v. Pershing, 10 W (2d) 352, 102 NW (2d) 765.

289.18 Log liens; priority. (1) Any person who shall, by himself or by his beast or machine or vehicle, perform any services in cutting, hauling, running, felling, piling, driving, rafting, booming, cribbing, towing, sawing, peeling or manufacturing logs, timber, stave bolts, heading staves, pulp wood, cordwood, firewood, railroad ties, piling, telegraph poles, telephone poles, fence posts, paving timber, tan or other barks or in preparing wood for or manufacturing charcoal shall have a lien upon such material for the amount owing for such services, which shall take precedence of all other claims, liens or encumbrances thereon or sales thereof.

(2) The right of lien given by this section survives any change in the property through manufacture and the lienor has his lien upon the manufactured product as though his services had been performed directly thereon.

289.19 Petition for log lien; filing same. 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.

289.20 Action to enforce log lien; parties; costs; change of venue. (1) An action to enforce any lien mentioned in s. 289.18 may be brought in the circuit court of the county where the petition is filed, when the amount claimed exceeds $100, or before any county court or justice of the peace having jurisdiction of the amount claimed in the county in which such petition is filed. Such claim shall cease to be a lien unless an action to foreclose it is commenced within 4 months after filing such petition. If the claim is not due at the time of filing such petition the time when the same will become due shall be stated therein, and in such case such claim shall not cease to be a lien until 30 days after the claim has become due and until 4 months after the filing of such petition.

(2) Where the property subject to such lien has been taken from the county where such work was done the lienor may bring an action to foreclose the lien in any county where said property may be found. In all foreclosure actions the person liable for such claim shall be made defendant and any other person claiming to own or have any interest in such property may be made a defendant, but shall not be liable for costs unless he defends the action. In actions appealed from justice court no change of venue shall be allowed except for prejudice of the judge or of the people.

History: 1961 c. 495.

289.21 Attachment, affidavit for; undertaking; service of writ. (1) The plaintiff in such action may have the remedy by attachment of the property upon which the lien is claimed as in personal actions; such attachment may be issued, served and returned and like proceedings had thereon including the release of any attached property as in personal actions. The affidavit for the attachment must state that the defendant who is personally liable is indebted to him in the sum named, above all set-offs, for services which entitle the plaintiff to a lien, describe the property on which it is claimed such 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. No undertaking upon such attachment or security for costs in actions hereunder before county courts or justices of the peace 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 court or any judge thereof requiring an undertaking or security for costs except upon 10 days' notice to the plaintiff.

(2) The writ of attachment shall direct the officer to attach the property described or so much thereof as shall be necessary to satisfy the sum claimed to be due and to hold the same subject to further proceedings in the action. The officer shall make return of his doings but it shall not be necessary for him to make an inventory or appraisal of the property attached; he shall pay any charges that may be due for booming or driving the property attached, and the amount paid shall be taxed as costs. Where personal service of the summons and writ of attachment cannot be made service shall be made as provided for service of summons on nonresidents or persons who cannot be found as in other actions.

History: 1961 c. 614.

289.24 Lien for camp supplies. All persons furnishing supplies necessary for the performing of the labor and services upon any property mentioned in section 289.18, at the request of the person engaging such labor or services, shall have the right of lien therefor and may enforce the same by action as herein provided for the enforcement of liens upon logs and timber.

289.25 Lien for joint log driving. When logs or timber of different owners are so intermixed that they cannot be conveniently separated for driving and either owner neglects to make the necessary provision for driving them any other owner may drive all such logs or timber to the destination and shall receive reasonable compensation for driving the logs of the owner so neglecting and shall have a lien for such compensation and may enforce the same as provided for the enforcement of liens upon logs or timber.

289.26 Lien of improvement companies. Every company whose charter authorizes it to collect tolls on logs, lumber or timber shall have a lien thereon, with the remedies herein given to enforce liens for labor and services in respect to logs or timber.

289.28 Execution. In actions to enforce liens on property mentioned in section 289.18 the execution, in addition to the directions of ordinary executions upon judgments for money, shall direct that the property upon which a lien is found to exist or so much thereof as may be necessary for such purpose be sold to satisfy the judgment.

