

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 26-074

BY SENATOR(S) Carson and Snyder, Liston, Pelton R.;
also REPRESENTATIVE(S) Camacho and Nguyen, Bacon, Carter, Duran,
Marshall.

CONCERNING CLARIFICATION OF THE PENALTY FOR CLAIMING AN EXCESSIVE
AMOUNT IN A PUBLIC CONSTRUCTION PERFORMANCE BOND DISPUTE.

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

SECTION 1. In Colorado Revised Statutes, 38-22-101, **amend** (1);
and **add** (7) as follows:

38-22-101. Liens in favor of whom - when filed.

(1) Every person who furnishes or supplies laborers, machinery, tools, or equipment in the prosecution of the work, and mechanics, materialmen, contractors, subcontractors, builders, and all persons of every class performing labor upon or furnishing directly to the owner or persons furnishing labor, laborers, or materials to be used in construction, alteration, improvement, addition to, or repair, either in whole or in part, of any building, mill, bridge, ditch, flume, aqueduct, reservoir, tunnel, fence, railroad, wagon road, tramway, or any other structure or improvement upon

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

land, including adjacent curb, gutter, and sidewalk, and also architects, engineers, draftsmen, and artisans who have furnished designs, plans, plats, maps, specifications, drawings, estimates of cost, surveys, or superintendence, or who have rendered other professional or skilled service, or bestowed labor in whole or in part, describing or illustrating, or superintending such structure, or work done or to be done, or any part connected therewith, shall have a lien upon the property upon which they have furnished laborers or supplied machinery, tools, or equipment or rendered service or bestowed labor or for which they have furnished materials or mining or milling machinery or other fixtures, for the value, WHETHER DISPUTED OR UNDISPUTED, of such laborers, machinery, tools, or equipment supplied, or services rendered or labor done or laborers or materials furnished, whether at the instance of the owner, or of any other person acting by the owner's authority or under the owner, as agent, contractor, or otherwise for the laborers, machinery, tools, or equipment supplied, or work or labor done or services rendered or laborers or materials furnished by each, respectively, whether supplied or done or furnished or rendered at the instance of the owner of the building or other improvement, or the owner's agent; and every contractor, architect, engineer, subcontractor, builder, agent, or other person having charge of the construction, alteration, addition to, or repair, either in whole or in part, of said building or other improvement shall be held to be the agent of the owner for the purposes of this ~~article~~ ARTICLE 22.

(7) NOTHING IN THIS ARTICLE 22 PROHIBITS THE INCLUSION OF COSTS OTHERWISE ALLOWED UNDER A CONTRACT IN A LIEN, INCLUDING COSTS INCURRED AS A RESULT OF DELAY, LOST PRODUCTIVITY, OR OTHER DISRUPTION TO THE WORK.

SECTION 2. In Colorado Revised Statutes, 38-22-128, **add** (2) and (3) as follows:

38-22-128. Excessive amounts claimed.

(2) AN AWARD BY A COURT HAVING JURISDICTION OF AN AMOUNT THAT IS LESS THAN THE AMOUNT FOR WHICH A PERSON'S LIEN WAS FILED DOES NOT RENDER THE AMOUNT EXCESSIVE FOR PURPOSES OF SUBSECTION (1) OF THIS SECTION IF THE PERSON HAD A GOOD FAITH BASIS TO BELIEVE THE LIEN AMOUNT WAS DUE AT TIME OF FILING.

(3) FOR PURPOSES OF THIS SECTION, AN AMOUNT IS "DUE" IF A PERSON REASONABLY BELIEVES, IN GOOD FAITH, THAT THE AMOUNT REPRESENTS THE VALUE OF THE LABOR, SERVICES, EQUIPMENT, OR OTHER MATERIALS OR PERSONS FURNISHED OR SUPPLIED TO A CONTRACTOR, AS DESCRIBED IN SECTION 38-22-101 (1), WHETHER OR NOT THE AMOUNT IS UNLIQUIDATED OR DISPUTED.

