

PROMPT PAY ACT

ARIZONA STATUTES 32-1129



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§32-1129. Definitions

- A. In sections 32-1129.01, 32-1129.02, 32-1129.03, 32-1129.04, 32-1129.05 and 32-1129.07, unless the context otherwise requires:
1. "Construction contract" means a written or oral agreement relating to the construction, alteration, repair, maintenance, moving or demolition of any building, structure or improvement or relating to the excavation of or other development or improvement to land.
 2. "Contractor" means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that has a direct contract with an owner to perform work under a construction contract.
 3. "Final completion" means the earliest of the following:
 - (a) When the work, or the work under a portion of a construction contract for which the contract states a separate price, has been completed in accordance with the terms and conditions of the construction contract.
 - (b) The date of final inspection and final written acceptance by the governmental body that issues the building permit for the building, structure or improvement.
 4. "Owner" means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that causes a building, structure or improvement to be constructed, altered, repaired, maintained, moved or demolished or that causes land to be excavated or otherwise developed or improved, whether the interest or estate of the person is in fee, as vendee under a contract to purchase, as lessee or another interest or estate less than fee.
 5. "Retention" means a portion of a progress payment otherwise due from the owner to the contractor that is withheld pursuant to the terms and conditions of a construction contract to ensure proper performance of the construction contract.
 6. "Subcontractor" means any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that has a direct contract with a contractor or another subcontractor to perform a portion of the work under a construction contract.
 7. "Substantial completion" or "substantially complete" means the earliest of the following events:
 - (a) The stage in the progress of the work on a construction contract when the work, or the work under a portion of a construction contract for which the contract states a separate price, is sufficiently complete in accordance with the terms and conditions of the construction contract so that the owner can occupy and use the work or such portion of the work for its intended purpose. When substantial completion occurs for a portion of a construction contract for which the contract states a separate price, substantial completion occurs only to the work under that portion of the contract.
 - (b) The stage in the progress of the work on a construction contract when the contractor has sufficiently completed the work or the work under a portion of a construction contract for which the contract states a separate price in accordance with the terms and conditions of the construction contract to allow the owner to occupy and use the work or such portion of the work for its intended purpose but the owner is unable to or does not occupy or use the work or such portion of the work for its intended purpose through no fault of the contractor.

(c) The date on which the governmental body that issues the building permit, if any, for a building, structure or improvement issues the written acceptance allowing the owner to occupy and use the work under a construction contract.

8. "Work" means the labor, materials, equipment and services to be provided by a contractor or subcontractor under a construction contract.

B. The definitions in this section do not apply to section 12-552.

§32-1129.01. Progress payments by owner; conditions; interest

A. By mutual agreement with a contractor, an owner may make progress payments on construction contracts of less than sixty days. An owner shall make progress payments to a contractor on all other construction contracts. Progress payments shall be made on the basis of a duly certified and approved billing or estimate of the work performed and the materials supplied during the preceding thirty day billing cycle, or such other billing cycle as stated in the construction contract. If billings or estimates are to be submitted in other than thirty day billing cycles, the construction contract and each page of the plans, including bid plans and construction plans, shall specifically identify such other billing cycle in a clear and conspicuous manner as prescribed in subsection B of this section. If any work is performed during the preceding billing cycle, a contractor shall timely submit a billing or estimate to the owner covering the work performed during that billing cycle. Except as provided in subsection C of this section, the owner shall make progress payments to the contractor within seven days after the date the billing or estimate is certified and approved pursuant to subsection D of this section. Except as provided in subsection C of this section, an owner shall release retention to the contractor within seven days after the date the billing or estimate for release of retention is certified and approved pursuant to subsection H of this section. Except as provided in subsection C of this section, an owner shall make final payment to the contractor within seven days after the billing or estimate for final payment is certified and approved pursuant to subsection K of this section.

B. A construction contract may provide for a billing cycle other than a thirty day billing cycle if the construction contract specifically sets forth such other billing cycle and either of the following applies:

1. The following legend or substantially similar language setting forth the other billing cycle appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of billings or estimates in billing cycles other than thirty days. Billings or estimates for this contract shall be submitted as follows:

2. The following legend or substantially similar language setting forth the other billing cycle appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

Notice of Extended Payment Provision

This contract allows the owner to make payment within ____ days after certification and approval of billings and estimates for progress payments, within ____ days after certification and approval of billings and estimates for release of retention and within ____ days after certification and approval of billings and estimates for final payment.

