
By: **Senators Lawlah, Britt, Conway, Currie, Exum, Gladden, Hughes,
Jones, Kelley, and McFadden**

Introduced and read first time: February 13, 2006

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Commercial Nondiscrimination Policy**

3 FOR the purpose of establishing a "Commercial Nondiscrimination Policy" under the
4 State procurement law; specifying the purpose, intent, and scope of the policy;
5 defining terms; specifying rules of construction; authorizing certain persons to
6 file certain complaints alleging discrimination; specifying investigation
7 procedures, duties, and responsibilities for handling complaints; providing an
8 opportunity for hearings and the adjudication of complaints; specifying certain
9 remedies and sanctions; providing for judicial review of certain decisions;
10 specifying certain contract clauses relating to nondiscrimination; specifying
11 certain disclosure requirements; requiring the Attorney General to establish a
12 certain expert pool; providing for the debarment of certain persons for certain
13 violations of procurement law; providing for the application of this Act; and
14 generally relating to the "Commercial Nondiscrimination Policy" under the
15 State procurement law.

16 BY repealing and reenacting, with amendments,
17 Article - State Finance and Procurement
18 Section 16-203(a)
19 Annotated Code of Maryland
20 (2001 Replacement Volume and 2005 Supplement)

21 BY adding to
22 Article - State Finance and Procurement
23 Section 19-101 through 19-121, inclusive, to be under the new title "Title 19.
24 Commercial Nondiscrimination Policy"
25 Annotated Code of Maryland
26 (2001 Replacement Volume and 2005 Supplement)

Preamble

1

2 WHEREAS, The purposes of this Act are:

3 (1) to establish a clear policy against discrimination in business on the
4 basis of sex, race, age, color, creed, or national origin, or on the basis of disability or
5 any other form of unlawful discrimination;

6 (2) to establish a clear policy for the State not to enter into contracts
7 with business entities that discriminate in the solicitation, selection, or treatment of
8 vendors, suppliers, subcontractors, or commercial customers; and

9 (3) to establish a formal complaint process and investigation process for
10 alleged violations of this policy, providing due process for hearing evidence, rendering
11 findings, and imposing sanctions for policy violations; and

12 WHEREAS, The General Assembly finds that in order to avoid becoming a
13 passive participant in private sector commercial discrimination, and consistent with
14 the requirements of the State procurement law, it is necessary to establish and firmly
15 enforce a clear policy against discrimination in business on the basis of sex, race, age,
16 color, creed, or national origin, or on the basis of disability or any other form of
17 unlawful discrimination; and

18 WHEREAS, Under this policy, it is the intent of the State that it not contract
19 with business entities that discriminate in the solicitation, selection, hiring, or
20 treatment of vendors, suppliers, subcontractors, or commercial customers in
21 contravention of the standards specified under the State procurement law; and

22 WHEREAS, Such a commercial nondiscrimination policy approach has been
23 favorably commented on by the United States Supreme Court in *City of Richmond v.*
24 *J. A. Croson*, 488 U.S. 469, 509-510 (1989), and by other federal courts; and

25 WHEREAS, The General Assembly has further determined that it has a
26 compelling interest in assuring that public funds do not serve to finance private
27 prejudice on the basis of sex, race, age, color, creed, or national origin or on the basis
28 of disability or any other form of unlawful discrimination; and

29 WHEREAS, It is in the best interests of the State to enhance competition on
30 State projects by promoting equal opportunity and the full participation of all
31 segments of the community in a marketplace environment that is free from the effects
32 of discrimination, in that the State is likely to benefit from a discrimination-free
33 marketplace through increased business activity, lower prices, and higher State
34 revenues; and

35 WHEREAS, Through enactment of this Act, the State provides a formal
36 mechanism for receiving, investigating, and resolving complaints of discrimination
37 filed against businesses that have submitted a bid or proposal for, have been selected
38 to engage in, or are engaged in providing goods or services to the State; and

1 WHEREAS, The State also gives fuller meaning and effect to the goals and
2 objectives of this Act by including enforcement provisions that may subject violators
3 of the Act to possible contract termination, disqualification from participation in
4 State contracts and projects, or other remedial actions; now, therefore,

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

7 **Article - State Finance and Procurement**

8 16-203.

9 (a) A person may be debarred from entering into a contract with the State if
10 the person, an officer, partner, controlling stockholder or principal of that person, or
11 any other person substantially involved in that person's contracting activities has:

12 (1) been convicted under the laws of the State, another state or the
13 United States of:

14 (i) a criminal offense incident to obtaining, attempting to obtain, or
15 performing a public or private contract, except as provided in § 16-202; or

16 (ii) fraud, embezzlement, theft, forgery, falsification or destruction
17 of records, or receiving stolen property;

18 (2) been convicted of a criminal violation of an antitrust statute of the
19 State, another state, or the United States;

20 (3) been convicted of a violation of the Racketeer Influenced and Corrupt
21 Organization Act, or the Mail Fraud Act, for acts in connection with the submission of
22 bids or proposals for a public or private contract;

23 (4) been convicted of a violation of § 14-308 of this article;

24 (5) been convicted of conspiracy to commit any act or omission that
25 would constitute grounds for conviction under any of the laws or statutes described in
26 paragraphs (1), (2), (3), or (4) of this subsection; [or]

27 (6) been found civilly liable under an antitrust statute of the State,
28 another state, or the United States for acts or omissions in connection with the
29 submission of bids or proposals for a public or private contract; OR

30 (7) BEEN FOUND IN A FINAL ADMINISTRATIVE DECISION TO HAVE
31 VIOLATED THE COMMERCIAL NONDISCRIMINATION POLICY UNDER TITLE 19 OF THIS
32 ARTICLE WITH REGARD TO A PUBLIC OR PRIVATE CONTRACT.

1 TITLE 19. COMMERCIAL NONDISCRIMINATION POLICY.

2 19-101.

3 (A) IT IS THE POLICY OF THE STATE NOT TO ENTER INTO A CONTRACT WITH
4 ANY BUSINESS ENTITY THAT HAS DISCRIMINATED IN THE SOLICITATION,
5 SELECTION, HIRING, OR TREATMENT OF VENDORS, SUPPLIERS, SUBCONTRACTORS,
6 OR COMMERCIAL CUSTOMERS ON THE BASIS OF SEX, RACE, AGE, COLOR, CREED, OR
7 NATIONAL ORIGIN, OR ON THE BASIS OF DISABILITY OR ANY OTHERWISE UNLAWFUL
8 USE OF CHARACTERISTICS REGARDING THE VENDOR'S, SUPPLIER'S, OR
9 COMMERCIAL CUSTOMER'S EMPLOYEES OR OWNERS.

10 (B) NOTHING IN THIS TITLE SHALL BE CONSTRUED TO PROHIBIT OR LIMIT
11 OTHERWISE LAWFUL EFFORTS TO REMEDY THE EFFECTS OF DISCRIMINATION THAT
12 HAVE OCCURRED OR ARE OCCURRING IN THE MARKETPLACE.

13 (C) CONDUCT THAT HAS OCCURRED MORE THAN 4 YEARS PRIOR TO THE
14 FILING OF A COMPLAINT ABOUT CONDUCT THAT IS NOT ACTIONABLE UNDER THIS
15 TITLE MAY NOT BE SUBJECT TO THE FILING OF A COMPLAINT NOR BE SUBJECT TO
16 THE IMPOSITION OF SANCTIONS OR REMEDIES UNDER THIS TITLE.

17 19-102.

18 IT IS THE INTENT OF THE STATE TO AVOID BECOMING A PASSIVE PARTICIPANT
19 IN PRIVATE SECTOR COMMERCIAL DISCRIMINATION BY REFUSING TO PROCURE
20 GOODS AND SERVICES FROM BUSINESS ENTITIES THAT DISCRIMINATE IN THE
21 SOLICITATION, SELECTION, HIRING, OR TREATMENT OF VENDORS, SUPPLIERS,
22 SUBCONTRACTORS, OR COMMERCIAL CUSTOMERS ON THE BASIS OF SEX, RACE, AGE,
23 COLOR, CREED, OR NATIONAL ORIGIN, OR ON THE BASIS OF DISABILITY OR OTHER
24 UNLAWFUL FORMS OF DISCRIMINATION BY PROVIDING A PROCEDURE FOR
25 RECEIVING, INVESTIGATING, AND RESOLVING COMPLAINTS OF DISCRIMINATION
26 FILED AGAINST BUSINESS ENTITIES THAT:

27 (1) HAVE SUBMITTED A BID OR PROPOSAL; OR

28 (2) HAVE BEEN SELECTED TO ENGAGE IN, OR ARE ENGAGED IN
29 PROVIDING GOODS OR SERVICES TO THE STATE.

