

SENATE BILL 417

K3, P2

6lr1706
CF HB 420

By: **Senators Kelley, Astle, Benson, Guzzone, Jennings, Klausmeier, Peters, Pugh, Reilly, and Young Young, Feldman, Middleton, Mathias, and Hershey**

Introduced and read first time: February 1, 2016

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 14, 2016

CHAPTER _____

1 AN ACT concerning

2 ~~Labor and Employment – Minimum Wage – Individuals With Disabilities~~

3 ~~(Ken Capone Equal Employment Act)~~

4 Individuals With Disabilities – Minimum Wage and Community Integration

5 FOR the purpose of prohibiting the Commissioner of Labor and Industry, ~~except~~ under
6 certain circumstances, from authorizing certain work activities centers and certain
7 sheltered workshops to pay employees with disabilities less than a certain minimum
8 wage; ~~requiring that a certain State certificate issued by the Commissioner under a~~
9 ~~certain provision of law expires no later than a certain date~~ authorizing certain work
10 activities centers and certain sheltered workshops to pay new employees a certain
11 wage only under certain circumstances; requiring the ~~Department of Labor,~~
12 ~~Licensing, and Regulation~~ Developmental Disabilities Administration and the
13 Department of Disabilities, in partnership with certain State agencies, to develop
14 and implement a certain plan to phase out certain authorizations under a certain
15 provision of law; providing for the scope of the plan; requiring the Administration
16 and the Department to engage with certain organizations representing those
17 impacted by the phase-out to implement a certain plan; requiring the
18 Administration and the Department to submit a certain plan to the Governor and
19 the General Assembly on or before a certain date; requiring the Department to report
20 certain benchmarks, outcomes, and recommendations to the Governor and the
21 General Assembly on or before a certain date each year dates; ~~prohibiting a certain~~
22 ~~work activities center or other sheltered workshop from receiving State funds on or~~
23 ~~after a certain date under certain circumstances; requiring a certain individual and~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 a certain resource coordinator, in consultation with certain individuals, to develop a
2 certain supplemental plan; requiring a certain resource coordinator to use
3 appropriate communication devices and techniques to facilitate the involvement of a
4 certain individual in the development of the individual's supplemental plan;
5 requiring that an individual's plan include certain information; requiring the
6 Administration, in consultation with certain stakeholders, to develop the planning
7 protocol and format for a supplemental plan; requiring a certain individual and the
8 individual's resource coordinator and team to discuss a certain job setting on an
9 annual basis and at any other time requested by the individual; requiring the
10 resource coordinator to document certain information in a certain individual's
11 annual individual plan; requiring the Administration to track the progress of certain
12 individuals by collecting certain data; requiring the Administration to report certain
13 information to the Governor and the General Assembly on or before certain dates;
14 prohibiting the Administration from funding certain providers beginning on a
15 certain date; requiring a certain new employee to be informed by the employee's
16 employer of certain opportunities, have a plan of habilitation that includes certain
17 information, be engaged in certain work when choosing to work, choose the employer
18 and employment, and be informed of certain rights; repealing certain provisions of
19 law relating to the authorization of certain work activities centers and certain
20 sheltered workshops to pay certain employees with disabilities less than a certain
21 minimum wage; repealing certain provisions of law requiring the Administration
22 and the Department to develop and implement a certain plan and make certain
23 reports; repealing certain provisions of law requiring certain individuals to have a
24 certain supplemental plan; repealing certain provisions of law requiring that a
25 certain new employee be informed by the employee's employer of certain
26 opportunities, have a plan of habilitation that includes certain information, be
27 engaged in certain work when choosing to work, choose the employer and
28 employment, and be informed of certain rights; authorizing certain work activities
29 centers and other workshops, beginning on a certain date, to pay less than the federal
30 prevailing wage of pay to the extent authorized under federal law and under certain
31 circumstances; requiring the Administration and the Department to conduct a
32 certain study, determine certain information, and make certain recommendations;
33 requiring the Administration and the Department to consult certain State agencies,
34 other entities, and relevant stakeholders in carrying out certain duties; requiring the
35 Administration and the Department to report their findings and recommendations
36 to the Governor and certain committees of the General Assembly on or before a
37 certain date; altering certain terminology; providing for a delayed effective date for
38 certain provisions of this Act; and generally relating to the payment of wages ~~under~~
39 ~~the Maryland Wage and Hour Law and~~ to and community integration of individuals
40 with disabilities.

