

1 **UTAH CONSTRUCTION CONTRACTS PROMPT**

2 **PAYMENT ACT**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Michael G. Waddoups**

6 **This act modifies the Commerce and Trade provisions by enacting the Utah Construction**
7 **Contracts Prompt Payment Act. The act defines certain terms. It requires progress**
8 **payments on certain construction contracts. The act requires the owner to promptly dispute**
9 **a billing or estimate with which the owner does not agree and limits the amount that an**
10 **owner can withhold from a progress payment. The act requires prompt payment by the**
11 **owner upon completion of the work. The act provides for interest on late payments. The act**
12 **gives subcontractors the right to notification of progress payments. The act provides for the**
13 **awarding of costs and attorneys' fees. The act requires prompt payment by the contractor**
14 **to subcontractors and suppliers. The act requires the waiver of mechanics' lien rights by**
15 **contractors and subcontractors upon receipt of payment. The act provides for the**
16 **interruption of the work on a construction contract without penalty in cases of an**
17 **environmental hazard. The act provides for the interruption of work on a construction**
18 **contract or the termination of the contract in cases of nonpayment. The act provides an**
19 **effective date and a coordination clause.**

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

21 AMENDS:

22 **58-55-501**, as last amended by Chapters 198 and 257, Laws of Utah 2001

23 ENACTS:

24 **13-34-101**, Utah Code Annotated 1953

25 **13-34-102**, Utah Code Annotated 1953

26 **13-34-103**, Utah Code Annotated 1953

27 **13-34-201**, Utah Code Annotated 1953



- 28 13-34-202, Utah Code Annotated 1953
- 29 13-34-203, Utah Code Annotated 1953
- 30 13-34-204, Utah Code Annotated 1953
- 31 13-34-205, Utah Code Annotated 1953
- 32 13-34-206, Utah Code Annotated 1953
- 33 13-34-207, Utah Code Annotated 1953
- 34 13-34-208, Utah Code Annotated 1953

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

36 Section 1. Section 13-34-101 is enacted to read:

37 **CHAPTER 34. UTAH CONSTRUCTION CONTRACTS PROMPT PAYMENT ACT**

38 **Part 1. General Provisions**

39 **13-34-101. Title.**

40 This chapter is known as the "Utah Construction Contracts Prompt Payment Act."

41 Section 2. Section 13-34-102 is enacted to read:

42 **13-34-102. Definitions.**

43 As used in this chapter:

44 (1) "Construction contract" means a contract or agreement to provide services, labor, or
45 materials for the design, construction, installation, alteration, or repair of any building, structure,
46 or improvement to real property located in Utah.

47 (2) "Construction project bid documents" means the drawings, specifications, invitation
48 for bids, request for proposals, or any other written document describing the proposed construction
49 project that requests the submission of bids or prices for furnishing labor, materials, supplies, or
50 equipment for construction of the project.

51 (3) "Contractor" means a person who is or may be awarded a construction contract.

52 (4) "Owner" means a person holding any legal or equitable title or interest in real property
53 which is the subject of a construction contract.

54 (5) "Subcontractor" means any person engaged by a contractor or another subcontractor
55 to provide services, labor, or materials for the design, construction, installation, alteration, or repair
56 of any building, structure, or improvement to real property located in Utah and includes a material
57 supplier, a trade contractor, and a specialty contractor.

58 Section 3. Section 13-34-103 is enacted to read:

59 **13-34-103. Scope of chapter.**

60 (1) Where there are any conflicts between the provisions of this chapter with the provisions
61 of Title 15, Chapter 6, Utah Prompt Payment Act, the provisions of this chapter shall govern.

62 (2) This chapter applies to all construction contracts entered into on or after July 1, 2002.

63 Section 4. Section **13-34-201** is enacted to read:

64 **Part 2. Prompt Payment**65 **13-34-201. Progress payments to contractor -- Payment upon completion of work --**

66 **Withholdings from payments -- Approval of billings -- Interest on late payments --**

67 **Notification to subcontractor of payments by owner.**

68 (1) An owner shall make progress payments as provided in Subsection (2) to a contractor
69 on all construction contracts where the contract performance period exceeds 45 calendar days.