30 19-103.

31 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

32 (B) "ADMINISTRATIVE LAW JUDGE" MEANS THE INDIVIDUAL ASSIGNED BY
33 THE OFFICE OF ADMINISTRATIVE HEARINGS TO CONDUCT A HEARING UNDER THIS
34 TITLE.

35 (C) "ATTORNEY GENERAL" MEANS THE ATTORNEY GENERAL OF MARYLAND,
36 OR A DESIGNEE OF THE ATTORNEY GENERAL.

1 (D) (1) "BUSINESS ENTITY" MEANS ANY PERSON, FIRM, SOLE
2 PROPRIETORSHIP, PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, OR
3 OTHER BUSINESS ENTITY OR A COMBINATION OF ANY OF THESE ENTITIES,
4 INCLUDING ANY FINANCIAL INSTITUTION, DEVELOPER, CONSULTANT, PRIME
5 CONTRACTOR, SUBCONTRACTOR, SUPPLIER, OR VENDOR, THAT HAS SUBMITTED A
6 BID OR PROPOSAL FOR, HAS BEEN SELECTED TO ENGAGE IN, OR IS ENGAGED IN
7 PROVIDING GOODS OR SERVICES TO THE STATE.

8 (2) "BUSINESS ENTITY" INCLUDES:

9 (I) SELLING OR LEASING SUPPLIES OR GOODS, OR PROVIDING
10 CONSTRUCTION, REAL ESTATE DEVELOPMENT, FINANCIAL, INSURANCE,
11 PROFESSIONAL, OR OTHER SERVICES, IN RETURN FOR A FEE OR ANY OTHER FORM
12 OF COMPENSATION PAID OR PROVIDED BY THE STATE; AND

13 (II) ANY SUBCONTRACTOR OF THE BUSINESS ENTITY.

14 (3) "BUSINESS ENTITY" DOES NOT INCLUDE ANOTHER GOVERNMENTAL
15 ENTITY.

16 (E) "COMMERCIAL CUSTOMER" MEANS A BUSINESS ENTITY THAT PROCURED
17 OR ATTEMPTED TO PROCURE GOODS OR SERVICES FROM A BUSINESS ENTITY FOR
18 BUSINESS AS OPPOSED TO PERSONAL USE.

19 (F) "COMMERCIAL NONDISCRIMINATION POLICY" MEANS THE PROVISIONS
20 CONTAINED UNDER THIS TITLE AND ANY REGULATIONS OR DOCUMENTATION
21 REQUIREMENTS ADOPTED BY THE ATTORNEY GENERAL FOR THE OFFICE OF
22 MINORITY AFFAIRS IN ACCORDANCE WITH THIS TITLE.

23 (G) "CONTRACT" MEANS AN AGREEMENT WITH A BUSINESS ENTITY THAT IS
24 LET BY OR ON BEHALF OF THE STATE FOR THAT BUSINESS ENTITY TO SELL OR
25 LEASE SUPPLIES OR GOODS, OR TO PROVIDE CONSTRUCTION, REAL ESTATE
26 DEVELOPMENT, FINANCIAL, INSURANCE, PROFESSIONAL, OR OTHER SERVICES TO
27 THE STATE IN RETURN FOR A FEE OR ANY OTHER FORM OF COMPENSATION TO BE
28 PAID OR PROVIDED BY THE STATE.

29 (H) (1) "DISCRIMINATION" MEANS ANY DISADVANTAGE, DIFFERENCE,
30 DISTINCTION, OR PREFERENCE IN THE SOLICITATION, SELECTION, HIRING, OR
31 TREATMENT OF A VENDOR, SUPPLIER, SUBCONTRACTOR, OR COMMERCIAL
32 CUSTOMER ON THE BASIS OF SEX, RACE, AGE, COLOR, CREED, OR NATIONAL ORIGIN,
33 OR ON THE BASIS OF DISABILITY OR ANY OTHERWISE UNLAWFUL USE OF
34 CHARACTERISTICS REGARDING THE VENDOR'S, SUPPLIER'S, OR COMMERCIAL
35 CUSTOMER'S EMPLOYEES OR OWNERS.

36 (2) "DISCRIMINATION" DOES NOT INCLUDE LAWFUL EFFORTS TO
37 REMEDY THE EFFECTS OF DISCRIMINATION THAT HAVE OCCURRED OR ARE
38 OCCURRING IN THE MARKETPLACE.

1 (I) "ECONOMIC DEVELOPMENT PROJECT" MEANS A REAL ESTATE
2 DEVELOPMENT, CONSTRUCTION, OR RENOVATION PROJECT FOR WHICH THE STATE
3 PROVIDES:

4 (1) FUNDING OR OTHER FINANCIAL ASSISTANCE, OTHER THAN
5 PAYMENTS IN EXCHANGE FOR GOODS OR SERVICES;

6 (2) LAND;

7 (3) ROAD IMPROVEMENTS;

8 (4) TAX CREDITS; OR

9 (5) A BELOW MARKET PURCHASE PRICE.

10 (J) (1) "FINANCIAL INSTITUTION" MEANS A PERSON:

11 (I) ENGAGED IN THE BUSINESS OF LENDING MONEY,
12 GUARANTEEING LOANS, EXTENDING CREDIT, SECURING BONDS, OR PROVIDING
13 VENTURE OR EQUITY CAPITAL; OR

14 (II) THAT OFFERS FINANCIAL SERVICES IN CONNECTION WITH
15 STATE PROJECTS OR THE ADMINISTRATION OF STATE GOVERNMENT.

16 (2) "FINANCIAL INSTITUTION" INCLUDES BANKS, SAVINGS AND LOANS,
17 VENTURE CAPITAL COMPANIES, INSURANCE COMPANIES, BONDING COMPANIES,
18 MORTGAGE COMPANIES, CREDIT UNIONS, AND BROKERS.

19 (K) "OFFICE" MEANS THE OFFICE OF THE ATTORNEY GENERAL.

20 (L) "PARTY" MEANS:

21 (1) THE PERSON WHO HAS FILED A COMPLAINT UNDER THIS TITLE;

22 (2) THE RESPONDENT BUSINESS ENTITY THAT HAS BEEN ALLEGED TO
23 HAVE VIOLATED THIS TITLE; AND

24 (3) THE OFFICE THAT IS RESPONSIBLE FOR INVESTIGATING THE
25 COMPLAINT AND RENDERING THE INITIAL FINDINGS.

26 (M) "RETALIATE" MEANS TO TAKE ANY ACTION THAT HAS A MATERIAL
27 NEGATIVE EFFECT AGAINST ANY PERSON, BUSINESS OR OTHER ENTITY FOR
28 REPORTING ANY INCIDENT OF DISCRIMINATION, TESTIFYING AS A WITNESS AT A
29 HEARING, OR PROVIDING REQUESTED ASSISTANCE TO THE OFFICE IN ANY
30 INVESTIGATION OF AN INCIDENT OF DISCRIMINATION UNDER THIS TITLE.

31 (N) "SERVICES" INCLUDES CONSTRUCTION, REAL ESTATE DEVELOPMENT,
32 FINANCIAL, INSURANCE, PROFESSIONAL, AND OTHER SERVICES.

1 (O) "STATE SUBCONTRACT" MEANS AN AGREEMENT FOR THE PROVISION OF
2 GOODS OR THE PERFORMANCE OF A PARTICULAR PORTION OF WORK TO BE
3 PERFORMED UNDER A CONTRACT WITH THE STATE, WHERE:

4 (1) THE PARTY PROVIDING THE GOODS OR SERVICES IS ON
5 REASONABLE NOTICE THAT THE WORK IS TO BE PERFORMED UNDER A STATE
6 CONTRACT; AND

7 (2) THE AMOUNT TO BE PAID FOR SUCH SERVICE IS MATERIAL WITH
8 RESPECT TO THE OVERALL AMOUNT OF THE CONTRACT.

9 (P) "STATE SUBCONTRACTOR" MEANS THE PARTY PROVIDING GOODS OR
10 SERVICES UNDER A STATE SUBCONTRACT.

11 19-104.

12 (A) AS A CONDITION OF PARTICIPATING IN AN ECONOMIC DEVELOPMENT
13 PROJECT, THE STATE SHALL REQUIRE THE GOVERNMENTAL ENTITY,
14 QUASI-GOVERNMENTAL ENTITY, CORPORATION, DEVELOPER, OR CONTRACTOR THAT
15 RECEIVES ASSISTANCE FROM THE STATE TO COMPLY WITH THIS TITLE:

16 (1) IN ADMINISTERING THE ECONOMIC DEVELOPMENT PROJECT; AND

17 (2) IN AWARDING CONTRACTS TO MANAGE OR PERFORM THE WORK
18 ENTAILED IN THE ECONOMIC DEVELOPMENT PROJECT.

