

# HOUSE BILL 796

P2

4lr2838  
CF SB 669

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By: **Delegates V. Turner, Barnes, Healey, Hubbard, Ivey, Murphy, Summers, Swain, Valderrama, and A. Washington**

Introduced and read first time: February 3, 2014

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2014

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Procurement – Debarment – Violations of Law**

3 FOR the purpose of providing that a person may be debarred from entering into a  
4 contract with the State if the person, or a certain other person connected to the  
5 person, has been convicted of a violation of certain provisions of federal law or  
6 State law or, under certain circumstances, has been found to have willfully or  
7 knowingly violated certain provisions of State law; and generally relating to  
8 debarment from State contracts.

9 BY repealing and reenacting, with amendments,  
10 Article – State Finance and Procurement  
11 Section 16–203  
12 Annotated Code of Maryland  
13 (2009 Replacement Volume and 2013 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article – State Finance and Procurement**

17 16–203.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (a) A person may be debarred from entering into a contract with the State if  
2 the person, an officer, partner, controlling stockholder or principal of that person, or  
3 any other person substantially involved in that person's contracting activities has:

4 (1) been convicted under the laws of the State, another state or the  
5 United States of:

6 (i) a criminal offense incident to obtaining, attempting to  
7 obtain, or performing a public or private contract, except as provided in § 16–202 of  
8 this subtitle; or

9 (ii) fraud, embezzlement, theft, forgery, falsification or  
10 destruction of records, or receiving stolen property;

11 (2) been convicted of a criminal violation of an antitrust statute of the  
12 State, another state, or the United States;

13 (3) been convicted of a violation of the Racketeer Influenced and  
14 Corrupt Organization Act, or the Mail Fraud Act, for acts in connection with the  
15 submission of bids or proposals for a public or private contract;

16 (4) been convicted of a violation of § 14–308 of this article;

17 (5) been convicted of conspiracy to commit any act or omission that  
18 would constitute grounds for conviction under any of the laws or statutes described in  
19 items (1), (2), (3), or (4) of this subsection;

20 **(6) BEEN CONVICTED OF A VIOLATION OF § 7201, § 7203, § 7205, §**  
21 **7206, OR § 7207 OF THE INTERNAL REVENUE CODE;**

22 **(7) BEEN CONVICTED OF A VIOLATION OF 18 U.S.C. § 286, § 287,**  
23 **OR § 371;**

24 **(8) BEEN CONVICTED OF A VIOLATION OF TITLE 13, SUBTITLE 7**  
25 **OR SUBTITLE 10 OF THE TAX – GENERAL ARTICLE;**

26 **(9) BEEN FOUND TO HAVE WILLFULLY OR KNOWINGLY VIOLATED**  
27 **TITLE 17, SUBTITLE 2 OR TITLE 18 OF THIS ARTICLE IF:**

28 **(I) 1. THE FINDING WAS MADE BY A COURT; AND**

29 **2. ~~THE CONVICTION BECAME A FINAL CONVICTION~~**  
30 **DECISION OF THE COURT BECAME FINAL; OR**

31 **(II) 1. THE FINDING WAS MADE IN A CONTESTED CASE**  
32 **UNDER THE ADMINISTRATIVE PROCEDURE ACT; AND**

1                                 **2. THE FINDING WAS NOT OVERTURNED ON**  
 2 **JUDICIAL REVIEW;**

3                                 **(10) BEEN FOUND TO HAVE WILLFULLY OR KNOWINGLY VIOLATED**  
 4 **TITLE 3, SUBTITLE 3, SUBTITLE 4, OR SUBTITLE 5 OR TITLE 5 OF THE LABOR**  
 5 **AND EMPLOYMENT ARTICLE IF:**

6                                 **(I) 1. THE FINDING WAS MADE BY A COURT; AND**

7   **2. ~~THE CONVICTION BECAME A FINAL CONVICTION~~**  
 8 **DECISION OF THE COURT BECAME FINAL; OR**

9                                 **(II) 1. THE FINDING WAS MADE IN A CONTESTED CASE**  
 10 **UNDER THE ADMINISTRATIVE PROCEDURE ACT; AND**

11                                 **2. THE FINDING WAS NOT OVERTURNED ON**  
 12 **JUDICIAL REVIEW;**

13                                 **[(6)] (11)** been found civilly liable under an antitrust statute of the  
 14 State, another state, or the United States for acts or omissions in connection with the  
 15 submission of bids or proposals for a public or private contract; or

16                                 **[(7)] (12)** been found in a final adjudicated decision to have violated  
 17 the Commercial Nondiscrimination Policy under Title 19 of this article with regard to  
 18 a public or private contract.

19                                 (b) A person may be debarred from entering into a contract with the State if,  
 20 during the course of an official investigation or other proceedings, the person, an  
 21 officer, partner, controlling stockholder or principal of that person, or any other person  
 22 substantially involved in that person's contracting activities has admitted, in writing  
 23 or under oath, an act or omission that constitutes grounds for conviction or liability  
 24 under any law or statute described in subsection (a) of this section.

25                                 (c) A person may be debarred from entering into a contract with the State if  
 26 the person, an officer, partner, controlling stockholder or principal of that person, or  
 27 any other person substantially involved in that person's contracting activities has been  
 28 debarred from federal contracts under the Federal Acquisition Regulations, as  
 29 provided in 48 C.F.R. Chapter 1.

30                                 (d) A person may be debarred from entering into a contract with the State:

31   (1) if the Board finds that the person was established or operates in a  
 32 manner designed to evade the application of this title or to defeat the purpose of this  
 33 title;

1           (2)    if the person is a successor, assignee, subsidiary, or affiliate of a  
2 person who is debarred or suspended;

3           (3)    for one of the following violations of a contract provision if the  
4 Board believes it to be serious enough to justify debarment:

5                   (i)    the deliberate failure, without good cause, to perform in  
6 accordance with the specifications, or within the time limit, provided in a contract; or

7                   (ii)   within the preceding 5 years, the failure to perform or of  
8 unsatisfactory performance in accordance with the terms of one or more contracts,  
9 unless the failure to perform or unsatisfactory performance was caused by acts beyond  
10 the control of the person;

11           (4)    if the person is a competing contractor, or any officer, employee,  
12 representative, agent, or consultant of any competing contractor who violates § 13–211  
13 of this article; or

14           (5)    for any other cause that the Board determines to be so serious as to  
15 affect the integrity of the procurement process.

16           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 October 1, 2014.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.