70 (2) (a) Progress payments shall be made on the basis of an approved billing or estimate of
71 the work performed and the materials supplied during the preceding monthly billing cycle, or an
72 alternate billing cycle as stated in the construction contract.

73 (b) If billings or estimates are to be submitted in other than monthly billing cycles, the
74 construction project bid documents shall specifically identify the alternate billing cycle in a clear
75 and conspicuous manner as required in Subsection (3).

76 (c) Except as provided in Subsection (4), the owner shall make progress payments to the
77 contractor within seven working days after the date the billing or estimate is approved by the
78 owner pursuant to Subsection (5).

79 (d) If required by the owner, the contractor shall provide waivers of mechanics' or
80 materialmens' liens from both the contractor and its subcontractors conditioned upon payment for
81 the work completed and materials supplied. The owner may require that these conditional waivers
82 of lien be notarized.

83 (3) (a) A construction contract may provide for a billing cycle other than a monthly billing
84 cycle if:

85 (i) the construction project bid documents and the construction contract specifically
86 establish the alternate billing cycle; and

87 (ii) the notice requirements of Subsection (3)(b) are satisfied.

88 (b) Either of the following legends, or substantially similar language setting forth the
89 alternate billing cycle, shall appear in clear and conspicuous type, in font size no less than 14 point,

90 on the construction project bid documents and the construction contract:

91 (i) "Notice of alternate billing cycle"

92 "This contract allows the owner to require billings or estimates to be submitted in billing
93 cycles other than monthly. Billings or estimates for this contract shall be submitted as follows:

94 [description of alternate billing cycle]"; or

95 (ii) "Notice of alternate billing cycle"

96 "This contract allows the owner to require billings or estimates to be submitted in billing
97 cycles other than monthly. A written description of the alternate billing cycle applicable to the

98 project is available from the owner or the owner's designated agent at [telephone number or

99 address, or both], and the owner or its designated agent shall provide this written description on

100 request."

101 (4) An owner may make progress payments and final payment later than seven working
102 days after the date the billing or estimate is approved by the owner if:

103 (a) the construction project bid documents and the construction contract in a clear and
104 conspicuous manner specifically provide for payment to be made on a specified number of days
105 after approval; and

106 (b) the following legend or substantially similar language setting forth the specified
107 number of days appears in clear and conspicuous type, in font size no less than 14 point, on the
108 construction project bid documents and the construction contract:

109 "Notice of extended payment provision"

110 "This contract allows the owner to make payment within _____ days after approval of
111 billings and estimates."

112 (5) (a) Except as provided in Subsection (7), a billing or estimate shall be considered to
113 be approved by the owner 14 calendar days after the owner receives the billing or estimate, unless
114 before that time the owner or the owner's agent delivers to the contractor a written statement
115 detailing those items in the billing or estimate that are not approved.

116 (b) An owner may decline to approve a billing or estimate or a portion of a billing or
117 estimate because of:

118 (i) unsatisfactory job progress;

119 (ii) defective construction work or materials which have not been remedied;

120 (iii) disputed work or materials;

