
By: **Senator Haines**

Introduced and read first time: February 4, 2000

Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

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:

24 **Article - State Finance and Procurement**

25 17-101.

26 (d) "Public body" means:

27 (1) the State;

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

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

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

7 17-108.

8 (a) Subject to subsection (b) of this section, a supplier may sue on payment
9 security if the supplier:

10 (1) supplied labor or materials in the prosecution of work provided for in
11 a contract subject to this subtitle; and

12 (2) has not been paid in full for the labor or materials within 90 days
13 after the day that the person last supplied labor or materials for which the claim is
14 made.

15 (b) (1) A supplier who has a direct contractual relationship with a
16 subcontractor or sub-subcontractor of a contractor who has provided payment
17 security but no contractual relationship with the contractor may sue on the security if
18 the supplier gives written notice to the contractor within 90 days after the labor or
19 materials for which the claim is made were last supplied in prosecution of work
20 covered by the security.

21 (2) A notice under this subsection:

22 (i) shall state with substantial accuracy the amount claimed and
23 the person to whom the labor or material was supplied; and

24 (ii) shall be sent by certified mail to the contractor at the
25 contractor's residence or a place where the contractor has an office or does business.

26 (c) (1) On request by a person who submits an affidavit verifying that the
27 person has supplied labor or materials but has not been paid or is being sued under
28 this section, the Comptroller or the officer in charge of the office where the payment
29 security or evidence of security is required to be filed shall issue:

30 (i) a certified copy of the payment bond; or

31 (ii) for other security, a certified statement of the security.

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

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

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

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

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

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