19 (B) (1) EACH CONTRACT AND SUBCONTRACT AWARDED IN CONNECTION
20 WITH AN ECONOMIC DEVELOPMENT PROJECT SHALL CONTAIN THE
21 NONDISCRIMINATION CLAUSE SET FORTH IN § 19-115 OF THIS TITLE.

22 (2) ANY CLAIM OF DISCRIMINATION RELATING TO THE ECONOMIC
23 DEVELOPMENT PROJECT SHALL BE SUBJECT TO INVESTIGATION AND
24 ADJUDICATION BY THE STATE IN ACCORDANCE WITH THIS TITLE.

25 (C) THIS TITLE SHALL NOT APPLY TO:

26 (1) OTHER THAN A LEASE OF REAL ESTATE FOR THE STATE'S USE, ANY
27 REAL PROPERTY ACQUISITION BY THE STATE, INCLUDING PROPERTY SUBJECT TO
28 CONDEMNATION;

29 (2) SETTLEMENT OF LITIGATION;

30 (3) EXCEPT FOR PROCEEDINGS TO ENFORCE THIS TITLE, SETTLEMENT
31 OF JUDICIAL OR ADMINISTRATIVE ENFORCEMENT PROCEEDINGS BY OR ON BEHALF
32 OF THE STATE;

33 (4) AGREEMENTS CONCERNING STANDARDS FOR LOCATING FACILITIES
34 IN A STATE RIGHT-OF-WAY WHEN A BUSINESS ENTITY HAS A STATUTORY RIGHT TO
35 BE IN THE RIGHT-OF-WAY; AND

1 (5) AGREEMENTS WITH NOT-FOR-PROFIT ENTITIES FOR THE PURPOSE
2 OF HAVING THE ENTITIES PERFORM FUNCTIONS THAT THE STATE IS AUTHORIZED
3 TO PERFORM.

4 19-105.

5 (A) THE PROVISIONS OF THIS TITLE ARE TO BE LIBERALLY CONSTRUED TO
6 ACCOMPLISH ITS OBJECTIVES AND PURPOSES.

7 (B) FOR PURPOSES OF ADMINISTRATION, THE ATTORNEY GENERAL SHALL
8 CONSTRUE THE PROVISIONS OF THIS TITLE.

9 (C) A DECISION OF THE ATTORNEY GENERAL IS SUBJECT TO JUDICIAL
10 REVIEW UNDER § 19-113 OF THIS TITLE.

11 19-106.

12 (A) ANY PERSON MAY FILE AN ADMINISTRATIVE COMPLAINT WITH THE
13 ATTORNEY GENERAL STATING FACTS SHOWING OR TENDING TO SHOW THAT A
14 BUSINESS ENTITY HAS WITHIN THE PRECEDING 5-YEAR PERIOD ENGAGED IN
15 DISCRIMINATION OR RETALIATION IN VIOLATION OF THIS TITLE.

16 (B) WITHIN 10 BUSINESS DAYS, THE ATTORNEY GENERAL SHALL NOTIFY THE
17 BUSINESS ENTITY AGAINST WHOM THE COMPLAINT WAS FILED THAT A COMPLAINT
18 HAS BEEN RECEIVED.

19 19-107.

20 (A) THE OFFICE SHALL BE RESPONSIBLE FOR INVESTIGATING
21 DISCRIMINATION AND RETALIATION COMPLAINTS FILED UNDER THIS TITLE.

22 (B) (1) IN CONDUCTING ITS INVESTIGATION, THE OFFICE MAY ENLIST THE
23 ASSISTANCE OF ONE OR MORE INDIVIDUALS WHO HAVE BEEN SELECTED BY THE
24 ATTORNEY GENERAL TO PARTICIPATE IN THE VOLUNTEER EXPERTS POOL
25 ESTABLISHED UNDER § 19-120 OF THIS TITLE.

26 (2) THE ROLE OF ANY WITNESSES SELECTED FROM THE VOLUNTEER
27 EXPERTS POOL SHALL BE TO HELP THE OFFICE EVALUATE THE CLAIM BY
28 PROVIDING INFORMATION REGARDING INDUSTRY CUSTOM AND PRACTICE IN A
29 PARTICULAR AREA OF BUSINESS.

30 (C) THE OFFICE MAY REQUEST THAT THE ATTORNEY GENERAL PROVIDE
31 ADDITIONAL STATE PERSONNEL OR OUTSIDE CONSULTANTS AS MAY BE
32 REASONABLY NECESSARY OR APPROPRIATE TO CONDUCT AN INVESTIGATION.

33 (D) (1) THE OFFICE SHALL EXERCISE REASONABLE JUDGMENT IN SEEKING
34 RELEVANT EVIDENCE FROM THE COMPLAINANT, THE RESPONDENT BUSINESS
35 ENTITY AND, AS NECESSARY, EXTERNAL SOURCES.

1 (2) THIS TITLE MAY NOT BE CONSTRUED TO REQUIRE THE STATE TO
2 FUND THE COST OF:

3 (I) HAVING STATE STAFF OR OTHER INDIVIDUALS TRAVEL
4 OUTSIDE THE MARYLAND METROPOLITAN STATISTICAL AREA TO INVESTIGATE ANY
5 CLAIM UNDER THIS TITLE; OR

6 (II) HAVING WITNESSES TRAVEL TO THE STATE FOR THE PURPOSE
7 OF INVESTIGATING A CLAIM OR TESTIFYING AT A HEARING OR PROCEEDING UNDER
8 THIS TITLE.

9 (E) THE OFFICE SHALL EXERCISE REASONABLE DISCRETION IN
10 DETERMINING THE EXTENT OF THE INVESTIGATION REQUIRED TO SUPPORT THE
11 ATTORNEY GENERAL'S INITIAL FINDINGS AND RECOMMENDATIONS.

12 (F) THE OFFICE SHALL HAVE NO OBLIGATION TO INVESTIGATE COMPLAINTS
13 RELATING TO DISCRIMINATION THAT OCCURRED OUTSIDE THE MARYLAND
14 METROPOLITAN STATISTICAL AREA, EXCEPT THAT THE OFFICE MAY DO SO IF THE
15 COMPLAINANT PROVIDES EVIDENCE OF A NEXUS BETWEEN THE DISCRIMINATION
16 THAT OCCURRED AND THE POTENTIAL FOR DISCRIMINATION IN THE MARYLAND
17 METROPOLITAN STATISTICAL AREA.

18 (G) IN DETERMINING WHETHER DISCRIMINATION OCCURRED UNDER THIS
19 TITLE, AND IN EVALUATING THE FACTORS SET FORTH IN § 19-108(A) OF THIS TITLE,
20 THE OFFICE MAY CONSIDER EVIDENCE RELATING TO ACTS OR OMISSIONS THAT
21 OCCURRED DURING OR PRIOR TO THE 5-YEAR PERIOD BEFORE THE COMPLAINT WAS
22 FILED.

23 19-108.

24 (A) IN DETERMINING WHETHER TO PROCEED FURTHER WITH AN
25 INVESTIGATION AND IN MAKING FINDINGS, THE OFFICE MAY CONSIDER ANY
26 EVIDENCE PROVIDED BY THE COMPLAINANT OR THE RESPONDENT BUSINESS
27 ENTITY AS TO THE FOLLOWING FACTORS:

28 (1) WHETHER THERE WAS AN INTENT TO DISCRIMINATE ON THE PART
29 OF THE RESPONDENT BUSINESS FIRM;

30 (2) WHETHER THERE WAS A PATTERN AND PRACTICE OF
31 DISCRIMINATION ON THE PART OF THE RESPONDENT BUSINESS ENTITY;

32 (3) ANY ACTIONS TAKEN BY THE RESPONDENT BUSINESS ENTITY TO
33 REMEDY THE ALLEGED DISCRIMINATION;

34 (4) THE EFFECTIVENESS OF ANY PRIOR ATTEMPTS BY THE
35 RESPONDENT BUSINESS ENTITY TO REMEDY THE DISCRIMINATION;

36 (5) WHETHER THE RESPONDENT BUSINESS ENTITY HAS PROCURED
37 GOODS OR SERVICES FROM OR OTHERWISE ENGAGED IN BUSINESS WITH PERSONS
38 OR ENTITIES OF THE SAME PROTECTED CLASS AS THE COMPLAINANT TO AN EXTENT

1 SUFFICIENT TO DEMONSTRATE THAT THE RESPONDENT BUSINESS ENTITY HAS NOT
2 DISCRIMINATED AGAINST SUCH PROTECTED CLASS IN THE OVERALL CONTEXT OF
3 ITS BUSINESS; AND

4 (6) ANY OTHER EVIDENCE DEEMED RELEVANT BY THE ATTORNEY
5 GENERAL.