D. Except as provided in subsection G of this section, a billing or estimate for a progress payment shall be deemed certified and approved fourteen days after the owner receives the billing or estimate, unless before that time the owner or the owner's agent prepares and issues a written statement stating in reasonable detail the owner's reasons for not certifying or approving all or a portion of the billing or estimate. The owner is deemed to have received the billing or estimate when the billing or estimate is submitted to any person designated by the owner for receipt or for certification and approval of the billing or estimate. The owner may withhold from a progress payment a reasonable amount for retention. An owner may decline to certify and approve a billing or estimate or portion of a billing or estimate for any of the following reasons:

C. An owner may make progress payments, release of retention and final payment later than seven days after the date the billing or estimate is certified and approved if both:

1. The construction contract in a clear and conspicuous manner specifically provides for a later payment defined by a specified number of days after certification and approval.
2. The following legend or substantially similar language setting forth the specified number of days appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

Notice of Extended Payment Provision

This contract allows the owner to make payment within ____ days after certification and approval of billings and estimates for progress payments, within ____ days after certification and approval of billings and estimates for release of retention and within ____ days after certification and approval of billings and estimates for final payment.

D. Except as provided in subsection F of this section, a billing or estimate for a progress payment shall be deemed certified and approved fourteen days after the owner receives the billing or estimate, unless before that time the owner or the owner's agent prepares and issues a written statement stating in reasonable detail the owner's reasons for not certifying or approving all or a portion of the billing or estimate. The owner is deemed to have received the billing or estimate when the billing or estimate is submitted to any person designated by the owner for receipt or for certification and approval of the billing or estimate. The owner may withhold from a progress payment a reasonable amount for retention. An owner may decline to certify and approve a billing or estimate or portion of a billing or estimate 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 contractor or a subcontractor to make timely payments for labor, equipment and materials.

7. Damage to the owner.

8. Reasonable evidence that the construction contract cannot be completed for the unpaid balance of the construction contract sum.

E. An owner may withhold from a progress payment only an amount that is sufficient to pay the direct costs and expenses the owner reasonably expects to incur to protect the owner from loss for which the contractor is responsible and that results from any reasons set forth in writing pursuant to subsection D of this section.

F. An owner may extend the period within which the billing or estimate for progress payments, release of retention and final payment is certified and approved if both:

1. The construction contract in a clear and conspicuous manner specifically provides for an extended time period within which a billing or estimate shall be certified and approved defined by a specified number of days after the owner has received the billing or estimate.
2. The following legend or substantially similar language, setting forth the specified number of days, appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

Notice of Extended Certification and Approval Period Provision

This contract allows the owner to certify and approve billings and estimates for progress payments within ____ days after the billings and estimates are received from the contractor, for release of retention within ____ days after the billings and estimates are received from the contractor and for final payment within ____ days after the billings and estimates are received from the contractor.

G. After the effective date of a construction contract, an owner and contractor may change the number of specified days after certification and approval for the owner to make payment to the contractor or within which a billing or estimate must be certified and approved. Any contractor or subcontractor that does not provide written consent to the change will continue to be paid as previously agreed.

H. On substantial completion of the work, a contractor shall submit a billing or estimate for release of retention, except as provided in subsection F of this section, the billing or estimate for release of retention shall be deemed certified and approved within fourteen days after the owner receives the billing or estimate, unless before that time the owner or the owner's agent issues a written statement stating in reasonable detail the owner's reasons for not certifying or approving all or a portion of the billing or estimate. The owner is deemed to have received the billing or estimate when the billing or estimate is submitted to any person designated by the owner for receipt or for certification and approval of the billing or estimate, the owner may:

1. Decline to certify and approve a billing or estimate for release of retention or a portion of a billing or estimate for release of retention for failure of the contractor to complete a material requirement of the construction contract or to complete portions of the work or for any reason permitted under subsection d of this section.
2. Withhold from retention to be released only an amount not to exceed one hundred fifty per cent of the direct costs and expenses the owner reasonably expects to incur to protect the owner from loss for which the contractor is responsible and that results from the contractor's failure to complete portions of the work at the time of substantial completion or for any reasons set forth in writing pursuant to this subsection.

