

SENATE SUBSTITUTE  
FOR  
HOUSE BILL NO. 3205  
AN ACT

To repeal sections 431.180, 436.300, and 436.303, RSMo, and to enact in lieu thereof seven new sections relating to special purpose contracts, with penalty provisions.

---

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 431.180, 436.300, and 436.303, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 379.135, 436.300, 436.303, 436.575, 436.580, 436.585, and 436.590, to read as follows:

379.135. 1. Upon payment by an insurer of all or any part of a claimant's property damage claim, legal title to the portion of the claim paid shall vest in the insurer to the extent of such payment. No assignment or other action by the claimant shall be required for the insurer to enforce its legal title. The claimant shall retain legal title only to that portion of the property damage claim not paid by the insurer.

2. As used in this section, "assignment agreement" means any instrument by which post-loss benefits under any policy of insurance covering property, including, but not limited to, any right of action against the insurer or any proceeds acquired from the insurer are assigned, transferred, or acquired in any other manner, in whole or in part, to or from a person providing services, including, but not limited to, communicating with an insurer or on an insured's behalf or inspecting, estimating, protecting, repairing, restoring, or replacing the property or mitigating against further damage to the property.

20           3. (1) A person shall not solicit or accept an  
21 assignment, in whole or in part, of any post-loss insurance  
22 benefit for property damage under a contract of insurance.  
23 An assignment agreement is against public policy and is null  
24 and void, and any contract entered into in violation of this  
25 section shall be void and unenforceable.

26           (2) The provisions of this subsection shall not apply  
27 to an assignment, transfer, pledge, or conveyance granted to  
28 a financial institution, mortgagee, lienholder, or a  
29 subsequent purchaser of property.

30           (3) The provisions of this subsection shall not apply  
31 to any covenant not to execute or contract to limit recovery  
32 under section 537.065.

33           4. A violation of subsection 3 of this section shall  
34 be considered a level two violation under section 374.049.

35           5. Nothing in this section shall be construed to  
36 prohibit an insured from authorizing or directing payment  
37 to, or paying, a person for services, materials, or any  
38 other thing which may be, or is, covered under an insurance  
39 policy. Insurers shall issue payment directly to a person  
40 for services, materials, and other items that are covered  
41 under an insurance policy, when the insured agrees that any  
42 person providing such services should be paid directly,  
43 subject to applicable liens.

          436.300. 1. As used in sections 436.300 to 436.336,  
2 the following terms mean:

3           (1) "Construction", furnishing labor, equipment,  
4 material, or supplies used, leased, or consumed for the  
5 design, construction, alteration, renovation, repair, or  
6 maintenance of a building, structure, access, road, bridge,  
7 all utilities' lines including, but not limited to, water  
8 lines, sewer lines, oil lines, gas lines, and fiber optic

9 lines, appurtenance or other improvement to real property  
10 including any moving, demolition, design, or excavation;

11 (2) "Contract", a contract or agreement concerning  
12 construction made and entered into by and between an owner  
13 and a contractor, a contractor and a subcontractor, or a  
14 subcontractor and another subcontractor;

15 (3) "Contractor", a person performing construction and  
16 having a contract with an owner or tenant of the real  
17 property;

18 (4) "Owner", any person or entity holding a record  
19 ownership or beneficial interest in real property at the  
20 time any contractor, subcontractor or materialman agrees or  
21 is requested to furnish any work, labor, material, fixture,  
22 engine, boiler, or machinery, who contracts for improvements  
23 or knowingly permits a third party to contract for  
24 improvements, on the real property;

25 (5) "Residential real property":

26 (a) Shall include:

27 a. Any parcel of real estate improved or unimproved  
28 that is intended to be used or is used for the construction  
29 of residential structures and related improvements which  
30 support the residential use of the land where such  
31 residential structures are intended, upon completion, to be  
32 occupied or sold. Such residential structures shall include  
33 any residential dwelling consisting of sixteen units or  
34 less, including condominiums, townhouses, or cooperatives;  
35 and