289.29 Who may become a party or appeal. In an action for the enforcement of a lien upon property mentioned in section 289.18 a person not a party may, at any time before sale of the property upon which a lien is claimed, become a party defendant by filing with the clerk of the court or with the justice of the peace where the action is pending an affidavit made by him or in his behalf that he is the owner of or of some interest in the property upon which a lien is claimed and verily believes that said claim for lien is 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 twenty days after the filing of such affidavit. Such right to file an affidavit or take an appeal shall not extend beyond one year from the rendition of the judgment.

289.30 Appeal by intervener and proceedings. Such appeal shall not stay execution unless the appellant files an undertaking, with two 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 such property they will pay the amount of the judgment in his favor with costs; said 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 shall have been previously 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 property in which appellant shall claim an interest that may have been levied upon shall be released from such levy. If upon the trial in the appellate court the plaintiff shall recover judgment of lien upon such property such 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 to be 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.

289.31 Cook's lien. The person who prepares or serves the food for men while they are performing lienable services upon any property mentioned in section 289.18, at the request of their employer shall have the right of lien therefor the same as those men.

289.33 Liens for log driving on Chippewa river. [*Not printed; 1935 c. 483 s. 116; see 1933 Stats.*]

289.35 Mining liens. Any person who shall perform any labor or services for any person or corporation engaged in or organized for the purpose of mining, smelting or manufacturing iron, copper, silver or other ores or minerals, and any bona fide holder of any draft, time check or order for the payment of money due for any such labor, issued or drawn by any such person or corporation, shall have a lien for the wages due him for the amount due on such draft, check or order upon all the personal property connected with such mining, smelting or manufacturing industry belonging to such person or corporation, including the ores or products of such mine or manufactory, together with the machinery and other personal property used in the operation of such mine or manufactory and all the interest of such person or corporation in any real estate belonging thereto and connected with such business, which said lien shall take precedence of all other debts, judgments, decrees, liens or mortgages against such person or corporation, except liens accruing for taxes, fines or penalties, subject to the exceptions and limitations hereinafter set forth.

289.36 Extent of lien; filing claim. Such lien shall extend only to the amount of the interest in the real property held by such employer or employers, and in case of his or their death or insolvency, or of the sale or transfer of such works, mines, manufactories or business, or his or their interest therein by execution or otherwise, all moneys that may be due for wages to any miner, mechanic or laborer shall be a lien upon all said property and shall be preferred and first paid out of the proceeds of the sale thereof; provided, that no such claim shall be a lien upon any real estate unless it shall be filed in the office of the clerk of the circuit court of the county in which the real estate upon which a lien is claimed is situated within sixty days after the claim, draft, time check or order is due and payable in the manner claims for mechanics' liens are required to be filed.

289.37 Satisfaction of lien. If an attachment, execution or similar writ shall be issued against any person or corporation engaged in such business as is within section 289.35, any miner, laborer, mechanic or other person who is entitled to claim a lien thereon may give notice in writing of such claim and the amount thereof, verified by affidavit, to the

officer holding any such writ at any time before the actual sale of the property affected thereby, and such officer shall retain out of the proceeds of such sale a sufficient sum to satisfy all such claims, which sum shall be held by him, subject to such order as the court may make.

289.38 Effect of mortgage. No mortgage or other instrument by which a lien is created shall operate to impair or postpone the lien and preference given and secured to the wages and moneys mentioned in section 289.35; provided, that no lien of any mortgage or judgment entered before such labor is performed shall be affected or impaired by such lien.

289.39 Foreclosure of lien. The liens and preferences given by sections 289.35 to 289.38 may be foreclosed in the same manner as mechanics' liens, and all provisions of these statutes relating to the foreclosure thereof shall apply to the foreclosure of the liens so given, so far as such provisions are applicable.

289.40 Liens for labor in quarry. (1) Any person who shall perform any labor for an employer not the owner of the real estate, engaged in quarrying, crushing, cutting or otherwise preparing stone for use or for manufacturing lime and any bona fide holder of any draft, time check or order for the payment of money due for any such labor issued by such employer, shall have a lien for the wages owing to him and for the amount due on such draft, check or order upon the personal property connected with such industry owned by such employer, including his interest in the product of such quarry or factory and his machinery and other personal property used in the operation of such quarry or factory, and all his interest in any lease of the real estate connected with such business, which lien shall take precedence of all other debts, judgments, decrees, liens or mortgages against such employer, except taxes, fines or penalties and mortgages or judgments recorded or entered before such labor is performed.

