

ARIZONA PROMPT PAY ACT UPDATE

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32-1183. Performance and payment by contractor, subcontractor or material supplier; conditions; interest

A. Notwithstanding the other provisions of this article, performance by a contractor, subcontractor or material supplier in accordance with the provisions of a construction contract entitles the contractor, subcontractor or material supplier to payment from the party with whom the contractor, subcontractor or material supplier contracts.

B. If a subcontractor or material supplier has performed in accordance with the provisions of a construction contract, the contractor shall pay to its subcontractors or material suppliers and each subcontractor shall pay to its subcontractors or material suppliers, within seven days of receipt by the contractor or subcontractor of each progress payment, retention release or final payment, the full amount received for such subcontractor's work and materials supplied based on work completed or materials supplied under the subcontract. Payment shall not be required pursuant to this subsection unless the subcontractor or material supplier provides to the contractor or subcontractor a billing or invoice for the work performed or material supplied in accordance with the terms of the construction contract between the parties. Each subcontractor or material supplier shall provide a waiver of any mechanic's or materialman's lien conditioned on payment for the work completed or material supplied. The contractor or subcontractor may require that such conditional waivers of lien be notarized. Any diversion by the contractor or subcontractor of payments received for work performed pursuant to a contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for disciplinary action by the registrar of contractors. Violations of this section shall be grounds for suspension or revocation of a license or other disciplinary action by the registrar pursuant to section 32-1154, subsections B, C and D. The subcontractor or material supplier may notify the registrar of contractors and the owner in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in this section.

C. Nothing in this section prevents the contractor or subcontractor, at the time of application or certification to the owner or contractor, from withholding such application or certification to the owner or contractor for payment to the subcontractor or material supplier for any of the following reasons:

1. Unsatisfactory job progress.
2. Defective construction work or materials not remedied.
3. Disputed work or materials.
4. Failure to comply with other material provisions of the construction contract.
5. Third-party claims filed or reasonable evidence that a claim will be filed.
6. Failure of the subcontractor to make timely payments for labor, equipment and materials.
7. Damage to a contractor or another subcontractor or material supplier.
8. Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.
9. The owner has withheld retention from the contractor, in which case the amount of the retention withholding by the contractor shall not exceed the actual amount of the retention retained by the owner pertaining to the subcontractor's work.

D. A contractor or subcontractor shall not withhold retention from a subcontractor in an amount greater than the actual amount of the retention retained by the owner pertaining to the work of the subcontractor.

E. If the contractor or subcontractor chooses to withhold the application or certification for all or a portion of a subcontractor's or material supplier's billing or estimates as permitted by subsection C of this section, the contractor or subcontractor must prepare and issue a written statement within fourteen days to the applicable subcontractors or material suppliers stating in reasonable detail the contractor's or subcontractor's reasons for withholding the application or certification from the owner or contractor.

F. If the owner issues a written statement pursuant to section 32-1182, subsection D, H or K stating that the owner declines to certify or approve all or a portion of the contractor's billing or estimate and if the amounts to be paid from that billing or estimate by the contractor to any subcontractors or material suppliers are affected by the owner's decision not to certify or approve, the contractor shall send a copy of that written statement within seven days after receipt to any affected subcontractors or material suppliers. If the contractor sends a copy of the owner's written statement to a subcontractor and if the amounts to be paid from that billing or estimate by a subcontractor to any of its subcontractors or material suppliers are affected by the owner's decision not to certify or approve, then the subcontractor shall send a copy of

that written statement within seven days after receipt to any of its affected subcontractors or material suppliers.

G. If the owner issues a written statement pursuant to section 32-1182, subsection D, H or K stating that the owner declines to certify or approve a billing or estimate or a portion of a billing or estimate for defective construction work or materials not remedied and if the contractor as a result does not receive sufficient payment from the owner to pay subcontractors and material suppliers for work included in the contractor's billing or estimate, the contractor shall nevertheless pay any subcontractor or material supplier whose work was not the basis of the owner's withholding for defective construction work or materials not remedied within twenty-one days after payment would otherwise have been made by the owner under section 32-1182, subsection A. This subsection does not limit a subcontractor's rights to suspend performance under a construction contract or terminate a construction contract under section 32-1185, subsection D.

H. If a progress or final payment or release of retention to a subcontractor or material supplier is delayed by more than seven days after receipt of progress or final payment or release of retention by the contractor or subcontractor pursuant to this section, the contractor or subcontractor shall pay its subcontractor or material supplier interest, except for periods of time during which payment is withheld pursuant to subsection C of this section, beginning on the eighth day, at the rate of one and one-half percent per month or a fraction of a month on the unpaid balance or at such higher rate as the parties agree.

I. Any licensed contractor, licensed subcontractor or material supplier who files a complaint with the registrar of contractors under this section shall be required to post a surety bond or cash deposit of \$500 or one-half of the amount due, whichever is less, with the registrar to secure the payment of claims under this section. If the complaint is determined by the registrar to be without merit and frivolous, the registrar shall order the person who filed the complaint to pay one-half of the amount of the required surety bond or cash deposit to the respondent and one-half to the registrar for deposit into the state general fund. If no claim may be made under this section against the surety bond or cash deposit, the surety bond or cash deposit shall be returned to the complainant. The surety bond or cash deposit shall be in the name of the licensee or material supplier who files the complaint and shall be subject to claims by the registrar of contractors and the respondent licensee as provided in this section. The surety bond or cash deposit shall be conditioned on and provide for payment on the presentation of a certified copy of the order of the registrar and a certification by the complainant of nonpayment within

thirty days after the order becomes final. The surety bond shall be executed by the complainant as principal with a corporation duly authorized to transact surety business in this state. Evidence of the surety bond shall be submitted to the registrar in a form acceptable to the registrar. The cash deposit shall be deposited, pursuant to sections 35-146 and 35-147, by the registrar in the contractors prompt pay complaint fund and shall be held for the payment of claims.

J. In any action or arbitration brought to collect payments or interest pursuant to this section, the successful party shall be awarded costs and attorney fees in a reasonable amount.