6 (B) BASED ON THE OFFICE'S REVIEW AND INVESTIGATION, THE OFFICE
7 SHALL MAKE AN INITIAL FINDING OF EACH ALLEGATION STATED IN THE
8 COMPLAINT, THAT EITHER:

9 (1) THE INVESTIGATION PRODUCED SUFFICIENT EVIDENCE TO FIND
10 THAT THE ALLEGED DISCRIMINATION OR RETALIATION DID TAKE PLACE
11 ("SUSTAINED");

12 (2) THE INVESTIGATION FAILED TO PRODUCE SUFFICIENT EVIDENCE
13 TO FIND WHETHER THE ALLEGED DISCRIMINATION OR RETALIATION TOOK PLACE
14 ("NOT SUSTAINED");

15 (3) THE INVESTIGATION PRODUCED SUFFICIENT EVIDENCE TO FIND
16 THAT THE ALLEGED DISCRIMINATION OR RETALIATION DID NOT TAKE PLACE
17 ("UNFOUNDED");

18 (4) THE INVESTIGATION PRODUCED SUFFICIENT EVIDENCE TO
19 ESTABLISH THAT THE COMPLAINANT KNOWINGLY MADE ONE OR MORE FALSE OR
20 FRIVOLOUS ALLEGATIONS, AND FURTHER INVESTIGATION DID NOT APPEAR LIKELY
21 TO PRODUCE SUFFICIENT EVIDENCE THAT THE ALLEGED DISCRIMINATION OR
22 RETALIATION DID TAKE PLACE ("FALSE OR FRIVOLOUS");

23 (5) THE ALLEGATION HAS BEEN SETTLED OR OTHERWISE RESOLVED
24 WITH THE AGREEMENT OF THE RESPONDENT BUSINESS ENTITY, THE COMPLAINANT,
25 AND THE STATE ("SETTLED"); OR

26 (6) THE ALLEGATION HAS BEEN WITHDRAWN WITH THE APPROVAL OF
27 THE ATTORNEY GENERAL ("WITHDRAWN").

28 (C) THE ATTORNEY GENERAL SHALL APPROVE THE WITHDRAWAL OF AN
29 ALLEGATION BY THE COMPLAINANT UNLESS THE ATTORNEY GENERAL DETERMINES
30 THAT PERMITTING THE WITHDRAWAL IS NOT IN THE BEST INTERESTS OF THE
31 STATE.

32 (D) IF THE ATTORNEY GENERAL DETERMINES THAT THE COMPLAINANT'S
33 WITHDRAWAL OF AN ALLEGATION IS NOT IN THE BEST INTERESTS OF THE STATE,
34 THEN THE ATTORNEY GENERAL MAY CONTINUE THE INVESTIGATION WITHOUT THE
35 COMPLAINANT'S PARTICIPATION AS A PARTY.

36 (E) ON COMPLETION OF ITS INITIAL INVESTIGATION, THE OFFICE SHALL
37 RECOMMEND TO THE ATTORNEY GENERAL THE APPROPRIATE ACTION TO BE TAKEN,
38 INCLUDING:

1 (1) ADDITIONAL INVESTIGATION OF THE COMPLAINT;

2 (2) THE ATTORNEY GENERAL'S ADOPTION OF THE INITIAL FINDINGS
3 RENDERED BY THE OFFICE;

4 (3) IMPOSITION OF SANCTIONS;

5 (4) IMPOSITION OF REMEDIES; OR

6 (5) OTHER ACTION CONSISTENT WITH THIS TITLE.

7 (F) IN DETERMINING APPROPRIATE ACTION ON A DISCRIMINATION CLAIM,
8 THE ATTORNEY GENERAL MAY TAKE INTO ACCOUNT ANY EVIDENCE PROVIDED OR
9 UNCOVERED IN THE COURSE OF THE INVESTIGATION REGARDING:

10 (1) THE IMPACT OF THE DISCRIMINATION ON AFFECTED PARTIES;

11 (2) THE IMPACT OF ANY AUTHORIZED REMEDY ON THE STATE OR ANY
12 OTHER PARTY;

13 (3) ACTIONS TAKEN BY THE RESPONDENT BUSINESS ENTITY TO
14 REMEDY THE ALLEGED DISCRIMINATION;

15 (4) THE EFFECTIVENESS OF ANY PRIOR ATTEMPTS BY THE
16 RESPONDENT BUSINESS ENTITY TO REMEDY THE DISCRIMINATION;

17 (5) WHETHER THE RESPONDENT BUSINESS ENTITY HAS PROCURED
18 GOODS OR SERVICES FROM OR OTHERWISE ENGAGED IN BUSINESS WITH PERSONS
19 OR ENTITIES OF THE SAME PROTECTED CLASS AS THE COMPLAINANT TO AN EXTENT
20 SUFFICIENT TO DEMONSTRATE THAT THE RESPONDENT BUSINESS ENTITY HAS NOT
21 DISCRIMINATED AGAINST SUCH PROTECTED CLASS IN THE OVERALL CONTEXT OF
22 ITS BUSINESS;

23 (6) THE NUMBER AND SCOPE OF PRIOR VIOLATIONS OF THIS POLICY BY
24 THE RESPONDENT BUSINESS ENTITY; AND

25 (7) ANY OTHER EVIDENCE DETERMINED TO BE RELEVANT BY THE
26 ATTORNEY GENERAL.

27 (G) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE
28 ATTORNEY GENERAL SHALL MAKE THE INITIAL FINDINGS AND ISSUE
29 RECOMMENDATIONS FOR APPROPRIATE ACTION WITHIN 120 CALENDAR DAYS OF
30 THE RECEIPT OF THE COMPLAINT.

31 (2) THE ATTORNEY GENERAL MAY EXTEND THE TIME LIMIT SET FORTH
32 IN PARAGRAPH (1) OF THIS SUBSECTION FOR GOOD CAUSE OR IF THE PARTIES AGREE
33 TO MEDIATE A SETTLEMENT TO THE COMPLAINT.

34 (H) THE ATTORNEY GENERAL SHALL NOTIFY THE COMPLAINANT AND THE
35 BUSINESS ENTITY WITHIN 5 BUSINESS DAYS OF THE ISSUANCE OF THE INITIAL

1 FINDINGS AND RECOMMENDATIONS, INCLUDING AN EXPLANATION OF THE
2 REASONS JUSTIFYING THE INITIAL FINDINGS.

3 (I) (1) FAILURE BY A PARTY TO PRODUCE DOCUMENTS OR OTHER
4 EVIDENCE RELEVANT TO AN INVESTIGATION UNDER THIS ARTICLE WITHIN 30 DAYS
5 AFTER THE DOCUMENTS ARE REQUESTED BY THE ATTORNEY GENERAL
6 CONSTITUTES A VIOLATION OF THIS TITLE.

7 (2) THE ATTORNEY GENERAL MAY RECOMMEND ANY REMEDY OR
8 SANCTION AUTHORIZED BY THIS TITLE AGAINST ANY PARTY WHO VIOLATES THIS
9 SUBSECTION.

10 19-109.

11 (A) IF THE ATTORNEY GENERAL DETERMINES THAT ONE OR MORE
12 ALLEGATIONS ARE SUSTAINED, THE BUSINESS ENTITY AGAINST WHOM THE
13 ALLEGATIONS WERE MADE SHALL BE ENTITLED TO REQUEST A CONTESTED CASE
14 HEARING.

15 (B) (1) TO SUBMIT A MATTER TO AN ADMINISTRATIVE HEARING AS A
16 CONTESTED CASE UNDER THIS TITLE, THE BUSINESS ENTITY MUST REQUEST A
17 CONTESTED CASE HEARING BY FILING A WRITTEN NOTICE WITH THE ATTORNEY
18 GENERAL AND THE COMPLAINANT WITHIN 15 CALENDAR DAYS OF NOTICE OF THE
19 INITIAL FINDINGS AND RECOMMENDATIONS.