- 121 (iv) failure to comply with a material provision of the construction contract;
122 (v) third-party claims filed or reasonable evidence that a claim will be filed;
123 (vi) failure of the contractor or a subcontractor to make timely payments for labor,
124 equipment, or materials;
125 (vii) loss or damage to the owner or the owner's property;
126 (viii) reasonable evidence that the construction contract cannot be completed for the
127 unpaid balance under the construction contract; or
128 (ix) a reasonable amount for retention as provided in Section 13-8-5.
129 (c) The owner is considered to have received the billing or estimate when the billing or
130 estimate is submitted to any person designated by the owner for the receipt of these submissions
131 or for review or approval of the billing or estimate.
132 (6) Except as provided in Section 13-8-5, an owner may withhold from a progress payment
133 only an amount that is sufficient to pay the direct expenses the owner reasonably expects to incur
134 to correct any items set forth in writing pursuant to Subsection (5).
135 (7) An owner may extend the period within which the billing or estimate is approved if:
136 (a) the construction project bid documents and the construction contract in a clear and
137 conspicuous manner specifically provide for an extended time period within which a billing or
138 estimate shall be approved, stating a specified number of days after the owner has received the
139 billing or estimate; and
140 (b) the following legend or substantially similar language, setting forth the specified
141 number of days, appears in clear and conspicuous type, in font size no less than 14 point, on the
142 construction project bid documents and the construction contract:
143 "Notice of extended certification and approval period provision"
144 "This contract allows the owner to approve billings and estimates within _____ days after
145 the billings and estimates are received from the contractor."
146 (8) Except as provided in Subsection (4) and in Section 13-8-5:
147 (a) when a contractor completes and an owner approves all work under a construction
148 contract, the owner shall make payment in full on the construction contract within seven working
149 days after the date of approval;
150 (b) when a contractor completes and an owner approves all work under a portion of a
151 construction contract for which the construction contract states a separate price, the owner shall

152 make payment in full on that portion of the construction contract within seven working days after
153 the date of approval; and

154 (c) on construction projects that require a federal agency's final approval or certification,
155 the owner shall make payment in full on the construction contract within seven working days of
156 the federal agency's final approval or certification.

157 (9) Payment is not required under this section unless the contractor provides the owner
158 with a billing or estimate for the work performed or the material supplied in accordance with the
159 terms of the construction contract between the parties.

160 (10) Except as otherwise specifically provided in this chapter, a construction contract may
161 not alter the rights of any contractor or subcontractor to receive prompt and timely progress
162 payments.

163 (11) If an owner or a third party designated by an owner as the person responsible for
164 making progress payments on a construction contract does not make a timely payment pursuant
165 to this section, the owner shall pay the contractor interest at the rate of 1.5% per month or fraction
166 of a month on the unpaid balance, or at a higher rate as set forth in the construction contract
167 between the parties.

168 (12) On the written request of a subcontractor, the owner shall notify the subcontractor
169 within five working days after the issuance of a progress payment or final payment to the
170 contractor under the construction contract.

171 (13) If the owner and contractor on a construction project are a single entity, that entity
172 shall pay its subcontractors within 14 calendar days after the billing or estimate is approved by the
173 owner unless the deadlines for approval or for payment have been modified under Subsection (4)
174 or (7).

175 Section 5. Section **13-34-202** is enacted to read:

176 **13-34-202. Progress payments to subcontractor or supplier -- Waiver of liens --**
177 **Withholdings from a payment -- Interest on late payments.**

178 (1) (a) If a subcontractor has performed in accordance with the provisions of a construction
179 contract, the contractor shall pay to its subcontractor and the subcontractor shall pay to its
180 subcontractors, within seven working days of receipt by the contractor or subcontractor, as the case
181 may be, of each progress payment or final payment, the full amount received for that
182 subcontractor's work and materials supplied based on work completed or materials supplied under

183 the subcontract.

184 (b) Payment is not required under Subsection (1) unless the subcontractor provides to the
185 contractor or subcontractor with whom it has the contract a billing or invoice for the work
186 performed or material supplied in compliance with the terms of the construction contract between
187 the parties.

188 (c) Each subcontractor shall provide to the contractor or subcontractor with whom it has
189 the contract a waiver of any mechanic's or materialman's lien conditioned upon payment for the
190 work completed or material supplied. The contractor or subcontractor may require that the
191 conditional waiver of lien be notarized.

