

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1074 (Delegate Rosenberg, *et al.*)
Health and Government Operations

Discrimination - Procurement Contracts

This bill adds specified items to mandatory nondiscrimination clauses included in State procurement contracts and provides for certain exceptions for religious organizations and schools.

Fiscal Summary

State Effect: None. The provisions of this bill would not materially affect State government operations.

Local Effect: None.

Small Business Effect: Potential minimal impact on small businesses that receive State financial assistance or contract with the State to post revised notices.

Analysis

Bill Summary: The bill modifies the requirement that all procurement contracts with the State include a nondiscrimination clause to include a prohibition on discrimination by the contractor against an employee or applicant for employment because of sexual orientation (as defined in Article 49B of the Annotated Code), genetic information, disability, or because of an individual's refusal to submit to a genetic test or make available the results of a genetic test. The bill applies to contracts with religious organizations, but not with respect to employment of individuals with primarily faith-related duties. The bill also exempts a school, college, university, or other educational institution that is owned, supported, controlled, or managed by a religious corporation,

association, or society, or if the curriculum is directed toward the propagation of a particular religion.

Current Law: All contracts for State procurement must have a nondiscrimination clause that prohibits discrimination in any manner by the contractor against an employee or applicant for employment because of sex, race, age, color, creed, or national origin. The clause must require each contractor and subcontractor subject to the clause to post a notice of the clause's provisions. If the nondiscrimination clause is omitted from a contract or subcontract for State procurement, the State may declare the contract void. There is no exception to the nondiscrimination clause requirement for a religious organization.

It is an unlawful employment practice for an employer to discriminate against an individual who is an employee or an applicant because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, disability unrelated in nature and extent so as to reasonably preclude the performance of employment, or because of the individual's refusal to submit to a genetic test or make available results of a genetic test unless the characteristic is a bona fide occupational qualification reasonably necessary to the normal operation of a particular business or enterprise. The anti-discrimination in employment provisions do not apply to an employer with respect to a religious corporation, association, educational institution, or society relating to the employment of individuals of a particular religion or sexual orientation to perform work connected with the carrying on of its activities.

Background: Title I of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 sets forth provisions that enable faith-based organizations to compete for government funds to provide welfare benefits and services under the Temporary Assistance for Needy Families Act (TANF). Thus, states and localities must allow religious organizations to compete for and receive federal funding for the provision of social services on the same basis as other service providers. This federal statute and proposed "charitable choice" regulations generally require equal treatment for faith-based organizations regardless of their religious character or affiliation. These organizations cannot be excluded from the competition for TANF funds simply because they are religious.

The proposed charitable choice regulations also preserve an exemption under the U.S. Civil Rights Act for a faith-based organization to discriminate on the basis of religion when making employment decisions. Current State procurement law does not preserve this religious employment exemption since it requires a nondiscrimination clause that prohibits discrimination in employment based on "creed," which is considered to mean religion. However, the charitable choice regulations expressly provide that its rules do

not preempt “any state with a statute that prohibits or restricts the expenditure of state funds in or by a religious organization.”

The provisions of the bill relating to the addition of sexual orientation, disability, and genetic information to the wording of the nondiscrimination clause were added in light of identical modifications to Article 49B regarding discrimination in employment. The new language in the bill, which makes the bill’s provisions inapplicable to the employment of individuals with certain educational or ministerial duties by a religious organization, is a requirement based on federal and State case law.

Additional Information

Prior Introductions: In 2003, HB 425, a similar bill, passed the House and was heard in the Senate Education, Health, and Environmental Affairs Committee. In 2000, HB 1161, a similar bill, was heard in the House Judiciary Committee.

Cross File: None.

Information Source(s): Department of General Services, Board of Public Works, University System of Maryland, Maryland Department of Transportation, Department of Budget and Management, Department of Legislative Services

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lc/hlb

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