



# HOUSE BILL No. 4529

March 7, 1995, Introduced by Reps. Munsell, Dobb, Goschka, Dalman, Schroer, DeLange, Anthony, Bullard, Dolan, Bodem and Byl and referred to the Committee on Commerce.

A bill to require owners to pay contractors and contractors to pay subcontractors in a timely manner on certain construction contracts; and to provide for remedies.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "construction prompt payment act".

3       Sec. 2. As used in this act:

4       (a) "Contractor" means a person who contracts with another  
5 to improve real property or perform or manage construction  
6 services. Contractor includes both the prime contractor and the  
7 subcontractor.

8       (b) "Improve" means to build, alter, repair, or demolish an  
9 improvement upon, connected with, or beneath the surface of any  
10 real property, to excavate, clear, grade, fill, or landscape any  
11 real property, to construct driveways and roadways, to perform

1 labor upon improvements, or to provide design or other  
2 professional or skilled services for an improvement.

3 (c) "Improvement" includes, but is not limited to, all or  
4 any part of any building, structure, erection, alteration, demo-  
5 lition, excavation, clearing, grading, filling, landscaping,  
6 trees, shrubbery, driveways, and roadways on real property.

7 (d) "Owner" means a person who has an interest in the real  
8 property improved and for whom an improvement is made or who  
9 ordered the improvement to be made. Owner does not include a  
10 state, local, or municipal governmental entity.

11 (e) "Prime contractor" means the person who contracts  
12 directly with an owner or owner's agent.

13 (f) "Real property" means the real estate that is improved,  
14 including, but not limited to, lands, leaseholds, tenements, her-  
15 editaments, and improvements placed on the real property.

16 (g) "Retainage" means the contractual retainage of any  
17 amounts due to ensure satisfactory completion of the contracted  
18 work.

19 (h) "Subcontractor" means a person who has contracted to  
20 furnish labor or supply materials for a contractor or another  
21 subcontractor in connection with a contract to improve real prop-  
22 erty, including any change orders.

23 Sec. 3. (1) Except as provided in sections 4 and 5, an  
24 owner shall make payment in full to a prime contractor upon  
25 receiving a proper statement or invoice for goods delivered,  
26 stored material, or services performed in accordance with the

1 provisions of the contract between the prime contractor and  
2 owner.

3 (2) The owner shall pay the prime contractor by first-class  
4 mail or by personally delivering the undisputed amount of a  
5 proper statement or invoice for work completed or services pro-  
6 vided within 21 days of receipt by the owner of the statement or  
7 invoice.

8 Sec. 4. The owner may return a defective invoice or state-  
9 ment to the prime contractor within 7 days after receipt of the  
10 defective invoice or statement. Interest shall continue to  
11 accrue from the date the invoice or statement was received by the  
12 owner for an invoice and statement returned within the 7-day  
13 period.

14 Sec. 5. (1) Payment shall be made in full to the prime con-  
15 tractor as provided in this section, unless the owner verifies 1.  
16 or more of the following:

17 (a) Unsatisfactory job progress.

18 (b) Defective construction not remedied.

19 (c) Third party claims filed, or reasonable evidence that a  
20 claim will be filed.

21 (d) Damage to owner, contractor, or another subcontractor.

22 (e) Reasonable evidence that the contract or subcontract  
23 cannot be completed for the unpaid balance of the contract or  
24 subcontract sum.

25 (f) A reasonable amount for retainage.

26 (2) Notification of any withholding shall be presented by  
27 the owner to the contractor in writing within 7 days after the

1 date the owner received an invoice or statement. This  
2 notification shall contain the reason for withholding payment and  
3 the dollar amount withheld, not to exceed twice the value of the  
4 work or claim verified under subsection (1).

5 (3) The amount withheld shall be deposited in an  
6 interest-bearing escrow account.

7 (4) The amount withheld plus interest shall be released to  
8 the prime contractor upon the correction of the defect that led  
9 to the withholding.

10 (5) An amount shall not be withheld or retained under this  
11 section for more than 30 days after acceptance of the statement  
12 or invoice or occupancy of the project by the owner, whichever is  
13 earlier.

14 Sec. 6. An invoice or statement received by the owner that  
15 is not returned or notice of withholding presented within 7 days  
16 is considered to be accepted by the owner and payment in full is  
17 due and owing in accordance with section 3.

