

1 **CONSTRUCTION CONTRACT LAW**

2 **AMENDMENTS**

3 1998 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Peter C. Knudson**

6 AN ACT RELATING TO COMMERCE AND TRADE; DEFINING A CONTINGENT  
7 PAYMENT CLAUSE IN A CONSTRUCTION CONTRACT; MAKING CONTINGENT  
8 PAYMENT CLAUSES UNENFORCEABLE IN CERTAIN CONSTRUCTION WORK; AND  
9 MAKING TECHNICAL CHANGES.

10 This act affects sections of Utah Code Annotated 1953 as follows:

11 AMENDS:

12 **13-8-4**, as enacted by Chapter 86, Laws of Utah 1997

13 *Be it enacted by the Legislature of the state of Utah:*

14 Section 1. Section **13-8-4** is amended to read:

15 **13-8-4. Obligation to pay under construction contracts -- Contingent payment**  
16 **clauses void -- Rights of parties under contingent payment provisions.**

17 (1) For purposes of this section:

18 (a) "Construction contract" means a contract or agreement to provide services, labor, or  
19 materials for the design, construction, installation, or repair of an improvement to real property  
20 located in Utah.

21 (b) "Contingent payment [~~contract~~] clause" means a clause in a construction contract  
22 between a contractor and a subcontractor that makes a payment from the contractor to the  
23 subcontractor contingent on the contractor receiving a corresponding payment from any other  
24 public or private party, including a private owner.

25 (c) "Contractor" means a person who is or may be awarded a contract for the construction,  
26 alteration, or repair of any building, structure, or improvement to real property.

27 (d) "Subcontractor" means any person engaged by a contractor to provide services, labor,

1 or materials for the design, construction, installation, or repair of an improvement to real property  
2 and includes a supplier and a trade contractor or specialty contractor.

3 (2) A party to a construction contract shall make all scheduled payments under the terms  
4 of the construction contract.

5 (3) The existence of a contingent payment clause which conditions payment from a  
6 contractor to a subcontractor upon receipt of payment by the contractor from an owner or other  
7 party is void, against public policy, and unenforceable.

8 (4) The existence of a contingent payment clause which would require a contractor or  
9 subcontractor to waive a claim against a payment bond before the contractor or subcontractor has  
10 been paid for the labor or material or both that the contractor or subcontractor has furnished is  
11 void, against public policy, and unenforceable.

12 [~~(3)~~] (5) (a) The existence of a contingent payment [~~contract~~] clause is not a defense to a  
13 claim to enforce a mechanics' lien filed under Title 38, Chapter 1, Mechanics' Liens.

14 (b) Subsection [~~(3)~~](5) does not apply to contracts for private construction work for the  
15 building, improvement, repair, or remodeling of residential property consisting of four units or  
16 less.

17 [~~(4)~~] (6) If a construction contract [~~is a~~] has any contingent requirements regarding  
18 payment [~~contract~~]:

19 (a) [~~the~~] a subcontractor may request from the contractor the financial information that the  
20 contractor has received from the public or private party regarding:

- 21 (i) the project financing; and
- 22 (ii) the public or private party; and

23 (b) if information is requested by the subcontractor under Subsection (4)(a), the contractor  
24 shall provide the information prior to the subcontractor signing the construction contract between  
25 the contractor and the subcontractor.

26 [~~(5) This section applies~~] (7) Subsections (1), (2), (5), and (6) apply to a contract executed  
27 on or after May 5, 1997. Subsections (3) and (4) apply to a contract executed on or after May 4,  
28 1998.

**Legislative Review Note**  
**as of 12-17-97 3:22 PM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**