36 b. Any improvements, including streets, sidewalks,  
37 utility services, improved common areas, or other  
38 facilities, which are constructed within the defined  
39 residential use structures, or are serving such defined  
40 residential use structures, or are located on or within any

41 common ground, common elements, or the separate and  
42 identifiable parcels identified for residential use;

43 (b) Shall not include:

44 a. Any mixed use or planned unit developments except  
45 to the extent that any residential uses of such developments  
46 are, or will be, located on separate, identifiable parcels  
47 from the nonresidential uses and this exception shall only  
48 apply to those residential uses; or

49 b. Multifamily rental, student housing or dormitories,  
50 or assisted living, skilled nursing, or similar facilities;

51 (6) "Subcontractor", any person of every tier  
52 performing construction covered by a contract between an  
53 owner and a contractor but not having a contract with the  
54 owner;

55 (7) "Substantial completion", the same meaning as such  
56 term is described in section 436.327.

57 2. For the purposes of sections 436.300 to 436.336,  
58 design or construction work shall include design,  
59 construction, alteration, repair, or maintenance of any  
60 building, roadway, or other structure or improvement to real  
61 property, or demolition or excavation connected therewith,  
62 and shall include the furnishing of surveying,  
63 architectural, engineering or landscape design, planning or  
64 management services, labor or materials, in connection with  
65 such work.

66 3. Notwithstanding any other law to the contrary, all  
67 parties to any contract or agreement for private  
68 construction work that is between any owner and any  
69 contractor, or between any contractor and any subcontractor,  
70 or between any subcontractor and any sub-subcontractor, or  
71 any supplier at whatever tier for construction,  
72 reconstruction, maintenance, alteration, or repair for a  
73 private owner of any building, improvement, structure,

74 private road, appurtenance, or appliance, including moving,  
75 demolition, or any excavating connected therewith, shall  
76 make payment in accordance with the terms of such contract  
77 or agreement, provided such terms are not inconsistent with  
78 the provisions of sections 436.300 to 436.336.

79 4. (1) An owner shall make progress payments to the  
80 contractor and any professional engineer, architect,  
81 landscape architect, or land surveyor on at least a monthly  
82 basis, or on a milestone basis as the work progresses, or on  
83 a lump sum basis according to the terms of the lump sum  
84 contract. Except in the case of lump sum and milestone  
85 contracts, payments shall be based upon estimates prepared  
86 at least monthly of work performed and material delivered or  
87 purchased and stored for the project per the requirements of  
88 the contract documents. Retainage withheld on any  
89 construction contract or subcontract for private  
90 construction projects shall comply with the requirements set  
91 forth in section 436.303.

92 (2) Payments shall be considered received within the  
93 context of this section when the funds are:

94 (a) Physically delivered;

95 (b) Posted at the post office or mailed by registered  
96 mail;

97 (c) Mailed by certified mail with return receipt  
98 requested or a certificate of mailing; or

99 (d) Electronically transferred.

100 (3) If in the discretion of the owner and when  
101 applicable under the contract, the project architect or  
102 engineer, and the contractor, it is determined that a  
103 subcontractor's performance has been completed and the  
104 subcontractor can be released prior to substantial  
105 completion of the contract without risk to the owner, the  
106 contractor shall request such adjustment in retainage, if

107 any, from the owner as necessary to enable the contractor to  
108 pay the subcontractor in full. The owner may reduce or  
109 eliminate retainage on any contract payment if in the  
110 owner's opinion the work is proceeding satisfactorily. The  
111 contractor shall have no obligation to release retainage to  
112 a subcontractor unless and until the contractor has received  
113 corresponding retainage from the owner for that  
114 subcontractor's work. If retainage is released and there  
115 are any remaining minor items to be completed, an amount  
116 equal to one hundred fifty percent of the value of each item  
117 as determined by the owner's duly authorized representatives  
118 shall be withheld until such item or items are completed.