(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.

(3) The provisions of sections 289.20 and 289.21 shall govern the foreclosure of the liens here given so far as such provisions are applicable.

289.41 Mechanic's liens. (1) Every mechanic and every keeper of a garage or shop, and every employer of a mechanic who transports, makes, alters, repairs or does any work on personal property at the request of the owner or legal possessor thereof, shall have a lien thereon for his just and reasonable charges therefor, including any parts, accessories, materials or supplies furnished in connection therewith and may retain possession of such property until such charges are paid. The lien given by this section for all such charges in excess of $200, except that for trucks, $600, and road tractors, trailers and semitrailers, $1,000, shall be subject to the lien of any chattel mortgage upon said property, or the right of any person in whom title to said property is reserved under a conditional sales contract, if the chattel mortgage or conditional sales contract was filed as required by law prior to the commencement of the work for which a lien is claimed unless such work was done with the express consent of the holder of such mortgage or of such title under such conditional sales contract.

(2) Every keeper of a garage or repair shop who alters, repairs or does any work on any detached accessory, fitting or part of an automobile, truck, motor cycle or similar motor vehicle or bicycle at the request of the owner or legal possessor thereof, shall have a lien upon and may retain possession of any such accessory, fitting or part until the charges for such alteration, repairing or other work have been paid. If the detached article becomes attached to such motor vehicle or bicycle while in the possession of the keeper, he shall have a lien against the same, as provided in subsection (1).

289.415 Liens on motor vehicles for towing and storage. (1) Every motor carrier holding a permit to perform vehicle towing services, every licensed motor vehicle salvage dealer and every licensed motor vehicle dealer who performs vehicle towing services or stores a motor vehicle after towing, when such towing is performed at the direction of a traffic officer or the owner of the vehicle, shall, if the vehicle is not claimed as provided herein, have a lien on such vehicle for reasonable towing and storage charges, and may retain possession of such property until such charges are paid. If such vehicle is subject to a lien by virtue of a duly filed chattel mortgage or conditional sales contract, such

towing lien shall have priority only to the extent of $15. If the value of the vehicle exceeds $50, the lien may be enforced under s. 289.48 (2). If the value of the vehicle does not exceed $50, as determined by 2 independent written appraisals by qualified garages or repair shops, the lien may be enforced by sale or junking substantially as provided herein. At least 20 days prior to sale or junking, notice thereof shall be given by registered mail to the person shown to be the owner of the vehicle in the records of the motor vehicle department and to any person who has a lien on such vehicle pursuant to any duly filed chattel mortgage or conditional sales contract, stating that unless the vehicle is claimed by the owner or his agent within said 20 days the vehicle will be exposed for sale or junked, as the case may be. If the proceeds of the sale exceed the charges, the balance shall be paid to the holder of the senior lien under a duly filed chattel mortgage or conditional sales contract, and if none, then to the owner as shown in the records of the motor vehicle department.

History: 1961 c. 356.

289.42 Obtaining mechanic's services by misrepresentation of interest in personal property. Any person who, for the purpose of inducing any mechanic, or keeper of a garage or shop, or the employer of a mechanic to transport, make, alter, repair or do any work on any personal property, makes any misrepresentation as to the nature or extent of his interest in said property or as to any lien upon said property shall be punished by a fine of not more than two hundred dollars or by imprisonment not more than six months or both such fine and imprisonment.

289.43 Liens of keepers of hotels, livery stables, garages and pastures. (1) As used in this section:

(a) "Boarding house" includes a house or building where regular meals are generally furnished or served to three or more persons at a stipulated amount for definite periods of one month or less.

(b) "Lodging house" includes any house or building or part thereof where rooms or lodgings are generally rented to three or more persons received or lodged for hire, or any part thereof is let in which to sleep at stipulated rentals for definite periods of one month or less, whether any or all such rooms or lodgings are let or used for light housekeeping or not, provided that so called duplex flats or apartment houses actually divided into residential units shall not be considered a lodging house.

