

CHAPTER 269
FORMERLY
HOUSE BILL NO. 109
AS AMENDED BY
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 6 RELATING TO BUILDING CONSTRUCTION AND PAYMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Section 1. Amend §3507 (e), Title 6, Delaware Code, by making insertions as shown by underlining and deletions as shown by strike through as follows:

(e) ~~If a subcontractor performs in accordance with the provisions of its contract, the subcontractor shall be entitled to payment from the party with whom the subcontractor has contracted in accordance with the payment terms of its contract or this section, whichever applies; provided, however, that a provision in a contingent payment clause in a construction contract which:~~ It shall be against public policy and shall be void and unenforceable for any provision of a construction contract or subcontract agreement to:

- (1) States that a contractor assumes the risk of nonpayment of the owner;
- (2) Requires a contractor to waive any statutory or other right to commence litigation or arbitration until payment is made to the general or prime contractor;
- (3) Makes subject to payment by the owner the obligation of a contractor and its surety under any payment or performance bond to make any payment to a claimant under such bond; ~~or~~
- (4) States that a contractor relies on the credit of the owner and not on the credit of the general or prime contractor or of a bonding company; or
- (5) Require a dispute or claim between the contractor and subcontractor to be governed or subject to the laws of a state other than Delaware or require litigation, arbitration, mediation or other dispute resolution processes to occur in a state other than Delaware.

~~is contrary to the public policy of this State and shall be void and unenforceable.~~

Approved June 25, 2012