41 BY adding to

42 Article – Health – General

43 Section 7–207, 7–1012, 7–1013, and 7–1014

44 Annotated Code of Maryland

45 (2015 Replacement Volume)

1 BY repealing and reenacting, with amendments,
2 Article – Labor and Employment
3 Section 3–414
4 Annotated Code of Maryland
5 (2008 Replacement Volume and 2015 Supplement)

6 ~~BY adding to~~
7 ~~Article – Labor and Employment~~
8 ~~Section 3–414.1~~
9 ~~Annotated Code of Maryland~~
10 ~~(2008 Replacement Volume and 2015 Supplement)~~

11 ~~BY adding to~~
12 ~~Article – State Finance and Procurement~~
13 ~~Section 2–801 to be under the new subtitle “Subtitle 8. Miscellaneous”~~
14 ~~Annotated Code of Maryland~~
15 ~~(2015 Replacement Volume)~~

16 BY repealing
17 Article – Health – General
18 Section 7–1012, 7–1013, and 7–1014
19 Annotated Code of Maryland
20 (2015 Replacement Volume)
21 (As enacted by Section 1 of this Act)

22 BY repealing and reenacting, with amendments,
23 Article – Labor and Employment
24 Section 3–414 and 3–414.1
25 Annotated Code of Maryland
26 (2008 Replacement Volume and 2015 Supplement)
27 (As enacted by Section 1 of this Act)

28 Preamble

29 WHEREAS, Section 14(c) of the Fair Labor Standards Act of 1938 authorizes the
30 United States Secretary of Labor to grant special wage certificates to certain entities, which
31 may then pay special minimum wages less than the federal minimum wage to workers who
32 have disabilities; and

33 WHEREAS, These Section 14(c) certificates also allow the payment of wages that
34 are less than the prevailing wage to workers who have disabilities for work being performed
35 on contracts subject to the McNamara–O’Hara Service Contract Act and the Walsh–Healey
36 Public Contracts Act; and

37 WHEREAS, During 2015, 3,589 Maryland residents were employed under Section
38 14(c) certificates; and

1 WHEREAS, 20% of individuals with developmental disabilities in Maryland work in
 2 facility-based settings where, for a 2-week period, the mean number of hours worked is 17
 3 hours and the mean income is \$66; and

4 WHEREAS, The practice of paying workers with disabilities less than the federal
 5 minimum wage dates back to the 1930s, a time of virtually no employment opportunities
 6 for disabled workers in the mainstream workforce; and

7 WHEREAS, Advancements in vocational rehabilitation, technology, and training
 8 now provide workers with disabilities with greater opportunities; and

9 WHEREAS, Employees with disabilities have rarely been able to transition from
 10 Section 14(c) programs to obtain integrated employment at competitive wages; now,
 11 therefore,

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

14 Article – Health – General

15 7-207.

16 BEGINNING OCTOBER 1, 2020, THE ADMINISTRATION MAY NOT FUND
 17 PROVIDERS THAT PAY INDIVIDUALS LESS THAN THE MINIMUM WAGE UNDER A
 18 CERTIFICATE THAT THE UNITED STATES DEPARTMENT OF LABOR ISSUES TO A
 19 WORK ACTIVITIES CENTER OR OTHER SHELTERED WORKSHOP TO ALLOW THE WORK
 20 ACTIVITIES CENTER OR WORKSHOP TO PAY AN INDIVIDUAL LESS THAN THE WAGE
 21 OTHERWISE REQUIRED FOR THE INDIVIDUAL UNDER FEDERAL LAW.

