



Lisa Sandberg

Final Analysis
Legislative Service Commission

Sub. H.B. 491

123rd General Assembly
(As Passed by the General Assembly)

Reps. Willamowski, Netzley, Taylor, Schuler, Terwilleger, Tiberi, Van Vyven, Winkler, Corbin, Evans, Hollister, Roman, Hartnett, Williams, Verich, Distel, Krupinski, Harris, D. Miller, Buchy, Perry, Young, Ogg, Stevens, Jolivette, Jacobson, Vesper, Widener

Sens. Cupp, Oelslager, Drake

Effective date: *

ACT SUMMARY

- Makes void and unenforceable as against public policy any provision of a construction contract, agreement, understanding, or specification, or of any document made part of a construction contract, agreement, understanding, or specification, for an improvement to real estate that contains a provision subjecting it to the laws of another state or that requires any litigation, arbitration, or other dispute resolution process with respect to it to occur in another state.
- Specifies that nothing in the Revised Code section amended by the act applies to any contract, agreement, understanding, or other document or documentation to which a financial institution or affiliate is a party.

CONTENT AND OPERATION

Public policy considerations in construction contract provisions

Under continuing law, any provision in a construction contract that does the following is void and unenforceable as against public policy:

- (1) Waives rights under a surety bond;

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

(2) Waives any pending or asserted claim on the basis of final payment made from one person to another for the construction contract, when the person against whom the claim is pending or asserted has received notice of that pending or asserted claim;

(3) Waives or precludes liability for delay during the course of a construction contract when the cause of delay is a proximate result of the owner's act or failure to act, or that waives any other remedy for a delay that is a proximate result of the owner's action or inaction;

(4) 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 subcontractor's action or inaction.

The act adds that any provision of a "construction contract" (see below), agreement, or 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 of an improvement to real estate in Ohio that makes the construction contract, subcontract, agreement, or other understanding subject to the laws of another state or that requires that any litigation, arbitration, or other dispute resolution process on the contract, subcontract, agreement, or other understanding to occur in another state is void and unenforceable as against public policy. The act also adds that any litigation, arbitration, or other type of dispute resolution process must occur in the county or counties where the improvement to the real estate is located or at another location in Ohio agreed upon by the parties. (R.C. 4113.62(D)(1) and (2).)

Additionally, the act provides that nothing in R.C. 4113.62 (the operative section in the act) may 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 R.C. 5725.01, or any affiliate, as defined in R.C. 1109.53(A)(1), is a party. (R.C. 4113.62(D)(3).)

Finally, the act defines "construction contract" to mean 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 Ohio. (R.C. 4113.62(G)(5).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-27-99	p. 1326
Reported, H. Commerce and Labor	04-12-00	p. 1818
Passed House (95-0)	05-10-00	pp. 1924-1925
Reported, S. Judiciary	11-16-00	p. 2250
Passed Senate (33-0)	11-16-00	pp. 2265-2266
House concurred in Senate amendments (93-0)	12-05-00	p. 2412

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