(2) Every keeper of an inn, hotel, boarding house or lodging house shall have a lien upon and may retain the possession of all the baggage and other effects brought into his place by any guest, boarder or lodger, whether the same is his property or under his control, or the property of any other person liable for such board and lodging for the proper charges owing such keeper for board, lodging and other accommodation furnished to or for such guest, boarder or lodger, and for all moneys loaned to him, not exceeding fifty dollars, and for extras furnished at the written request signed by him, until such charges are paid, and any execution or attachment levied upon such baggage or effects shall be subject to such lien and the costs of satisfying it. But the lien given by this section does not cover charges for malt, spirituous, ardent or intoxicating liquors nor the papers of any soldier, sailor or marine that are derived from and evidence of military or naval service or adjusted compensation, compensation, pension, citation medal or badge.

(3) Every keeper of a garage, livery or boarding stable, and every person pasturing or keeping any carriages, automobiles, harness or animals, and every person or corporation, municipal or private, owning any airport, hangar or aircraft service station and leasing hangar space for aircraft, shall have a lien thereon and may retain the possession thereof for the amount due him for the keep, support, storage or repair and care thereof until paid. But no garage keeper shall exercise the lien upon any automobile unless there shall be posted in some conspicuous place in his garage a card, stating the charges for storing automobiles, easily readable at a distance of 15 feet.

289.44 Liens of consignees. Every consignee of property shall have a lien thereon for any money advanced or negotiable security given by him to or for the use of the person in whose name the shipment of such property is made, and for any money or negotiable security received by such person for his use unless he shall, before advancing any such money, or giving such security, or before it is so received for his use, have notice that such person is not the actual owner thereof.

289.45 Liens of factors, brokers, etc. Every factor, broker or other agent intrusted by the owner with the possession of any bill of lading, customhouse permit, warehouse receipt or other evidence of the title to personal property, or with the possession of personal property for the purpose of sale or as security for any advances made or liability by him incurred in reference to such property, shall have a lien upon such personal prop-

erty for all such advances, liability incurred or commissions or other moneys due him for services as such factor, broker or agent, and may retain the possession of such property until such advances, commissions or moneys are paid or such liability is discharged.

289.46 Jeweler's lien. Every jeweler, watchmaker or silversmith who shall do any work on any article at the request of the owner or legal possessor of such property, shall have a lien upon and may retain the possession of such article until the charges for alteration, repair or other work have been paid.

289.48 How such liens enforced. (1) Every person given a lien by sections 289.43 to 289.46, except 289.43 (3), or as bailee for hire, carrier, warehouseman or pawnee or otherwise, by common law, may, in case the claim remain unpaid for 3 months and the value of the property affected thereby does not exceed $100, sell such property at public auction and apply the proceeds of such sale to the claim and the expenses of such sale. Notice in writing, of the time and place of such sale and of the amount claimed to be due shall be given to the owner of such property personally or by leaving the same at his place of abode, if a resident of this state, and if not, by publication thereof once in each week, for 3 weeks successively, next before the time of sale in some newspaper published in the county in which such lien accrues, if there be one, and if not, by posting such notice in 3 public places in such county. If such property exceed in value $100, then such lien may be enforced against the same by action.

(2) Every person given a lien by sections 289.41 and 289.43 (3) may in case the claim remains unpaid for 2 months after the debt is incurred enforce such lien by sale of the property substantially in conformity with the provisions of sections 241.13 (1), (2), (3), (4) and 241.15 and the lien claimant shall have the right and duties of a mortgagee thereunder. When such sections are applied to the enforcement of such lien the word mortgagor or equivalent when used therein shall be deemed to refer to the owner of the property and any other person having an interest shown by instrument filed as required by law or shown in the records of the motor vehicle department, and the word debt or equivalent shall include all claims upon which such lien is based.