119 (4) Upon substantial completion, the owner shall pay  
120 at least ninety-eight percent of the retainage, less any  
121 offsets or deductions authorized in the contract or  
122 otherwise authorized by law, to the contractor. The  
123 contractor shall pay the subcontractor or supplier after  
124 substantial completion of the contract work and acceptance  
125 by the owner's authorized contract representative. Such  
126 payment shall be made within thirty days after acceptance  
127 and the invoice and all other appropriate documentation and  
128 certifications in complete and acceptable form are provided,  
129 as may be required by the contract documents. If the owner  
130 or the owner's representative determines the work is not  
131 substantially completed and accepted, the owner or the  
132 owner's representative shall provide a written explanation  
133 of why the work is not considered substantially completed  
134 and accepted within fourteen calendar days to the  
135 contractor, who shall then provide such notice to the  
136 subcontractor or suppliers responsible for such work. If  
137 such written explanation is not given by the owner, the  
138 owner shall pay at least ninety-eight percent of the  
139 retainage within thirty calendar days. If at that time

140 there are any remaining minor items to be completed, an  
141 amount equal to one hundred fifty percent of the value of  
142 each item as determined by the owner or owner's  
143 representative shall be withheld until such items are  
144 completed.

145 (5) All estimates or invoices for supplies and  
146 services purchased, approved, and processed or final  
147 payments shall be paid promptly and shall be subject to late  
148 payment charges as provided in this section. Except as  
149 provided in subdivision (4) of this subsection, if the  
150 contractor has not been paid within thirty days as set forth  
151 in this section, the owner shall pay the contractor, in  
152 addition to the payment due to the contractor, interest at  
153 the rate of one and one half percent per month calculated  
154 from the expiration of the thirty-day period until fully  
155 paid. Any person who has not been paid may bring an action  
156 in a court of competent jurisdiction against a person who  
157 has failed to pay. The court may, in addition to any other  
158 award for damages, award interest at the rate of up to one  
159 and one-half percent per month from the date payment was due  
160 under the terms of the contract and reasonable attorney's  
161 fees to the prevailing party. If the parties elect to  
162 resolve the dispute by arbitration under section 435.350, or  
163 the corresponding provisions of the Federal Arbitration Act,  
164 the arbitrator may award any remedy that a court is  
165 authorized to award hereunder.

166 (6) Within two business days after payment from the  
167 owner to the contractor for one or more subcontractors'  
168 work, the owner shall notify each subcontractor in writing  
169 or electronically. When a contractor receives any payment,  
170 the contractor shall pay each subcontractor and material  
171 supplier in proportion to the work completed by each  
172 subcontractor and material supplier their application less

173 any retainage as set forth in section 436.303. If the  
174 contractor receives less than the full payment due under the  
175 construction contract, the contractor shall be obligated to  
176 disburse on a pro rata basis those funds received, with the  
177 contractor, subcontractors, and material suppliers each  
178 receiving a prorated portion based on the amount of  
179 payment. When, however, the owner does not release the full  
180 payment due under the contract because there are specific  
181 areas of work or materials the owner is rejecting or because  
182 the owner has otherwise determined such areas are not  
183 suitable for payment, those specific subcontractors or  
184 suppliers involved shall not be paid for that portion of the  
185 work rejected or deemed not suitable for payment, provided  
186 the owner, or the owner's representative, gives a written  
187 explanation to the contractor, subcontractor, or supplier  
188 involved as to why the work or supplies were rejected or  
189 deemed not suitable for payment, and all other  
190 subcontractors and suppliers shall be paid in full.

191 (7) If the contractor, without reasonable cause, fails  
192 to make any payment to his or her subcontractors and  
193 material suppliers within fifteen days after receipt of  
194 payment under the construction contract, the contractor  
195 shall pay to his or her subcontractors and material  
196 suppliers, in addition to the payment due to them, interest  
197 in the amount of one and one-half percent per month,  
198 calculated from the expiration of the fifteen-day period  
199 until fully paid. This subdivision shall also apply to any  
200 payments made by subcontractors and material suppliers to  
201 their subcontractors and material suppliers and to all  
202 payments made to lower-tier subcontractors and material  
203 suppliers throughout the contracting chain.

