

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0776.01 Chuck Brackney x2295

SENATE BILL 12-181

SENATE SPONSORSHIP

Tochtrop,

HOUSE SPONSORSHIP

Kerr J.,

Senate Committees
Business, Labor and Technology

House Committees

A BILL FOR AN ACT

101 CONCERNING BUILDING AND CONSTRUCTION CONTRACTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill defines "building and construction contract" as any contract subject to statutory provisions regarding mechanics' liens. Any provision in a building and construction contract that is performed in Colorado making the contract subject to the laws of another state or requiring dispute resolution in another state is void. Any provision requiring a contractor, subcontractor, or material supplier to waive a right to a mechanics' lien is void.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Contractors and subcontractors must pay subcontractors and material suppliers within 7 days after completion of the work under a building and construction contract. The owner of the property for which the work is performed must make monthly progress payments to the contractor unless the building and construction contract provides otherwise.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 38-22-134 as
3 follows:

4 **38-22-134. Building and construction contracts - definition.**

5 (1) AS USED IN THIS SECTION, "BUILDING AND CONSTRUCTION CONTRACT"
6 MEANS ANY CONTRACT SUBJECT TO THIS ARTICLE AND EXCLUDES ANY
7 PUBLIC WORKS CONTRACT AS DEFINED IN SECTION 24-91-103.5 (1) (b),
8 C.R.S.

9 (2) ANY PROVISION CONTAINED IN, OR EXECUTED IN CONNECTION
10 WITH, A BUILDING AND CONSTRUCTION CONTRACT PERFORMED, OR TO BE
11 PERFORMED, IN COLORADO THAT MAKES THE CONTRACT SUBJECT TO THE
12 LAWS OF ANOTHER STATE, OR THAT REQUIRES ANY LITIGATION,
13 ARBITRATION, OR OTHER DISPUTE RESOLUTION PROCESS REGARDING THE
14 CONTRACT TO OCCUR IN ANOTHER STATE, IS VOID AND UNENFORCEABLE.

15 (3) ANY PROVISION CONTAINED IN, OR EXECUTED IN CONNECTION
16 WITH, A BUILDING AND CONSTRUCTION CONTRACT THAT REQUIRES A
17 CONTRACTOR, SUBCONTRACTOR, OR MATERIAL SUPPLIER TO WAIVE THE
18 RIGHT TO A MECHANICS' LIEN OR TO A CLAIM AGAINST A PAYMENT BOND
19 BEFORE THE CONTRACTOR, SUBCONTRACTOR, OR MATERIAL SUPPLIER HAS
20 BEEN PAID FOR THE LABOR OR MATERIALS THAT THEY FURNISHED IS VOID
21 AND UNENFORCEABLE.

22 (4) (a) NOTWITHSTANDING ANY PROVISION IN A BUILDING AND

1 CONSTRUCTION CONTRACT TO THE CONTRARY:

2 (I) THE PRINCIPAL OR PRIME CONTRACTOR AND ALL
3 SUBCONTRACTORS SHALL PROMPTLY PAY ANY SUBCONTRACTOR OR
4 MATERIAL SUPPLIER WITHIN SEVEN DAYS AFTER RECEIPT BY THE
5 CONTRACTOR OR SUBCONTRACTOR RESPONSIBLE FOR PAYMENT OF
6 UNDISPUTED SERVICES PROVIDED BY THE SUBCONTRACTOR OR MATERIAL
7 SUPPLIER REQUESTING PAYMENT.

8 (II) THE OWNER OF THE PROPERTY, CONTRACTOR, OR
9 SUBCONTRACTOR RESPONSIBLE FOR PAYMENT SHALL PAY INTEREST OF
10 ONE AND ONE-HALF PERCENT PER MONTH TO THE PARTY REQUESTING
11 PAYMENT ON ANY UNDISPUTED AMOUNT NOT PAID ON TIME.

