

# HOUSE BILL 289

P3

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CF SB 375

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By: ~~Delegate Kerr~~ Delegates Kerr, Bagnall, Bhandari, Chisholm, Cullison, Guzzone, Hill, Hutchinson, S. Johnson, Kaiser, Kipke, R. Lewis, Lopez, Martinez, M. Morgan, Pena-Melnyk, Reilly, Rosenberg, Szeliga, Taveras, White Holland, and Woods

Introduced and read first time: January 12, 2024

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 13, 2024

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

1 AN ACT concerning

2 **State Contracts – Prohibited Provisions**

3 FOR the purpose of prohibiting certain provisions from being included in State contracts;  
4 specifying that certain provisions are void if included in a State contract; specifying  
5 the applicable law and interpretation of State contracts; and generally relating to  
6 prohibited provisions in State contracts.

7 BY adding to

8 Article – State Finance and Procurement

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

10 Annotated Code of Maryland

11 (2021 Replacement Volume and 2023 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

13 That the Laws of Maryland read as follows:

14 **Article – State Finance and Procurement**

15 **SUBTITLE 9. STATE CONTRACTS.**

16 **2–901.**

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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.



1 (A) IN THIS SECTION, "STATE CONTRACT" MEANS ANY AGREEMENT  
2 ENTERED INTO BY THE STATE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2024.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.