22 7-1012.

23 (A) THE ADMINISTRATION AND THE DEPARTMENT OF DISABILITIES, IN
 24 PARTNERSHIP WITH RELEVANT STATE AGENCIES, INCLUDING THE DEPARTMENT OF
 25 ECONOMIC COMPETITIVENESS AND COMMERCE, THE STATE DEPARTMENT OF
 26 EDUCATION, AND THE DIVISION OF REHABILITATION SERVICES, SHALL DEVELOP
 27 AND IMPLEMENT A PLAN TO PHASE OUT ON OR BEFORE OCTOBER 1, 2020,
 28 AUTHORIZATIONS UNDER § 3-414 OF THE LABOR AND EMPLOYMENT ARTICLE TO
 29 PAY AN EMPLOYEE WITH A DISABILITY LESS THAN THE MINIMUM WAGE OTHERWISE
 30 REQUIRED FOR THE EMPLOYEE UNDER TITLE 3, SUBTITLE 4 OF THE LABOR AND
 31 EMPLOYMENT ARTICLE.

32 (B) THE PLAN DEVELOPED AND IMPLEMENTED UNDER SUBSECTION (A) OF
 33 THIS SECTION SHALL INCLUDE:

34 (1) BENCHMARKS AND DESIRED OUTCOMES FOR EACH YEAR OF THE
 35 PHASE-OUT;

1 **(2) A LIST OF THE RESOURCES NECESSARY TO ENSURE THAT**
2 **INDIVIDUALS WITH DISABILITIES RECEIVE SUPPORT ACCORDING TO THE NEEDS**
3 **AND PREFERENCES OF THE INDIVIDUALS AND IN AN INTEGRATED SETTING,**
4 **REGARDLESS OF THE NATURE OR SEVERITY OF THE INDIVIDUALS' DISABILITIES;**

5 **(3) APPLICATION FOR AND USE OF ALL FEDERAL AND STATE**
6 **FUNDING PROGRAMS, INCLUDING PROGRAMS AVAILABLE UNDER MEDICAID**
7 **WAIVER AMENDMENTS AND RESOURCES UNDER THE WORKFORCE INNOVATION AND**
8 **OPPORTUNITY ACT, TO ASSIST INDIVIDUALS WITH DISABILITIES TO OBTAIN**
9 **COMPETITIVE, INTEGRATED EMPLOYMENT; AND**

10 **(4) THE TRACKING OF OUTCOMES OF INDIVIDUALS WITH**
11 **DISABILITIES ON THE BASIS OF:**

12 **(I) WAGES;**

13 **(II) UNEMPLOYMENT RATES;**

14 **(III) THE NUMBER OF INDIVIDUALS WHO MOVE FROM**
15 **SUBMINIMUM WAGE POSITIONS TO COMPETITIVE, INTEGRATED EMPLOYMENT; AND**

16 **(IV) THE NUMBER OF INDIVIDUALS WHO MOVE FROM**
17 **SUBMINIMUM WAGE POSITIONS TO NONPAYING ACTIVITIES.**

18 **(C) IN IMPLEMENTING THE PLAN DEVELOPED UNDER SUBSECTION (A) OF**
19 **THIS SECTION, THE ADMINISTRATION AND THE DEPARTMENT OF DISABILITIES**
20 **SHALL ENGAGE STATEWIDE ORGANIZATIONS, INCLUDING THE MARYLAND**
21 **DEVELOPMENTAL DISABILITIES COUNCIL, AND PROVIDER AND FAMILY STATEWIDE**
22 **ADVOCACY ORGANIZATIONS REPRESENTING THOSE IMPACTED BY THE PHASE-OUT.**

23 **(D) (1) ON OR BEFORE OCTOBER 1, 2017, THE ADMINISTRATION AND**
24 **THE DEPARTMENT OF DISABILITIES SHALL SUBMIT THE PLAN DEVELOPED UNDER**
25 **SUBSECTION (A) OF THIS SECTION TO THE GOVERNOR AND, IN ACCORDANCE WITH §**
26 **2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.**