18 Sec. 7. (1) If a periodic or final payment to a prime con-  
19 tractor is delayed by more than 21 days after the receipt of a  
20 proper statement or invoice, the owner shall pay the prime con-  
21 tractor interest, beginning on the due date, at the rate of 2%  
22 per month of the balance owed, or a pro rata fraction of the  
23 monthly interest calculated on a per diem basis, on the unpaid  
24 balance.

25 (2) The prime contractor, upon receiving delayed payments  
26 with interest, shall pay his or her subcontractor's interest,  
27 beginning on the date interest began to accrue for the prime

1 contractor, at the rate of 2% per month of the balance owed, or a  
2 pro rata fraction of the monthly interest, on the balance owed to  
3 the subcontractor. The prime contractor may deduct proportion-  
4 ately an amount incurred in securing the delayed payment, includ-  
5 ing court costs and reasonable attorney fees.

6       Sec. 8. (1) A contractor shall pay his or her subcontrac-  
7 tors within 7 days after receipt by the contractor of each  
8 periodic or final payment of the owner, or within 30 days after  
9 the date the owner is granted occupancy, whichever is earlier.

10       (2) The contractor shall pay a subcontractor by first-class  
11 mail or by personally delivering the full amount due for the  
12 subcontractor's work and materials based on work completed or  
13 service provided under the subcontract.

14       Sec. 9. (1) Payments shall be made in full to a subcontrac-  
15 tor without withholding for an invoice or statement that has been  
16 accepted, other than a reasonable amount for retainage.

17       (2) The prime contractor shall not withhold a higher percen-  
18 tage for retainage than the owner is withholding from the prime  
19 contractor.

20       (3) Notification of any withholding of payment by a contrac-  
21 tor from a subcontractor must be presented in writing to the  
22 owner and the subcontractor before the contractor submits a  
23 statement or invoice for payment to the owner. The notification  
24 shall contain the reason for withholding payment and the dollar  
25 amount withheld, not to exceed twice the value of the work in  
26 dispute. The amount to be withheld from the subcontractor shall

1 not be included in the statement or invoice submitted to the  
2 owner by the contractor.

3 (4) Notification of a defective invoice or statement or  
4 reason for withholding payment from a subcontractor shall be  
5 presented by the contractor to the subcontractor in writing  
6 within 7 days after the date the contractor received the state-  
7 ment or invoice from the subcontractor. This notification shall  
8 state the defect in the invoice or statement or the reason for  
9 withholding payment as provided under subsection (3).

10 (5) All invoices and statements received by the contractor  
11 that are not returned or notice of withholding payment presented  
12 within 7 days shall be considered to be accepted by the contrac-  
13 tor and payment in full is due and owing in accordance with this  
14 act.

15 Sec. 10. (1) If periodic or final payment to a subcontractor  
16 is delayed beyond the period required for payment in section  
17 8, the contractor shall pay his or her subcontractor's interest,  
18 beginning on the date payment is due at the rate of 2% of the  
19 balance owed per month or a pro rata fraction of the monthly  
20 interest calculated on a per diem basis, on the unpaid balance.

21 (2) If the contractor fails to pay the subcontractor,  
22 through no fault of the subcontractor, within the time prescribed  
23 in section 8, without prejudice to any other available remedy,  
24 the subcontractor may stop work until payment of the amount owing  
25 has been received.

26 Sec. 11. A statement or invoice from a subcontractor for  
27 work completed or services provided shall be paid by the

1 contractor as provided by this act and shall not be contingent  
2 upon prior receipt of payment by that contractor from the owner  
3 or other contractor.

4       Sec. 12. The owners, contractors, and subcontractors are  
5 strictly prohibited from agreeing by contract or otherwise to  
6 rates of interest less than or payment periods greater than  
7 required by this act. Owners, contractors, and subcontractors  
8 may agree by contract to greater interest rates or shorter pay-  
9 ment periods than required by this act.

10       Sec. 13. This act does not apply to a contract provided for  
11 under Act No. 279 of the Public Acts of 1984, being sections  
12 17.51 to 17.57 of the Michigan Compiled Laws.

13       Sec. 14. (1) This act does not limit the rights or remedies  
14 available to a person under any other statute of this state.

15       (2) In addition to any other remedy, a person may bring an  
16 action to recover damages caused by a violation of this act. The  
17 court shall award the person the amount of actual damages caused  
18 by the violation, plus costs and reasonable attorney fees.