20 (2) THE NOTICE MUST CONTAIN THE FOLLOWING INFORMATION:

21 (I) A DEMAND THAT THE MATTER BE REFERRED TO THE OFFICE
22 OF ADMINISTRATIVE HEARINGS FOR A CONTESTED CASE HEARING IN ACCORDANCE
23 WITH § 10-205(C)(2) OF THE STATE GOVERNMENT ARTICLE;

24 (II) THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF THE
25 ATTORNEY GENERAL, AND THE COMPLAINANT;

26 (III) A REFERENCE TO THIS TITLE; AND

27 (IV) A SUMMARY OF THE ATTORNEY GENERAL'S FINDINGS AND
28 RECOMMENDATIONS THAT ARE BEING SUBMITTED FOR RESOLUTION TO THE
29 ADMINISTRATIVE LAW JUDGE FOR THE CONTESTED CASE HEARING.

30 (C) IF THE BUSINESS ENTITY FAILS TO PROPERLY REQUEST A CONTESTED
31 CASE HEARING, THE INITIAL FINDINGS AND RECOMMENDATIONS OF THE ATTORNEY
32 GENERAL SHALL BECOME THE FINAL ADMINISTRATIVE DECISION OF THE STATE,
33 AND THE ATTORNEY GENERAL SHALL THEN BE AUTHORIZED TO ENTER ANY ORDER
34 AND TO TAKE ANY ACTION REASONABLY NECESSARY OR CONVENIENT TO:

35 (1) IMPLEMENT REMEDIES UNDER § 19-110 OF THIS TITLE;

36 (2) IMPOSE SANCTIONS UNDER § 19-111 OF THIS TITLE; AND

1 (3) GOVERN THE CONDUCT OF THE PARTIES IN THE MANNER
2 DESCRIBED UNDER § 19-112 OF THIS TITLE SO THAT THE PURPOSES OF THIS TITLE
3 ARE ACHIEVED.

4 (D) (1) FOR EACH CONTESTED CASE HEARING PROPERLY REQUESTED BY
5 THE BUSINESS ENTITY, THE ATTORNEY GENERAL SHALL DELEGATE THE MATTER TO
6 THE OFFICE OF ADMINISTRATIVE HEARINGS TO ASSIGN AN ADMINISTRATIVE LAW
7 JUDGE TO CONDUCT A HEARING IN A MANNER CONSISTENT WITH THE
8 REQUIREMENTS OF THIS SUBSECTION.

9 (2) WITHIN 30 DAYS AFTER NOTICE TO THE PARTIES OF THE
10 COMMENCEMENT OF THE CONTESTED CASE HEARING BY THE ADMINISTRATIVE LAW
11 JUDGE, THE BUSINESS ENTITY SHALL FILE A WRITTEN RESPONSE TO THE ATTORNEY
12 GENERAL'S FINDINGS AND RECOMMENDED ACTIONS, ALONG WITH ANY CLAIMS
13 THAT THE BUSINESS ENTITY MAY HAVE UNDER THIS TITLE.

14 (3) THE RESPONSE OF THE BUSINESS ENTITY SHALL STATE IN DETAIL
15 ALL GROUNDS ON WHICH THE BUSINESS ENTITY CONTENDS THAT THE ATTORNEY
16 GENERAL'S FINDINGS OR RECOMMENDATIONS ARE NOT APPROPRIATE UNDER THIS
17 TITLE.

18 (4) AT LEAST 20 DAYS BEFORE THE HEARING, EACH PARTY SHALL
19 PROVIDE TO THE OTHER PARTIES COPIES OF ALL DOCUMENTS THAT THE PARTY
20 INTENDS TO INTRODUCE AS EVIDENCE AT THE HEARING.

21 (5) THE ADMINISTRATIVE LAW JUDGE MAY ENTER ANY ORDER THAT IS
22 DETERMINED TO BE REASONABLY NECESSARY OR CONVENIENT TO:

23 (I) GOVERN THE CONDUCT OF THE HEARING AND THE PARTIES SO
24 THAT THE PURPOSES OF THIS TITLE ARE ACHIEVED;

25 (II) CONCLUDE ANY HEARING AND ISSUE ANY DECISION WITHIN A
26 REASONABLE TIME; AND

27 (III) CONDUCT ANY HEARING IN A MANNER THAT IS CONSISTENT
28 WITH THIS TITLE AND ANY DUE PROCESS RIGHTS TO WHICH ANY PARTY IS
29 ENTITLED.

30 (6) THE HEARING SHALL AFFORD ALL PARTIES AN OPPORTUNITY TO
31 PRESENT WITNESSES, CONDUCT DIRECT AND CROSS-EXAMINATION OF WITNESSES,
32 INTRODUCE RELEVANT EVIDENCE, SUBMIT BRIEFS, AND PRESENT ORAL ARGUMENT.

33 (7) THE ADMINISTRATIVE LAW JUDGE MAY ISSUE A PROTECTIVE ORDER
34 FOR GOOD CAUSE AS IS LAWFUL AND AS THE ADMINISTRATIVE LAW JUDGE
35 DETERMINES TO BE APPROPRIATE TO:

36 (I) LIMIT, OR OTHERWISE IMPOSE CONDITIONS ON, ACCESS BY
37 ANY PERSON TO ANY DOCUMENT IN THE POSSESSION OF A PARTY, INCLUDING ANY
38 DOCUMENT IN THE STATE'S POSSESSION OR IN THE RECORD OF THE HEARING THAT
39 IS NOT A PUBLIC RECORD; AND

1 (II) CLOSE ALL OR ANY PORTION OF THE HEARING OR OTHERWISE
2 IMPOSE CONDITIONS ON ACCESS TO THE HEARING BY ANY PERSON.

3 (8) WITHOUT LIMITING THE SCOPE OF THE ADMINISTRATIVE LAW
4 JUDGE'S AUTHORITY TO ISSUE PROTECTIVE ORDERS, IT IS UNDERSTOOD THAT THE
5 ADMINISTRATIVE LAW JUDGE MAY LIMIT, OR OTHERWISE IMPOSE CONDITIONS ON, A
6 PARTY'S ACCESS TO RECORDS OR PRESENCE DURING THE HEARING ONLY TO THE
7 EXTENT THE LIMITS OR CONDITIONS CAN BE IMPOSED IN A MANNER THAT IS
8 CONSISTENT WITH THE RIGHT, IF ANY, A PARTY MAY HAVE TO ACCESS THE RECORDS
9 OR BE PRESENT DURING THE HEARING UNDER APPLICABLE LAW, INCLUDING
10 EXPRESS PROVISIONS OF THIS TITLE.

11 (9) BASED ON THE EVIDENCE PRESENTED AT THE CONTESTED CASE
12 HEARING, AND WITHIN 30 CALENDAR DAYS AFTER THE HEARING, THE
13 ADMINISTRATIVE LAW JUDGE SHALL PREPARE A WRITTEN DECISION.

14 (10) THE ADMINISTRATIVE LAW JUDGE'S WRITTEN DECISION MAY:

15 (I) AFFIRM OR REJECT THE INITIAL FINDINGS AND
16 RECOMMENDATIONS;

17 (II) SUBSTITUTE DIFFERENT FINDINGS OR RECOMMEND
18 APPROPRIATE REMEDIES; OR

19 (III) CONTINUE THE HEARING AND RETURN THE CASE TO THE
20 ATTORNEY GENERAL FOR FURTHER INVESTIGATION AND FINDINGS AND TO REPORT
21 TO THE ADMINISTRATIVE LAW JUDGE ON THE RESULTS OF THE INVESTIGATION
22 WITHIN THE TIME FRAME THE ADMINISTRATIVE LAW JUDGE MAY SPECIFY.

23 (11) THE ADMINISTRATIVE LAW JUDGE'S WRITTEN DECISION SHALL BE
24 SOLELY BASED ON A PREPONDERANCE OF THE EVIDENCE CONTAINED IN THE
25 RECORD OF THE CONTESTED CASE HEARING AND SHALL REFLECT THE
26 EVIDENTIARY BASIS FOR ITS FINDINGS.

27 (E) NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS TITLE, UNLESS
28 THE ADMINISTRATIVE LAW JUDGE FINDS THAT ONE OR MORE ALLEGATIONS GIVING
29 RISE TO THE ATTORNEY GENERAL'S FINDINGS OR THE BUSINESS ENTITY'S
30 CHALLENGE TO THE FINDINGS WERE FRIVOLOUS OR KNOWINGLY FALSE WHEN
31 MADE, EACH PARTY SHALL BEAR THE COST OF ITS OWN LEGAL REPRESENTATION
32 AND EXPERT WITNESS FEES.