204 (8) The owner shall make final payment of all moneys  
205 owed to the contractor, including any retainage withheld

206 under subdivision (4) of this subsection, less any offsets  
207 or deductions authorized in the contract or otherwise  
208 authorized by law, within thirty days of the due date.

209 Final payment shall be considered due upon the earliest of  
210 the following events:

211 (a) Completion of the project and filing with the  
212 owner of all required documentation and certifications, in  
213 complete and acceptable form, in accordance with the terms  
214 and conditions of the contract; or

215 (b) The project reaches substantial completion.

216 5. Nothing in this section shall prevent the  
217 contractor or subcontractor, at the time of application or  
218 certification to the owner or contractor, from withholding  
219 such applications or certifications to the owner or  
220 contractor for payment to the subcontractor or material  
221 supplier. Amounts intended to be withheld shall not be  
222 included in such applications or certifications to the owner  
223 or contractor. Reasons for withholding such applications or  
224 certifications shall include, but not be limited to, the  
225 following:

226 (1) Unsatisfactory job progress;

227 (2) Defective construction work or material not  
228 remedied;

229 (3) Disputed work;

230 (4) Failure to comply with other material provisions  
231 of the contract or other specific contractual condition to  
232 payment;

233 (5) Third-party claims filed or reasonable evidence  
234 that a claim will be filed;

235 (6) Failure of the subcontractor to make timely  
236 payments for labor, equipment, and materials;

237 (7) Damage to a contractor or another subcontractor or  
238 material supplier; or

239           (8) Reasonable evidence that the contract cannot be  
240 completed for the unpaid balance of the subcontract sum or a  
241 reasonable amount for retention, not to exceed the initial  
242 percentage retained by the owner.

243           6. If the contractor determines, after application or  
244 certification has been made and after payment has been  
245 received from the owner, or after payment has been received  
246 by a contractor based upon the owner's estimate of materials  
247 in place and work performed as provided by contract, that  
248 all or a portion of the moneys needs to be withheld from a  
249 specific subcontractor or material supplier for any of the  
250 reasons enumerated in this section, and such moneys are  
251 withheld from such subcontractor or material supplier, such  
252 undistributed amounts shall be specifically identified in  
253 writing and deducted from the next application or  
254 certification made to the owner or from the next estimate by  
255 the owner of payment due to the contractor until a  
256 resolution of the matter has been achieved. Disputes shall  
257 be resolved in accordance with the terms of the contract  
258 documents. Upon such resolution the amounts withheld by the  
259 contractor from the subcontractor or material supplier shall  
260 be included in the next application or certification made to  
261 the owner or the next estimate by the owner and shall be  
262 paid promptly in accordance with the provisions of this  
263 section. This subsection shall also apply to applications  
264 or certifications made by subcontractors or material  
265 suppliers to the contractor and throughout the various tiers  
266 of the contracting chain.

267           7. For contracts that provide for payments to the  
268 contractor based upon the owner's estimate of materials in  
269 place and work performed rather than applications or  
270 certifications submitted by the contractor, the owner shall  
271 pay the contractor within thirty days following the date

272 upon which the estimate is required by contract to be  
273 completed by the owner, the amount due less a retainage as  
274 set forth in section 436.303. All such estimates by the  
275 owner shall be paid promptly and shall be subject to late  
276 payment charges as provided in this subsection. After the  
277 thirtieth day following the date upon which the estimate is  
278 required by contract to be completed by the owner, the owner  
279 shall pay the contractor, in addition to the payment due to  
280 the contractor, interest at a rate of one and one-half  
281 percent per month calculated from the expiration of the  
282 thirty-day period until fully paid.

