

Odde

83 LSO 0334

# HOUSE BILL 0295

HOUSE BILL 0295

Title:

AN ACT to create W.S. 29-2-110 relating to misappropriation of construction funds; defining misappropriation of money by contractors; providing for punitive damages; providing for lien waivers as evidence of proper appropriation; and providing for an effective date.

Introduced by:

Mary Odde

DATE	ACTION	DATE	ACTION
JAN 2 4 1983	READ FIRST TIME	2-2-83	STANDING COMM. REPORT
	REFERRED TO COM. NO. 1		AMEND AND DO PAS.
	DELIVERED TO COM. NO. 1		
JAN 21 1983	RETURNED		
	Recommended Amend and Do Pass 7 days 3 days		
FEB 3 1983	CONSIDERED IN COM. OF WHOLE		
	Standing Com. Amendment HB 295 HSI/A		
	ADOPTED		
	RECOMMENDED DO.....PASS		
FEB 4 1983	READ SECOND TIME		
	Amended as follows HB 295 H21/A		
	ADOPTED		
FEB 5 1983	READ THIRD TIME		
	PASSED		
	Ayes 48 Nays 16 Excused 0 Absent 0		
	Sent to Senate		
2-5-83	RECEIVED FROM HOUSE		
	SENT TO LSO FOR ENGROSSING		
	RECEIVED FROM LSO ENGROSSED		
2-5-83	ENGROSSED		
2-7-83	Sent to Senator		
2-7-83	Resolved from House		
	Read first time		
	Referred to Com. No. 1		
	Delivered to Com. No. 1		

CONTINUED ON BACK

# 913295 House Reading Date 2/5/83

**Roll Call of the House**  
of the FORTY-SEVENTH LEGISLATURE  
of Wyoming

	Ayes	Noes	Excused	Absent		Ayes	Noes	Excused	Absent
ARNOLD	✓				PARKER	✓			
BARLOW	✓				PERKINS	✓			
BLACKWELL	✓	✓			PHELAN	✓			
BROWN	✓	✓			RANDOLPH	✓			
BUDD	✓	✓			RATLIFF	✓			
BURNS	✓				ROBERTSON	✓			
BURTON	✓				ROTH	✓	✓		
BYRD	✓				SALISBURY	✓			
CHAMBERLAIN	✓	✓			SANDERS	✓			
CROSS	✓				SCHMIDT	✓	✓		
DICKEY	✓	✓			SCHWOPE	✓			
DOBOS	✓				SHREVE	✓			
<del>EDWARDS</del>					SIDI	✓			
EDWARDS	✓				SIMONS	✓	✓		
GERINGER	✓				SIMPSON	✓	✓		
GETTER	✓				SORENSEN	✓			
GRANT	✓				STAUFFER	✓			
HAGEMAN	✓				STEWART	✓			
HANSEN	✓				STRAND	✓	✓		
HARRISON	✓				TIPTON	✓			
HENDRICKS	✓				TYSDAL	✓	✓		
HERBST	✓	✓			URBIGKIT, D.	✓			
HUMPHREY	✓				URBIGKIT, W.	✓			
JACKSON	✓				WALLIS	✓			
JENSEN	✓				WEAVER	✓			
JONES	✓				WIEDERSPAHN	✓			
LARSON, T.	✓				WOLFLEY	✓			
MACMILLAN	✓				ZUMBRUNNEN	✓	✓		
MADER	✓				MR. SPEAKER	✓	✓		
MALDONADO	✓	✓			PRESENT				
MARTON	✓								
MCILVAIN	✓								
MEENAN	✓								
MICHEL	✓								
MURPHY	✓								
ODDE	✓	✓							

AYES 48  
 NOES 16  
 EXCUSED \_\_\_\_\_  
 ABSENT \_\_\_\_\_  
 TOTAL 64  
 LESS 16  
48

## THE LEGISLATURE OF THE STATE OF WYOMING

## House of Representatives

HB 0295 HS1/

Cheyenne, January 31, 1983

Mr. Speaker:

Your Committee No. 1 on JUDICIARY

to whom was referred HB No. 0295

respectfully reports same back to the House with the recommendation that DO PASS with

the following amendments:

Page 1 - line 3 After ";" delete balance of the line.  
 Page 1 - line 6 Delete "guilty" insert "providing for punitive damages".  
 Page 1 - line 1 After "29-2-110" delete balance of line.

