

HOUSE BILL No. 2248

By Committee on Commerce and Labor

2-1

10 AN ACT concerning private construction contracts; enacting the private
11 construction prompt payment act.

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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. Sections 1 to 7 inclusive, and amendments thereto, shall
15 be known and may be cited as the private construction prompt payment
16 act.

17 Sec. 2. As used in this act:

18 (a) "Construction" means furnishing labor, equipment, material or
19 supplies used or consumed for the improvement of real property.

20 (b) "Contract" means a contract or agreement made and entered into
21 by an owner, contractor or subcontractor concerning construction.

22 (c) "Contractor" means a person performing construction and having
23 a contract with an owner of the real property or with a trustee, agent or
24 spouse of an owner.

25 (d) "Owner" means a person who holds an ownership interest in real
26 property.

27 (e) "Person" means an individual, corporation, estate, trust, partner-
28 ship, limited liability company, association, joint venture or any other legal
29 entity.

30 (f) "Retainage" means the money earned by a contractor or subcon-
31 tractor but withheld to ensure proper performance by the contractor or
32 subcontractor.

33 (g) "Subcontractor" means any person performing construction cov-
34 ered by a contract between an owner and a contractor but not having a
35 contract with the owner.

36 Sec. 3. (a) All persons who enter into a contract for private construc-
37 tion work after July 1, 2005, shall make all scheduled payments pursuant
38 to the terms of the contract.

39 (b) Any person who has not been paid in accordance with subsection
40 (a) may bring an action in a court of competent jurisdiction against a
41 person who has failed to pay.

42 (c) An owner, contractor and subcontractor may each withhold no
43 more than 10% retainage from the amount of any uncontested payment

1 due.

2 Sec. 4. A contractor shall not withhold from a subcontractor more
3 retainage than the owner withholds from the contractor and a subcon-
4 tractor shall not withhold from a lower-tier subcontractor more retainage
5 than the contractor withholds from the subcontractor for that party's
6 work, so long as the subcontractor has provided performance and pay-
7 ment bonds for the full value of the subcontract and provided the sub-
8 contractor's surety consents to the amount of retainage to be withheld or
9 released, or both.

10 Sec. 5. (a) If the owner does not pay the contractor within seven days
11 after the date established in the contract documents the undisputed
12 amount awarded by arbitration, then the contractor, upon seven addi-
13 tional days' written notice to the owner, may stop the work until payment
14 of the amount owing has been received. The contract time shall be ex-
15 tended appropriately and the contract sum shall be increased by the
16 amount of the contractor's reasonable costs of shut-down, delay and start-
17 up, plus interest as provided for in the contract documents.

18 (b) If the contractor does not pay the subcontractor through no fault
19 of the subcontractor, within seven days from the time payment should be
20 made as provided in this agreement, the subcontractor, without prejudice
21 to any other available remedies, upon seven additional days' written notice
22 to the contractor, may stop the work of this subcontract until payment of
23 the amount owing has been received. The subcontract sum, by appropri-
24 ate adjustment, shall be increased by the amount of the subcontractor's
25 reasonable costs of demobilization, delay and remobilization.

26 Sec. 6. In any action to enforce sections 3, 4 and 5, and amendments
27 thereto, including arbitration, the court or arbitrator shall award costs and
28 reasonable attorney fees to the prevailing party. The court shall in addi-
29 tion to any other award for damages, award interest at the rate of one
30 and one-half percent per month from the date payment was due pursuant
31 to the terms of the contract. Venue of such an action shall be in the state
32 or federal court for the district or county where the real property is lo-
33 cated. The hearing in such an arbitration shall be held in the county where
34 the real property is located.

35 Sec. 7. The provisions of this act shall not apply to single-family resi-
36 dential housing and multi-family residential housing of four units or less.

37 Sec. 8. This act shall take effect and be in force from and after its
38 publication in the statute book.