192 (2) Nothing in this section prevents the contractor or subcontractor, at the time of
193 application or certification to its owner or contractor, as the case may be, from withholding the
194 application or certification to the owner or contractor for payment to the subcontractor because of:

195 (a) unsatisfactory job progress;

196 (b) defective construction work or materials which have not been remedied;

197 (c) disputed work or materials;

198 (d) failure to comply with a material provision of the subcontract;

199 (e) third-party claims filed or reasonable evidence that a claim will be filed;

200 (f) failure of the subcontractor to make timely payments for labor, equipment, or materials;

201 (g) damage to the contractor or another subcontractor or material supplier;

202 (h) reasonable evidence that the subcontract cannot be completed for the unpaid balance

203 under the contract; or

204 (i) a reasonable amount for retention, as provided in Section 13-8-5, that does not exceed
205 the actual percentage retained by the owner.

206 (3) If a periodic or final payment to a subcontractor is delayed by more than seven working
207 days after receipt of periodic or final payment by the contractor or subcontractor with whom it has
208 the contract, the contractor or subcontractor, as the case may be, shall pay its subcontractor interest,
209 except for periods of time during which payment is withheld pursuant to Subsection (2), at the rate
210 of 1.5% per month or a fraction of a month on the unpaid balance or at a higher rate set forth in
211 the construction contract between the parties.

212 Section 6. Section **13-34-203** is enacted to read:

213 **13-34-203. Payment entitlement -- No waiver.**

214 Notwithstanding any other provision of this chapter:

215 (1) performance by a contractor or subcontractor in accordance with the provisions of a
216 construction contract entitles the contractor or subcontractor to payment from the party with whom
217 the contractor or subcontractor contracts pursuant to the terms of the construction contract; and

218 (2) the contractor or subcontractor shall not be considered to have waived any claims it
219 may have arising out of performance of work or supplying of materials pursuant to any
220 construction contract.

221 Section 7. Section **13-34-204** is enacted to read:

222 **13-34-204. Interruption of work for environmental hazard -- Termination of**
223 **contract.**

224 (1) A contractor may interrupt the performance of a construction contract without penalty
225 or liability for breach of contract if:

226 (a) (i) any applicable law or rule requires the cessation of work; or

227 (ii) (A) the contractor encounters any hazardous substance or hazardous material which
228 is required to be removed or contained by any applicable statute or rule; and

229 (B) (I) any applicable law or rule prohibits the contractor from proceeding to remove or
230 contain the hazardous material or hazardous substance unless the contractor is duly licensed and
231 the contractor is not so licensed; or

232 (II) the removal or containment of the hazardous material or hazardous substance cannot
233 be accomplished without a cessation of work; and

234 (b) the situation which resulted in the cessation of work under Subsection (1)(a) was not:

235 (i) caused by the contractor or any agent, employee, subcontractor, or supplier of the
236 contractor; or

237 (ii) part of the scope of the work under the construction contract.

238 (2) A contractor whose work is impaired, impeded, or prohibited under Subsection (1) may
239 interrupt performance of the construction contract as provided in this section only to the extent of
240 the area affected by the hazardous materials or hazardous substances removed or contained by the
241 owner or as otherwise required by applicable statute or rule.

242 (3) The owner may terminate the construction contract upon payment to the contractor,
243 subcontractor, or other person whose work is delayed under Subsection (1) of the amount of any
244 services or materials supplied or expended which conform to the contract terms and specifications.

245 (4) A contractor who interrupts the performance of a construction contract under this
246 section is entitled to recover from the owner any costs incurred for mobilization resulting from the
247 shutdown and restart of the project.

248 Section 8. Section **13-34-205** is enacted to read:

249 **13-34-205. Suspension or termination of work for nonpayment -- Notice -- Costs and**
250 **attorneys' fees.**

251 (1) (a) A contractor may suspend performance under a construction contract or terminate
252 a construction contract for failure by the owner to make timely payment of the amount approved
253 pursuant to Subsection 13-34-201(5).

254 (b) A contractor shall provide written notice to the owner at least seven working days
255 before the contractor's intended suspension or termination unless a shorter notice period is set forth
256 in the construction contract between the owner and contractor. A construction contract may not
257 extend the time period for a contractor to suspend performance or terminate a construction contract
258 under this Subsection (1).

259 (c) The suspension of performance or termination of a construction contract pursuant to
260 this Subsection (1) does not constitute a breach of contract by the contractor.

