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SENATE BILL NO. 1119

Offered January 9, 2019

Prefiled December 26, 2018

A BILL to amend and reenact § 43-13 of the Code of Virginia, relating to mechanics' liens; right to withhold payment.

Patron—Petersen

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 43-13 of the Code of Virginia is amended and reenacted as follows:

§ 43-13. Funds paid to general contractor or subcontractor must be used to pay persons performing labor or furnishing material.

Any contractor or subcontractor or any officer, director or employee of such contractor or subcontractor who shall, with intent to defraud, retain or use the funds, or any part thereof, paid by the owner or his agent, the contractor or lender to such contractor or by the owner or his agent, the contractor or lender to a subcontractor under any contract for the construction, removal, repair, or improvement of any building or structure permanently annexed to the freehold, for any other purpose than to pay persons performing labor upon or furnishing material for such construction, repair, removal, or improvement, ~~shall be~~ *is* guilty of larceny in appropriating such funds for any other use while any amount for which the contractor or subcontractor may be liable or become liable under his contract for such labor or materials remains unpaid, and may be prosecuted upon complaint of any person or persons who have not been fully paid any amount due them.

The use by any such contractor or subcontractor or any officer, director, or employee of such contractor or subcontractor of any moneys paid under the contract, before paying all amounts due or to become due for labor performed or material furnished for such building or structure, for any other purpose than paying such amounts *due on the project*, shall be prima facie evidence of intent to defraud. *Any breach or violation of this section may give rise to a civil cause of action for a party in contract with the general contractor or subcontractor, as appropriate; however, this right does not affect a contractor's or subcontractor's right to withhold payment for failure to properly perform labor or furnish materials on the project. Any contract or subcontract provision that allows a contracting party to withhold funds due under one contract or subcontract for alleged claims or damages due on another contract or subcontract is void as against public policy.*