

CHAPTER 409, Laws of 1975

AN ACT to amend 112.01 (1) (b) and (10), 289.02 (5), 289.16 and 706.11 (3) of the statutes, relating to trust funds of contractors and subcontractors and fiduciary duties in connection with trust funds.

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

SECTION 1. 112.01 (1) (b) and (10) of the statutes are amended to read:

112.01 (1) (b) "Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, prime contractor or subcontractor who is a trustee under ch. 289, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust or estate.

(10) DEPOSIT IN FIDUCIARY'S PERSONAL ACCOUNT. If a fiduciary makes a deposit in a bank to ~~his~~ the fiduciary's personal credit of checks drawn by ~~him~~ the fiduciary upon an account in his or her own name as fiduciary, or of checks payable to ~~him~~ the fiduciary as fiduciary, or of checks drawn by ~~him~~ the fiduciary upon an account in the name of his or her principal if ~~he~~ the fiduciary is empowered to draw checks thereon, or of checks payable to his or her principal and indorsed by ~~him~~ the fiduciary, if ~~he~~ the fiduciary is empowered to indorse such checks, or if ~~he~~ the fiduciary otherwise makes a deposit of funds held by ~~him~~ the fiduciary as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his or her obligation as fiduciary; ~~and the~~ The bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary, including checks payable to the bank, without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his or her obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith, and the bank paying the check is not bound to inquire whether the fiduciary is committing thereby a breach of his or her obligation as fiduciary.

SECTION 2. 289.02 (5) of the statutes is amended to read:

289.02 (5) THEFT BY CONTRACTORS. The proceeds of any mortgage on land paid to any prime contractor or any subcontractor for improvements upon the mortgaged premises, and all moneys paid to any prime contractor or subcontractor by any owner for improvements, constitute a trust fund only in the hands of the prime contractor or subcontractor to the amount of all claims due or to become due or owing from the prime contractor or subcontractor for labor and materials used for the improvements, until all the claims have been paid, and shall not be a trust fund in the hands of any other person. The use of any such moneys by any prime contractor or subcontractor for any other purpose until all claims, except those which are the subject of a bona fide dispute and then only to the extent of the amount actually in dispute, have been paid in full or pro rata in cases of a deficiency, is theft by the prime contractor or subcontractor of moneys so misappropriated and ~~shall be punished~~ is punishable under s. 943.20. If the prime contractor or subcontractor is a corporation, such misappropriation also shall be deemed theft by any officers, directors or agents of the

corporation responsible for the misappropriation. Any of such misappropriated moneys which have been received as salary, dividend, loan repayment, capital distribution or otherwise by any shareholder of the corporation not responsible for the misappropriation shall be a civil liability of the shareholder and may be recovered from him and restored to the trust fund specified in this subsection by action brought by any interested party for that purpose. Except as provided in this subsection, this section does not create a civil cause of action against any other person. Until all claims are paid in full, have matured by notice and filing or have expired, such proceeds and moneys shall not be subject to garnishment, execution, levy or attachment.

SECTION 3. 289.16 of the statutes is amended to read:

289.16 Theft by contractors. All moneys, bonds or warrants paid or to become due, to any prime contractor or subcontractor for public improvements are a trust fund only in his the hands; and the of the prime contractor or subcontractor and shall not be a trust fund in the hands of any other person. The use of the moneys by ~~him~~ the prime contractor or subcontractor for any purpose other than the payment of claims on such public improvement, before the claims have been satisfied, constitutes theft by the prime contractor or subcontractor and is punishable under s. 943.20. This section shall not create a civil cause of action against any person other than the prime contractor or subcontractor to whom such moneys are paid or become due. Until all claims are paid in full, have matured by notice and filing or have expired, such money, bonds and warrants shall not be subject to garnishment, execution, levy or attachment.

SECTION 4. 706.11 (3) of the statutes is amended to read:

706.11 (3) The proceeds of any such mortgage referred to in this section, shall, when paid out by such state savings and loan association or federal savings and loan association, or of any other mortgage from any other source and received by the owner of the premises or by any contractor or subcontractor performing the work and labor, forthwith constitute a trust fund only in the hands of such owner, contractor or subcontractor for the payment pro rata of all claims due and to become due or owing from such contractor or subcontractor for lienable labor and materials until all such claims have been paid, and shall not be a trust fund in the hands of any other person. This section shall not create a civil cause of action against any person other than such owner, contractor or subcontractor. The use of any of such moneys by any owner, 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, shall constitute theft by such owner, contractor or subcontractor of any moneys so misappropriated. The district attorney of the county where the premises are situated shall on the complaint of any aggrieved party prosecute such owner, contractor or subcontractor misappropriating such moneys for such theft.
