CHAPTER 780

LIENS AGAINST VESSELS

780.01 Liens against vessels.
780.02 Receiving note not to waive lien.
780.03 Owner personally liable.
780.04 Attachment; affidavit for.
780.05 When undertaking not required.
780.06 Attachment, what to direct.
780.09 Vessel, how released.
780.10 Findings and judgment; execution.

780.01 Liens against vessels. Every ship, boat or vessel used in navigating the waters of this state shall be liable for and the claims or demands hereinafter mentioned shall constitute a lien on such ship, boat or vessel, which shall take precedence of all other claims or liens thereon:

(1) For all debts contracted by the master, owner, agent or consignee thereof on account of supplies furnished for the use of such ship, boat or vessel, or on account of work done or services rendered on board of such ship, boat or vessel, or on account of labor done or materials furnished by mechanics, tradesmen or others in and for building, repairing, fitting out, furnishing or equipping such ship, boat or vessel, or on account of any indebtedness for insurance effected upon such ship, boat or vessel, the engines, machinery, sails, rigging, tackle, apparel or furniture thereof, against any fire or marine risk.

(2) For all sums due for wharfage, towage or anchorage of such ship, boat or vessel within this state.

(3) For all demands or damages accruing from the nonperformance or malperformance of any contract of affreightment or any contract touching the transportation of persons or property entered into by the master, agent, owner or consignee of the ship, boat or vessel on which such contract is to be performed.

(4) For all damages arising from injuries done to persons or property by such ship, boat or vessel; but no person employed as master, or otherwise, on board of any such ship, boat or vessel to collect or receive freights or passage money shall have any lien as provided in this chapter or be entitled to an action in accordance with its provisions. Such lien may be enforced by proceedings in admiralty or in the cases herein mentioned as prescribed in this chapter.

(5) For all arrearages owed by the owner in child support ordered under s. 48.355 (2) (b) 4. or (4g) (a), 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4. or (4g) (a), 938.357 (5m) (a), 938.363 (2), or 948.22 (7) or ch. 767 or 769 or in family support ordered under ch. 767.

History: 1979 c. 32 s. 58; 1979 c. 176; Stats. 1979 s. 780.01; 1995 a. 287; 1999 a. 103; 2015 a. 373.

780.02 Receiving note not to waive lien. The receiving of the note or other evidence of indebtedness of the owner, master, agent or consignee of such ship, boat or vessel for any such claim or demand shall not affect the right of the party to a lien under this chapter unless expressly received in payment therefor and so specified therein.

History: 1979 c. 32 s. 58; 1979 c. 176; Stats. 1979 s. 780.02.

780.03 Owner personally liable. The owner or owners of any such ship, boat or vessel shall be personally liable for the payment of every debt and for every demand or claim arising under s. 780.01 (1), (2) or (5). Such liability for a debt, demand or claim arising under s. 780.01 (1) or (2) shall not in any way impair or affect the liability that may exist against the master, agent or consignee for the same debt or demand.

History: 1979 c. 32 ss. 58, 92 (10); Stats. 1979 s. 780.03; 1995 a. 287.

780.04 Attachment; affidavit for. (1) In all cases where the owner of any ship, boat or vessel is personally liable for any claim mentioned in s. 780.01, the claimant, the claimant's personal representatives or the claimant's assigns may, in an action against the owner of the ship, boat or vessel for the recovery of the claim, have a writ of attachment, by virtue of which all right and title that the owner had in the ship, boat or vessel at the time that the claim accrued or at any time thereafter may be attached to secure the payment of the claim.

(2) Before any attachment under this section is issued in any action, the plaintiff or someone in the plaintiff's behalf shall make and file in the action an affidavit stating all of the following:

(a) That the defendant in the action is indebted to the plaintiff or has a claim or demand against the plaintiff in a specified amount, over and above all legal set−offs.

(b) That the indebtedness owed by the defendant is due for or accrued or arose out of or upon one or more of the causes specified in s. 780.01, specifying the cause.

(c) The name of the ship, boat or vessel, if any, and, if not, then a description of the ship, boat or vessel.

(d) That the action in which the attachment is applied for was commenced within 12 months after the claimant's debt, demand or claim accrued or became payable.

(3) No affidavit, except that required under sub. (2), shall be required for the issuance of an attachment under this section.

(4) (a) Except as provided in par. (b) or as otherwise provided in this chapter, the proceedings upon an attachment issued under this section shall be the same as provided in ch. 811.

