

SECOND REGULAR SESSION

# HOUSE BILL NO. 2332

## 94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PARSON.

Read 1st time March 3, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5039L.01I

### AN ACT

To amend chapter 434, RSMo, by adding thereto one new section relating to unenforceable construction contracts.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 434, RSMo, is amended by adding thereto one new section, to be  
2 known as section 434.105, to read as follows:

**434.105. 1. No agreement, provision, covenant, clause, or understanding in,  
2 collateral to, implied in, or affecting a construction contract shall:**

**3 (1) State that a party to the construction contract cannot suspend performance  
4 under such contract or terminate such contract if another party to such contract fails to  
5 make prompt payments under such contract;**

**6 (2) Require a party to the construction contract to continue work or to continue to  
7 supply, furnish, or provide materials, labor, or services if that party is not paid under such  
8 contract;**

**9 (3) Permit, allow, or authorize one party to take the following adverse action:**

**10 (a) Terminate or suspend the construction contract;**

**11 (b) Withhold, deduct, back charge, setoff, or redirect payments otherwise due to  
12 another party to the construction contract;**

**13 (c) Take possession of equipment, materials, appliances, property, or tools of  
14 another construction contract;**

**15 (d) Take over and finish the work of another party to the construction contract;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16           (e) Take any other action detrimental to another party for any reason without first  
17 giving written notice of the adverse action to the party against whom the adverse action  
18 will be taken and stating with particularity what actions need to be taken to cure the  
19 breach, defect, or deficiency serving as the basis for taking the adverse action and giving  
20 reasonable opportunity to cure the same;

21           (4) Require one party to a construction contract to waive or release any rights it has  
22 under such contract or by operation of law to recover any amount in dispute as a condition  
23 for receiving payment of an amount not in dispute;

24           (5) Make the construction contract subject to the laws of another state or that  
25 requires any litigation, arbitration, or other dispute resolution proceeding arising from  
26 such contract to be conducted in another state.

27           2. Any agreement, provision, covenant, clause, or understanding in, collateral to,  
28 implied in, or affecting a construction contract described in subsection 1 of this section is  
29 void against public policy and wholly unenforceable.

30           3. As used in this section, a construction contract shall be one for private  
31 construction between:

32           (1) Any owner and any contractor or supplier;

33           (2) Any contractor and any subcontractor or supplier;

34           (3) Any subcontractor and any sub-subcontractor or supplier;

35           (4) Any sub-subcontractor and sub-sub-subcontractor or supplier at whatever tier  
36 for construction, reconstruction, remodeling, alteration, maintenance, or repair of any  
37 Missouri real property, buildings, structures, improvements, highways, streets, bridges,  
38 viaducts, shafts, wells, water or sewer systems, gas or other distribution systems, pipelines,  
39 or appliances, including demolition, moving, or excavation connected therewith, and shall  
40 include the furnishing of surveying, design, engineering, development, supervision, testing,  
41 observation, development, planning, or management services or labor, materials, or  
42 equipment in connection with such work.

43           4. The provisions of this section shall only apply to construction contracts or  
44 agreements entered into after August 28, 2008.

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