33 (F) IF THE ADMINISTRATIVE LAW JUDGE FINDS THAT ONE OR MORE
34 ALLEGATIONS GIVING RISE TO THE ATTORNEY GENERAL'S FINDINGS OR THE
35 BUSINESS ENTITY'S CHALLENGE TO THE FINDINGS WAS FRIVOLOUS OR KNOWINGLY
36 FALSE WHEN MADE, THE ADMINISTRATIVE LAW JUDGE MAY REQUIRE THE PARTY
37 WHO MADE THE FRIVOLOUS OR KNOWINGLY FALSE ALLEGATIONS TO BEAR ALL OR A
38 PORTION OF THE OTHER PARTY'S LEGAL FEES AND EXPERT WITNESS FEES.

39 (G) THE BUSINESS ENTITY, THE ATTORNEY GENERAL, AND THE
40 COMPLAINANT SHALL COOPERATE IN GOOD FAITH TO HAVE THE CONTESTED CASE

1 HEARING CONCLUDED WITHIN 90 DAYS AFTER THE BUSINESS ENTITY ISSUES ITS
2 NOTICE FOR A CONTESTED CASE HEARING.

3 (H) DURING THE CONTESTED CASE HEARING, THE ATTORNEY GENERAL OR
4 THE ADMINISTRATIVE LAW JUDGE MAY CALL AS WITNESSES ONE OR MORE
5 INDIVIDUALS WHO HAVE BEEN SELECTED BY THE ATTORNEY GENERAL TO
6 PARTICIPATE IN THE VOLUNTEER EXPERT POOL AS DESCRIBED IN § 19-120 OF THIS
7 TITLE FOR THE PURPOSE OF PROVIDING TESTIMONY REGARDING INDUSTRY
8 CUSTOM AND PRACTICE IN A PARTICULAR AREA OF BUSINESS.

9 (I) IF THE ATTORNEY GENERAL DETERMINES THAT ONE OR MORE
10 ALLEGATIONS ARE FALSE OR FRIVOLOUS, THE COMPLAINANT MAKING THE
11 ALLEGATIONS SHALL BE ENTITLED TO A CONTESTED CASE HEARING ON THE
12 ALLEGATIONS THAT ARE DETERMINED TO BE FALSE OR FRIVOLOUS IN ACCORDANCE
13 WITH THE PROCEDURES SET FORTH IN THIS SECTION, EXCEPT THAT ALL
14 REFERENCES TO THE BUSINESS ENTITY WITH RESPECT TO MATTERS OF CONTESTED
15 CASE HEARING RULES AND PROCEDURE SHALL APPLY TO THE COMPLAINANT.

16 (J) IF THE COMPLAINANT FAILS TO PROPERLY REQUEST A CONTESTED CASE
17 HEARING REGARDING A DETERMINATION OF A FALSE OR FRIVOLOUS ALLEGATION
18 AS PROVIDED IN THIS TITLE, THE INITIAL FINDINGS AND RECOMMENDATIONS
19 SHALL BECOME THE FINAL ADMINISTRATIVE DECISION OF THE STATE IN
20 ACCORDANCE WITH § 19-112 OF THIS TITLE.

21 (K) ABSENT GOOD CAUSE, FAILURE BY A PARTY TO PRODUCE RELEVANT
22 DOCUMENTS OR OTHER EVIDENCE IN ACCORDANCE WITH AN INITIAL
23 INVESTIGATION OR TO A CONTESTED CASE HEARING UNDER THIS TITLE WITHIN 30
24 DAYS AFTER THE DOCUMENTS ARE REQUESTED BY THE ATTORNEY GENERAL OR
25 THE ADMINISTRATIVE LAW JUDGE SHALL CONSTITUTE A VIOLATION OF THIS TITLE,
26 AND IN THE EVENT OF A VIOLATION THE ADMINISTRATIVE LAW JUDGE MAY ORDER
27 ANY REMEDY, SANCTION, OR ANY COMBINATION OF BOTH AUTHORIZED BY THIS
28 TITLE.

29 (L) (1) IF A TIMELY CONTESTED CASE HEARING IS NOT REQUESTED, THE
30 ATTORNEY GENERAL MAY VACATE THE OFFICE'S RECOMMENDED REMEDY ON
31 WRITTEN NOTICE TO ALL PARTIES WITHIN 5 BUSINESS DAYS AFTER THE TIME FOR
32 REQUESTING A CONTESTED CASE HEARING HAS EXPIRED.

33 (2) IN THE ABSENCE OF NOTICE, THE ATTORNEY GENERAL SHALL BE
34 DEEMED TO HAVE APPROVED THE OFFICE'S RECOMMENDED REMEDY.

35 (M) IF THE ATTORNEY GENERAL VACATES THE OFFICE'S PROPOSED REMEDY,
36 THE ATTORNEY GENERAL SHALL INITIATE A CONTESTED CASE HEARING BY FILING
37 A REQUEST FOR A CONTESTED CASE HEARING WITH THE OFFICE OF
38 ADMINISTRATIVE HEARINGS IN COMPLIANCE WITH THE REQUIREMENTS OF THIS
39 TITLE.

40 (N) THE SCOPE OF THE CONTESTED CASE HEARING PROVIDED UNDER THIS
41 POLICY SHALL BE LIMITED TO WHETHER THIS TITLE HAS BEEN PROPERLY APPLIED,

1 AND ANY CHALLENGES TO THE LEGALITY OF THE TITLE ITSELF MUST BE BROUGHT
2 IN A COURT OF COMPETENT JURISDICTION.

3 (O) TO THE EXTENT THAT PROCEDURES AND STANDARDS STATED IN THIS
4 TITLE DIFFER FROM THOSE CONTAINED IN TITLE 10, SUBTITLE 2 OF THE STATE
5 GOVERNMENT ARTICLE, THIS TITLE SHALL GOVERN BUT IN ALL OTHER RESPECTS,
6 THE PROVISIONS OF THE STATE GOVERNMENT ARTICLE SHALL GOVERN.

7 19-110.

8 (A) WHEN AN ALLEGATION IS SUSTAINED BY AN ADMINISTRATIVE LAW
9 JUDGE UNDER THIS TITLE, THE ADMINISTRATIVE LAW JUDGE MAY TAKE
10 ADDITIONAL EVIDENCE ON THE APPROPRIATE REMEDY TO BE RECOMMENDED,
11 INCLUDING EVIDENCE RELATING TO FACTORS SET FORTH IN § 19-108(F) OF THIS
12 SUBTITLE AND ANY OTHER EVIDENCE DEEMED RELEVANT BY THE ADMINISTRATIVE
13 LAW JUDGE.

14 (B) IF THE ADMINISTRATIVE LAW JUDGE SUSTAINS AN ALLEGATION, THE
15 ADMINISTRATIVE LAW JUDGE SHALL ORDER ANY ONE OR MORE OF THE FOLLOWING
16 ACTIONS:

17 (1) ANY REMEDY THAT IS AGREED TO BY THE RESPONDENT BUSINESS
18 ENTITY, THE COMPLAINANT, AND THE ATTORNEY GENERAL, PROVIDED THAT, IF THE
19 COMPLAINANT OBJECTS TO THE REMEDY AGREED TO BY THE RESPONDENT
20 BUSINESS ENTITY AND THE ATTORNEY GENERAL, THE REMEDY MAY BE
21 CONSIDERED AS APPROVED BY THE STATE ONLY IF THE ATTORNEY GENERAL
22 APPROVES THE REMEDY AFTER AFFORDING THE COMPLAINANT AN OPPORTUNITY
23 TO ADDRESS THE ATTORNEY GENERAL ORALLY OR IN WRITING REGARDING THE
24 MERITS OR LACK OF MERIT OF THE PROPOSED REMEDY;

25 (2) REFERRAL OF THE RESPONDENT BUSINESS ENTITY TO THE BOARD
26 OF PUBLIC WORKS FOR A DETERMINATION OF DEBARMENT PURSUANT TO §§ 16-306
27 AND 16-307 OF THIS ARTICLE TO PRECLUDE THE BUSINESS ENTITY FROM:

28 (I) BIDDING ON OR RECEIVING CONTRACT AWARDS ON STATE
29 PROJECTS; AND

30 (II) PARTICIPATING IN STATE CONTRACTS AS A SUBCONTRACTOR,
31 VENDOR, OR SUPPLIER FOR A PERIOD OF NOT MORE THAN 3 YEARS;

32 (3) RESCISSION, SUSPENSION, OR TERMINATION OF ANY CURRENT
33 CONTRACT BETWEEN THE RESPONDENT BUSINESS ENTITY AND THE STATE UNDER
34 THE TERMS OF THAT CONTRACT;

35 (4) EXERCISE OF ANY OTHER RIGHTS OR REMEDIES AVAILABLE TO THE
36 STATE UNDER ANY CURRENT CONTRACT BETWEEN THE RESPONDENT BUSINESS
37 ENTITY AND THE STATE, INCLUDING, BUT NOT LIMITED TO, LIQUIDATED DAMAGES;

38 (5) FINDING THAT THE RESPONDENT BUSINESS ENTITY IS NOT A
39 "RESPONSIBLE BIDDER" WITHIN THE MEANING OF THIS ARTICLE WITH RESPECT TO

1 SPECIFIC CONTRACTS THAT THE STATE HAS PUT OUT FOR BIDS OR INTENDS TO PUT
2 OUT FOR BIDS; OR

3 (6) REFERRAL OF THE MATTER FOR CRIMINAL PROSECUTION OF FRAUD
4 AND OTHER VIOLATIONS UNDER STATE LAW IF APPROPRIATE UNDER THE
5 CIRCUMSTANCES.