I. Except as provided in subsections C and H of this section, the owner shall pay the retention to the contractor within seven days after the date the billing or estimate for release of retention is certified and approved, if the owner has declined to certify or approve a billing or estimate for release of retention or a portion of a billing or estimate for release of retention pursuant to subsection H of this section, when any reason as stated in the owner's written statement has been removed, the contractor may submit a supplemental billing or estimate for all or a portion of the withheld amounts of retention pursuant to subsection H of this section. Unless otherwise agreed, the contractor may submit only one billing or estimate during each billing cycle.

J. When a contractor substantially completes all work under a portion of a construction contract for which the contract states a separate price, the contractor shall submit a billing or estimate for release of retention on that portion of the construction contract pursuant to subsection H of this section.

K. On final completion of the work, a contractor shall submit a billing or estimate for final payment, except as provided in subsection F of this section, a billing or estimate for final payment shall be deemed certified and approved fourteen days after the owner receives the billing or estimate, unless before that time the owner or owner's agent prepares and issues a written statement stating in reasonable detail the reasons the billing or estimate has not been certified or approved. The owner is deemed to have received the billing or estimate for final payment when the billing or estimate is submitted to any person designated by the owner for receipt of or for certification and approval of the billing or estimate, the owner may:

1. Decline to certify and approve a billing or estimate for final payment or a portion of a billing or estimate for final payment for failure of the contractor to complete a requirement of the construction contract or to complete portions of the work or for any reason permitted under subsection d of this section.
2. Withhold from final payment only an amount not to exceed one hundred fifty per cent of the direct costs and expenses the owner reasonably expects to incur to protect the owner from loss for which the contractor is responsible and that results from any reasons set forth in writing pursuant to this subsection.

L. Except as provided in subsection C of this section, the owner shall make final payment to the contractor within seven days after the date the billing or estimate for final payment is certified and approved, if the owner has declined to certify or approve a billing or estimate for final payment or a portion of a billing or estimate for final payment pursuant to subsection K of this section, when any reason as stated in the owner's written statement has been removed, the contractor may submit a billing or estimate for all or a portion of the withheld amounts of final payment pursuant to subsection K of this section. Unless otherwise agreed, the contractor may submit only one billing or estimate during each billing cycle.

M. Except as provided in subsection c of this section, on projects that require a federal agency's final certification or approval, the owner shall make payment in full on the construction contract within seven days after the federal agency's final certification or approval.

N. When a contractor completes all work under a portion of a construction contract for which the contract states a separate price, the contractor may timely submit a billing or estimate for final payment on that portion of the construction contract pursuant to subsection K of this section.

O. Payment shall not be required pursuant to this section unless the contractor provides the owner with a billing or estimate in accordance with the terms of the construction contract between the parties.

