

Chapter 433

**(Senate Bill 375)**

AN ACT concerning

**State Contracts – Prohibited Provisions**

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

BY adding to

Article – State Finance and Procurement

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

Annotated Code of Maryland

(2021 Replacement Volume and 2023 Supplement)

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

**Article – State Finance and Procurement**

**SUBTITLE 9. STATE CONTRACTS.**

**2–901.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article – State Finance and Procurement

2-901.

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

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

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

SECTION ~~2~~ 5. AND BE IT FURTHER ENACTED, That, except as provided in Section 4 of this Act, this Act shall take effect October 1, 2024.

**Approved by the Governor, May 9, 2024.**