

SENATE BILL 971

P2, C1

7lr3226
CF HB 919

By: **Senator Kagan**

Introduced and read first time: February 3, 2017

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Nondiscrimination Clauses and State Policy Prohibiting**
3 **Discrimination**

4 FOR the purpose of altering the requirements for a certain nondiscrimination clause that
5 prohibits certain discrimination by a contractor against an employee or applicant for
6 employment; requiring a certain contract for procurement to include a certain
7 nondiscrimination clause that prohibits certain discrimination by a contractor in the
8 formation or composition of a certain board of directors; providing that it is the policy
9 of the State not to enter into a contract with a certain business entity that has
10 discriminated in the formation or composition of a board of directors on the basis of
11 certain characteristics; and generally relating to nondiscrimination clauses and
12 policies prohibiting discrimination in procurement.

13 BY repealing and reenacting, with amendments,
14 Article – State Finance and Procurement
15 Section 13–219 and 19–101
16 Annotated Code of Maryland
17 (2015 Replacement Volume and 2016 Supplement)

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

20 **Article – State Finance and Procurement**

21 13–219.

22 (a) This section is broadly applicable to all procurements by the State.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (c) The nondiscrimination clause shall:

2 (1) prohibit discrimination in any manner by the contractor:

3 (I) against an employee or applicant for employment [because of
4 sex, race, age, color, creed, or national origin;] **ON THE BASIS OF RACE, COLOR,
5 RELIGION, ANCESTRY OR NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, SEXUAL
6 ORIENTATION, OR ON THE BASIS OF DISABILITY OR ANY OTHERWISE UNLAWFUL USE
7 OF CHARACTERISTICS REGARDING EMPLOYMENT; AND**

8 (II) **IF APPLICABLE, IN THE FORMATION OR COMPOSITION OF A
9 BOARD OF DIRECTORS ON THE BASIS OF RACE, COLOR, RELIGION, ANCESTRY OR
10 NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, SEXUAL ORIENTATION, OR ON THE
11 BASIS OF DISABILITY OR ANY OTHERWISE UNLAWFUL USE OF CHARACTERISTICS
12 REGARDING THE FORMATION OR COMPOSITION OF A BOARD OF DIRECTORS;**

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

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

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

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

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

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

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

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

4 (2) The Board:

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

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

8 19–101.

9 (a) It is the policy of the State not to enter into a contract with any business entity
10 that has discriminated in:

11 (1) the solicitation, selection, hiring, or commercial treatment of vendors,
12 suppliers, subcontractors, or commercial customers on the basis of race, color, religion,
13 ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of
14 disability or any otherwise unlawful use of characteristics regarding the vendor's,
15 supplier's, or commercial customer's employees or owners; **OR**

16 (2) **THE FORMATION OR COMPOSITION OF A BOARD OF DIRECTORS ON**
17 **THE BASIS OF RACE, COLOR, RELIGION, ANCESTRY OR NATIONAL ORIGIN, SEX, AGE,**
18 **MARITAL STATUS, SEXUAL ORIENTATION, OR ON THE BASIS OF DISABILITY OR ANY**
19 **OTHERWISE UNLAWFUL USE OF CHARACTERISTICS REGARDING THE FORMATION OR**
20 **COMPOSITION OF A BOARD OF DIRECTORS.**

21 (b) Nothing in this title shall be construed to prohibit or limit otherwise lawful
22 efforts to remedy the effects of discrimination that have occurred or are occurring in the
23 marketplace.

24 (c) A complaint of discrimination shall be filed within 4 years after the date the
25 cause of action accrues.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2017.