

FIRST REGULAR SESSION

HOUSE BILL NO. 1090

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FALKNER.

2388H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 431.180, RSMo, and to enact in lieu thereof one new section relating to payments for certain contracts.

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

Section A. Section 431.180, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 431.180, to read as follows:

431.180. 1. **As used in this section unless the context requires otherwise, the following terms mean:**

(1) "Contractor", any person entering into a contract with the owner of real property for the provision of work, labor, or services on a private construction project;

(2) "Owner", the owner of record of the real property upon which the work, labor, or services are to be performed at the time any contractor agrees or is requested to furnish any work, labor, or services;

(3) "Subcontractor", any person entering into a subcontract with a contractor to furnish materials, labor, or services, as included in subsection 5 of this section, on a private construction project.

2. All persons who enter into a contract for private design or construction work after August 28, ~~[1995]~~ 2023, shall make all ~~[scheduled]~~ payments ~~[pursuant]~~ **subject** to the terms of **this section and** the contract.

~~[2-]~~ 3. Any person who has not been paid **or received notice** in accordance with subsection ~~[+]~~ **2, 6 or 7** of this section may bring an action in a court of competent jurisdiction against a person who has failed to pay **or give notice**. The court may in addition to any other award for damages, award interest at the rate of up to ~~[one and one-half]~~ **two** percent per

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.

18 month from the date payment was due pursuant to the terms of the contract, and reasonable
19 ~~[attorney]~~ **attorney's** fees, to the prevailing party. If the parties elect to resolve the dispute by
20 arbitration pursuant to section 435.350, the arbitrator may award any remedy that a court is
21 authorized to award hereunder.

22 ~~[3-]~~ **4.** The provisions of this section shall not apply to contracts for private
23 construction work for the **development**, building, improvement, repair, or remodeling of
24 ~~[owner-occupied]~~ residential property ~~[of four units or less]~~.

25 ~~[4-]~~ **5.** For purposes of this section, design or construction work shall include design,
26 construction, alteration, repair or maintenance of any building, roadway or other structure or
27 improvement to real property, or demolition or excavation connected therewith, and shall
28 include the furnishing of surveying, architectural, engineering or landscape design, planning
29 or management services, labor or materials, in connection with such work.

30 **6. (1) In any contract between an owner and a contractor for design or**
31 **construction work, the parties shall include a provision that requires the owner to pay**
32 **the contractor within forty days of the receipt of an invoice following satisfactory**
33 **completion of the portion of the work for which the contractor has invoiced the owner.**
34 **An owner shall not be required to pay amounts invoiced that are subject to withholding**
35 **under the contract for the contractor's noncompliance with the terms of the contract.**
36 **However, a contractor's partial noncompliance shall not be justification for withholding**
37 **the entire invoice, and an owner may only withhold payment of the specific amount**
38 **associated with the contractor's noncompliance.**

39 **(2) In the event that an owner withholds all or part of the amount invoiced by**
40 **the contractor, the owner shall give notice to the contractor, in writing, within thirty**
41 **days of the receipt of an invoice of his or her intention to withhold all or a part of the**
42 **contractor's payment. Such written notice shall state the reason for nonpayment,**
43 **specifically identifying the contractual noncompliance, the payment amount being**
44 **withheld, and the party responsible for the contractual noncompliance.**

45 **(3) Failure of the owner to make a timely payment as provided in this subsection**
46 **may result in the imposition of interest or penalties consistent with subsection 3 of this**
47 **section.**

48 **7. (1) Any contract for design or construction work in which there is at least one**
49 **contractor and one subcontractor shall include a provision that requires the contractor**
50 **to pay the subcontractor within seven days of the contractor receiving payment from the**
51 **owner. On the same day a contractor receives any payment from the owner, the**
52 **contractor shall notify, at least electronically, the subcontractor who is currently**
53 **performing and has previously performed work on the project of the amount of**

54 payment received from the owner. Thereafter, the contractor shall have seven days to
55 remit payment to the subcontractor.

56 (2) In the event the owner withholds payment to the contractor under subsection
57 6 of this section, the contractor shall send the actual notice of withholding, at least
58 electronically, to the subcontractor who is currently performing and has previously
59 performed work on the project within seven days of the contractor receiving any
60 withholding notice from the owner. Partial payment by the owner shall not be a
61 justification for the contractor to withhold a payment to the subcontractor whose work
62 is satisfactory, and the contractor shall only withhold payment to the subcontractor
63 identified in the owner's notice as being responsible for the contractual noncompliance.

64 (3) On the same day the subcontractor receives any payment from the
65 contractor, the subcontractor shall notify the subcontractor's lower-tier subcontractors
66 or material suppliers, at least electronically, of the amount of payment received from the
67 contractor. Thereafter, the subcontractor shall have seven days to remit payment to the
68 lower-tier subcontractors or material suppliers. Alternatively, in the event the owner
69 and contractor withhold payment to the subcontractor under subsection 6 of this
70 section, the subcontractor shall send the actual notice of withholding, at least
71 electronically, to the subcontractor's lower-tier subcontractors or material suppliers
72 within seven days of receipt. Failure of a contractor or subcontractor to provide timely
73 notice as provided in this subsection may result in interest or penalties consistent with
74 subsection 3 of this section.

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