- P. A construction contract shall not alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payments as provided under this article.
- Q. If an owner or a third party designated by an owner as the person responsible for making progress payments, releasing retention or making final payment on a construction contract does not make a timely payment on amounts due pursuant to this section, the owner shall pay the contractor interest at the rate of one and one-half per cent a month or fraction of a month on the unpaid balance, or at a higher rate as the parties to the construction contract agree.
- R. On the written request of a subcontractor, the owner shall notify the subcontractor within five days after the issuance of a progress payment to the contractor. On the written request of a subcontractor, the owner shall notify the subcontractor within five days after the owner releases retention or makes the final payment to the contractor on the construction contract. A subcontractor's request pursuant to this subsection shall remain in effect for the duration of the subcontractor's work on the project.
- S. 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.
- T. If the owner and contractor are a single entity, that entity shall pay its subcontractors or material suppliers within fourteen days after the billing or estimate is certified and approved unless the deadlines for certification and approval or for payment have been modified pursuant to subsection C or F of this section.
- U. Notwithstanding anything to the contrary in this section, an owner may define "retention," "substantial completion" and "final completion" to have meanings different than those stated in section 32-1129, if:
1. The construction contract in a clear and conspicuous manner defines the terms.
 2. The legend set forth in subsection W of this section or substantially similar language appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans.
 3. The different meanings of retention, substantial completion and final completion are set forth in the plans, including on bid plans and construction plans, and the legend required by paragraph 2 of this subsection designates the sheet number of the plans on which the different meanings of the terms can be found.
- V. Notwithstanding anything to the contrary in this section, an owner may establish different timing and conditions for when the contractor may submit a billing or estimate for release of retention or for final payment and for when such payments shall be due, if:
1. The construction contract in a clear and conspicuous manner establishes different timing for when the contractor may submit a billing or estimate for release of retention or for final payment, or both, and for when such payments shall be due.
 2. The legend set forth in subsection W of this section or substantially similar language appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans.
 3. The different timing and conditions for when the contractor may submit a billing or estimate for release of retention or for final payment and for when such payments shall be due are set forth in the plans, including on bid plans and construction plans, and the legend required by paragraph 2 of this subsection designates the sheet number of the plans on which the different timing and conditions can be found.

- W. The legend for making one or more of the modifications set forth in subsections U and V of this section shall be as follows:
 Notice of alternate arrangements for
 Release of retention and final payment
 This contract allows the owner to make alternate arrangements for the occurrence of substantial completion, the release of retention and making of final payment. Such alternate arrangements are disclosed on sheet no. _____ of these plans.

§32-1129.02. 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 32-1129.01, 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 32-1129.01, 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 32-1129.01, 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 32-1129.04, 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 per cent 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 five hundred dollars 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.

§32-1129.03. Interruption of performance of construction contract; damages; termination of contract

- A. A contractor licensed under this chapter may interrupt the performance of a construction contract without penalty or liability for breach of contract if any applicable law or rule requires the cessation of work or the contractor encounters any hazardous substance or hazardous material which is required to be removed or contained by any applicable law or rule and either of the following apply:
 1. Any applicable law or rule prohibits the contractor from proceeding to remove or contain the hazardous material or hazardous substance unless the contractor is duly licensed and the contractor is not so licensed.
 2. The removal or containment of the hazardous material or hazardous substance cannot be accomplished without a cessation of work.
- B. A contractor licensed under this chapter whose work is impaired, impeded or prohibited under subsection A may interrupt performance of the construction contract as provided in this section only to the extent of the area affected by the hazardous materials or hazardous substances removed or contained by the owner or as otherwise required by applicable statute or rule.
- C. A person who interrupts the performance of a construction contract under subsection A is entitled to reasonable and foreseeable damages caused by the delay unless the existence of the specific hazardous substance or hazardous material is disclosed in writing prior to entering into the contract. The right to damages is conditioned upon notification within a reasonable period of time to the owner of the discovery by the person of the existence of the hazardous material or hazardous substance. This section shall not affect any legal rights and remedies otherwise existing between the parties, including but not limited to rights to damages, setoff and counterclaim.

- D. The owner may terminate the construction contract on payment to the contractor, subcontractor or other person whose work is delayed under subsection A of the amount of any services or materials supplied or expended which conform to the contract terms and specifications and the payment of damages subject to the provisions of subsection C to the date of the termination of the contract.

§32-1129.04. Construction contracts; suspension of performance; termination

- A. A contractor may suspend performance under a construction contract or terminate a construction contract for failure by the owner to make timely payment of the amount certified and approved pursuant to section 32-1129.01. A contractor shall provide written notice to the owner at least seven calendar days before the contractor's intended suspension or termination unless a shorter notice period is prescribed in the construction contract between the owner and contractor. A contractor shall not be deemed in breach of the construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract shall not extend the time period for a contractor to suspend performance or terminate a construction contract under this subsection.
- B. A subcontractor may suspend performance under a construction contract or terminate a construction contract if the owner fails to make timely payment of amounts certified and approved pursuant to section 32-1129.01 for the subcontractor's work and the contractor fails to pay the subcontractor for the certified and approved work. A subcontractor shall provide written notice to the contractor and owner at least three calendar days before the subcontractor's intended suspension or termination unless a shorter notice period is prescribed in the construction contract between the contractor and subcontractor. A subcontractor shall not be deemed in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract shall not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection.
- C. A subcontractor may suspend performance under a construction contract or terminate a construction contract if the owner makes timely payment of amounts certified and approved pursuant to section 32-1129.01 for the subcontractor's work but the contractor fails to pay the subcontractor for the certified and approved work. A subcontractor shall provide written notice to the contractor and owner at least seven calendar days before the subcontractor's intended suspension or termination unless a shorter notice period is prescribed in the construction contract between the contractor and subcontractor. A subcontractor shall not be deemed in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract shall not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection.

