

Chapter 723

(Senate Bill 453)

AN ACT concerning

State Contracts – Prohibited Provisions

FOR the purpose of clarifying a prohibition on including in State contracts provisions pertaining to limitations of liability for damage to certain property; clarifying a prohibition on including in State contracts provisions limiting the recovery of costs related to the use of replacement contractors under certain circumstances; and generally relating to prohibited provisions in State contracts.

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 2–901
Annotated Code of Maryland
(2021 Replacement Volume and 2024 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

2–901.

(a) In this section, “State contract” means any agreement entered into by the State.

(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.

(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 **REAL PROPERTY OR TANGIBLE PERSONAL** 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 **DIFFERENCE IN THE** cost of a replacement contractor **TO PERFORM THE SERVICES NOT PERFORMED BY THE ORIGINAL CONTRACTOR, TO THE EXTENT THAT THE SUM OF THE AMOUNT PAID TO THE REPLACEMENT CONTRACTOR AND THE AMOUNT PAID TO THE ORIGINAL CONTRACTOR EXCEED THE COSTS PROVIDED FOR IN THE CONTRACT WITH THE ORIGINAL 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 this Act shall take effect October 1, 2025.

Approved by the Governor, May 20, 2025.