289.49 Lien of owner of breeding animal or methods. (1) Every owner of a stallion or jackass, or bull, or semen therefrom, kept and used for breeding purposes shall have a lien upon any dam served and upon any offspring gotten by such animal, or by means of such artificial insemination for the sum stipulated to be paid for the service thereof, and may seize and take possession of such dam and offspring or either without process at any time before the offspring is one year old, in case the price agreed upon for such service remains unpaid, and sell the same at public auction upon 10 days' notice, to be posted in at least 3 public places in the town where the service was rendered, and apply the proceeds of such sale to the payment of the amount due for such service and the expenses of such seizure and sale, returning the residue, if any, to the party entitled thereto; provided, no such lien shall be effectual for any purpose as against an innocent purchaser or mortgagee of such offspring or the dam thereof for value unless such owner having a claim for the service shall file with the register of deeds of the county where the owner of the dam served resides a statement showing that such service has been rendered and the amount due therefor.

(2) Any person who sells, disposes of or gives a mortgage upon any dam which to his knowledge has been so served, the fee for which service has not been paid, without giving written information to the purchaser or mortgagee of the fact of such service, shall be guilty of a misdemeanor and upon conviction shall be fined not more than $10 or by confinement in the county jail not to exceed 60 days.

289.50 Lien for threshing, husking, baling; enforcement. (1) Every person who threshes grain, cuts, shreds, husks or shells corn or bales hay or straw by machine for another shall have a lien upon the same for the value of his services to the extent the person contracting for such services has an interest therein, from the date of the commencement of such service; and in case such services remain unpaid, he may take possession of so much of such grain, corn, hay or straw as shall be necessary to pay for such services and the expenses of enforcing such lien, for the purpose of foreclosing said lien at any time within six months from the last charge for such services, and sell the same at public auction, upon notice of not less than ten nor more than fifteen days from the date of such seizure.

(2) Notice of such sale shall be given personally and by posting in at least three public places in the town where the debtor resides, and also in the town where such sale is to be made; and if such debtor is a nonresident of the state, in the town where such grain, corn, hay or straw, or some part thereof, was threshed, cut, husked, shelled or baled, and apply the proceeds of such sale to the payment of such service, together with the expenses of such seizure and sale, returning the residue to the party entitled thereto.

(3) The lien created by this section shall be preferred to all other liens and encumbrances, but does not apply to an innocent purchaser for value unless such lien be filed as a chattel mortgage within fifteen days from the date of the completion of such service.

289.52 Costs and expenses. The costs and expenses of seizure and sale aforesaid shall be: Seizing grain, corn, hay or straw, fifty cents; posting up each notice, twelve cents; serving each notice of sale, twenty-five cents; for every copy of such notice delivered on request, twelve cents; for each mile actually traveled, going and returning to serve any notice; or to give or to post up notices of sale, ten cents; for conducting such sale, fifty cents; for collecting and paying over all sums upon such sale, five per cent; but in no case shall the whole percentage exceed ten dollars, and all necessary expenses incurred in taking possession of any grain, corn, hay or straw and preserving the same as shall be just and reasonable.

289.53 Public improvements; lien on contractor; duty of officials. (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 or county court. If the action is not brought within 3 months from the time the notice required by sub. (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 or county 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.

History: 1961 c. 495.

The remedy under (1) is not available to the supplier of a subcontractor of a contractor. Lehmann Tire & Supply v. Mashuda Constr. Co. 14 W (2d) 176, 109 NW (2d) 650.

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 in-

cludes 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 department of administration. If the debt is owned 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 s. 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 creditor 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 s. 289.53, may be accepted by the proper officer, board, department or commission, unless the judgment creditor or other interested person gives written notice that an action is pending in circuit or county 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 sub. (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 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.

History: 1961 c. 316, 495.

289.536 Theft 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 theft.

289.538 Release of funds on filing bond. At any time after the service of a notice of lien claim or filing of judgment or pending the determination of any action commenced thereunder, the contractor shall be entitled tc the release of any moneys due him under the contract upon filing a bond, executed by a surety company duly authorized to transact business in this state, with the public authority having jurisdiction over the work, guaranteeing that the contractor will pay any judgment of the court rendered in favor of the lien claimant and all judgments filed. Such bond shall be in an amount sufficient to insure payment of the lien claims and judgments, and shall be approved as to form and amount by such public authority.

