
By: **Delegates Rosenberg, Hubbard, Madaleno, Mandel, McIntosh, Murray,
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Introduced and read first time: February 13, 2004

Assigned to: Health and Government Operations

A BILL ENTITLED

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 contains 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 2003 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.

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

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

26 [(1)] (I) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
27 prohibit discrimination in any manner by the contractor against an employee or

1 applicant for employment because of sex, race, age, color, creed, [or] national origin,
2 SEXUAL ORIENTATION AS DEFINED IN ARTICLE 49B, § 15(J) OF THE CODE, GENETIC
3 INFORMATION, OR DISABILITY UNRELATED IN NATURE AND EXTENT SO AS TO
4 REASONABLY PRECLUDE THE PERFORMANCE OF THE EMPLOYMENT, OR BECAUSE
5 OF THE INDIVIDUAL'S REFUSAL TO SUBMIT TO A GENETIC TEST OR MAKE AVAILABLE
6 THE RESULTS OF A GENETIC TEST;

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

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

13 (2) THIS SECTION DOES NOT APPLY TO:

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

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

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

27 2. THE CURRICULUM OF THE SCHOOL, COLLEGE,
28 UNIVERSITY, OR OTHER EDUCATIONAL INSTITUTION OR INSTITUTION OF LEARNING
29 IS DIRECTED TOWARD THE PROPAGATION OF A PARTICULAR RELIGION.

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

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

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

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

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

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

10 (2) The Board:

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

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

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2004.