

SB0971/724232/1

BY: Education, Health, and Environmental Affairs Committee

AMENDMENTS TO SENATE BILL 971
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 11, after “characteristics;” insert “declaring the intent of the State; altering certain language required to be contained in certain nondiscrimination clauses, in a certain certification, and in certain contracts; altering a certain definition;”; and in line 15, strike “and 19-101” and substitute “, 19-101, 19-102, 19-103(j), 19-114, 19-115, and 19-116”.

AMENDMENT NO. 2

On page 3, after line 25, insert:

“19-102.

It is the intent of the State to avoid becoming a passive participant in private sector commercial discrimination:

(1) by refusing to procure goods and services from business entities that:

(I) discriminate in the solicitation, selection, hiring, or commercial treatment of vendors, suppliers, subcontractors, or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination;
OR

(II) DISCRIMINATE IN THE FORMATION OR COMPOSITION OF A BOARD OF DIRECTORS ON THE BASIS OF RACE, COLOR, RELIGION, ANCESTRY OR NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, SEXUAL ORIENTATION, OR ON

(Over)

THE BASIS OF DISABILITY OR OTHER UNLAWFUL FORMS OF DISCRIMINATION;
AND

(2) by providing a procedure for receiving, investigating, and resolving complaints of discrimination, AS DESCRIBED IN ITEM (1) OF THIS SUBSECTION, filed against business entities that:

[(1)](I) have submitted a bid or proposal; or

[(2)](II) have been selected to engage in, or are engaged in, providing goods or services to the State.

19-103.

(j) (1) “Discrimination” means any disadvantage, difference, distinction, or preference in:

(I) the solicitation, selection, hiring, or commercial treatment of a vendor, supplier, subcontractor, or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor’s, supplier’s, or commercial customer’s employees or owners; OR

(II) THE FORMATION OR COMPOSITION OF A BOARD OF DIRECTORS ON THE BASIS OF RACE, COLOR, RELIGION, ANCESTRY OR NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, SEXUAL ORIENTATION, OR ON THE BASIS OF DISABILITY OR OTHER UNLAWFUL USE OF CHARACTERISTICS REGARDING THE FORMATION OR COMPOSITION OF A BOARD OF DIRECTORS.

(2) “Discrimination” does not include lawful efforts to remedy the effects of discrimination that have occurred or are occurring in the marketplace.

SB0971/724232/1 Education, Health, and Environmental Affairs Committee
Amendments to SB 971
Page 3 of 5

19-114.

Every contract and subcontract shall contain a nondiscrimination clause that reads as follows:

“As a condition of entering into this agreement, the company represents and warrants that it will comply with the State’s Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, the company may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers **OR IN THE FORMATION OR COMPOSITION OF A BOARD OF DIRECTORS**, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.”.

19-115.

All requests for bids or proposals issued for State contracts shall include the following certification to be completed by the bidder:

(Over)

SB0971/724232/1 Education, Health, and Environmental Affairs Committee
Amendments to SB 971
Page 4 of 5

“The undersigned bidder hereby certifies and agrees that the following information is correct:

In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in “discrimination” as defined in § 19–103 of the State Finance and Procurement Article of the Annotated Code of Maryland; to wit: discrimination in the solicitation, selection, or commercial treatment of any subcontractor, vendor, supplier, or commercial customer **OR IN THE FORMATION OR COMPOSITION OF A BOARD OF DIRECTORS** on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination. Without limiting the foregoing, “discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination”. Without limiting any other provision of the solicitation for bids on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder shall provide to the State a list of all instances within the immediate past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against its subcontractors, vendors, suppliers, or commercial customers **OR DISCRIMINATED IN THE FORMATION OR COMPOSITION OF A BOARD OF DIRECTORS**, and a description of the status or resolution of that complaint, including any remedial action taken. As a condition of submitting a bid or proposal to the State, the bidder agrees to comply with the State’s Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.”.

19–116.

Every contract that the State enters into shall include the following language:

**SB0971/724232/1 Education, Health, and Environmental Affairs Committee
Amendments to SB 971
Page 5 of 5**

“As a condition of entering into this agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against the company under Title 19 of the State Finance and Procurement Article, as amended from time to time, the company agrees to: provide to the State within 60 days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the company has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by the contractor on each subcontract or supply contract, **OR ANY INFORMATION REQUESTED BY THE COMMISSION TO INVESTIGATE THE FORMATION OR COMPOSITION OF A BOARD OF DIRECTORS.** The company further agrees to cooperate in any investigation conducted by the State pursuant to the State’s Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, to provide any documents relevant to any investigation that is requested by the State. The company understands and agrees that violation of this clause shall be considered a material breach of this agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.”.”