289.54 to 289.66 Blacksmith's lien. [*Not printed; 1935 c. 483 s. 127; see 1933 Stats.*]

289.70 Maintenance liens. (1) Any corporation organized under the laws of this state as a nonprofit, membership corporation for the purpose of maintaining, improving, policing or preserving properties in which its members shall have common rights of usage and enjoyment, including, without limitation because of specific enumeration, private (not public) parks, plazas, roads, paths, highways, piers, docks, playgrounds,

tennis courts, beaches, water pumping plant and connecting pipes or sewer plant and connecting pipes, shall have the power to prepare and annually submit to its membership a budget of the expenditures which it proposes to make for the ensuing year. Such budget shall include the expenses of maintaining the necessary organization of the corporation including salaries to officers, fees paid for auditing the books of the corporation and for necessary legal services and counsel fees to the governing board thereof.

(2) Upon the adoption and approval of the annual budget by a majority of the membership, at a regular meeting or adjournment thereof, the governing board of such corporation shall be empowered to levy an assessment not in excess of 8 mills on each dollar of assessed valuation to be known as a maintenance assessment against all of the lots, the ownership of which entitles the owner thereof to the use and enjoyment of the properties controlled by such corporation, provided that the limitation of 8 mills on each dollar of assessed valuation shall not apply in any case in which the property owners or their predecessors in title have, by written contract, or by the terms of their deeds of conveyance, assumed and agreed to pay the costs of maintaining those properties in which the owners have common rights of usage and enjoyment. The assessments so levied shall be equal in amount against all of such lots and shall be levied at the same time once in each year, upon all lots. The governing board shall apportion the cost of operating water or sewer plants and facilities thereof and separate such costs from the other expenses of the budget and shall include the expenses of water and sewer plant maintenance only in the levy against those lots which may be improved with a dwelling house on the date when the levy is ordered, and no portion of such cost shall be assessed against the vacant lots or the owners thereof.

(3) The governing board of such corporation shall declare the assessments so levied due and payable at any time after thirty days from the date of such levy and the secretary or other officer shall notify the owner of every lot so assessed of the action taken by the board, the amount of the assessment of each lot owned by him and the date such assessment becomes due and payable. Such notice shall be mailed to him at his last known post-office address by the secretary by United States mail, with postage prepaid.

(4) In the event that the assessment levied against any lot remains unpaid for a period of sixty days from the date of the levy, then the governing board of such corporation may, in its discretion, file a claim for a maintenance lien against such lot at any time within six months from the date of the levy, such claim to be filed in the office of the clerk of the circuit court of the county in which the lands affected thereby lie. Such claim for lien shall contain a reference to the resolution authorizing such levy and date thereof, the name of the claimant or assignee, the name of the person against whom the assessment is levied, a description of the property affected thereby and a statement of the amount claimed. It shall be signed by the claimant or by its attorney, and need not be verified, and may be amended, in case of action brought, by order of court, as pleadings may be.

(5) The clerk of circuit court shall docket each claim for a maintenance lien in a lien docket immediately after the claim is filed in the same manner that other liens are docketed. The date of levy of assessment will appear on the docket instead of the last date of performance of labor or furnishing materials.

(6) When the corporation, described in subsection (1) shall have so filed its claim for lien upon a lot it may foreclose the same by action in the circuit court or any county court having jurisdiction thereof, and the provisions of sections 289.09, 289.12, 289.13, 289.14 and 289.15 shall apply to proceedings undertaken for the enforcement and collection of maintenance liens as herein described.

289.71 Disposition of articles left for laundering, dry cleaning, repair, storage. (1) Any garment, clothing, wearing apparel or household goods remaining in the possession of a person, firm, partnership or corporation, on which laundering, cleaning, pressing, glazing or dyeing has been done or upon which alteration or repairs have been made, or on which materials or supplies have been used or furnished, for a period of 6 months or more, may be sold to pay the reasonable or agreed charges and the cost of notifying the owner, after giving notice of said sale as specified in subsection (3) to such owner. Property that is to be placed in storage after any of the services or labors mentioned herein are performed shall not be affected by the provisions of this subsection.

(2) All garments, clothing, wearing apparel or household goods placed in storage, or on which any of the services or labors mentioned in the preceding section have been performed and then placed in storage by agreement and remaining in the possession of a person, firm, partnership or corporation without the reasonable or agreed charges having been paid for a period of more than 18 months, may be sold to pay said charges after giving notice of said sale as specified in subsection (3) to such owner, provided that where property was delivered to be cleaned, pressed, glazed or dyed, and left for storage

in addition to having such work done, it shall not be so sold unless at the time of delivery the owner was given a receipt for such property containing a statement that the property will be sold when such 18 months have elapsed unless called for within such 18 months' period. Persons, firms, partnerships or corporations operating as warehouses or warehousemen shall not be affected by this subsection.