283 8. The owner shall pay or cause to be paid to any  
284 professional engineer, architect, landscape architect, or  
285 land surveyor the amount due within thirty days following  
286 the receipt of an invoice prepared and submitted in  
287 accordance with the contract terms. In addition to the  
288 payment due, the owner shall pay interest at the rate of one  
289 and one-half percent per month calculated from the  
290 expiration of the thirty-day period until fully paid.

291 9. Nothing in this section shall prevent the owner  
292 from withholding payment or final payment from the  
293 contractor or a subcontractor or material supplier. Reasons  
294 for withholding payment or final payment shall include, but  
295 not be limited to:

- 296 (1) Liquidated damages;  
297 (2) Unsatisfactory job progress;  
298 (3) Defective construction work or material not  
299 remedied;  
300 (4) Disputed work;  
301 (5) Failure to comply with any material provision of  
302 the contract or other specific contractual condition for  
303 payment;

304           (6) Third-party claims filed or reasonable evidence  
305 that a claim will be filed;

306           (7) Failure to make timely payments for labor,  
307 equipment, or materials;

308           (8) Damage to a contractor, subcontractor, or material  
309 supplier;

310           (9) Reasonable evidence that a subcontractor or  
311 material supplier cannot be fully compensated under its  
312 contract with the contractor for the unpaid balance of the  
313 contract sum; or

314           (10) Citation by the enforcing authority for acts of  
315 the contractor or subcontractor that do not comply with any  
316 material provision of the contract and that result in a  
317 violation of any federal, state, or local law, regulation,  
318 or ordinance applicable to that project causing additional  
319 costs or damages to the owner.

320           10. In addition to contractor's rights under  
321 subsection 5 of this section, subcontractors, whether or not  
322 specifically required in the contract, specifically grant  
323 the contractor the right to hold future payments until lien  
324 waivers are provided and until the contractor receives  
325 confirmation of account status from any of the parties  
326 previously noted. The contractor shall have the right to  
327 remedy unpaid balances associated with the subcontractors'  
328 obligations through all legal means noted in the contract  
329 including, but not limited to, issuing joint checks between  
330 the subcontractor and third party vendors. In the event  
331 that the contractor is required to issue a payment in the  
332 form of a joint check, a processing fee shall be charged to  
333 the subcontractor not exceeding two hundred fifty dollars  
334 and withheld from future payments.

335 11. Nothing in this section shall be construed to  
336 require direct payment by an owner to a subcontractor or  
337 supplier.

338 12. Notwithstanding any other provisions in this  
339 section to the contrary, no late payment interest shall be  
340 due and owing for payments that are withheld in good faith  
341 for reasonable cause under subsections 6, 9, and 10 of this  
342 section. If it is determined by a court of competent  
343 jurisdiction that a payment that was withheld under  
344 subsections 6, 9, and 10 of this section was not withheld in  
345 good faith for reasonable cause, the court may impose  
346 interest at the rate of one and one-half percent per month  
347 calculated from the date of the invoice and may, in its  
348 discretion, award reasonable attorney's fees to the  
349 prevailing party. In any civil action or part of a civil  
350 action brought under this section, if a court determines  
351 after a hearing for such purpose that the cause was  
352 initiated, or a defense was asserted, or a motion was filed,  
353 or any proceeding therein was done frivolously and in bad  
354 faith, the court shall require the party who initiated such  
355 cause, asserted such defense, filed such motion, or caused  
356 such proceeding to be had to pay the other party named in  
357 such action the amount of the costs attributable thereto and  
358 reasonable expenses incurred by such party, including  
359 reasonable attorney's fees.

360 13. Nothing in this section shall be construed to  
361 prevent any person who has not been paid in accordance with  
362 this section from bringing an action in a court of competent  
363 jurisdiction against a person who has failed to pay.

364 14. The provisions of this section shall not apply to  
365 contracts for construction or design work on residential  
366 real property.

