

FIRST REGULAR SESSION

HOUSE BILL NO. 1089

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CASTEEL.

2415H.01I

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 436, RSMo, by adding thereto one new section relating to construction contracts.

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

Section A. Chapter 436, RSMo, is amended by adding thereto one new section, to be known as section 436.302, to read as follows:

436.302. 1. As used in this section, the following terms mean:

(1) "Construction contract", a written or oral agreement:

(a) Between an owner and a contractor or a supplier;

(b) Between a contractor and a subcontractor or a supplier;

(c) Between a subcontractor and a sub-subcontractor or a supplier; or

(d) Between a sub-subcontractor and a sub-sub-subcontractor or a supplier at whatever tier

for construction, reconstruction, renovation, remodeling, alteration, maintenance, repair, moving, design, excavation, or demolition; and that is intended to be used for nongovernmental purposes; of any Missouri real property, buildings, structures, improvements, private roads, highways, streets, bridges, viaducts, shafts, wells, water or sewer systems, gas or other distribution systems, pipelines, appurtenances, or appliances, including any demolition, moving, or excavation connected therewith; and shall include the furnishing of surveying, design, engineering, development, supervision, testing, observation, development, planning, or management services; or any labor,

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.

17 materials, supplies, tools, equipment, and services performed, provided, furnished,
18 supplied, or rendered in connection with such work;

19 (2) "Owner", any person, firm, partnership, corporation, limited liability
20 company, joint venture, association, entity, or other organization, or a combination of
21 any such entities, that has a construction contract with a contractor, whether the interest
22 or estate of the person is in fee, as vendee under a contract to purchase, as lessee, or
23 another interest or estate less than fee;

24 (3) "Pay application", a collection of documents that contractors submit to
25 request payment for work on a construction project;

26 (4) "Subcontractor", any person, firm, partnership, corporation, limited
27 liability company, joint venture, association, entity, or other organization, or a
28 combination of any such entities at any tier, that has a contract with a contractor or
29 another subcontractor at any tier to perform, provide, furnish, supply, or render a
30 portion of the work under a construction contract;

31 (5) "Work", the labor, materials, supplies, tools, equipment, and services,
32 including design services, to be performed, provided, furnished, supplied, or rendered
33 by a contractor or subcontractor under a construction contract.

34 2. The rights and duties prescribed and recognized under this section shall not
35 be waivable or diminished under the terms of a contract or other agreement. The terms
36 of any contract or agreement purporting to waive or diminish the rights and duties
37 prescribed or recognized under this section shall be null and void and wholly
38 unenforceable and in violation of the public policy of this state.

39 3. The following construction contracts are against this state's public policy and
40 are null and void and wholly unenforceable:

41 (1) An agreement, provision, covenant, clause, or understanding in, collateral to,
42 implied in, or affecting a construction contract stating that a party to the construction
43 contract may withhold payment to another party to the construction contract for either
44 an amount in excess of the amount in dispute or for claims one party has against
45 another party relating to or arising out of another contract, agreement, or incident
46 between those parties;

47 (2) An agreement, provision, covenant, clause, or understanding in, collateral to,
48 implied in, or affecting a construction contract stating that a party to the construction
49 contract cannot suspend performance under the construction contract or terminate the
50 construction contract if another party to the construction contract fails to make prompt
51 payments pursuant to the terms of the construction contract;

52 (3) An agreement, provision, covenant, clause, or understanding in, collateral to,
53 implied in, or affecting a construction contract requiring a party to the construction

54 contract to continue work or to continue to supply, furnish, or provide materials, labor,
55 or services if that party is not paid pursuant to terms of the construction contract;

56 (4) An agreement, provision, covenant, clause, or understanding in, collateral to,
57 implied in, or affecting a construction contract requiring one party to a construction
58 contract to perform, provide, or furnish extra or additional construction work not
59 included in the original scope of work of that person's construction contract without an
60 agreement made and entered into prior to performing, providing, or furnishing said
61 extra or additional work as to the amount to be paid or the methodology for
62 determining the amount to be paid for such extra or additional construction work;

63 (5) An agreement, provision, covenant, clause, or understanding in, collateral to,
64 implied in, or affecting a construction contract requiring one party to a construction
65 contract to waive or release any rights it has under the construction contract or rights it
66 has by operation of law to recover any amount in dispute as a condition for receiving
67 payment of an amount not in dispute;

68 (6) An agreement, provision, covenant, clause, or understanding in, collateral to,
69 implied in, or affecting a construction contract permitting, allowing, or authorizing one
70 party to take any of the following adverse actions:

71 (a) Terminate or suspend the construction contract;

72 (b) Withhold, deduct, back charge, set off, or redirect payments otherwise due to
73 another party to the construction contract;

74 (c) Take possession of equipment, materials, appliances, property, or tools of
75 another party to the construction contract;

76 (d) Take over and finish the work of another party to the construction contract;
77 or

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

83 (7) An agreement, provision, covenant, clause, or understanding in, collateral to,
84 implied in, or affecting a construction contract making the construction contract subject
85 to the laws of another state or that requires any litigation, arbitration, or other dispute
86 resolution proceeding arising from the construction contract to be conducted in another
87 state; and

88 (8) An agreement, provision, covenant, clause, or understanding in, collateral to,
89 implied in, or affecting a construction contract stating the payment by the owner to the
90 contractor, or the payment by the contractor to a subcontractor or supplier, or the

91 payment by a subcontractor to a sub-subcontractor or supplier at any tier, is a condition
92 precedent for payment to either the subcontractor, sub-subcontractor, or supplier at
93 whatever tier who has performed in accordance with the terms of its construction
94 contract.

