

CHAPTER 112.

UNIFORM FIDUCIARIES ACT.

- 112.01 Uniform fiduciaries act.
112.02 Suspension of powers of fiduciaries engaged in war service.

112.01 Uniform fiduciaries act. (1) DEFINITIONS. In this section unless the context or subject matter otherwise requires:

(a) "Bank" includes any person or association of persons, whether incorporated or not, carrying on the business of banking.

(b) "Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust or estate.

(c) "Person" includes a corporation, partnership, or other association, or two or more persons having a joint or common interest.

(d) "Principal" includes any person to whom a fiduciary as such owes an obligation.

(2) DEFINITION. A thing is done "in good faith" within the meaning of this section, when it is in fact done honestly, whether it be done negligently or not.

(3) APPLICATION OF PAYMENTS MADE TO FIDUCIARIES. A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

(4) REGISTRATION OF TRANSFER OF SECURITIES HELD BY FIDUCIARIES. If a fiduciary in whose name are registered any shares of stock, bonds or other securities of any corporation, public or private, or company or other association, or of any trust, transfers the same, such corporation or company or other association, or any of the managers of the trust, or its or their transfer agent, is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or to see to the performance of the fiduciary obligation, and is liable for registering such transfer only where registration of the transfer is made with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making the transfer, or with knowledge of such facts that the action in registering the transfer amounts to bad faith.

(5) TRANSFER OF NEGOTIABLE INSTRUMENT BY FIDUCIARY. If any negotiable instrument payable or indorsed to a fiduciary as such is indorsed by the fiduciary, or if any negotiable instrument payable or indorsed to his principal is indorsed by a fiduciary empowered to indorse such instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in indorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary, unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument.

(6) CHECK DRAWN BY FIDUCIARY PAYABLE TO THIRD PERSON. If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with actual knowledge of such breach, or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of or as security for a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument.

(7) CHECK DRAWN BY AND PAYABLE TO FIDUCIARY. If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person, and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary, unless he takes the instrument with actual knowledge of such breach, or with knowledge of such facts that his action in taking the instrument amounts to bad faith.

(8) DEPOSIT IN NAME OF FIDUCIARY AS SUCH. If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank, and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

(9) DEPOSIT IN NAME OF PRINCIPAL. If a check is drawn upon the account of his principal in a bank by a fiduciary, who is empowered to draw checks upon his principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of or as security for a personal debt of the fiduciary to it, the bank is liable to the principal if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

(10) DEPOSIT IN FIDUCIARY'S PERSONAL ACCOUNT. If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, or of checks payable to his principal and indorsed by him, if he is empowered to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.

(11) DEPOSIT IN NAMES OF TWO OR MORE TRUSTEES. When a deposit is made in a bank in the name of two or more persons as trustees, and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the trust account, and is not liable unless the circumstances be such that the action of the payee or other holder or the bank amounts to bad faith.

(12) ACT NOT RETROACTIVE. The provisions of this section shall not apply to transactions taking place prior to the time when it takes effect.

(13) CASES NOT PROVIDED FOR IN ACT. In any case not provided for in this section the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply.

(14) UNIFORMITY OF INTERPRETATION. This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(15) SHORT TITLE. This section may be cited as the "Uniform Fiduciaries Act."

(16) INCONSISTENT LAWS REPEALED. All acts or parts of acts inconsistent with this section are repealed.

Note: The executor's knowledge as president of the bank that his misappropriations as executor from the estate funds in the bank were in breach of his trust as a fiduciary was not imputed to the bank so as to render the bank liable for his defalcations and thus deprive his surety in other estates of the

right to subrogation in the premises. *Fidelity & Casualty Co. v. Maryland C. Co.*, 222 W 174, 263 NW 226.

The surety of a fiduciary who has been compelled to respond for the fiduciary's breach of trust is entitled to be subrogated to all rights of action which the cestui que

trust or creditor has against the fiduciary and all parties who participated in his wrongful acts which were the cause of the default. *Martineau v. Mehlberg*, 221 W 347, 267 NW 9.

Where the cashier of a bank, who was also guardian for certain minors whose funds he had deposited in a checking account in his name as guardian, withdrew the funds from the bank on checks issued by him as guardian payable to a corporation of which he was secretary-treasurer, which checks were indorsed by the payee corporation and honored by the bank, the

bank was not liable to the wards under the uniform fiduciaries act, 112.01 (8), or otherwise, for the amount of the funds because of the cashier's alleged misappropriation thereof, since the cashier withdrew the funds as guardian, and the bank (the cashier's knowledge of his own alleged unlawful acts not being imputed to the bank) had the right in good faith to pay out the funds on checks issued by the cashier as guardian, and the bank had no further responsibility in the matter. *Matz v. Ibach*, 235 W 45, 291 NW 377.

112.02 Suspension of powers of fiduciaries engaged in war service. (1) Whenever an executor, administrator, guardian or testamentary trustee is engaged in war service as defined in this section, such fiduciary or any other person interested in the estate or fund may present a petition to the court having jurisdiction praying for a decree suspending the powers of such fiduciary while he is engaged in war service and until the further order of the court, and if the suspension of such fiduciary will leave no person acting as executor, administrator, guardian or testamentary trustee, or leave the sole beneficiary of a trust as the only acting trustee thereof, the petition must pray for the appointment of a successor unless a successor has been named in the will and such successor is not engaged in war service or is not for other reasons unable or unwilling to act as a fiduciary.

(2) For the purposes of this section a fiduciary shall be deemed to be engaged in war service in any of the following cases:

(a) If he is a member of the military or naval forces of the United States or of any of its allies or if he has been accepted for such service and is awaiting induction into such service.

(b) If he is engaged in any work abroad in connection with a governmental agency of the United States or in connection with the American Red Cross society or any other body with similar objects.

(c) If he is interned in an enemy country or is in a foreign country or a possession or dependency of the United States and is unable to return to this state.

(3) Where the application is made by a fiduciary engaged in war service notice shall be given to such persons and in such manner as the presiding judge may direct. Where the application is made by any other person interested in the estate or fund and the fiduciary is in the military or naval service of the United States notice shall be given to such fiduciary in such manner as the judge may direct. In every other case where the application is made by a person other than the fiduciary notice thereof shall be given to such persons and in such manner as the judge may direct.

(4) Upon the filing of the petition and the proof of service of the notice prescribed, the court may, notwithstanding any other provision of law, suspend the fiduciary engaged in war service from the exercise of all his powers and duties while such fiduciary remains engaged in war service and until the further order of the court. The decree may further provide that the remaining executor, administrator, guardian or testamentary trustee or if there be none, the successor named in the will or appointed by the court is possessed of and may exercise all of the powers and duties incidental to his office as fiduciary.

(5) When the suspended fiduciary ceases to be engaged in war service he may be reinstated as executor, administrator, guardian or testamentary trustee if any of the duties of such office remain unexecuted, upon application to the court and upon such notice as the presiding judge thereof may direct. If the suspended fiduciary is reinstated the court shall thereupon remove his successor and revoke his letters and make such other order or decree as justice requires, but such removal and revocation of letters shall not bar the successor from subsequently qualifying as a fiduciary in accordance with the provisions of the will or if for any reason it thereafter becomes necessary that a fiduciary be appointed. [1943 c. 283]