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CHAPTER 7.

LIENS OF LABORERS AND OTHERS ON CONTRACT PRICE

**SECTION 29‑7‑10.** Contractors and subcontractors to pay laborers and others out of money received; laborers’ lien.

Any contractor or subcontractor in the erection, alteration, or repairing of buildings in this State shall pay all laborers, subcontractors, and materialmen for their lawful services and material furnished out of the money received for the erection, alteration, or repairs of buildings upon which such laborers, subcontractors, and materialmen are employed or interested and such laborers, as well as all subcontractors and persons who shall furnish material for any such building, shall have a first lien on the money received by such contractor for the erection, alteration, or repair of such building in proportion to the amount of their respective claims. Any person providing private security guard services at the site of the building during its erection, alteration, or repair shall be deemed to be a laborer within the meaning of this section. Nothing herein contained shall make the owner of the building responsible in any way and nothing contained in this section shall be construed to prevent any contractor or subcontractor from borrowing money on any such contract. “Person” as used in this section shall mean any individual, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or other such entity.

**SECTION 29‑7‑20.** Failure to pay laborers and others; falsely certifying that payment has been made; penalties; waiver of right to file or claim lien for labor and material; set off against money owed.

(1) A contractor or subcontractor who, for other purposes than paying the money loaned upon such contract, transfers, invests or expends and fails to pay to a laborer, subcontractor, or materialman out of the money received as provided in Section 29‑7‑10 is guilty of a misdemeanor and, upon conviction, when the consideration for the work and material exceeds the value of one hundred dollars must be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned not less than three months nor more than six months and when such consideration does not exceed the value of one hundred dollars must be fined not more than five hundred dollars or imprisoned not longer than thirty days.

(2) Any person who wilfully and intentionally certifies to any owner or lending institution by affidavit or otherwise that all persons, firms, or corporations including subcontractors and materialmen having furnished services, labor, or materials or extra items used in the construction, improvement, or repair to the owner’s building or real property have been paid in full, when such persons have not been paid in full, except with regard to services or materials concerning which all lien rights have been waived in writing, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than five thousand dollars or imprisoned not more than sixty days, or both. Provided, however, that an agreement to waive the right to file or claim a lien for labor and materials is against public policy and is unenforceable unless payment substantially equal to the amount waived is actually made.

(3) Unless otherwise provided in an agreement between the parties, a contractor or subcontractor may set off, against the money upon which a laborer, subcontractor, or materialman has a lien as provided by Section 29‑7‑10, any debt claimed to be owed to the contractor by such laborer, subcontractor, or materialman, based upon a good faith claim that those services and materials for which payment is claimed by the laborer, subcontractor, or materialman were defective. In order to make such a set‑off, a declaration and accounting thereof must be included in any certificate submitted with an application for payment and a copy thereof or a separate notarized original of the declaration must be sent by certified mail to the affected laborer, subcontractor, or materialman at the time the certificate is submitted.

**SECTION 29‑7‑30.** Right of arbitration.

Any contractor or subcontractor may have the right of arbitration by agreement with any such laborer, subcontractor or materialman.