95 4. (1) In any construction contract between an owner and a contractor, the
96 parties shall include a provision that requires the owner to pay the contractor within
97 forty days after receipt of an invoice or pay application following satisfactory
98 completion of the portion of the work for which the contractor has sought payment.
99 Any construction contract that does not contain such a provision shall be deemed to
100 include such provision notwithstanding any language to the contrary contained in the
101 construction contract or other contract documents incorporated therein or otherwise
102 governing the construction contract. An owner shall not be required to pay amounts
103 invoiced or be subject to a contractor's pay application to the extent they are subject to
104 withholding under the contractor's construction contract with the owner due to the
105 contractor's material noncompliance with the terms of the construction contract. The
106 amount withheld shall not exceed the reasonable value of the work in material
107 noncompliance with the terms of the construction contract.

108 (2) In the event that an owner intends to withhold all or part of the amount
109 invoiced by or subject to the contractor's pay application, the owner shall give notice to
110 the contractor in writing of its intention to withhold all or part of the contractor's
111 payment. Such notice shall be given within fifteen days after the owner receives the
112 contractor's invoice or pay application and shall provide:

- 113 (a) The amount the owner intends to withhold;
114 (b) The specific reasons why the owner intends to withhold payment identifying
115 the work that is believed to be materially noncompliant;
116 (c) The name of the party and trade responsible for the noncompliant work with
117 sufficient information to allow the contractor to determine which, if any, subcontractor
118 or supplier may be responsible for the materially noncompliant work; and
119 (d) The extent or percentage of the amount withheld and apportioned between
120 all parties and trades, if more than one, believed to be ultimately responsible for the
121 materially noncompliant work. Any such notice that fails to reasonably apportion
122 responsibility between or among multiple parties and trades shall be deemed to be null
123 and void and ineffective.

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125 Failure by the owner to give such notice within fifteen days after the owner receives the
126 contractor's invoice or pay application shall be deemed to be acceptance of the
127 contractor's pay application in full, subject only to the owner's right to claim later that

128 materially noncompliant work was discovered and that such work was not reasonably
129 discoverable prior to the due date for giving said notice or information.

130 5. (1) In any construction contract between a contractor and a subcontractor,
131 the parties shall include a provision that requires the contractor to pay the
132 subcontractor within seven days after receipt of payment from the owner for the
133 subcontractor's work. Any construction contract that does not contain such a provision
134 shall be deemed to include such provision notwithstanding any language to the contrary
135 contained in the construction contract or other contract documents incorporated
136 therein or otherwise governing the construction contract. Within two business days
137 after receipt of payment from the owner for one or more subcontractors' work, the
138 contractor shall notify each subcontractor in writing or electronically of the amount of
139 payment received by the contractor for such subcontractor's work. The contractor shall
140 within seven days of receipt of funds from the owner remit to each subcontractor the full
141 share of the sum received by the contractor from the owner for the subcontractor's
142 work. Any funds received by the contractor from the owner for a subcontractor's work
143 that the owner does not intend to pay to the subcontractor shall promptly be returned to
144 the owner.

145 (2) In the event that an owner withholds all or part of the amount invoiced by, or
146 subject to, the contractor's pay application or gives notice of its intent to do so as
147 provided in subdivision (1) of this subsection, the contractor shall within seven days
148 after receipt of such information or notice provide a copy of the notice or information to
149 each subcontractor affected thereby. The failure by the contractor to give such notice or
150 information to the subcontractor within seven days after receipt of such notice or
151 information from the owner shall be deemed to be acceptance by the contractor of the
152 subcontractor's invoice or pay application, subject only to the contractor's right to claim
153 later that materially noncompliant work was discovered and that such work was not
154 reasonably discoverable prior to the due date for giving said notice or information.

155 (3) Partial payment by the owner to the contractor shall not be a basis for the
156 contractor to withhold more from the subcontractor than the owner withheld from the
157 contractor for the subcontractor's work. The contractor shall not withhold from the
158 subcontractor any more than the owner identifies as the responsibility of the
159 subcontractor.

160 (4) A sub-subcontractor or supplier shall have the same rights and
161 responsibilities in relation to its subcontractor as the subcontractor has to its contractor.

162 (5) All rights and responsibilities shall flow down to all parties in the
163 construction contract chain no matter the tier. A lower-tier subcontractor and supplier,
164 at whatever tier, shall have the same rights and responsibilities in relationship to the

165 party with whom it has a construction contract as that party has with the party with
166 whom it has a construction contract. A subcontractor to a contractor shall have the
167 same rights and responsibilities as to the contractor as the contractor has in its
168 relationship with the owner; and a supplier to a subcontractor shall have the same
169 rights and responsibilities as to the subcontractor as the subcontractor has in its
170 relationship with the contractor; and a supplier to a contractor shall have the same
171 rights and responsibilities as to the contractor as the contractor has in its relationship
172 with the owner.

173 6. The provisions of this section shall not apply to the repair or remodeling of, or
174 the addition to, any owner-occupied residential property of four units or less where the
175 owner currently occupies, or intends to occupy, as a residence within a reasonable time
176 after the completion of the repair, remodeling, or addition that is the subject of the
177 construction contract.

178 7. The provisions of this section shall apply only to construction contracts or
179 agreements entered into after August 28, 2025.

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