Page 1 - line 2 Delete entirely.

Page 1 - line 3 Delete entirely through "LAWS".

Page 1 - line 7 After ":", delete balance of line.

Page 1 - line 8 Delete entirely through ":",

Page 2 - line 4 Delete ", owners".

Page 2 - line 5 Delete "construction" insert "the"; after "costs" insert  
 "of work performed and materials supplied"; ~~XXXXXXXXXX~~  
 delete "guilty of" insert "liable to the owner for".

Page 2 - line 6 After "misappropriation" insert "." and delete balance of line.

Page 2 - lines 7 through 9 Delete entirely and insert "In any action brought pursuant to  
 to this section, the court in addition to awarding actual damages  
 may in its discretion award punitive damages in an amount not  
 to exceed double the actual damages awarded.".

AYESNOESEXCUSED

BROWN  
 HANSEN  
 JACKSON  
 ODDE  
 ROBERTSON  
 TIPTON  
 WIEDERSPAHN

HARRISON  
~~WICKIT~~  
 CHAMBERLAIN

0

Page 2 - lines 14 through 22 Delete entirely.  
 Page 3 - lines 1 through 23 Delete entirely.  
 Page 4 - line 1 through 4 Delete entirely.  
 Page 4 - line 5 After "Section" delete "4" insert "2".

Douglas W. Chamberlain

Chairman

- 1 HB0295H31/ F
- 2 Delete the Harrison second reading amendment (HB0295H21/A).
- 3 -ODDE

A handwritten mark, possibly a signature or initials, located to the right of the second list item.

THE LEGISLATURE OF THE STATE OF WYOMING

Senate

Cheyenne, February 21, 1983

Mr. President:

Your Committee No. 1 on Judiciary to whom was referred House Bill 0295 respectfully reports same back to the Senate with the recommendation that it DO PASS with the following amendments:

HB0295881

TO ENGROSSED COPY

Page 1-line 3      After the second";" insert "providing for attorney fees;".  
Page 1-line 9      Delete "original".  
Page 1-line 10     Delete "services" and insert "work".  
  
Page 2-line 1      Delete "use such".  
Page 2-line 2      Delete "payment to"; delete "services and" and insert "work or"; delete ", and".  
Page 2-line 7      Delete "in its discre-".  
Page 2-line 8      Delete "tion"; after "damages" delete the balance of the line.  
Page 2-line 9      Delete the line through "awarded" and insert ", together with reasonable attorney fees". -ARNEY

AYES:            Senators Arney, Nicholas, Norris and Vinich.  
NOES:            Senator Scott.

Stored: HB0295881:0

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Chairman

House of Intro			
_____	To Com No.	_____	
_____	Stand Report Do	Amd _____	Not _____
_____	Com Whole Do	Amd _____	Not _____
_____	2nd Reading Amd	_____	
_____	3rd Reading Amd	Pass _____	Fail _____

Second House			
_____	To Com No.	_____	
_____	Stand Report Do	Amd _____	Not _____
_____	Com Whole Do	Amd _____	Not _____
_____	2nd Reading Amd	_____	
_____	3rd Reading Amd	Pass _____	Fail _____

## INTRODUCED

1983

STATE OF WYOMING

83LSO-0334.01

HOUSE BILL NO. 0295

Mechanics & materialmen's liens.

Sponsored by: Representative(s) ODDE

### A BILL

for

1 AN ACT to create W.S. 29-2-110; and to amend W.S. 6-3-608  
 2 as enacted by Chapter 75, 1982 Wyoming Session Laws and  
 3 Section 5, Chapter 75, 1982 Wyoming Session Laws relating  
 4 to misappropriation of construction funds; defining mis-  
 5 appropriation of money by contractors; establishing a pen-  
 6 alty; providing for lien waivers as evidence of proper  
 7 appropriation; conforming Sections 3 and 5, Chapter 75,  
 8 1982 Wyoming Session Laws; and providing for an effective  
 9 date.