(b) No attachment shall be issued under this section unless the amount claimed in the affidavit filed under sub. (2) exceeds $100.

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1979 c. 32 ss. 58, 92 (10); 1979 c. 176; Stats. 1979 s. 780.04; 1981 c. 390; 1993 a. 486; 1997 a. 254.

780.05 When undertaking not required. In case the plaintiff's claim arises out of or is founded upon any of the causes under s. 780.01 (1) or (5) the plaintiff shall not be required to give the undertaking required by s. 811.06 unless required so to do by an order of the court or judge; and no such order shall be made unless the defendant or someone in the defendant's behalf shall make an affidavit showing that he or she has a good and valid defense in whole or in part to the claim or demand of the plaintiff, setting forth the nature of the defense; and where the defense is only to a portion of the claim, before any such order shall be made the defendant shall pay or tender to the plaintiff that portion of the claim to which there is no defense; such payment or tender shall not affect the jurisdiction of the court or prevent a recovery by the plaintiff of the same costs, disbursements and charges as the plaintiff would have been entitled to had not the amount of the plaintiff's claim been reduced by such payment. No such order shall be made except upon one day's notice to the plaintiff, accompanied by copies of the affidavits and other papers upon which it is founded.

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218, 422; 1979 c. 32 ss. 58, 92 (10); Stats. 1979 s. 780.05; 1995 a. 287.

780.06 Attachment, what to direct. Such writ of attachment, when issued by the circuit court, shall command the officer to whom the same is directed to attach and safely keep the ship, boat or vessel named or described in the affidavit, its tackle, apparel and furniture, if to be found within the officer's county, to satisfy the plaintiff's demand, with costs and expenses. The issu-

ing of such writ of attachment shall not exclude the right to an attachment against the other property of the defendant under ch. 811.

History: Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1975 c. 218; 1979 c. 32 s. 58; Stats. 1979 s. 780.06; 1989 a. 359.

780.09 Vessel, how released. (1) Whenever any ship, boat or vessel, or its tackle, apparel or furniture, has been seized by virtue of any attachment issued under this chapter the defendant or any other person in the defendant's behalf may file with the court that issued the attachment, at any time before a final judgment, an undertaking with at least 2 sureties, to the effect that the defendant will pay to the plaintiff on demand any judgment that may be rendered in the plaintiff's favor, not exceeding double the amount claimed by the plaintiff in the affidavit.

(2) Such undertaking shall be of no effect unless accompanied by the affidavit of the sureties, in which each surety shall state that the surety is worth a certain sum, mentioned in the affidavit, over and above all debts and liabilities, in property within this state, not by law exempt from execution, and which sum sworn to by the sureties shall, in the aggregate, amount to the sum specified in the undertaking; and the sureties shall, upon notice, justify in like manner as upon bail or arrest. Upon filing the undertaking the clerk of the court shall make an order discharging the property attached, and upon delivery to the officer having the ship, boat or vessel in custody of a certified copy of such order the officer shall deliver the property attached to the person obtaining such order.

History: 1979 c. 32 s. 58; 1979 c. 176; Stats. 1979 s. 780.09; 1997 a. 254.

780.10 Findings and judgment; execution. In all actions under this chapter, unless the defendant or someone in the defendant's behalf shall have given the undertaking prescribed in s. 780.09, the court or jury who shall try the same or make an assessment of damages therein shall find whether or not such debt or damages are due for or accrued or arose out of or upon any of the causes mentioned in s. 780.01, and specify such cause and the date when the same became due or accrued in the verdict or finding. If such court or jury shall find that such debt or damages are for any of the causes specified in s. 780.01 and that the defendant is liable to the plaintiff therefor then the court shall render judgment accordingly, and that the amount of such debt or damages so found, together with the costs, charges and disbursements, are a lien upon such ship, boat or vessel to the extent of the interest of the defendant therein at the time the same became due or accrued or at any time thereafter, and the execution issued thereon may, in addition to the directions contained in other executions against the property of a defendant, direct that such interest of the defendant in such ship, boat or vessel, its tackle, apparel and furniture be sold to satisfy such judgment, and the same shall be sold accordingly; but if the court or jury shall find that the amount due the plaintiff for such debt or damages is not for any of the causes mentioned in s. 780.01 or if the defendant shall have given such undertaking the plaintiff shall only be entitled to judgment as in other civil actions.

History: 1979 c. 32 ss. 58, 92 (10); 1979 c. 176; Stats. 1979 s. 780.10; 1981 c. 390 s. 252; 1989 a. 359.