436.303. A contract or agreement for private design or  
2 construction work may include a provision for the retainage  
3 of a portion of any payment due from the owner to the  
4 contractor, not to exceed ten percent of the amount of such  
5 payment due pursuant to the contract or agreement, to ensure  
6 the proper performance of the contract or agreement,  
7 provided that the contract may provide that if the  
8 contractor's performance is not in accordance with the terms  
9 of the contract or agreement, the owner may retain  
10 additional sums to protect the owner's interest in  
11 satisfactory performance of the contract or agreement.  
12 There shall be no retainage if the contractor and each  
13 subcontractor at any tier are bonded for both payment and  
14 performance. The amount or amounts so retained by the owner  
15 shall be referred to in sections 436.300 to 436.336 as  
16 "retainage", and shall be held by the owner in trust for the  
17 benefit of the contractor and contractor's subcontractors,  
18 sub-subcontractors, and suppliers at whatever tier who are  
19 not in default, in proportion to their respective  
20 interests. Such retainage shall be subject to the  
21 conditions and limitations listed in sections 436.300 to  
22 436.336.

436.575. As used in sections 436.575 to 436.590, the  
2 following terms mean:

3 (1) "Agent of a foreign principal", any person who  
4 acts as an agent, representative, employee, or servant, or  
5 any person who acts in any other capacity at the order,  
6 request, or under the direction or control, of a foreign  
7 principal or of a person any of whose activities are  
8 directly or indirectly supervised, directed, controlled,  
9 financed, or subsidized in whole or in major part by a  
10 foreign principal, and who directly or through any other  
11 person acts in the interest of such foreign principal;

12 (2) "Foreign principal", any country, government,  
13 person, sovereign wealth fund, or entity listed as a  
14 "foreign country of concern" under 42 U.S.C. 19221(a)(1) or  
15 an organization designated by the United States Secretary of  
16 State as a terrorist organization;

17 (3) "Litigation expenses", costs incurred to pursue a  
18 civil action, including, but not limited to, court costs,  
19 filing fees, attorney's fees, expert witness fees, travel  
20 expenses, and expenses related to identifying or soliciting  
21 potential clients to participate in the litigation before,  
22 during, or after filing or resolving the civil action;

23 (4) "Litigation funder", a person or entity that  
24 enters a litigation funding agreement or any person or  
25 entity who has a direct or indirect right to receive  
26 compensation from a litigation funding agreement. A  
27 litigation funder does not include:

28 (a) A parent, sibling, spouse, grandparent,  
29 grandchild, or child related by blood, adoption, or marriage  
30 of the party being funded;

31 (b) An attorney who, at the time money is provided to  
32 or on behalf of a client under a litigation funding  
33 agreement, has an attorney-client relationship with the  
34 party concerning the party's civil action;

35 (c) A licensed or registered financial institution  
36 that does not receive, in consideration for loaning money to  
37 any person, a right to receive payment from the value of any  
38 proceeds or other consideration realized from any judgment,  
39 award, settlement, verdict, or other form of monetary relief  
40 any person may receive or recover in relation to any civil  
41 action;

42 (d) A nonprofit entity that provides pro bono legal  
43 services to the party with no right to receive payment from  
44 the amount of any judgment, award, settlement, verdict, or

45 other form of monetary compensation obtained in the civil  
46 action. Court ordered awards of costs or attorney's fees to  
47 nonprofit legal organizations shall not be affected by this  
48 section; or

49 (e) A person or entity that provides money to a party  
50 for litigation solely for purposes other than funding  
51 litigation expenses;

52 (5) "Litigation funding agreement", with respect to  
53 any civil action or group of civil actions, any written  
54 agreement:

55 (a) Whereby a third party agrees to provide funds to  
56 one of the named parties, or any law firm affiliated with  
57 the action or group of civil actions; and

58 (b) Which creates a direct or collateralized interest  
59 in the proceeds of a civil action or group of civil actions,  
60 by settlement, verdict, judgment, or otherwise, and whose  
61 interest is based, in whole or in part, on a funding-based  
62 obligation to the action or group of actions or the  
63 appearing counsel or any contractual co-counsel or the law  
64 firms of the counsel or co-counsel executed with:

65 a. Any attorney representing a party;

66 b. Any co-counsel in the litigation with a contingent  
67 fee interest in the representation of that party; or

68 c. Any third-party who has a collateral-based interest  
69 in the contingency fees of the counsel or co-counsel firm  
70 related in whole or part to the fees derived from  
71 representing that party.

