

No. 86, S.]

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CHAPTER 213.

AN ACT to amend section 3315 of the statutes, relating to sub-contractor's and laborer's liens.

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

SECTION 1. Section 3315 of the statutes is amended to read: Section 3315. 1. Every person who, * * * performs any work or labor for or furnishes any materials * * * in any of the cases * * * enumerated in the preceding section, may have the lien and remedy given by this chapter if, within sixty days after performing such work or labor or furnishing such materials, he shall give notice in writing to the owner, or his agent, of the property to be affected by such lien, if to be found in the county, and if neither can be found therein, by filing such notice in the office of the clerk of the circuit court of said county, setting forth that he has been employed * * * to perform or furnish, and has performed or furnished, such work, labor or material, with a statement of the labor performed or the materials furnished, the amount due therefor * * * and that he claims the lien given by this chapter; *provided, however, that no such person except a laborer or principal contractor shall have the lien and remedy given by this chapter unless in addition to the notice herein provided for and within ten days after the actual delivery of the first of such material or the performance of the first labor on the premises, he shall give written notice personally to the owner or his agent of the property to be affected thereby, or if neither can be found, by depositing the same in the post office securely enclosed in an envelope with postage prepaid, duly registered, and addressed to the last known post-office address of the person or persons intended to be notified, and by filing such notice in the office of the clerk of the circuit court of the county where such property is situated, that he has commenced to furnish such material or labor and that such owner will be liable therefor and his property subject to such lien in case the contractor shall fail to pay therefor. In describing the property to be affected by such notice, it shall be sufficient to state its location with reasonable certainty so that the owner will not be misled or deceived thereby. In the event that the owner shall complain of the insufficiency of any such notice, the burden of proof shall be upon him to show that he has been misled or deceived by such insufficiency thereof. Such notice when so served shall entitle such person furnishing such materials or labor to a*

right to a lien for the amount due and owing for the labor or materials so furnished as elsewhere provided in this chapter.

2. In the event that any such person so required to give the ten day notice shall not give said notice in writing as hereinbefore provided within ten days after the commencement of the furnishing of such materials or labor, but subsequently shall serve such notice that he will claim the benefits of a lien as provided in subsection 1 of this section, then and in that event he shall be entitled to a lien only to the extent of the amount then owing from the owner of such real estate for all improvements thereon for which such materials are furnished or labor performed and only for the amount and value of any materials furnished or labor performed subsequent to the time of serving such ten day notice; and in case no such ten day notice shall have been given at any time as provided in this section, but such sixty day notice be given, then and in that event he shall be entitled to a lien against the real estate to which such materials were furnished or upon which such labor was performed only to the extent of the amount owing and unpaid from the owner of such real estate for all improvements thereon for which such materials are furnished and labor performed, at the time of the service of such notice. In any event to complete such right of lien, the sixty day notice must be served as hereinbefore provided.

3. It shall be the duty of every contractor at the time he purchases any materials or contracts for the furnishing of any labor for any contract to deliver to such material man or other person with whom he contracts, a description of the real estate upon which the materials are to be used or the labor to be performed and the name of the owner thereof, and his agent, if any, and it shall also be the duty of every contractor before each and every payment is made to him or his assigns to give to the owner or his authorized agent a verified written statement containing the names of all persons furnishing materials or labor, whether used or to be used, to whom a lien is given by law, and no money shall become due to such principal contractor until ten days after each written statement has been so given: if, for any reason, the parties waive the giving of such written statement, which waiver to be effective must be in writing, then and in that event 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 be used only in the payment of claims due for labor and materials to persons entitled to a lien by law against said owner or his property, and the using of such moneys by such principal contractor for any other purpose is hereby declared to be an em-

embezzlement of said moneys punishable as provided for 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 his duty 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 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 costs, 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 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 the lessee under any lease continuing for a longer period than five years, in which cases the right of lien herein provided shall attach to the interests of such lessee and his assigns in such real estate, and the term "owner" of the real estate as mentioned in this section shall, in all such cases, be deemed to mean and include any such lessee.*

SECTION 2. Nothing in this section shall affect any rights or contracts entered into prior to the passage and publication of this act.

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

Approved May 10, 1913.