- D. A subcontractor may suspend performance under a construction contract or terminate a construction contract if the owner declines to approve and certify portions of the contractor's billing or estimate pursuant to section 32-1129.01 for that subcontractor's work but the reasons for that failure by the owner to approve and certify are not the fault of or directly related to the subcontractor's work. A subcontractor shall provide written notice to the contractor and the owner at least seven calendar days before the subcontractor's intended suspension or termination unless a shorter notice period is prescribed in the construction contract between the contractor and subcontractor. A subcontractor shall not be deemed in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract shall not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection.
- E. A contractor or subcontractor that suspends performance as provided in this section is not required to furnish further labor, materials or services until the contractor or subcontractor is paid the amount that was certified and approved, together with any costs incurred for mobilization resulting from the shutdown or start-up of a project.
- F. In any action or arbitration brought pursuant to this section, the successful party shall be awarded costs and attorney fees in a reasonable amount.
- G. Written notice required under this section shall be deemed to have been provided if either of the following occurs:
1. The written notice is delivered in person to the individual or a member of the entity or to an officer of the corporation for which it was intended.
 2. The written notice is delivered at or sent by any means that provides written, third party verification of delivery to the last business address known to the party giving notice.

§32-1129.05. Construction contracts; void provisions

- A. The following are against this state's public policy and are void and unenforceable:
1. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract that makes the contract subject to the laws of another state or that requires any litigation arising from the contract to be conducted in another state.
 2. A provision, covenant, clause or understanding in, collateral to or affecting a construction contract stating that a party to the contract cannot suspend performance under the contract or terminate the contract if another party to the contract fails to make prompt payments under the contract pursuant to section 32-1129, 32-1129.01 or 32-1129.02.
- B. Any mediation, arbitration or other dispute resolution proceeding arising from a construction contract for work performed in this state shall be conducted in this state.

§32-1129.06. Applicability to state and political subdivisions

Sections 32-1129.01, 32-1129.02, 32-1129.04 and 32-1129.05 do not apply to this state or political subdivisions of this state.

§32-1129.07. Applicability to construction of a dwelling for an owner-occupant; definitions

- A. The requirements in section 32-1129.01 do not apply to construction contracts for the construction of a dwelling for an owner-occupant unless the following legend or substantially similar language appears in clear and conspicuous type on the front page of each billing or estimate from the contractor to the owner-occupant:

Notice to owner of applicability of Arizona prompt pay act (Notice required by Arizona revised statutes section 32-1129.07)

Attention: your obligations to pay your contractor are subject to the Arizona prompt pay act. That act is set forth in section 32-1129, Arizona revised statutes, and sections 32-1129.01 through 32-1129.07, Arizona revised statutes. The full texts of the statutes are available at your local public law library or the internet. Under that act, you have the right to withhold all or a portion of a payment to a contractor for a variety of reasons, including defective construction work that has not been corrected. However, in order to do so, you must issue a written statement setting forth in reasonable detail your reasons for withholding payments within fourteen (14) days after the date you receive a billing or estimate. If you fail to issue the written statement within that period, the billing or estimate will be deemed approved. Once the billing or estimate is deemed approved, you must pay the billing or estimate within seven (7) days. Generally, you are limited by the act to withholding only an amount that is sufficient to pay the direct costs and expenses you reasonably expect to incur to protect you from loss for which the contractor is responsible. You are encouraged to read the act in full to know your obligations and rights.

- B. For the purposes of this section, "dwelling" and "owner-occupant" have the same meanings prescribed in section 33-1002.