

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**

House Bill 558 (Delegates Simmons and Kramer)  
Health and Government Operations

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**Procurement - Automatic Debarment - Employee Arbitration Clauses**

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This bill specifies that any person who includes in an employment or collective bargaining agreement a requirement that employees use arbitration to resolve specified disputes is debarred automatically from entering into a contract with a public body. The debarment is lifted automatically if the person no longer includes the requirement to use arbitration in an employment or collective bargaining agreement. A bidder or offeror for a State contract must attest that, to the best of its knowledge, no subsidiary, affiliate, or subcontractor includes such an arbitration requirement in an employment or collective bargaining agreement.

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**Fiscal Summary**

**State Effect:** None. Any increase in debarment proceedings can be handled by the Board of Public Works (BPW) and the Office of the Attorney General (OAG) with existing budgeted resources. Procurement units can develop and process the required affidavits with existing resources.

**Local Effect:** Local governments can likely absorb any additional workload with existing resources.

**Small Business Effect:** Minimal.

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**Analysis**

**Bill Summary:** An employment or collective bargaining agreement may not require the use of arbitration for:

- claims under Title VII of the Civil Rights Act of 1964; or
- torts related to or arising out of sexual assault or sexual harassment, including assault and battery, intentional affliction of emotional distress, false imprisonment, and negligent hiring, supervision, or retention.

Persons who are automatically debarred must be notified of the debarment and be given the opportunity for a hearing before BPW on whether the basis for debarment exists.

**Current Law:** A person is subject to automatic debarment from procurement with any public body in the State if the person has been convicted under the laws of the State for bribery, attempted bribery, or conspiracy to bribe committed in the furtherance of obtaining a contract with a public body. In all other cases, generally involving criminal convictions, failing to perform according to contract provisions, or having been debarred by the federal government, debarment from entering into procurement contracts with the State is subject to the determination of BPW, based on evidence provided by OAG following an investigation. Except for automatic debarments described above, a person has a right to a hearing before BPW prior to being debarred. A person who is automatically debarred also has an opportunity for a hearing on whether the basis for debarment exists, but only after being notified that automatic debarment has been carried out.

A debarment imposed due to a criminal conviction terminates if the conviction that is the basis for the debarment is reversed or overturned on appeal. A debarred person may petition to BPW for termination of the debarment after five years have passed or, if the debarment is for a specified period of time, after half of the debarment period has passed.

**Background:** Title VII of the Civil Rights Act prohibits employment discrimination on the basis of race, color, religion, sex, or national origin.

It has become increasingly common for employers to include in employment contracts a clause that requires employees to submit disputes with the employer to binding arbitration instead of pursuing a private right of action. The federal Defense Appropriations Act of 2010 prohibits defense contractors from requiring cases involving workplace discrimination, battery, and sexual assault to go to binding arbitration. Known as the Franken amendment, the requirement stemmed from the case of a female employee of a defense contractor who was raped by coworkers while working in Iraq.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Charles, Frederick, and Montgomery counties; Office of the Attorney General; Board of Public Works; Department of Budget and Management; University System of Maryland; Lawyers.com; employeerightspost.com; Department of Legislative Services

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