

# HOUSE BILL 1231

N1

(9lr2690)

## ENROLLED BILL

— Economic Matters/Judicial Proceedings —

Introduced by **Delegate Adams**

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.

\_\_\_\_\_  
Speaker.

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

1 AN ACT concerning

#### 2 **Real Property – Construction Contracts – Retention Proceeds**

3 FOR the purpose of establishing that a certain remedy for the payment of an undisputed  
4 amount owed under a construction contract applies to certain retention proceeds;  
5 reducing a certain minimum contract amount for purposes of the applicability of  
6 certain provisions of law relating to retention proceeds; requiring certain *undisputed*  
7 retention proceeds retained by an owner to be paid within a certain period of time  
8 after the date of substantial completion; and generally relating to retention proceeds  
9 for construction contracts.

10 BY repealing and reenacting, with amendments,  
11 Article – Real Property  
12 Section 9–303 and 9–304  
13 Annotated Code of Maryland  
14 (2015 Replacement Volume and 2018 Supplement)

---

#### 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 – Real Property**

4 9–303.

5 **(A) IN THIS SECTION, “UNDISPUTED AMOUNTS” INCLUDES ANY RETENTION**  
6 **PROCEEDS THAT EXCEED THE AMOUNT AUTHORIZED TO BE RETAINED UNDER §**  
7 **9–304 OF THIS SUBTITLE.**

8 **[(a)] (B)** In addition to any other remedy provided under any other provision of  
9 law, a court of competent jurisdiction, for good cause shown may:

10 (1) Award any equitable relief for prompt payment of undisputed amounts  
11 that it considers necessary, including the enjoining of further violations; and

12 (2) In any action, award to the prevailing party:

13 (i) Interest from the date the court determines that the amount  
14 owed was due; and

15 (ii) Any reasonable costs incurred.

16 **[(b)] (C)** If a court determines that an owner, contractor, or subcontractor has  
17 acted in bad faith by failing to pay any undisputed amounts owed as required under §  
18 9–302 of this subtitle, the court may award to the prevailing party reasonable attorney’s  
19 fees.

20 9–304.

21 (a) In this section, “retention proceeds” means money earned but retained under  
22 the terms of a contract or subcontract:

23 (1) By an owner to guarantee performance of the contract by a contractor;

24 (2) By a contractor to guarantee performance of a subcontract by a  
25 subcontractor; or

26 (3) By a subcontractor to guarantee performance of a subcontract by  
27 another subcontractor.

28 (b) This section does not apply to:

29 (1) A contract in an amount less than ~~[\$250,000]~~ **\$100,000**; or

1 (2) A contract or subcontract for a project funded wholly or in part by or  
2 through the Department of Housing and Community Development.

3 (c) Except as provided in this section:

4 (1) If a contractor has furnished 100% security to guarantee the  
5 performance of a contract and 100% security to guarantee payment for labor and materials,  
6 including leased equipment:

7 (i) The retention proceeds under the terms of a contract may not  
8 exceed 5% of the contract price; and

9 (ii) The retention proceeds of any payment due under the terms of a  
10 contract from an owner to a contractor may not exceed 5% of the payment;

11 (2) The retention proceeds of any payment due under the terms of a  
12 contract from a contractor to a subcontractor may not exceed the percentage of retention  
13 proceeds from the owner to the contractor; and

14 (3) The retention proceeds of any payment due under the terms of a  
15 contract from a subcontractor to another subcontractor may not exceed the percentage of  
16 retention proceeds from the contractor to the subcontractor.

17 (d) This section may not be construed to prohibit the withholding of any amount  
18 due:

19 (1) From the owner to the contractor if the owner reasonably determines  
20 that the contractor's performance under the contract provides reasonable grounds for  
21 withholding the additional amount;

22 (2) From the contractor to any subcontractor if the contractor reasonably  
23 determines that the subcontractor's performance under the subcontract provides  
24 reasonable grounds for withholding the additional amount; or

25 (3) From a subcontractor to another subcontractor if the subcontractor  
26 determines that the other subcontractor's performance under the subcontract provides  
27 reasonable grounds for withholding the additional amount.

28 (E) ~~RETENTION~~ **UNDISPUTED RETENTION PROCEEDS RETAINED BY AN**  
29 **OWNER UNDER THIS SECTION SHALL BE PAID WITHIN 90 DAYS AFTER THE DATE OF**  
30 **SUBSTANTIAL COMPLETION, AS DEFINED BY THE APPLICABLE CONTRACT OR**  
31 **SUBCONTRACT.**

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
33 October 1, 2019.