
By: **Delegates Rosenberg, Madaleno, Mandel, McIntosh, and Patterson
Patterson, Hubbard, Murray, Nathan-Pulliam, and V. Turner**

Introduced and read first time: February 5, 2003
Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 18, 2003

CHAPTER _____

1 AN ACT concerning

2 **Discrimination - Procurement Contracts**

3 FOR the purpose of clarifying that the requirement that certain procurement
4 contracts include a certain nondiscrimination clause applies to procurement
5 contracts with religious organizations; requiring that the nondiscrimination
6 clause included in certain procurement contracts contain a prohibition against
7 discrimination based on sexual orientation, certain types of disability, genetic
8 information, a refusal to submit to a genetic test, or to make available the
9 results of a genetic test; providing certain exceptions for certain religious
10 entities under certain circumstances; defining a certain term; and generally
11 relating to prohibiting discrimination in procurement contracts.

12 BY repealing and reenacting, with amendments,
13 Article - State Finance and Procurement
14 Section 13-219
15 Annotated Code of Maryland
16 (2001 Replacement Volume and 2002 Supplement)

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

19 **Article - State Finance and Procurement**

20 13-219.

21 (a) This section is broadly applicable to all procurements by the State,
22 INCLUDING PROCUREMENT CONTRACTS WITH RELIGIOUS ORGANIZATIONS.

1 (b) Each contract for procurement shall include a nondiscrimination clause as
2 provided in this section.

3 (c) (1) The nondiscrimination clause shall:

4 [(1)] (I) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
5 prohibit discrimination in any manner by the contractor against an employee or
6 applicant for employment because of sex, race, age, color, creed, [or] national origin,
7 SEXUAL ORIENTATION, AS DEFINED IN ARTICLE 49B, § 15(J) OF THE CODE, GENETIC
8 INFORMATION, OR DISABILITY UNRELATED IN NATURE AND EXTENT SO AS TO
9 REASONABLY PRECLUDE THE PERFORMANCE OF THE EMPLOYMENT, OR BECAUSE
10 OF THE INDIVIDUAL'S REFUSAL TO SUBMIT TO A GENETIC TEST OR MAKE AVAILABLE
11 THE RESULTS OF A GENETIC TEST;

12 [(2)] (II) require the contractor to include a similar clause in every
13 subcontract except a subcontract for standard commercial supplies or raw materials;
14 and

15 [(3)] (III) require each contractor and subcontractor subject to this clause
16 to post conspicuously a notice that sets forth the provisions of the clause in a place
17 that is available to employees and applicants for employment.

18 (2) THIS SECTION DOES NOT APPLY TO:

19 (I) A RELIGIOUS CORPORATION, ASSOCIATION, EDUCATIONAL
20 INSTITUTION OR SOCIETY WITH RESPECT TO THE EMPLOYMENT OF INDIVIDUALS OF
21 A PARTICULAR RELIGION WHOSE PRIMARY DUTIES CONSIST OF TEACHING,
22 SPREADING THE FAITH, CHURCH GOVERNANCE, SUPERVISION OF A RELIGIOUS
23 ORDER, OR SUPERVISION OR PARTICIPATION IN RELIGIOUS RITUAL OR WORSHIP; OR

24 (II) A SCHOOL, COLLEGE, UNIVERSITY, OR OTHER EDUCATIONAL
25 INSTITUTION OR INSTITUTION OF LEARNING IF:

26 1. THE SCHOOL, COLLEGE, UNIVERSITY, OR OTHER
27 EDUCATIONAL INSTITUTION OR INSTITUTION OF LEARNING IS, IN WHOLE OR IN
28 SUBSTANTIAL PART, OWNED, SUPPORTED, CONTROLLED, OR MANAGED BY A
29 PARTICULAR RELIGION OR BY A PARTICULAR RELIGIOUS CORPORATION,
30 ASSOCIATION, OR SOCIETY; OR

31 2. THE CURRICULUM OF THE SCHOOL, COLLEGE,
32 UNIVERSITY, OR OTHER EDUCATIONAL INSTITUTION OR INSTITUTION OF LEARNING
33 IS DIRECTED TOWARD THE PROPAGATION OF A PARTICULAR RELIGION.

34 (d) If the nondiscrimination clause is omitted from a contract or subcontract
35 subject to this section, the State may declare the contract to be void. In that event, the
36 contractor is entitled to the reasonable value of work that has been performed and
37 materials that have been provided.

1 (e) If a contractor willfully fails to comply with the requirements of the
2 nondiscrimination clause and the contract is partly executory, the State may compel
3 the contractor to continue to perform under the contract, but the State:

4 (1) is liable for no more than the reasonable value of work performed and
5 materials provided after the date on which the breach of contract was or should have
6 been discovered; and

7 (2) shall deduct any money that has been paid under the contract from
8 the money that becomes due under item (1) of this subsection.

9 (f) If a subcontractor willfully fails to comply with the requirements of a
10 nondiscrimination clause, the contractor may void the subcontract. In that event, the
11 contractor is liable for no more than the reasonable value of work performed or
12 materials provided.

13 (g) (1) Any person, including an employee or prospective employee, who has
14 information about a violation of this section or a nondiscrimination clause may inform
15 the Board.

16 (2) The Board:

17 (i) shall cause an immediate investigation of the charge; and

18 (ii) if it concludes that the charge is true, may invoke any remedy
19 available by law.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2003.