

HOUSE BILL NO. 3166

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE EALY.

6652H.011

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

7 whatever tier

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

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 **supplies, tools, equipment, and services performed, provided, furnished, supplied, or**
18 **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 such**
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 to the construction**
79 **contract for any reason without first giving written notice of the adverse action to the**
80 **party against whom the adverse action will be taken and stating with particularity what**
81 **actions need to be taken to cure the breach, defect, or deficiency serving as the basis for**
82 **taking the adverse action and 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 the owner's intention to withhold all or part of the**
111 **contractor's payment. Such notice shall be given within fifteen days after the owner**
112 **receives the 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.**

124

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**
140 **shall, within seven days of receipt of funds from the owner, remit to each subcontractor**
141 **the full share of the sum received by the contractor from the owner for the**
142 **subcontractor's work. Any funds received by the contractor from the owner for a**
143 **subcontractor's work that the owner does not intend to pay to the subcontractor shall**
144 **promptly be returned to 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 (2) of subsection 4 of this section, the contractor shall, within**
148 **seven days after receipt of such information or notice, provide a copy of the notice or**
149 **information to each subcontractor affected thereby. The failure by the contractor to**
150 **give such notice or information to the subcontractor within seven days after receipt of**
151 **such notice or information from the owner shall be deemed to be an acceptance by the**
152 **contractor of the subcontractor's invoice or pay application, subject only to the**
153 **contractor's right to claim later that materially noncompliant work was discovered and**
154 **that such work was not reasonably discoverable prior to the due date for giving said**
155 **notice or information.**

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

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

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

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

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

179 7. The provisions of this section shall apply only to construction contracts or
180 agreements entered into after August 28, 2026.

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