SECTION 3. In Colorado Revised Statutes, 38-26-107, **amend** (1) as follows:

38-26-107. Supplier may file statement - notice - withholding funds.

(1) Any person, as defined in section 2-4-401 (8), ~~C.R.S.~~, that has furnished labor, materials, EQUIPMENT, SERVICES, sustenance, or other supplies used or consumed by a contractor or ~~his or her~~ THEIR subcontractor in or about the performance of the work contracted to be done or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the work whose claim therefor has not been paid by the contractor or the subcontractor may, at any time up to and including the time of final settlement for the work contracted to be done, file with the board, officer, person, or other contracting body by whom the contract was awarded a verified statement of the amount due and unpaid on account of the claim, WHETHER THE AMOUNT IS DISPUTED OR UNDISPUTED. NOTHING IN THIS ARTICLE 26 PROHIBITS THE INCLUSION OF COSTS OTHERWISE ALLOWED UNDER A CONTRACT IN A VERIFIED STATEMENT OF CLAIM, INCLUDING COSTS INCURRED AS A RESULT OF DELAY, LOST PRODUCTIVITY, OR OTHER DISRUPTION TO THE WORK. If the amount of the contract awarded to the contractor exceeds one hundred fifty thousand dollars, the board, officer, person, or other contracting body by whom the contract was awarded shall, no later than ten days before the final settlement is made, publish a notice of the final settlement at least twice in a newspaper of general circulation in any county where the work was contracted for or performed or in an electronic medium approved by the executive director of the department of personnel. It is unlawful for any person to divide a public works contract into two or more separate contracts for the sole purpose of evading or attempting to evade the requirements of this subsection (1).

SECTION 4. In Colorado Revised Statutes, 38-26-110, **amend** (1) introductory portion; and **add** (2) and (3) as follows:

38-26-110. Excessive amounts claimed.

(1) Any person who files a verified statement of a claim or asserts a claim against a principal or surety that has furnished a bond under this ~~article~~ ARTICLE 26 for an amount greater than the amount due without a reasonable possibility that the amount claimed is due and with the knowledge that the amount claimed is greater than the amount due, and that fact is demonstrated in any proceedings under this ~~article~~ ARTICLE 26, shall forfeit all rights to the ~~amount claimed~~ VERIFIED STATEMENT OF CLAIM and shall be liable to the following in an amount equal to all costs and all attorney fees reasonably incurred in bonding over, contesting, or otherwise responding in any way to the excessive verified statement of claim or excessive bond claim:

(2) AN AWARD BY A COURT HAVING JURISDICTION OF AN AMOUNT THAT IS LESS THAN THE AMOUNT IN A PERSON'S VERIFIED STATEMENT OF CLAIM DOES NOT RENDER THAT AMOUNT EXCESSIVE FOR PURPOSES OF SUBSECTION (1) OF THIS SECTION IF THE PERSON HAD A GOOD FAITH BASIS TO BELIEVE THE AMOUNT IN THE VERIFIED STATEMENT OF CLAIM WAS DUE AT THE TIME OF FILING.

(3) FOR PURPOSES OF THIS SECTION, "AMOUNT DUE" MEANS THE AMOUNT OF MONEY A PERSON REASONABLY BELIEVES, IN GOOD FAITH, REPRESENTS THE VALUE OF THE LABOR, MATERIALS, SUSTENANCE, OTHER SUPPLIES, LABORERS, RENTAL MACHINERY, TOOLS, OR EQUIPMENT, FURNISHED OR SUPPLIED TO A CONTRACTOR, AS DEFINED IN SECTION 38-26-101, OR THEIR SUBCONTRACTOR, WHETHER OR NOT THE AMOUNT IS UNLIQUIDATED OR DISPUTED, AS SET FORTH IN SECTION 38-26-107 (1).

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 12, 2026, if adjournment sine die is on May 13, 2026); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO