

HOUSE BILL NO. 2139

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FALKNER.

4612H.011

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

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

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

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

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

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

50 (3) An agreement, provision, covenant, clause, or understanding in, collateral to,
51 implied in, or affecting a construction contract requiring a party to the construction
52 contract to continue work or to continue to supply, furnish, or provide materials, labor,
53 or services if that party is not paid pursuant to terms of the construction contract;

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

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

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

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

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

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

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

75 **or**

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

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

86 **(8) An agreement, provision, covenant, clause, or understanding in, collateral to,**
87 **implied in, or affecting a construction contract stating the payment by the owner to the**
88 **contractor, or the payment by the contractor to a subcontractor or supplier, or the**
89 **payment by a subcontractor to a sub-subcontractor or supplier at any tier, is a condition**
90 **precedent for payment to either the subcontractor, sub-subcontractor, or supplier at**

91 whatever tier who has performed in accordance with the terms of its construction
92 contract.

93 4. (1) In any construction contract between an owner and a contractor, the
94 parties shall include a provision that requires the owner to pay the contractor within
95 forty days after receipt of an invoice or pay application following satisfactory
96 completion of the portion of the work for which the contractor has sought payment.
97 Any construction contract that does not contain such a provision shall be deemed to
98 include such provision notwithstanding any language to the contrary contained in the
99 construction contract or other contract documents incorporated therein or otherwise
100 governing the construction contract. An owner shall not be required to pay amounts
101 invoiced or be subject to a contractor's pay application to the extent they are subject to
102 withholding under the contractor's construction contract with the owner due to the
103 contractor's material noncompliance with the terms of the construction contract. The
104 amount withheld shall not exceed the reasonable value of the work in material
105 noncompliance with the terms of the construction contract.

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

111 (a) The amount the owner intends to withhold;

112 (b) The specific reasons why the owner intends to withhold payment identifying
113 the work that is believed to be materially noncompliant;

114 (c) The name of the party and trade responsible for the noncompliant work with
115 sufficient information to allow the contractor to determine which, if any, subcontractor
116 or supplier may be responsible for the materially noncompliant work; and

117 (d) The extent or percentage of the amount withheld and apportioned between
118 all parties and trades, if more than one, believed to be ultimately responsible for the
119 materially noncompliant work. Any such notice that fails to reasonably apportion
120 responsibility between or among multiple parties and trades shall be deemed to be null
121 and void and ineffective.

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123 Failure by the owner to give such notice within fifteen days after the owner receives the
124 contractor's invoice or pay application shall be deemed to be acceptance of the
125 contractor's pay application in full, subject only to the owner's right to claim later that
126 materially noncompliant work was discovered and that such work was not reasonably
127 discoverable prior to the due date for giving said notice or information.

128 **5. (1) In any construction contract between a contractor and a subcontractor,**
129 **the parties shall include a provision that requires the contractor to pay the**
130 **subcontractor within seven days after receipt of payment from the owner for the**
131 **subcontractor's work. Any construction contract that does not contain such a provision**
132 **shall be deemed to include such provision notwithstanding any language to the contrary**
133 **contained in the construction contract or other contract documents incorporated**
134 **therein or otherwise governing the construction contract. Within two business days**
135 **after receipt of payment from the owner for one or more subcontractors' work, the**
136 **contractor shall notify each subcontractor in writing or electronically of the amount of**
137 **payment received by the contractor for such subcontractor's work. The contractor shall**
138 **within seven days of receipt of funds from the owner remit to each subcontractor the full**
139 **share of the sum received by the contractor from the owner for the subcontractor's**
140 **work. Any funds received by the contractor from the owner for a subcontractor's work**
141 **that the owner does not intend to pay to the subcontractor shall promptly be returned to**
142 **the owner.**

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

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

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

160 **(5) All rights and responsibilities shall flow down to all parties in the**
161 **construction contract chain no matter the tier. A lower-tier subcontractor and supplier,**
162 **at whatever tier, shall have the same rights and responsibilities in relationship to the**
163 **party with whom it has a construction contract as that party has with the party with**
164 **whom it has a construction contract. A subcontractor to a contractor shall have the**

165 same rights and responsibilities as to the contractor as the contractor has in its
166 relationship with the owner; and a supplier to a subcontractor shall have the same
167 rights and responsibilities as to the subcontractor as the subcontractor has in its
168 relationship with the contractor; and a supplier to a contractor shall have the same
169 rights and responsibilities as to the contractor as the contractor has in its relationship
170 with the owner.

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

176 **7. The provisions of this section shall apply only to construction contracts or**
177 **agreements entered into after August 28, 2024.**

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