(3) The mailing of a registered letter, with a return address marked thereon, addressed to the owner at their address given at the time of the delivery of the article or articles to a person, firm, partnership or corporation rendering any of the services or labors as set out in this section, stating the time and place of sale, shall constitute notice. Said notice shall be posted or mailed at least 30 days before the date of sale. The costs of posting or mailing said letter shall be added to the charges.

(4) The person, firm, partnership or corporation to whom the charges are payable, shall, from the proceeds of sale, deduct the charges due plus the costs of notifying the owner and shall hold the overplus, if any, subject to the order of the owner and shall immediately thereafter mail to the owner thereof at his address, if known, a notice of the sale, the amount of overplus, if any, due him, and at any time within 12 months, upon demand by the owner, pay to the owner said sums of overplus in his hands.

(5) All persons, firms, partnerships or corporations taking advantage of this section must keep posted in a prominent place in their receiving office or offices at all times 2 notices which shall read as follows: "All articles cleaned, pressed, glazed, laundered, washed, altered or repaired and not called for in 6 months will be sold to pay charges". "All articles stored by agreement and charges not having been paid for 18 months will be sold to pay charges."

289.80 Hospital liens. (1) Every corporation, association or other organization operating as a charitable institution and maintaining a hospital in this state shall have a lien for services rendered, by way of treatment, care or maintenance, to any person who has sustained personal injuries as a result of the negligence, wrongful act or any tort of any other person.

(2) Such lien shall attach to any and all rights of action, suits, claims, demands and upon any judgment, award or determination, and upon the proceeds of any settlement which such injured person, or his legal representatives might have against any such other person for damages on account of such injuries, for the amount of the reasonable and necessary charges of such hospital.

(3) No such lien shall be effective unless a written notice containing the name and address of the injured person, the date and location of the event causing such injuries, the name and location of the hospital, and if ascertainable by reasonable diligence, the names and addresses of the persons alleged to be liable for damages sustained by such injured person, shall be filed in the office of the clerk of circuit court in the county in which such injuries have occurred, or in the county in which such hospital is located, or in the county in which suit for recovery of such damages is pending, prior to the payment of any moneys to such injured person or his legal representatives, but in no event later than 30 days after discharge of such injured person from the hospital.

(a) The clerk of circuit court in every county shall, at the expense of the county, provide a suitable, well-bound book, to be called "the hospital lien docket", in which he shall enter the name of the injured person, the date of the event causing the injury and the name of the hospital or other institution making the claim. The said clerk shall make a proper index of the same in the name of the injured person and shall receive 25 cents for filing each such claim.

(b) Within 10 days after filing of the notice of lien, the hospital shall send by registered mail or serve personally a copy of such notice with the date of filing thereof to or upon the injured person and the person alleged to be liable for damages sustained by such injured person, if ascertained by reasonable diligence. If such hospital fails to give notice if the name and address of the person injured or the person allegedly liable for the injury are known or should be known, the lien shall be void.

(c) The hospital shall also serve a copy of such notice, as provided in par. (b), to any insurance carrier which has insured such person alleged to be liable for the injury against such liability, if the name and address may be ascertained by reasonable deligence.

(4) After filing and service of the notice of lien, no release of any judgment, claim or demand by the injured person shall be valid as against such lien, and the person making any payment to such injured person or his legal representatives as compensation for the injuries sustained shall, for a period of one year from the date of such payment, remain liable to the hospital for the amount of such lien.

(5) Such lien shall not in any way prejudice or interfere with any lien or contract

which may be made by such injured person or his legal representatives with any attorney or attorneys for legal services rendered with respect to the claim of the injured person or his legal representatives against the person alleged to be liable for such injury. Said lien shall also be subservient to actual taxable court costs, and actual disbursements made by the attorney in prosecuting the court action.

(6) No hospital shall be entitled to any lien hereunder if the person injured is eligible for compensation under any workmen's compensation act.

History: 1961 c. 418.