

# SENATE BILL 375

P3

(4lr1733)

## ENROLLED BILL

— Budget and Taxation/Health and Government Operations —

Introduced by **Senator King**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
President.

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

1 AN ACT concerning

2 **State Contracts – Prohibited Provisions**

3 FOR the purpose of prohibiting certain provisions from being included in State contracts;  
4 specifying that certain provisions are void if included in a State contract; specifying  
5 the applicable law and interpretation of State contracts; providing a certain  
6 exemption from the prohibitions in this Act under certain circumstances; and  
7 generally relating to prohibited provisions in State contracts.

8 BY adding to

9 Article – State Finance and Procurement

10 Section 2–901 to be under the new subtitle “Subtitle 9. State Contracts”

11 Annotated Code of Maryland

12 (2021 Replacement Volume and 2023 Supplement)

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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.

*Italics indicate opposite chamber/conference committee amendments.*



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

3 **Article – State Finance and Procurement**

4 **SUBTITLE 9. STATE CONTRACTS.**

5 **2–901.**

6 (A) IN THIS SECTION, “STATE CONTRACT” MEANS ANY AGREEMENT  
7 ENTERED INTO BY THE STATE.

8 (B) EXCEPT AS REQUIRED BY STATE OR FEDERAL LAW, A STATE CONTRACT  
9 MAY NOT INCLUDE:

10 (1) A PROVISION THAT REQUIRES THE STATE TO INDEMNIFY,  
11 DEFEND, OR HOLD HARMLESS ANOTHER PERSON WITHOUT AN APPROPRIATION OF  
12 STATE FUNDS FOR THAT PURPOSE;

13 (2) A PROVISION BY WHICH THE STATE AGREES TO BINDING  
14 ARBITRATION OR ANY OTHER BINDING EXTRAJUDICIAL DISPUTE RESOLUTION  
15 PROCESS;

16 (3) A PROVISION THAT NAMES A JURISDICTION OR VENUE FOR ANY  
17 ACTION OR DISPUTE AGAINST THE STATE OTHER THAN A COURT OF PROPER  
18 JURISDICTION IN THE STATE;

19 (4) A PROVISION THAT REQUIRES THE STATE TO AGREE TO LIMIT THE  
20 LIABILITY FOR ANY DIRECT LOSS TO THE STATE FOR BODILY INJURY, DEATH, OR  
21 DAMAGE TO PROPERTY OF THE STATE CAUSED BY THE NEGLIGENCE, INTENTIONAL  
22 OR WILLFUL MISCONDUCT, FRAUDULENT ACT, RECKLESSNESS, OR OTHER  
23 TORTIOUS CONDUCT OF A PERSON OR A PERSON’S EMPLOYEES OR AGENTS OR A  
24 PROVISION THAT WOULD OTHERWISE IMPOSE AN INDEMNIFICATION OBLIGATION  
25 ON THE STATE;

26 (5) A PROVISION THAT REQUIRES THE STATE TO BE BOUND BY A  
27 TERM OR CONDITION THAT:

28 (I) IS UNKNOWN TO THE STATE AT THE TIME OF SIGNING A  
29 CONTRACT;

30 (II) MAY BE UNILATERALLY CHANGED BY THE OTHER PARTY; OR

1 (III) IS ELECTRONICALLY ACCEPTED BY A STATE EMPLOYEE  
2 WITHOUT AUTHORITY;

3 (6) A PROVISION THAT PROVIDES FOR A PERSON OTHER THAN THE  
4 ATTORNEY GENERAL OF MARYLAND TO SERVE AS LEGAL COUNSEL FOR THE STATE,  
5 UNLESS PROVIDED UNDER § 6-106 OF THE STATE GOVERNMENT ARTICLE;

6 (7) A PROVISION THAT IS INCONSISTENT WITH THE STATE'S  
7 OBLIGATIONS UNDER TITLE 3 OR 4 OF THE GENERAL PROVISIONS ARTICLE;

8 (8) A PROVISION PROHIBITED UNDER § 7-237 OF THIS ARTICLE;

9 (9) A PROVISION FOR AUTOMATIC RENEWAL THAT OBLIGATES THE  
10 STATE TO ALLOCATE FUNDING IN SUBSEQUENT FISCAL YEARS; OR

11 (10) A PROVISION THAT LIMITS THE STATE'S ABILITY TO RECOVER THE  
12 COST OF A REPLACEMENT CONTRACTOR.

13 (C) IF A STATE CONTRACT CONTAINS A PROVISION LISTED UNDER  
14 SUBSECTION (B) OF THIS SECTION, THE PROVISION IS VOID AB INITIO AND THE  
15 CONTRACT CONTAINING THAT PROVISION SHALL BE ENFORCEABLE AS IF IT DID NOT  
16 CONTAIN THE PROVISION.

17 (D) A STATE CONTRACT THAT CONTAINS A PROVISION LISTED UNDER  
18 SUBSECTION (B) OF THIS SECTION SHALL BE GOVERNED BY AND CONSTRUED IN  
19 ACCORDANCE WITH STATE LAW, NOTWITHSTANDING ANY TERM OR CONDITION TO  
20 THE CONTRARY IN THE CONTRACT.

21 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
22 as follows:

23 Article – State Finance and Procurement

24 2-901.

25 (A-1) THIS SECTION DOES NOT APPLY TO A STATE CONTRACT RELATING TO  
26 THE PURCHASE, REDEVELOPMENT, OR OPERATION OF A RACING FACILITY OR  
27 TRAINING FACILITY SITE AS THOSE TERMS ARE DEFINED UNDER § 10-601 OF THE  
28 ECONOMIC DEVELOPMENT ARTICLE.

29 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall be construed  
30 to apply only prospectively and may not be applied or interpreted to have any effect on or  
31 application to any State contract executed before the effective date of this Act or to the  
32 renewal or extension of a State contract executed before the effective date of this Act.

1            SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take  
 2 effect October 1, 2024, contingent on the taking effect of H.B. 1524 of the Acts of the General  
 3 Assembly of 2024, and if H.B. 1524 does not take effect, Section 2 of this Act, with no further  
 4 action required by the General Assembly, shall be null and void.

5            SECTION ~~3~~ 5. AND BE IT FURTHER ENACTED, That, except as provided in  
 6 Section 4 of this Act, this Act shall take effect October 1, 2024.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.