

1973 Assembly Bill 1028

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## CHAPTER 231, Laws of 1973

AN ACT to amend 289.01 (5), 289.02 (5) and 289.16 of the statutes, relating to priority of construction liens over garnishment.

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

SECTION 1. 289.01 (5) of the statutes is amended to read:

289.01 (5) ASSIGNMENT OF LIEN, GARNISHMENT. ~~An assignment~~ Assignment of ~~his~~ a claim or right to a lien or any part thereof by a prime contractor, or garnishment by ~~his~~ the creditor of a prime contractor, subcontractor, materialman, laborer or mechanic, shall not operate to compel the owner, prime contractor, subcontractor or materialman to pay the assignee or creditor until the lien claims of subcontractors, materialmen and laborers under this subchapter have either ~~have~~ been paid in full, ~~have~~ matured by notice and filing or ~~have~~ expired. If such claims become liens, the owner, prime contractor, subcontractor or materialman shall be compelled to pay such assignee or creditor only what remains due in excess of such liens.

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 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. 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 of moneys so misappropriated and shall be punished 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. 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 in his hands; and the use of the moneys by him for any purpose other than the payment of claims on such public improvement, before the claims have been satisfied, constitutes theft and is punishable under s. 943.20. 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.

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