436.580. 1. A foreign principal or agent of a foreign  
2 principal shall not engage in litigation funding in this  
3 state.

4 2. A foreign principal or agent of a foreign principal  
5 shall not, directly or indirectly, invest in, finance, fund,  
6 or loan money to a litigation funder in this state.

7           3. A person engaged in litigation funding in this  
8 state may not, directly or indirectly:

9           (1) Become affiliated with or maintain an affiliation  
10 with a principal or agent of a foreign principal; or

11           (2) Allow a foreign principal or agent of a foreign  
12 principal to invest in, maintain an ownership interest in,  
13 or exercise any control over a litigation funding agreement  
14 or litigation funded through a litigation funding agreement.

436.585. 1. A litigation funder shall have a  
2 fiduciary duty to a party in a civil action if it has  
3 provided litigation funding for that civil action.

4           2. No litigation funder shall engage in any act,  
5 practice, or course of business that is inconsistent with  
6 the litigation funder's fiduciary duty pursuant to  
7 subsection 1 of this section.

8           3. A litigation funder shall be jointly liable for any  
9 award or order imposing or assessing costs or monetary  
10 sanctions against a funded party or funded party's attorney  
11 arising from or relating to the funded civil action.

436.590. 1. It shall be an unlawful practice pursuant  
2 to section 407.020 to violate any provision of section  
3 436.575 to 436.590, and pursuant to sections 407.010 to  
4 407.130, the violation shall be subject to penalties,  
5 remedies, and procedures provided in sections 407.010 to  
6 407.130. The remedies available in this section are  
7 cumulative and in addition to any other remedies available  
8 by law.

9           2. Any person who willfully and knowingly engages in  
10 any act or practice declared to be unlawful by any provision  
11 of section 436.580 shall be guilty of a class E felony.

12           3. The attorney general may institute a legal action  
13 to prohibit a person who violates any provision of section

14 436.580 or 436.585 from providing litigation funding in this  
15 state.

16 4. A litigation funding agreement that is entered into  
17 in violation of section 436.580 is void and unenforceable.

2 [431.180. 1. All persons who enter into a  
3 contract for private design or construction work  
4 after August 28, 1995, shall make all scheduled  
5 payments pursuant to the terms of the contract.

6 2. Any person who has not been paid in  
7 accordance with subsection 1 of this section may  
8 bring an action in a court of competent  
9 jurisdiction against a person who has failed to  
10 pay. The court may in addition to any other  
11 award for damages, award interest at the rate of  
12 up to one and one-half percent per month from  
13 the date payment was due pursuant to the terms  
14 of the contract, and reasonable attorney fees,  
15 to the prevailing party. If the parties elect  
16 to resolve the dispute by arbitration pursuant  
17 to section 435.350, the arbitrator may award any  
18 remedy that a court is authorized to award  
19 hereunder.

20 3. The provisions of this section shall  
21 not apply to contracts for private construction  
22 work for the building, improvement, repair or  
23 remodeling of owner-occupied residential  
24 property of four units or less.

25 4. For purposes of this section, design or  
26 construction work shall include design,  
27 construction, alteration, repair or maintenance  
28 of any building, roadway or other structure or  
29 improvement to real property, or demolition or  
30 excavation connected therewith, and shall  
31 include the furnishing of surveying,  
32 architectural, engineering or landscape design,  
33 planning or management services, labor or  
materials, in connection with such work.]