10 Be It Enacted by the Legislature of the State of Wyoming:

1           Section 1. W.S. 29-2-110 is created to read:

2           29-2-110. Misappropriation of monies by contractor;  
3   penalty. Any original contractor or subcontractor who  
4   receives money from the owner, owners or agent and does  
5   not apply the money toward construction costs is guilty of  
6   misappropriation and shall be sentenced to not less than  
7   one (1) or more than ten (10) years in the penitentiary,  
8   or fined not less than one thousand dollars (\$1,000.00) or  
9   more than twenty thousand dollars (\$20,000.00), or both.  
10   Lien waivers signed by all materialmen, subcontractors and  
11   laborers are prima facie evidence that monies received  
12   from the owner were applied toward construction costs by  
13   the contractor.

14           Section 2. W.S. 6-3-608 as enacted by Chapter 75,  
15   1982 Wyoming Session Laws is amended to read:

16           6-3-608. Fraudulent use of materials; misappropria-  
17   tion of monies.

18           (a) A contractor or subcontractor who purchases  
19   materials on credit and represents that they will be used  
20   in a designated building or improvement and who knowingly  
21   uses the materials or allows them to be used in a building  
22   or improvement other than the one designated with intent

1 to defraud the seller is guilty of a misdemeanor punishable  
2 able by imprisonment for not more than six (6) months, a  
3 fine of not more than seven hundred fifty dollars  
4 (\$750.00), or both.

5 (b) ANY ORIGINAL CONTRACTOR OR SUBCONTRACTOR WHO  
6 RECEIVES MONEY FROM THE OWNER, OWNERS OR AGENT AND DOES  
7 NOT APPLY THE MONEY TOWARD CONSTRUCTION COSTS IS GUILTY OF  
8 MISAPPROPRIATION AND SHALL BE SENTENCED TO NOT LESS THAN  
9 ONE (1) OR MORE THAN TEN (10) YEARS IN THE PENITENTIARY,  
10 OR FINED NOT LESS THAN ONE THOUSAND DOLLARS (\$1,000.00) OR  
11 MORE THAN TWENTY THOUSAND DOLLARS (\$20,000.00), OR BOTH.  
12 LIEN WAIVERS SIGNED BY ALL MATERIALMEN, SUBCONTRACTORS AND  
13 LABORERS ARE PRIMA FACIE EVIDENCE THAT MONIES RECEIVED  
14 FROM THE OWNER WERE APPLIED TOWARD CONSTRUCTION COSTS BY  
15 THE CONTRACTOR.

16 Section 3. Section 5, Chapter 75, 1982 Wyoming  
17 Session Laws is amended to read:

18 Section 5. W.S. 7-6-205, 7-11-418, 7-11-419,  
19 7-15-104, 7-17-104, 9-1-126, 9-2-314, 9-2-405, 9-7-1134,  
20 11-20-122, 11-20-207, 11-29-102, 11-29-112, 11-30-101,  
21 11-30-102, 11-30-103, 11-30-105, 13-10-105, 14-3-101,  
22 14-3-102, 14-3-103, 15-4-107, 15-4-236, 29-2-110,  
23 30-1-120, 30-1-121, 30-3-111, 30-3-112, 31-5-407,



1 31-11-102, 31-11-103(a), 31-11-104, 31-11-105, 31-12-201,  
2 35-1-105(a)(ii), 35-10-103, 35-10-105, 35-10-106,  
3 35-10-107, 36-8-101, 36-8-102, 37-12-102, 37-12-108  
4 through 37-12-110, 37-12-123 and 41-13-205 are repealed.

