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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

A N A C T

RELATING TO PROPERTY - LABOR AND LABOR RELATIONS - CONSTRUCTION
TRUST

Introduced By: Senator Michael J. McCaffrey

Date Introduced: February 13, 2007

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 34 of the General Laws entitled "PROPERTY" is hereby amended by
2 adding thereto the following chapter:

3 CHAPTER 27.2

4 THE RHODE ISLAND CONSTRUCTION TRUST ACT

5 **34-27.2-1. Short title.** -- This chapter shall be known and may be cited as "The Rhode
6 Island Construction Trust Act."

7 **34-27.2-2. Legislative findings.** -- The general assembly finds and declares that the
8 uniqueness of the construction industry requires a special system to ensure that payment is
9 received by those businesses, contractors and owners who expend materials and/or labor prior to
10 the completion of a construction project, but then must wait to be made financially compensated
11 for the materials and/or labor. The general assembly also recognizes that once the materials and
12 labor are placed into the building, or other construction project, it is impossible to reclaim the
13 goods or services so that the only means of compensation is to receive monetary payment. In
14 addition, the general assembly finds that the comprehensive bankruptcy reform act of 2005
15 expanded section 523(a) of the Uniform Code of chapter 13, and created a new section known as
16 UC Bankruptcy Code 1328 that gives building material suppliers recourse when a contractor,
17 "commits fraud or defalcation while acting in a fiduciary capacity." Under the new UC
18 Bankruptcy Code 1328, if any person commits fraud or defalcation while acting in a fiduciary

1 capacity, embezzlement, or larceny the debt is nondischargeable under chapter 7 (liquidation),
2 chapter 11 (adjustment of debt) or chapter 13 (reorganization).

3 **34-27.2-3. Definitions.** -- The following definitions apply in the interpretations of the
4 provisions of this chapter, unless the context requires another meaning:

5 (1) "Express Trust" means funds that have been paid by an owner, for or in connection
6 with materials used in an improvement of real property, which are to be held by a contractor or
7 subcontractor, in express trust, for material men. Any such contractor or subcontractor who
8 accepts money from any owner or contractor shall become the trustee of the express trust that is
9 created under this act. These funds are not required to be held in any separate account by a
10 contractor or subcontractor. Such trust shall be considered in full effect in the event the contractor
11 or subcontractor files for bankruptcy under chapter 7 (liquidation), chapter 11 (adjustment of
12 debt), or chapter 13 (reorganization).

13 (2) "Material men" means those retailers of lumber who are engaged in the business
14 primarily of selling lumber and building materials to contractors, subcontractors, or repairmen to
15 be used for the construction, erection, alteration, or repairing a building or other structure or in
16 the making of any other improvements on land or the preparation thereof, and whose lumber and
17 building material sales comprise of at least fifty percent (50%) of their total sales as defined in
18 section 44-19-41.

19 **34-27.2-4. Funds held in trust commingling.** -- (a) Any moneys paid under a contract
20 by an owner to a contractor, or by the owner or contractor to a subcontractor, for work done for or
21 about a building by any subcontractor shall be held in express trust by the contractor or
22 subcontractor, as trustee, for those subcontractors who did work for or about the building, for
23 purposes of paying those subcontractors.

24 (b) Any money paid under a contract by an owner to a contractor, or by the owner or
25 contractor to a subcontractor, for supplies provided by material men in contract for the
26 construction, repair, remodeling, improvement or renovation of any building or structure shall be
27 held in an express trust by the contractor or subcontractor for the material men.

28 (c) Nothing contained in this chapter shall be construed as requiring moneys held in
29 express trust by a contractor or subcontractor under subsection (a) or (b) of this section to be
30 placed in a separate account. If a contractor or subcontractor commingles moneys held in express
31 trust under this section with other moneys, the mere commingling of the moneys does not
32 constitute a violation of this chapter.

33 (d) The existence of trust funds shall not prohibit the filing or enforcement of a labor,
34 mechanic or material men's lien against the affected real property by any lien claimant, nor shall

1 [the filing of such a lien release the holder of the funds from the obligations created under Rhode](#)
2 [Island law.](#)

3 SECTION 2. [No Express Trust shall be required for a federal, state or municipal project.](#)

4 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PROPERTY - LABOR AND LABOR RELATIONS - CONSTRUCTION
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1 This act would create the Rhode Island Construction Trust Act which would establish a
2 special system for the compensation of businesses and contractors who expend labor and
3 materials for construction projects.

4 This act would take effect upon passage.

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