

House Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 237

HOUSE BILL 2268

AN ACT

AMENDING SECTION 34-223, ARIZONA REVISED STATUTES; RELATING TO CONSTRUCTION CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 34-223, Arizona Revised Statutes, is amended to
3 read:

4 34-223. Payment bond provisions

5 A. Every claimant who has furnished labor or material in the
6 prosecution of the work provided for in ~~such~~ A contract ~~in respect of~~ FOR
7 which a payment bond is furnished under ~~the provisions of~~ section 34-222, and
8 who has not been paid in full ~~therefor~~ FOR THE LABOR OR MATERIAL FOR THE WORK
9 before the expiration of a period of ninety days after the day on which the
10 last of the labor was done or performed by the claimant or material was
11 furnished or supplied by the claimant for which ~~such~~ THE claim is made, shall
12 have the right to sue on ~~such~~ THE payment bond for the amount, or the balance
13 ~~thereof~~ OF THE AMOUNT, unpaid at the time of institution of ~~such~~ THE suit and
14 to prosecute ~~such~~ THE action to final judgment for the sum or sums justly due
15 the claimant, and have execution thereon, provided however that any ~~such~~
16 claimant ~~having~~ WHO HAS a direct contractual relationship with a
17 subcontractor of the contractor furnishing ~~such~~ THE payment bond but ~~no~~ NOT A
18 contractual relationship express or implied with ~~such~~ THE contractor ~~shall~~
19 ~~have~~ HAS a right of action ~~upon~~ ~~such~~ ON THE payment bond ~~upon~~ ON giving the
20 contractor ~~only~~ THE FOLLOWING NOTICES:

21 1. A written preliminary ~~twenty day~~ TWENTY-DAY notice, as provided for
22 in section 33-992.01, subsection C, paragraphs 1, 2, 3 and 4 and subsections
23 E, F and H, ~~and upon giving~~.

24 2. A written NINETY-DAY notice ~~to such contractor~~ GIVEN within ninety
25 days ~~from~~ AFTER the date on which ~~such~~ THE claimant performed the last of the
26 labor or furnished or supplied the last of the material for which ~~such~~ THE
27 claim is made, stating with substantial accuracy the amount claimed and the
28 name of the party to whom the material was furnished or supplied OR for whom
29 the labor was done or performed. ~~Such~~ THE NINETY-DAY notice shall be ~~served~~
30 GIVEN by ~~registered or certified mail, postage prepaid, in an envelope~~
31 ~~addressed~~ ANY MEANS THAT PROVIDES WRITTEN, THIRD-PARTY VERIFICATION OF
32 DELIVERY to the contractor at any place the contractor maintains an office or
33 conducts business, or at the contractor's residence.

34 B. Every suit instituted under this section shall be brought in the
35 name of the claimant, ~~but~~ no such suit shall be commenced after the
36 expiration of one year ~~from~~ AFTER the date on which the last of the labor was
37 performed or materials were supplied by the person bringing this suit.

38 C. ON WRITTEN APPLICATION, the contracting body and the agent in
39 charge of its office shall furnish to ~~anyone making written application~~
40 ~~therefor who states that it~~ ANY PERSON THAT STATES THE PERSON has supplied
41 labor or materials for ~~such~~ THE work, and payment ~~therefor~~ FOR THE LABOR OR
42 MATERIALS FOR THE WORK has not been made, or ~~that it~~ is being sued on ~~any~~
43 ~~such~~ THE bond, or ~~that it~~ is the surety ~~thereon~~ ON THE BOND, a certified copy
44 of ~~such~~ THE bond and the contract for which ~~it~~ THE BOND was given, ~~which~~. THE
45 copy ~~shall be~~ IS prima facie evidence of the contents, execution and delivery

1 of the original. Applicants shall pay for such THE certified copies such AND
2 THE reasonable fees as THAT the contracting body or the agent in charge of
3 its office fixes to cover the actual cost of preparation thereof OF THE
4 CERTIFIED COPIES.

5 Sec. 2. Legislative findings; intent

6 The legislature finds that in a 2015 opinion, the Arizona Court of
7 Appeals held in *Cemex Construction Materials South, LLC v. Falcone Brothers &*
8 *Associates, Inc.*, 237 Ariz. 236 (Ct. App. 2015) that a written preliminary
9 twenty-day notice that sub-subcontractors and suppliers to subcontractors are
10 required to give as a precondition to recovering against statutory payment
11 bonds pursuant to section 34-223, Arizona Revised Statutes, must be sent by
12 certified mail. The legislature also finds that the construction industry
13 believes the *Cemex* decision incorrectly applied the legislature's intent in
14 interpreting this notice requirement. It is the intent of the legislature to
15 clarify that under section 34-223, Arizona Revised Statutes, as amended by
16 this act, the written preliminary twenty-day notice may be sent by first
17 class mail with certificate of mailing, certified or registered mail. It is
18 also the intent of the legislature to allow for additional delivery methods
19 for the ninety-day notice.

APPROVED BY THE GOVERNOR MAY 12, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2016.

Passed the House February 18, 2016

Passed the Senate May 7, 2016

by the following vote: 58 Ayes,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

0 Nays, 2 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

Pro Tempore
[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this
9th day of May, 2016

at 9:54 o'clock A. M.

[Signature]
Secretary to the Governor

Approved this 12th day of
May

at 9:55 o'clock A. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State
this 13 day of May, 2016

at 8:32 o'clock A. M.

[Signature]
Secretary of State

H.B. 2268