5 Section 4. This act is effective May 27, 1983.

6 (END)

FISCAL NOTE

Anticipated REVENUE to:	Fiscal Year 19	Fiscal Year 19
TOTAL ESTIMATED REVENUE		
Anticipated COST to:	Fiscal Year 19	Fiscal Year 19
TOTAL ESTIMATED COST		

1. Fiscal impact cannot be estimated.
2. No apparent personnel impact.

NB295

1983

STATE OF WYOMING

83LSO-0334/eng

HOUSE BILL NO. 0295

**ENGROSSED**

Mechanics & materialmen's liens.

Sponsored by: Representative(s) ODDE

A BILL

for

1 AN ACT to create W.S. 29-2-110 relating to misappropria-  
2 tion of construction funds; defining misappropriation of  
3 money by contractors; providing for punitive damages; pro-  
4 viding for lien waivers as evidence of proper appropria-  
5 tion; and providing for an effective date.

6 Be It Enacted by the Legislature of the State of Wyoming:

7 Section 1. W.S. 29-2-110 is created to read:

8 29-2-110. Misappropriation of monies by contractor;  
9 penalty. Any original contractor or subcontractor who  
10 receives payment from an owner or his agent for services

1 performed or materials provided, and does not use such  
2 payment to pay for the services and materials, and with  
3 the intent to misappropriate the payment partially or  
4 entirely to the contractor's or subcontractor's own use,  
5 shall be liable to the owner for damages caused the owner.  
6 In any action brought pursuant to this section, the court  
7 in addition to awarding actual damages may in its discre-  
8 tion award punitive damages in an amount not to exceed  
9 double the actual damages awarded. Lien waivers signed by  
10 all materialmen, subcontractors and laborers are prima  
11 facie evidence that monies received from the owner were  
12 applied toward construction costs by the contractor.

13 Section 2. This act is effective May 27, 1983.

14 (END)

1 HB0295HS1/A

2 ✓ Page 1-line 1 ✓ After "29-2-110" delete balance of line.

3 ✓ Page 1-line 2 ✓ Delete entirely.

4 ✓ Page 1-line 3 ✓ Delete entirely through "Laws".

5 ✓ Page 1-line 5 ✓ After ";" delete balance of the line.

6 ✓ Page 1-line 6 ✓ Delete "alty" insert "providing for punitive damages".

8 ✓ Page 1-line 7 ✓ After ";" delete balance of line.

9 ✓ Page 1-line 8 ✓ Delete entirely through ";".

10 Page 2-line 4 Delete ", owners".

11 X Page 2-line 5 Delete "construction" insert "the"; after  
 12 "costs" insert "of work performed and materials  
 13 supplied"; delete "guilty of" insert "liable to  
 14 the owner for".

15 Page 2-line 6 After "misappropriation" insert "." and delete  
 16 balance of line.

17 ✓ Page 2-lines 7 through 9 Delete entirely and insert "In any  
 18 action brought pursuant to this section, the  
 19 court in addition to awarding actual damages  
 20 may in its discretion award punitive damages in  
 21 an amount not to exceed double the actual dam-  
 22 ages awarded."

23 ✓ Page 2-lines 14 through 22 Delete entirely.

24 ✓ Page 3-lines 1 through 23 Delete entirely.

25 ✓ Page 4-lines 1 through 4 ✓ Delete entirely.

26 ✓ Page 4-line 5 ✓ After "Section" delete "4" insert "2".  
 27 -CHAMBERLAIN, CHAIRMAN

ADOPTED

1 HB0295H21/A

2 + Page 2-lines 4 through 6 Delete standing committee  
3 amendment (HB0295HS1/A) to these lines.4 - Page 2-lines 4 through 6 Delete lines entirely and  
5 insert:

6 "receives payment from an owner or his  
 7 agent for services performed or materials  
 8 provided, and does not use such payment to  
 9 pay for the services and materials, and  
 10 with the intent to misappropriate the pay-  
 11 ment partially or entirely to the  
 12 contractor's or subcontractor's own use,  
 13 shall be liable to the owner for damages  
 14 caused the owner." -HARRISON

ADOPTED