261 (2) (a) A subcontractor may suspend performance under a construction contract or
262 terminate a construction contract if the owner fails to make timely payment of amounts approved
263 pursuant to Subsection 13-34-201(5) for the subcontractor's work or materials supplied and the
264 contractor fails to pay the subcontractor for the approved work.

265 (b) A subcontractor shall provide written notice to the contractor and owner at least seven
266 working days before the subcontractor's intended suspension or termination unless a shorter notice
267 period is prescribed in the construction contract between the contractor and subcontractor. A
268 construction contract may not extend the time period for a subcontractor to suspend performance
269 or terminate a construction contract under this Subsection (2).

270 (c) The suspension of performance or termination of a subcontract pursuant to this
271 Subsection (2) does not constitute a breach of contract by the subcontractor.

272 (3) (a) A subcontractor may suspend performance under a construction contract or
273 terminate a construction contract if the owner makes timely payment of amounts approved
274 pursuant to Subsection 13-34-201(5) for the subcontractor's work or materials supplied but the
275 contractor fails to pay the subcontractor for the approved work.

276 (b) A subcontractor shall provide written notice to the contractor and owner at least seven
277 working days before the subcontractor's intended suspension or termination unless a shorter notice
278 period is prescribed in the construction contract between the contractor and subcontractor. A
279 construction contract may not extend the time period for a subcontractor to suspend performance
280 or terminate a construction contract under this Subsection (3).

281 (c) The suspension of performance or termination of a subcontract pursuant to this
282 Subsection (3) does not constitute a breach of contract by the subcontractor.

283 (4) (a) A subcontractor may suspend performance under a construction contract or
284 terminate a construction contract if the owner declines to approve and certify portions of the
285 contractor's billing or estimate pursuant to Subsection 13-34-201(5) for that subcontractor's work
286 or materials supplied but the reasons for that failure by the owner to approve are not the fault of
287 or are not directly related to the subcontractor's work or materials supplied.

288 (b) A subcontractor shall provide written notice to the contractor and owner at least seven
289 working days before the subcontractor's intended suspension or termination unless a shorter notice
290 period is prescribed in the construction contract between the contractor and subcontractor, or
291 subcontractor and subcontractor. A construction contract may not extend the time period for a
292 subcontractor to suspend performance or terminate a construction contract under this Subsection
293 (4).

294 (c) The suspension of performance or termination of a subcontract pursuant to this
295 Subsection (4) does not constitute a breach of contract by the subcontractor.

296 (5) A contractor or subcontractor that suspends performance as provided in this section
297 is not required to furnish further labor, materials, or services until the contractor or subcontractor
298 is paid the amount that was approved, together with any costs incurred for mobilization resulting
299 from the shutdown or restart of a project.

300 Section 9. Section **13-34-206** is enacted to read:

301 **13-34-206. Written notice.**

302 Written notice required under this chapter shall be provided by:

303 (1) delivery of a written notice in person to the individual or a member of the entity or to
304 an officer of the corporation for which it was intended; or

305 (2) sending the written notice by any means that provides written, third-party verification
306 of delivery to the last business address known to the party giving notice.

307 Section 10. Section **13-34-207** is enacted to read:

308 **13-34-207. Costs and attorneys fees.**

309 In any action or arbitration brought under this chapter, the successful party shall be awarded
310 costs and reasonable attorneys fees.

311 Section 11. Section **13-34-208** is enacted to read:

312 **13-34-208. Time of payment.**

313 For purposes of this chapter, payment is considered to have been made at the time the
314 payment is sent.

315 Section 12. Section **58-55-501** is amended to read:

316 **58-55-501. Unlawful conduct.**

317 Unlawful conduct includes:

318 (1) engaging in a construction trade, acting as a contractor, an alarm business or company,
319 or an alarm company agent, or representing oneself to be engaged in a construction trade or to be
320 acting as a contractor in a construction trade requiring licensure, unless the person doing any of
321 these is appropriately licensed or exempted from licensure under this chapter;