6 19-111.

7 (A) IF THE ATTORNEY GENERAL DETERMINES THAT ONE OR MORE
8 ALLEGATIONS OF A COMPLAINT FILED UNDER THIS TITLE ARE FALSE AND THAT THE
9 COMPLAINANT KNEW THEM TO BE FALSE WHEN FILED, OR THAT ONE OR MORE OF
10 THE ALLEGATIONS OF A COMPLAINT ARE SO FRIVOLOUS THAT THEY ARE WHOLLY
11 WITHOUT MERIT, THE ATTORNEY GENERAL MAY REFUSE TO REVIEW OR
12 INVESTIGATE ANY SUBSEQUENT COMPLAINT FILED BY THAT COMPLAINANT FOR A
13 PERIOD OF UP TO 3 YEARS.

14 (B) WHEN THE TOTALITY OF THE EVIDENCE CLEARLY WARRANTS
15 EXTRAORDINARY ACTION TO DETER FUTURE ABUSE OF THE PROTECTIONS MADE
16 AVAILABLE UNDER THIS TITLE, THE ATTORNEY GENERAL MAY ALSO RECOMMEND
17 TO THE ADMINISTRATIVE LAW JUDGE:

18 (1) THAT MONETARY SANCTIONS BE IMPOSED AGAINST THE
19 COMPLAINANT IN THE AMOUNT OF THE COSTS INCURRED BY THE STATE AND THE
20 BUSINESS ENTITY IN THE INVESTIGATION AND REVIEW OF THE FALSE OR
21 FRIVOLOUS COMPLAINT, INCLUDING REASONABLE ATTORNEYS' FEES; AND

22 (2) THAT THE COMPLAINANT BE DISQUALIFIED FROM BIDDING AND
23 CONTRACT AWARDS ON STATE PROJECTS FOR A PERIOD OF NOT MORE THAN 3
24 YEARS.

25 19-112.

26 (A) ABSENT A REQUEST FOR A CONTESTED CASE HEARING, THE ATTORNEY
27 GENERAL'S FINDINGS AND RECOMMENDATIONS SHALL BECOME THE FINAL
28 ADMINISTRATIVE DECISION OF THE STATE, SUBJECT TO SUCH JUDICIAL REVIEW AS
29 IS PROVIDED FOR IN A CONTESTED CASE UNDER § 10-222 OF THE STATE
30 GOVERNMENT ARTICLE.

31 (B) IN CASES WHERE A CONTESTED CASE HEARING HAS BEEN REQUESTED,
32 THE ADMINISTRATIVE LAW JUDGE'S WRITTEN DECISION SHALL BECOME THE FINAL
33 ADMINISTRATIVE DECISION OF THE STATE SUBJECT TO JUDICIAL REVIEW AS
34 PROVIDED FOR IN A CONTESTED CASE UNDER § 10-222 OF THE STATE GOVERNMENT
35 ARTICLE.

36 (C) ON ISSUANCE OF A FINAL DECISION, THE ATTORNEY GENERAL OR THE
37 ADMINISTRATIVE LAW JUDGE MAY ENTER ANY ORDER REASONABLY NECESSARY OR
38 CONVENIENT TO GOVERN THE CONDUCT OF THE STATE AND THE PARTIES SO THAT
39 THE PURPOSES OF THIS TITLE ARE ACHIEVED.

1 19-113.

2 ANY PARTY WHO, AFTER HAVING EXHAUSTED ALL ADMINISTRATIVE REMEDIES
3 AVAILABLE, IS AGGRIEVED BY A FINAL DECISION OF THE ATTORNEY GENERAL OR
4 THE ADMINISTRATIVE LAW JUDGE MAY SEEK JUDICIAL REVIEW OF SUCH DECISION
5 UNDER § 10-222 OF THE STATE GOVERNMENT ARTICLE.

6 19-114.

7 EVERY CONTRACT AND SUBCONTRACT SHALL CONTAIN A NONDISCRIMINATION
8 CLAUSE THAT READS AS FOLLOWS:

9 "AS A CONDITION OF ENTERING INTO THIS AGREEMENT, THE COMPANY
10 REPRESENTS AND WARRANTS THAT IT WILL FULLY COMPLY WITH THE STATE'S
11 COMMERCIAL NONDISCRIMINATION POLICY, AS DESCRIBED UNDER TITLE 19 OF THE
12 STATE FINANCE AND PROCUREMENT ARTICLE OF THE ANNOTATED CODE OF
13 MARYLAND, AND CONSENTS TO BE BOUND BY ANY FINAL DECISION RENDERED
14 THEREUNDER. AS PART OF SUCH COMPLIANCE, THE COMPANY MAY NOT
15 DISCRIMINATE ON THE BASIS OF SEX, RACE, AGE, COLOR, CREED, OR NATIONAL
16 ORIGIN, OR ON THE BASIS OF DISABILITY OR OTHER UNLAWFUL FORMS OF
17 DISCRIMINATION IN THE SOLICITATION, SELECTION, HIRING, OR TREATMENT OF
18 SUBCONTRACTORS, VENDORS, SUPPLIERS, OR COMMERCIAL CUSTOMERS, NOR
19 SHALL THE COMPANY RETALIATE AGAINST ANY PERSON FOR REPORTING
20 INSTANCES OF SUCH DISCRIMINATION. THE COMPANY SHALL PROVIDE EQUAL
21 OPPORTUNITY FOR SUBCONTRACTORS, VENDORS, AND SUPPLIERS TO PARTICIPATE
22 IN ALL OF ITS PUBLIC SECTOR AND PRIVATE SECTOR SUBCONTRACTING AND SUPPLY
23 OPPORTUNITIES, PROVIDED THAT NOTHING CONTAINED IN THIS CLAUSE SHALL
24 PROHIBIT OR LIMIT OTHERWISE LAWFUL EFFORTS TO REMEDY THE EFFECTS OF
25 MARKETPLACE DISCRIMINATION THAT HAVE OCCURRED OR ARE OCCURRING IN THE
26 MARKETPLACE. THE COMPANY UNDERSTANDS AND AGREES THAT A VIOLATION OF
27 THIS CLAUSE SHALL BE CONSIDERED A MATERIAL BREACH OF THIS AGREEMENT
28 AND MAY RESULT IN TERMINATION OF THIS AGREEMENT, DISQUALIFICATION OF
29 THE COMPANY FROM PARTICIPATING IN STATE CONTRACTS, OR OTHER SANCTIONS".

30 19-115.

31 ALL REQUESTS FOR BIDS OR PROPOSALS ISSUED FOR STATE CONTRACTS SHALL
32 INCLUDE THE FOLLOWING CERTIFICATION TO BE COMPLETED BY THE BIDDER:

33 "THE UNDERSIGNED BIDDER HEREBY CERTIFIES AND AGREES THAT THE
34 FOLLOWING INFORMATION IS CORRECT:

35 IN PREPARING ITS BID ON THIS PROJECT, THE BIDDER HAS CONSIDERED ALL
36 PROPOSALS SUBMITTED FROM QUALIFIED, POTENTIAL SUBCONTRACTORS AND
37 SUPPLIERS, AND HAS NOT ENGAGED IN "DISCRIMINATION" AS DEFINED IN § 19-103
38 OF THE STATE GOVERNMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND; TO
39 WIT: DISCRIMINATION IN THE SOLICITATION, SELECTION, OR TREATMENT OF ANY
40 SUBCONTRACTOR, VENDOR, SUPPLIER, OR COMMERCIAL CUSTOMER ON THE BASIS
41 OF SEX, RACE, AGE, COLOR, CREED, OR NATIONAL ORIGIN, OR ON THE BASIS OF
42 DISABILITY OR OTHER UNLAWFUL FORMS OF DISCRIMINATION. WITHOUT LIMITING