12 (b) THE CONTRACTOR, SUBCONTRACTOR, OR MATERIAL SUPPLIER
13 REQUESTING PAYMENT THAT PREVAILS IN A CIVIL ACTION TO COLLECT
14 INTEREST PENALTIES FROM THE OWNER OF THE PROPERTY, CONTRACTOR,
15 OR SUBCONTRACTOR RESPONSIBLE FOR PAYMENT MUST BE AWARDED ITS
16 COSTS AND DISBURSEMENTS, INCLUDING REASONABLE ATTORNEY FEES,
17 INCURRED IN BRINGING THE ACTION. ADDITIONALLY, ANY PARTY WHO
18 REMAINS UNPAID AFTER PROVIDING SEVEN DAYS' WRITTEN NOTICE TO THE
19 OFFENDING PARTY IS EXCUSED, ALONG WITH ITS SURETY, IF ANY, FROM
20 ANY FURTHER OBLIGATIONS UNDER THE BUILDING AND CONSTRUCTION
21 CONTRACT.

22 (5) (a) UNLESS THE BUILDING AND CONSTRUCTION CONTRACT
23 PROVIDES OTHERWISE, THE OWNER OF THE PROPERTY, THE OWNER'S
24 AGENT, OR ANY OTHER PERSON MAKING PAYMENTS UNDER THE CONTRACT
25 SHALL MAKE MONTHLY PROGRESS PAYMENTS TO THE CONTRACTOR AS THE
26 WORK PROGRESSES. PAYMENTS ARE BASED ON ESTIMATES OF WORK
27 COMPLETED AS APPROVED BY THE OWNER OR OWNER'S AGENT. A

1 PROGRESS PAYMENT IS NOT CONSIDERED ACCEPTANCE OR APPROVAL OF
2 ANY WORK OR WAIVER OF ANY DEFECTS.

3 (b) AN OWNER OR OWNER'S AGENT MAY RESERVE AS RETAINAGE
4 FROM ANY PROGRESS PAYMENT AN AMOUNT NOT TO EXCEED FIVE PERCENT
5 OF THE PAYMENT. AN OWNER OR OWNER'S AGENT MAY REDUCE THE
6 AMOUNT OF RETAINAGE OR MAY ELIMINATE RETAINAGE ON ANY PROGRESS
7 PAYMENT IF, IN THE OWNER'S OPINION, THE WORK IS PROGRESSING
8 SATISFACTORILY.

9 (6) PURSUANT TO A BUILDING AND CONSTRUCTION CONTRACT, THE
10 OWNER OF THE PROPERTY MAY ISSUE A WRITTEN ORDER DIRECTING A
11 CHANGE IN THE WORK PRIOR TO REACHING AGREEMENT WITH THE
12 CONTRACTOR ON THE ADJUSTMENT, IF ANY. THE OWNER AND
13 CONTRACTOR SHALL NEGOTIATE EXPEDITIOUSLY AND IN GOOD FAITH FOR
14 APPROPRIATE ADJUSTMENTS, AS APPLICABLE, TO THE BUILDING AND
15 CONSTRUCTION CONTRACT. AS THE CHANGED WORK IS PERFORMED, THE
16 CONTRACTOR SHALL SUBMIT ITS COSTS FOR SUCH WORK WITHIN THIRTY
17 DAYS AFTER THE ISSUANCE OF THE DIRECTED CHANGE. IF THERE IS A
18 DISPUTE AS TO THE COST TO THE OWNER, THE OWNER SHALL PAY THE
19 CONTRACTOR FIFTY PERCENT OF THE ESTIMATED COST TO PERFORM THE
20 WORK. IN SUCH EVENT, THE PARTIES RESERVE THEIR RIGHTS AS TO THE
21 DISPUTED AMOUNT.

22 **SECTION 2. Act subject to petition - effective date -**
23 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
24 the expiration of the ninety-day period after final adjournment of the
25 general assembly (August 8, 2012, if adjournment sine die is on May 9,
26 2012); except that, if a referendum petition is filed pursuant to section 1
27 (3) of article V of the state constitution against this act or an item, section,

1 or part of this act within such period, then the act, item, section, or part
2 will not take effect unless approved by the people at the general election
3 to be held in November 2012 and, in such case, will take effect on the
4 date of the official declaration of the vote thereon by the governor.

5 (2) The provisions of this act apply to building and construction
6 contracts executed on or after the applicable effective date of this act.