322 (2) acting in a construction trade, as an alarm business or company, or as an alarm
323 company agent beyond the scope of the license held;

324 (3) hiring or employing in any manner an unlicensed person, other than an employee for
325 wages who is not required to be licensed under this chapter, to engage in a construction trade for
326 which licensure is required or to act as a contractor or subcontractor in a construction trade
327 requiring licensure;

328 (4) applying for or obtaining a building permit either for oneself or another when not
329 licensed or exempted from licensure as a contractor under this chapter;

330 (5) issuing a building permit to any person for whom there is no evidence of a current
331 license or exemption from licensure as a contractor under this chapter;

332 (6) applying for or obtaining a building permit for the benefit of or on behalf of any other
333 person who is required to be licensed under this chapter but who is not licensed or is otherwise not
334 entitled to obtain or receive the benefit of the building permit;

335 (7) failing to obtain a building permit when required by law or rule;

336 (8) submitting a bid for any work for which a license is required under this chapter by a
337 person not licensed or exempted from licensure as a contractor under this chapter;

338 (9) willfully or deliberately misrepresenting or omitting a material fact in connection with
339 an application to obtain or renew a license under this chapter;

340 (10) allowing one's license to be used by another except as provided by statute or rule;

341 (11) doing business under a name other than the name appearing on the license, except as
342 permitted by statute or rule;

343 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
344 journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician,
345 or residential electrician, failing to directly supervise an apprentice under one's supervision or
346 exceeding the number of apprentices one is allowed to have under his supervision;

347 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
348 funds in payment for a specific project from an owner or any other person, which funds are to pay
349 for work performed or materials and services furnished for that specific project, and after receiving
350 the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and
351 payable to persons who performed work or furnished materials or services within a reasonable
352 period of time;

353 (14) employing as an alarm company an unlicensed individual as an alarm company agent,
354 except as permitted under the exemption from licensure provisions under Section 58-1-307;

355 (15) if licensed as an alarm company or alarm company agent, filing with the division
356 fingerprint cards for an applicant which are not those of the applicant, or are in any other way false
357 or fraudulent and intended to mislead the division in its consideration of the applicant for
358 licensure;

359 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

360 (a) the building or construction laws of this state or any political subdivision;

361 (b) the safety and labor laws applicable to a project;

362 (c) any provision of the health laws applicable to a project;

363 (d) the workers' compensation insurance laws of the state applicable to a project;

364 (e) the laws governing withholdings for employee state and federal income taxes,
365 unemployment taxes, FICA, or other required withholdings; or

366 (f) reporting, notification, and filing laws of this state or the federal government;

367 (17) aiding or abetting any person in evading the provisions of this chapter or rules
368 established under the authority of the division to govern this chapter;

369 (18) engaging in the construction trade or as a contractor for the construction of residences
 370 of up to two units when not currently registered or exempt from registration as a qualified
 371 beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;

372 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a
 373 written contract the notification required in Section 38-11-108; § [f] or [h] §

374 (20) wrongfully filing a mechanics' lien in violation of Section 38-1-25 § [†] . [~~†~~;or]
 375 [~~(21) violating the provisions of Section 13-34-202.~~] §

376 Section 13. **Effective date.**

377 This act takes effect on July 1, 2002.

378 Section 14. **Coordination clause.**

379 If this bill and H.B. 205, Division of Construction Services, both pass, it is the intent of the
 380 Legislature that the Office of Legislative Research and General Counsel in preparing the database
 381 for publication, make the following changes:

382 (1) Sections 13-34-101 through 13-34-103 and 13-34-201 through 13-34-208 be
 383 renumbered respectively as Sections 13-35-101 through 13-35-103 and 13-35-201 through
 384 13-35-208; and

385 (2) cross references to the sections renumbered by this coordination clause shall be
 386 correspondingly renumbered.

Legislative Review Note as of 11-14-01 3:45 PM

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

Office of Legislative Research and General Counsel

Committee Note

The Business and Labor Interim Committee recommended this bill.