

AN ACT

To amend section 4113.62 of the Revised Code to specify
that a construction contract containing a provision
subjecting the contract to the laws of another state is void.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 4113.62 of the Revised Code be amended to read as follows:

Sec. 4113.62. (A) Any provision of a construction contract, agreement, or understanding that waives rights under a surety bond is void and unenforceable as against public policy.

(B) Any provision of a construction contract, agreement, or understanding, or specification or other documentation that is made a part of a construction contract, agreement, or understanding, that waives any pending or asserted claim on the basis of final payment made from one person to another for the construction contract, agreement, or understanding, is void and unenforceable as against public policy, when the person against whom the claim is pending or asserted has received notice of that pending or asserted claim. Nothing in this division precludes parties to a construction contract, agreement, or understanding from entering into a subsequent settlement agreement arising from a claim under that construction contract, agreement, or understanding.

(C)(1) Any provision of a construction contract, agreement, or understanding, or specification or other documentation that is made a part of a construction contract, agreement, or understanding, that waives or precludes liability for delay during the course of a construction contract when the cause of the delay is a proximate result of the owner's act or failure to act, or that waives any other remedy for a construction contract when the cause of the delay is a proximate result of the owner's act or failure to act, is void and unenforceable as against public policy.

(2) Any provision of a construction subcontract, agreement, or understanding, or specification or other documentation that is made part of a construction subcontract, agreement, or understanding, that waives or precludes liability for delay during the course of a construction subcontract

when the cause of the delay is a proximate result of the owner's or contractor's act or failure to act, or that waives any other remedy for a construction subcontract when the cause of the delay is a proximate result of the owner's or contractor's act or failure to act, is void and unenforceable as against public policy.

(D)(1) Any provision of a construction contract, agreement, understanding, or specification or other document or documentation that is made a part of a construction contract, subcontract, agreement, or understanding for an improvement, or portion thereof, to real estate in this state that makes the construction contract or subcontract, agreement, or other understanding subject to the laws of another state is void and unenforceable as against public policy.

(2) Any provision of a construction contract, agreement, understanding, specification, or other document or documentation that is made a part of a construction contract, subcontract, agreement, or understanding for an improvement, or portion thereof, to real estate in this state that requires any litigation, arbitration, or other dispute resolution process provided for in the construction contract, subcontract, agreement, or understanding to occur in another state is void and unenforceable as against public policy. Any litigation, arbitration, or other dispute resolution process provided for in the construction contract, subcontract, agreement, or understanding shall take place in the county or counties in which the improvement to real estate is located or at another location within this state mutually agreed upon by the parties.

(3) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO APPLY TO ANY PROMISSORY NOTE, LOAN AGREEMENT, MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS, OR ANY OTHER CONTRACT, AGREEMENT, UNDERSTANDING, OR OTHER DOCUMENT OR DOCUMENTATION TO WHICH A FINANCIAL INSTITUTION, AS DEFINED IN SECTION 5725.01 OF THE REVISED CODE, OR ANY AFFILIATE, AS DEFINED IN DIVISION (A)(1) OF SECTION 1109.53 OF THE REVISED CODE, IS A PARTY.

(E) No construction contract, agreement, or understanding that makes payment from a contractor to a subcontractor or materials supplier, or from a subcontractor to a materials supplier, lower tier subcontractor, or lower tier materials supplier contingent or conditioned upon receipt of payment from any other person shall prohibit a person from filing a claim to protect rights under sections 153.56, 1311.06, and 1311.26 of the Revised Code from expiring during the pendency of receipt of payment.

~~(E)~~(F) Nothing in this section shall be construed to create a liability for a surety on a bond that is greater than that of its principal, or limit the availability to a surety of any defenses available to its principal.

~~(F)~~(G) As used in this section:

(1) "Contractor" and "lower tier subcontractor" have the same meanings as in section 4113.61 of the Revised Code.

(2) "Materials supplier" includes any person by whom any materials are furnished in furtherance of an improvement.

(3) "Lower tier materials supplier" means a materials supplier who is not in privity of contract with a contractor but is in privity of contract with another subcontractor or a materials supplier.

(4) "Subcontractor," "improvement," and "materials" have the same meanings as in section 1311.01 of the Revised Code.

(5) "CONSTRUCTION CONTRACT" MEANS A CONTRACT OR AGREEMENT FOR THE DESIGN, PLANNING, CONSTRUCTION, ALTERATION, REPAIR, MAINTENANCE, MOVING, DEMOLITION, OR EXCAVATION OF A BUILDING, STRUCTURE, HIGHWAY, ROAD, APPURTENANCE, OR APPLIANCE SITUATED ON REAL ESTATE LOCATED IN THIS STATE.

SECTION 2. That existing section 4113.62 of the Revised Code is hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 491

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____