

HOUSE BILL 558

P2

2lr2175

By: **Delegates Simmons and Kramer**

Introduced and read first time: February 3, 2012

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Automatic Debarment – Employee Arbitration Clauses**

3 FOR the purpose of providing that a person is debarred, by operation of law, from
4 entering into a contract with a public body if the person or a subsidiary, an
5 affiliate, or a subcontractor of the person includes a requirement in certain
6 agreements that an employee use arbitration for certain claims; requiring the
7 Board of Public Works to notify a person that the person is debarred under a
8 certain provision of this Act and to give the person a certain opportunity for a
9 hearing; prohibiting a person that is debarred under a certain provision of this
10 Act from being considered for the award of, being awarded, or performing a
11 contract with a public body during a certain time period; providing for the
12 termination of the debarment of certain persons; requiring a certain affidavit to
13 contain a certain affirmation under certain circumstances; and generally
14 relating to the automatic debarment from procurement for the use of employee
15 arbitration clauses.

16 BY adding to

17 Article – State Finance and Procurement
18 Section 16–202.1
19 Annotated Code of Maryland
20 (2009 Replacement Volume and 2011 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article – State Finance and Procurement
23 Section 16–304, 16–309, 16–310(a), and 16–311
24 Annotated Code of Maryland
25 (2009 Replacement Volume and 2011 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – State Finance and Procurement**

2 **16–202.1.**

3 **A PERSON IS DEBARRED BY OPERATION OF LAW FROM ENTERING INTO A**
 4 **CONTRACT WITH A PUBLIC BODY IF THE PERSON OR A SUBSIDIARY, AN**
 5 **AFFILIATE, OR A SUBCONTRACTOR OF THE PERSON INCLUDES IN AN**
 6 **EMPLOYMENT AGREEMENT OR A COLLECTIVE BARGAINING AGREEMENT A**
 7 **REQUIREMENT THAT AN EMPLOYEE USE ARBITRATION FOR:**

8 **(1) CLAIMS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF**
 9 **1964; OR**

10 **(2) TORTS RELATED TO OR ARISING OUT OF SEXUAL ASSAULT OR**
 11 **SEXUAL HARASSMENT, INCLUDING:**

12 **(I) ASSAULT AND BATTERY;**

13 **(II) INTENTIONAL AFFLICTION OF EMOTIONAL DISTRESS;**

14 **(III) FALSE IMPRISONMENT; AND**

15 **(IV) NEGLIGENT HIRING, SUPERVISION, OR RETENTION.**

16 **16–304.**

17 (a) The Board shall notify a person that the person is debarred under §
 18 16–202(a) **OR § 16–202.1** of this title, and shall give reasonable opportunity for that
 19 person to be heard on whether the stated basis for debarment exists.

20 (b) (1) The Attorney General may institute proceedings to debar a person
 21 under § 16–202(b) or § 16–203 of this title by filing an administrative complaint with
 22 the Board.

23 (2) The Board shall notify the person that debarment proceedings
 24 have been initiated and that the person has a right to a hearing.

25 (c) Before being debarred, a person subject to debarment under § 16–202(b)
 26 or § 16–203 of this title is entitled to a hearing before the Board. The Board shall
 27 conduct the hearing in accordance with Title 10, Subtitle 2 of the State Government
 28 Article.

29 (d) When a unit contracting for a public body is notified that a person who
 30 has applied for a contract is subject to debarment under this title, the unit shall notify
 31 the person in writing that:

1 (1) the application may be disqualified; and

2 (2) the person has a right to a hearing before the Board.

3 (e) Unless a person notified by the Board pursuant to this section submits a
4 request to the Board for a hearing within 30 days after receiving such notice, the
5 person:

6 (1) waives the right to a hearing; and

7 (2) is debarred.

8 16-309.

9 (a) If a person or business is debarred or suspended based on an offense
10 listed in § 16-202 of this title, the person or business may not be considered for the
11 award of, be awarded, or perform, directly or indirectly, a contract with a public body
12 during the time period of debarment or suspension.

13 **(B) IF A PERSON IS DEBARRED UNDER § 16-202.1 OF THIS TITLE, THE**
14 **PERSON MAY NOT BE CONSIDERED FOR THE AWARD OF, BE AWARDED, OR**
15 **PERFORM, DIRECTLY OR INDIRECTLY, A CONTRACT WITH A PUBLIC BODY**
16 **DURING THE TIME OF DEBARMENT.**

17 **[(b)] (C)** If a person or business is debarred or suspended based on an
18 offense listed in § 16-203 of this title, the person or business may not be considered for
19 the award of, be awarded, or perform, directly or indirectly, a contract with the State
20 during the time period of debarment or suspension.

21 16-310.

22 (a) (1) If the conviction that is the basis for a debarment or suspension is
23 reversed or otherwise rendered void, the debarment or suspension terminates
24 automatically.

25 (2) If the federal debarment that is the basis for a State debarment is
26 reversed or otherwise rendered void, the debarment terminates automatically if the
27 person debarred provides to the Board sufficient legal documentation that the federal
28 debarment has been reversed or otherwise rendered void.

29 **(3) IF THE PERSON NO LONGER INCLUDES IN AN EMPLOYMENT**
30 **AGREEMENT OR A COLLECTIVE BARGAINING AGREEMENT THE ARBITRATION**
31 **REQUIREMENT THAT WAS THE BASIS FOR DEBARMENT UNDER § 16-202.1 OF**
32 **THIS TITLE, THE DEBARMENT TERMINATES AUTOMATICALLY.**

1 16-311.

2 (a) Every person, upon submitting a bid proposal or other application for a
3 contract with a public body, shall submit an affidavit stating to its best knowledge
4 whether it or any of its officers, directors, or partners, or any of its employees who are
5 directly involved in obtaining or performing contracts with any public bodies has:

6 (1) been convicted of bribery, attempted bribery, or conspiracy to
7 bribe, under the laws of any state or of the federal government;

8 (2) been convicted under a State or federal law or statute of any
9 offense enumerated in § 16-203 of this title; or

10 (3) been found civilly liable under a State or federal antitrust statute
11 as provided in § 16-203 of this title.

12 (b) The affidavit required by subsection (a) of this section shall also contain
13 the person's affirmation that it shall not knowingly enter into a contract with a public
14 body under which a person or business debarred or suspended under this subtitle will
15 provide, directly or indirectly, supplies, services, architectural services, construction
16 related services, leases of real property, or construction.

17 **(C) THE AFFIDAVIT REQUIRED BY SUBSECTION (A) OF THIS SECTION**
18 **SHALL ALSO CONTAIN THE PERSON'S AFFIRMATION THAT THE PERSON AND, TO**
19 **THE BEST OF THE PERSON'S KNOWLEDGE, ANY SUBSIDIARY, AFFILIATE, OR**
20 **SUBCONTRACTOR OF THE PERSON DOES NOT INCLUDE IN AN EMPLOYMENT**
21 **AGREEMENT OR A COLLECTIVE BARGAINING AGREEMENT AN ARBITRATION**
22 **REQUIREMENT THAT WOULD BE THE BASIS FOR DEBARMENT UNDER § 16-202.1**
23 **OF THIS TITLE.**

24 **[(c)] (D)** The requirements of this section are satisfied if the affidavit:

25 (1) incorporates by reference the statements contained in an affidavit
26 filed with the same public body within the previous year pursuant to the requirements
27 of this section; and

28 (2) states that those statements remain accurate.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2012.