1 THE FOREGOING, "DISCRIMINATION" ALSO INCLUDES RETALIATING AGAINST ANY
2 PERSON OR OTHER ENTITY FOR REPORTING ANY INCIDENT OF "DISCRIMINATION".
3 WITHOUT LIMITING ANY OTHER PROVISION OF THE SOLICITATION FOR BIDS ON THIS
4 PROJECT, IT IS UNDERSTOOD AND AGREED THAT, IF THIS CERTIFICATION IS FALSE,
5 SUCH FALSE CERTIFICATION WILL CONSTITUTE GROUNDS FOR THE STATE TO
6 REJECT THE BID SUBMITTED BY THE BIDDER ON THIS PROJECT, AND TERMINATE
7 ANY CONTRACT AWARDED BASED ON THE BID. AS A CONDITION OF CONTRACTING
8 WITH THE STATE, THE BIDDER AGREES TO PROMPTLY PROVIDE TO THE STATE ALL
9 INFORMATION AND DOCUMENTATION THAT MAY BE REQUESTED BY THE STATE
10 FROM TIME TO TIME REGARDING THE SOLICITATION AND SELECTION OF
11 SUBCONTRACTORS. FAILURE TO MAINTAIN OR FAILURE TO PROVIDE THE
12 INFORMATION CONSTITUTES GROUNDS FOR THE STATE TO REJECT THE BID
13 SUBMITTED BY THE BIDDER AND TERMINATE ANY CONTRACT AWARDED ON THE BID.
14 AS PART OF ITS BID OR PROPOSAL, THE BIDDER SHALL PROVIDE TO THE STATE A
15 LIST OF ALL INSTANCES WITHIN THE IMMEDIATE PAST 5 YEARS WHERE A
16 COMPLAINT WAS FILED OR PENDING AGAINST THE BIDDER IN A LEGAL OR
17 ADMINISTRATIVE PROCEEDING ALLEGING THAT THE BIDDER DISCRIMINATED
18 AGAINST ITS SUBCONTRACTORS, VENDORS, SUPPLIERS, OR COMMERCIAL
19 CUSTOMERS, AND A DESCRIPTION OF THE STATUS OR RESOLUTION OF THAT
20 COMPLAINT, INCLUDING ANY REMEDIAL ACTION TAKEN. AS A CONDITION OF
21 SUBMITTING A BID OR PROPOSAL TO THE STATE, THE BIDDER AGREES TO COMPLY
22 WITH THE STATE'S COMMERCIAL NONDISCRIMINATION POLICY AS DESCRIBED
23 UNDER TITLE 19 OF THE STATE FINANCE AND PROCUREMENT ARTICLE OF THE
24 ANNOTATED CODE OF MARYLAND, AND CONSENTS TO BE BOUND BY ANY FINAL
25 DECISION ISSUED THEREUNDER."

26 19-116.

27 EVERY CONTRACT THAT THE STATE ENTERS INTO SHALL INCLUDE THE
28 FOLLOWING LANGUAGE:

29 "AS A CONDITION OF ENTERING INTO THIS AGREEMENT, THE COMPANY
30 AGREES TO: (A) PROMPTLY PROVIDE TO THE STATE ALL INFORMATION AND
31 DOCUMENTATION THAT MAY BE REQUESTED BY THE STATE FROM TIME TO TIME
32 REGARDING THE SOLICITATION, SELECTION, TREATMENT AND PAYMENT OF
33 SUBCONTRACTORS IN CONNECTION WITH THIS AGREEMENT; AND (B) IF REQUESTED,
34 PROVIDE TO THE STATE WITHIN 60 DAYS AFTER THE REQUEST A TRUTHFUL AND
35 COMPLETE LIST OF THE NAMES OF ALL SUBCONTRACTORS, VENDORS, AND
36 SUPPLIERS THAT THE COMPANY HAS USED IN THE PAST 5 YEARS ON ANY OF ITS
37 CONTRACTS THAT WERE UNDERTAKEN WITHIN THE MARYLAND STATE
38 METROPOLITAN STATISTICAL AREA, INCLUDING THE TOTAL DOLLAR AMOUNT PAID
39 BY THE CONTRACTOR ON EACH SUBCONTRACT OR SUPPLY CONTRACT. THE
40 COMPANY FURTHER AGREES TO FULLY COOPERATE IN ANY INVESTIGATION
41 CONDUCTED BY THE STATE PURSUANT TO THE STATE'S COMMERCIAL
42 NONDISCRIMINATION POLICY AS SET FORTH UNDER TITLE 19 OF THE STATE
43 FINANCE AND PROCUREMENT ARTICLE OF THE ANNOTATED CODE OF MARYLAND, TO
44 PROVIDE ANY DOCUMENTS RELEVANT TO ANY INVESTIGATION THAT IS REQUESTED
45 BY THE STATE, AND TO BE BOUND BY ANY FINAL DECISION ISSUED UNDER THAT
46 POLICY. THE COMPANY UNDERSTANDS AND AGREES THAT VIOLATION OF THIS

1 CLAUSE SHALL BE CONSIDERED A MATERIAL BREACH OF THIS AGREEMENT AND
2 MAY RESULT IN CONTRACT TERMINATION, DISQUALIFICATION BY THE STATE FROM
3 PARTICIPATING IN STATE CONTRACTS, AND OTHER SANCTIONS."

4 19-117.

5 THE REMEDIES PROVIDED BY THIS TITLE ARE IN ADDITION TO ANY OTHER
6 STATUTORY, LEGAL, OR EQUITABLE REMEDIES THAT MAY BE AVAILABLE AND ARE
7 NOT INTENDED TO BE PREREQUISITE TO OR EXCLUSIVE OF ANY OTHER REMEDIES.

8 19-118.

9 THE FILING, INVESTIGATION, HEARING, AND APPEAL OF A COMPLAINT UNDER
10 THIS TITLE MAY NOT HINDER OR AFFECT THE AWARD OF, PERFORMANCE OF, OR
11 PAYMENT ON A CONTRACT PRIOR TO A FINAL ADMINISTRATIVE DECISION THAT
12 ESTABLISHES A VIOLATION.

13 19-119.

14 (A) THE ATTORNEY GENERAL SHALL RECOMMEND REGULATIONS AS MAY BE
15 REQUIRED FROM TIME TO TIME TO IMPLEMENT THIS TITLE.

16 (B) THE ATTORNEY GENERAL MAY ESTABLISH DOCUMENTATION AND
17 REPORTING REQUIREMENTS TO FURTHER THE PURPOSES AND INTENT OF THIS
18 TITLE.

19 19-120.

20 (A) (1) WITHIN 60 DAYS AFTER THIS TITLE BECOMES LAW, THE ATTORNEY
21 GENERAL SHALL APPOINT A VOLUNTEER EXPERTS POOL TO SERVE AS ADVISORS TO
22 THE ATTORNEY GENERAL IN INVESTIGATING DISCRIMINATION CLAIMS AND AS
23 EXPERT WITNESSES IN HEARINGS UNDER THIS TITLE.

24 (2) AS REQUESTED BY THE ATTORNEY GENERAL OR THE
25 ADMINISTRATIVE LAW JUDGE, THE VOLUNTEER EXPERT POOL SHALL:

26 (I) ASSIST THE OFFICE IN EVALUATING ALLEGED VIOLATIONS OF
27 THIS TITLE; AND

28 (II) PROVIDE TESTIMONY AT HEARINGS UNDER THIS TITLE ON
29 MATTERS RELATING TO INDUSTRY CUSTOM AND PRACTICE IN A PARTICULAR LINE
30 OF BUSINESS.

31 (B) (1) NOTICE OF VOLUNTEER OPPORTUNITIES IN THE VOLUNTEER
32 EXPERT POOL SHALL BE POSTED IN LOCAL NEWSPAPERS AT LEAST 15 DAYS PRIOR TO
33 THE DEADLINE FOR SUBMITTING APPLICATIONS.

34 (2) THE VOLUNTEER EXPERT POOL SHALL BE LIMITED TO 15
35 INDIVIDUALS, PROVIDED THAT THE ATTORNEY GENERAL MAY INCREASE THE
36 NUMBER OF INDIVIDUALS IN THE POOL FROM TIME TO TIME TO PROVIDE SPECIFIC

1 EXPERTISE THAT MAY POTENTIALLY BE NEEDED TO ASSIST IN EVALUATING A
2 DISCRIMINATION CLAIM IN A MATTER UNDER THIS TITLE.

3 19-121.

4 THIS TITLE AND ANY REGULATIONS ADOPTED UNDER THIS TITLE MAY BE
5 CITED AS THE "COMMERCIAL NONDISCRIMINATION POLICY".

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
7 construed to apply only prospectively and may not be applied or interpreted to have
8 any effect on or application to any conduct that has occurred before the effective date
9 of this Act.

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 July 1, 2006.