

HOUSE BILL No. 2655

By Committee on Commerce and Labor

1-19

9 AN ACT concerning private construction contracts; relating to retainage;
10 amending K.S.A. 2005 Supp. 16-1802, 16-1803 and 16-1804 and re-
11 pealing the existing sections.
12

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

14 Section 1. K.S.A. 2005 Supp. 16-1802 is hereby amended to read as
15 follows: 16-1802. As used in this act:

16 (a) "Construction" means furnishing labor, equipment, material or
17 supplies used or consumed for the design, construction, alteration, ren-
18 ovation, repair or maintenance of a building, structure, road, bridge, water
19 line, sewer line, oil line, gas line, appurtenance or other improvement to
20 real property, including any moving, demolition or excavation.

21 (b) "Contract" means a contract or agreement concerning construc-
22 tion made and entered into by and between an owner and a contractor,
23 a contractor and a subcontractor or a subcontractor and another
24 subcontractor.

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

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

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

33 (f) "Retainage" means money earned by a contractor or subcontractor
34 but withheld to ensure proper performance by the contractor or
35 subcontractor.

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

39 (h) "*Substantial completion*" means the stage of a construction project
40 where the project, or a designated portion thereof, is sufficiently complete
41 in accordance with the contract, so that the owner can occupy or utilize
42 the constructed project for its intended use.

43 Sec. 2. K.S.A. 2005 Supp. 16-1803 is hereby amended to read as

1 follows: 16-1803. (a) Subject to the provisions of subsections (b), (c), (d),
2 (e), (f), (g) and (h) and K.S.A. 2005 Supp. 16-1804 and 16-1805, and
3 amendments thereto, all persons who enter into a contract for private
4 construction after the effective date of this act, shall make all payments
5 pursuant to the terms of the contract.

6 (b) The following provisions in a contract for private construction
7 shall be against public policy and shall be void and unenforceable:

8 (1) A provision that purports to waive, release or extinguish the right
9 to resolve disputes through litigation in court or substantive or procedural
10 rights in connection with such litigation except that a contract may require
11 binding arbitration as a substitute for litigation or require non-binding
12 alternative dispute resolution as a prerequisite to litigation;

13 (2) a provision that purports to waive, release or extinguish rights
14 provided by article 11 of chapter 60 of the Kansas Statutes Annotated,
15 and amendments thereto, except that a contract may require a contractor
16 or subcontractor to provide a waiver or release of such rights as a con-
17 dition for payment, but only to the extent of the amount of payment
18 received; and

19 (3) a provision that purports to waive, release or extinguish rights of
20 subrogation for losses or claims covered or paid by liability or workers
21 compensation insurance except that a contract may require waiver of sub-
22 rogation for losses or claims paid by a consolidated or wrap-up insurance
23 program, owners and contractors protective liability insurance, or project
24 management protective liability insurance.

25 (c) Any provision in a contract for private construction providing that
26 a payment from a contractor or subcontractor to a subcontractor is con-
27 tingent or conditioned upon receipt of a payment from any other private
28 party, including a private owner, is no defense to a claim to enforce a
29 mechanic's lien or bond to secure payment of claims pursuant to the
30 provisions of article 11 of chapter 60 of the Kansas Statutes Annotated,
31 and amendments thereto.

32 (d) All contracts for private construction shall provide that payment
33 of amounts due a contractor from an owner, except retainage, shall be
34 made within 30 days after the owner receives a timely, properly com-
35 pleted, undisputed request for payment.

36 (e) If the owner fails to pay a contractor within 30 days following
37 receipt of a timely, properly completed, undisputed request for payment,
38 the owner shall pay interest to the contractor beginning on the thirty-first
39 day after receipt of the request for payment, computed at the rate of 18%
40 per annum on the undisputed amount.

41 (f) A contractor shall pay its subcontractors any amounts due within
42 seven business days of receipt of payment from the owner, including
43 payment of retainage, if retainage is released by the owner, *but in any*

1 *case the owner shall release for payment the retainage due to a contractor*
2 *and the contractor shall release for payment the retainage due to a sub-*
3 *contractor not more than 60 days after the subcontractor has satisfactorily*
4 *completed all the work of the subcontractor under the contract, if the*
5 *subcontractor has provided a timely, properly completed and undisputed*
6 *request for payment to the contractor.*

7 (g) If the contractor fails to pay a subcontractor within seven business
8 days, the contractor shall pay interest to the subcontractor beginning on
9 the eighth business day after receipt of payment by the contractor, com-
10 puted at the rate of 18% per annum on the undisputed amount.

11 (h) The provisions of subsections (f) and (g) shall apply to all pay-
12 ments from subcontractors to their subcontractors.

13 Sec. 3. K.S.A. 2005 Supp. 16-1804 is hereby amended to read as
14 follows: 16-1804. (a) An owner, contractor or subcontractor may withhold
15 no more than 10% retainage from the amount of any undisputed payment
16 due.

17 (b) *An owner may withhold retainage on any undisputed payment*
18 *due for no more than 60 days after substantial completion of the project.*

19 (c) If an owner, contractor or subcontractor fails to pay retainage, if
20 any, pursuant to the terms of a contract for private construction or as
21 required by this act, the owner, contractor or subcontractor shall pay
22 interest to the contractor or subcontractor to whom payment was due,
23 beginning on the first business day after the payment was due, at a rate
24 of 18% per annum.

25 Sec. 4. K.S.A. 2005 Supp. 16-1802, 16-1803 and 16-1804 are hereby
26 repealed.

27 Sec. 5. This act shall take effect and be in force from and after its
28 publication in the statute book.