

FIRST REGULAR SESSION

HOUSE BILL NO. 91

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GREEN.

0204H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 436, RSMo, by adding thereto eleven new sections relating to the Missouri prompt pay act.

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

Section A. Chapter 436, RSMo, is amended by adding thereto eleven new sections, to be known as sections 436.339, 436.340, 436.341, 436.342, 436.343, 436.344, 436.345, 436.346, 436.347, 436.348, and 436.349, to read as follows:

436.339. Sections 436.339 to 436.349 shall be known and may be cited as the "Missouri Prompt Pay Act".

436.340. As used in this act, the following terms mean:

- (1) "Contractor", a person or entity that contracts with an owner to improve real property or to perform construction services or construction management services for an owner;**
- (2) "Improve", to:**
 - (a) Build, affect, alter, repair, or demolish any improvement on, connected to, or beneath the surface of any real property;**
 - (b) Excavate, clear, grade, fill, or landscape any real property;**
 - (c) Construct driveways or private roadways;**
 - (d) Furnish materials, including trees and shrubbery, for any purpose described under paragraphs (a) to (c) of this subdivision; or**
 - (e) Perform any labor upon an improvement;**

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.

13 (3) "Improvement", all or any part of any building, structure, erection, alteration,
14 demolition, excavation, clearing, grading, filling, or landscaping, including trees and
15 shrubbery, driveways, and roadways, on real property;

16 (4) "Owner", a person or entity that has an interest in the real property that is
17 improved and for whom an improvement is made and who ordered such improvement.
18 "Owner" shall include private persons and entities and state, local, or municipal
19 government agencies, instrumentalities, or entities; however, the provisions of this act shall
20 not apply if the owner is a:

21 (a) County having a population of less than ten thousand; or

22 (b) Municipality having a population of less than two thousand five hundred;

23 (5) "Owner's representative", the architect or engineer in charge of the project for
24 the owner or such other contract representative or officer designated in the contract
25 documents as the party representing the owner's interest regarding administration and
26 oversight of the project;

27 (6) "Real property", the real estate that is improved, including lands, leaseholds,
28 tenements, and improvements placed on the real property;

29 (7) "Receipt", actual receipt of cash or funds in the contractor's or subcontractor's
30 bank account;

31 (8) "Subcontractor", any person or entity that contracts to furnish labor or
32 materials to, or performs labor or supplied materials for, a contractor or another
33 subcontractor in connection with a contract to improve real property. The term
34 "subcontractor" shall include materialmen.

 436.341. Performance by a contractor or subcontractor in accordance with the
2 provisions and conditions of the contractor's or subcontractor's contract before payment
3 entitles such person or entity to payment from the party with whom the person or entity
4 contracts.

 436.342. 1. When a contractor has performed in accordance with the provisions
2 of a contract, the owner shall pay the contractor within fifteen days of receipt by the owner
3 or the owner's representative of any payment request based upon work completed or
4 service provided under the contract.

5 2. When a subcontractor has performed in accordance with the provisions and
6 conditions of its subcontract before payment is satisfied, the contractor shall pay to that
7 subcontractor, and each subcontractor shall pay to its subcontractor, within ten days of
8 receipt by the contractor or subcontractor of each periodic or final payment, the full
9 amount received for such subcontractor's work and materials based on work completed
10 or service provided under the subcontract, provided that the subcontractor provides such

11 **satisfactory reasonable assurances of continued performance and financial responsibility**
12 **to complete the subcontractor's work as the contractor, in the contractor's reasonable**
13 **discretion, may require including, but not limited to, a payment and performance bond.**

2 **436.343. 1. Nothing in this act shall prevent the owner from withholding payment**
3 **to its contractor because of:**

- 4 **(1) Unsatisfactory job progress;**
- 5 **(2) Defective construction that has not been remedied;**
- 6 **(3) Disputed work;**
- 7 **(4) Third-party claims filed or reasonable evidence that a claim will be filed;**
- 8 **(5) Failure of the contractor or its subcontractor to make timely payments for**
9 **labor, equipment, or materials;**
- 10 **(6) Damage caused by the contractor to the owner, other contractors, or**
11 **subcontractors; or**
- 12 **(7) Reasonable evidence that the contract cannot be completed for the unpaid**
13 **balance of the contract sum.**

14 **In addition, the owner may withhold a reasonable amount for retainage, provided that the**
15 **retainage withheld by the owner shall not exceed the retainage percentage set forth in the**
16 **contract between the contractor and the owner.**

17 **2. Nothing in this act shall prevent the contractor or a subcontractor from**
18 **withholding payment to a subcontractor for:**

- 19 **(1) Unsatisfactory job progress;**
- 20 **(2) Defective construction that has not been remedied;**
- 21 **(3) Disputed work;**
- 22 **(4) Third-party claims filed or reasonable evidence that a claim will be filed;**
- 23 **(5) Failure of the subcontractor to make timely payments for labor, equipment, or**
24 **materials;**
- 25 **(6) Damage caused by the subcontractor to the owner, the contractor, or**
26 **contractors or subcontractors; or**
- 27 **(7) Reasonable evidence that the subcontract cannot be completed for the unpaid**
28 **balance of the subcontract sum.**

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30 **In addition, the contractor or the subcontractor may withhold a reasonable amount for**
31 **retainage, provided that the retainage withheld shall not exceed the percentage retained**
32 **from the contractor by the owner on account of the subcontractor's work.**

436.344. The contractor shall, within ten days of the contractor's receipt of retainage from the owner, pass through payments to subcontractors and shall reduce each subcontractor's retainage in the same manner as the contractor's retainage is reduced by the owner, provided that:

(1) The value of the subcontractor's work that is complete and in place equals fifty percent of the subcontractor's subcontract value, including approved change orders and other additions to the subcontract value;

(2) The work of the subcontractor is proceeding satisfactorily; and

(3) The subcontractor provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete the subcontractor's work as the contractor, in the contractor's reasonable discretion, may require including, but not limited to, a payment and performance bond.

436.345. 1. Except as provided in section 436.343, if a periodic or final payment to a contractor is delayed by more than fifteen days or if a periodic or final payment to a subcontractor is delayed more than ten days after receipt of a periodic or final payment by the contractor or subcontractor, then the owner, contractor, or subcontractor shall pay his or her contractor or subcontractor interest, beginning on the day following the due date, at the rate of one percent per month or a pro rata fraction thereof on the unpaid balance as may be due. However, no interest is due unless the person being charged interest has been notified of the provision of this section at the time the request for payment is made. Acceptance of progress payments or final payment shall release all claims for interest on such payments.

2. Nothing in this act shall prohibit owners, contractors, and subcontractors from agreeing by contract to rates of interest, payment periods, and contract and subcontract terms different from those stipulated under this section, and such contractual provisions shall control. If a willful breach of the contract provisions as to the time of payment, the interest rate specified in this section shall apply.

436.346. In any action to enforce a claim under this act, the prevailing party is entitled to recover a reasonable fee for the services of its attorney including, but not limited to, trial, appeal, and arbitration, in an amount to be determined by the court or arbitrators.

436.347. Neither the right to recover interest on a payment nor the right to recover attorney's fees under this act are exclusive remedies. This act shall not modify the remedies available to any person under the terms of a contract or by another statute.

436.348. The provisions of this act shall not apply to improvements to real property intended for residential purposes that consists of twelve or fewer residential units.

**436.349. The provisions of this act shall not apply to contracts or subcontracts
2 entered into prior to August 28, 2019.**

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