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By: **Delegate Malone**

Introduced and read first time: February 11, 2000

Assigned to: Judiciary

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Committee Report: Favorable

House action: Adopted

Read second time: March 20, 2000

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Procurement - Action by Supplier on Payment Security**

3 FOR the purpose of prohibiting an executory contract between a supplier and a  
4 contractor or subcontractor that is related to a construction contract from  
5 waiving or requiring a supplier to waive the right to sue on certain payment  
6 security; providing that an executory contract between a supplier and a  
7 contractor or subcontractor that conditions payment to a supplier on certain  
8 other payment may not contain a contract provision abrogating or waiving the  
9 right of a supplier to sue on certain payment security; providing that a provision  
10 of a contract made in violation of this Act is void as against the public policy of  
11 the State; and generally relating to actions on payment security.

12 BY repealing and reenacting, without amendments,  
13 Article - State Finance and Procurement  
14 Section 17-101(d) and (e)  
15 Annotated Code of Maryland  
16 (1995 Replacement Volume and 1999 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article - State Finance and Procurement  
19 Section 17-108  
20 Annotated Code of Maryland  
21 (1995 Replacement Volume and 1999 Supplement)

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

1 **Article - State Finance and Procurement**

2 17-101.

3 (d) "Public body" means:

- 4 (1) the State;
- 5 (2) a county, municipal corporation, or other political subdivision;
- 6 (3) a public instrumentality; or
- 7 (4) any governmental unit authorized to award a contract.

8 (e) (1) "Supplier" means a person who supplies labor or materials.

9 (2) "Supplier" includes a lessor of equipment to the extent of the fair  
10 rental value of the equipment.

11 17-108.

12 (a) Subject to subsection (b) of this section, a supplier may sue on payment  
13 security if the supplier:14 (1) supplied labor or materials in the prosecution of work provided for in  
15 a contract subject to this subtitle; and16 (2) has not been paid in full for the labor or materials within 90 days  
17 after the day that the person last supplied labor or materials for which the claim is  
18 made.19 (b) (1) A supplier who has a direct contractual relationship with a  
20 subcontractor or sub-subcontractor of a contractor who has provided payment  
21 security but no contractual relationship with the contractor may sue on the security if  
22 the supplier gives written notice to the contractor within 90 days after the labor or  
23 materials for which the claim is made were last supplied in prosecution of work  
24 covered by the security.

25 (2) A notice under this subsection:

26 (i) shall state with substantial accuracy the amount claimed and  
27 the person to whom the labor or material was supplied; and28 (ii) shall be sent by certified mail to the contractor at the  
29 contractor's residence or a place where the contractor has an office or does business.30 (c) (1) On request by a person who submits an affidavit verifying that the  
31 person has supplied labor or materials but has not been paid or is being sued under  
32 this section, the Comptroller or the officer in charge of the office where the payment  
33 security or evidence of security is required to be filed shall issue:

- 1 (i) a certified copy of the payment bond; or  
2 (ii) for other security, a certified statement of the security.

3 (2) The person requesting certification shall pay a reasonable fee, set by  
4 the Comptroller or other officer required to issue the certification, to cover the costs of  
5 preparation.

6 (3) A certification under this section is prima facie evidence of the  
7 contents, execution, and delivery of payment security.

8 (D) (1) AN EXECUTORY CONTRACT BETWEEN A SUPPLIER AND A  
9 CONTRACTOR OR SUBCONTRACTOR THAT IS RELATED TO A CONSTRUCTION  
10 CONTRACT MAY NOT WAIVE OR REQUIRE THE SUPPLIER TO WAIVE THE RIGHT TO  
11 SUE ON PAYMENT SECURITY UNDER THIS SECTION.

12 (2) A PROVISION IN AN EXECUTORY CONTRACT BETWEEN A SUPPLIER  
13 AND A CONTRACTOR OR SUBCONTRACTOR THAT IS RELATED TO A CONSTRUCTION  
14 CONTRACT AND THAT CONDITIONS PAYMENT TO THE SUPPLIER ON RECEIPT OF  
15 PAYMENT BY THE PERSON FROM A PUBLIC BODY OR OTHER THIRD PARTY, MAY NOT  
16 ABROGATE OR WAIVE THE RIGHT OF THE SUPPLIER TO SUE ON PAYMENT SECURITY  
17 UNDER THIS SUBTITLE.

18 (3) A PROVISION OF A CONTRACT MADE IN VIOLATION OF THIS  
19 SUBSECTION IS VOID AS AGAINST THE PUBLIC POLICY OF THE STATE.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2000.