27 **(2) ON OR BEFORE OCTOBER 1, 2018, 2019, AND 2020, THE**
28 **ADMINISTRATION AND THE DEPARTMENT OF DISABILITIES SHALL REPORT TO THE**
29 **GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT**
30 **ARTICLE, THE GENERAL ASSEMBLY ON:**

31 **(I) THE BENCHMARKS AND STATUS OF ACHIEVING THE**
32 **OUTCOMES INCLUDED IN THE PLAN UNDER SUBSECTION (B)(1) OF THIS SECTION;**
33 **AND**

1 (II) RECOMMENDATIONS FOR FUNDING LEVELS OR OTHER
2 RESOURCES NECESSARY TO IMPLEMENT THE PLAN DEVELOPED UNDER
3 SUBSECTION (A) OF THIS SECTION.

4 7-1013.

5 (A) (1) EACH INDIVIDUAL WHO IS BEING PAID LESS THAN THE MINIMUM
6 WAGE UNDER § 3-414 OF THE LABOR AND EMPLOYMENT ARTICLE AND THE
7 INDIVIDUAL'S RESOURCE COORDINATOR, IN CONSULTATION WITH MEMBERS FROM
8 THE INDIVIDUAL'S TEAM, SHALL DEVELOP AS PART OF THE INDIVIDUAL'S ANNUAL
9 INDIVIDUAL PLAN A SUPPLEMENTAL PLAN THAT ADDRESSES HOW COMMUNITY
10 INTEGRATION AND EMPLOYMENT WILL BE ACCOMPLISHED.

11 (2) THE RESOURCE COORDINATOR SHALL USE APPROPRIATE
12 COMMUNICATION DEVICES AND TECHNIQUES, INCLUDING SIGN LANGUAGE, TO
13 FACILITATE THE INVOLVEMENT OF THE INDIVIDUAL IN THE DEVELOPMENT OF THE
14 INDIVIDUAL'S SUPPLEMENTAL PLAN.

15 (B) AN INDIVIDUAL'S SUPPLEMENTAL PLAN SHALL INCLUDE:

16 (1) THE RESOURCE COORDINATOR'S RECOMMENDATION ON THE
17 MOST INTEGRATED SETTING APPROPRIATE TO MEET THE INDIVIDUAL'S NEEDS;

18 (2) A DESCRIPTION OF THE SERVICES AND SUPPORTS THAT ARE
19 REQUIRED FOR THE INDIVIDUAL TO RECEIVE SERVICES IN THE MOST INTEGRATED
20 SETTING APPROPRIATE TO MEET THE INDIVIDUAL'S NEEDS;

21 (3) A LISTING OF BARRIERS THAT PREVENT THE INDIVIDUAL FROM
22 RECEIVING THE SERVICES AND SUPPORTS REQUIRED FOR THE INDIVIDUAL TO
23 WORK IN THE MOST INTEGRATED SETTING APPROPRIATE TO MEET THE
24 INDIVIDUAL'S NEEDS, INCLUDING:

25 (I) BARRIERS TO ACCESSING FUNDING AND RESOURCES,
26 INCLUDING FOR STAFFING, TRANSPORTATION, AND OTHER NEEDED SERVICES AND
27 SUPPORTS;

28 (II) DECISION MAKING BY THE INDIVIDUAL OR THE
29 INDIVIDUAL'S REPRESENTATIVE, AS APPROPRIATE;

30 (III) BARRIERS TO ACCESSING MEDICAL OR BEHAVIORAL
31 SUPPORT NEEDS; AND

32 (IV) FAMILY MEMBERS' CONCERNS OR OPPOSITION; AND

1 (4) AN UPDATE ON THE STATUS AND PROGRESS TOWARD
2 ADDRESSING AND RESOLVING BARRIERS IDENTIFIED UNDER ITEM (3) OF THIS
3 SUBSECTION IN A PREVIOUS SUPPLEMENTAL PLAN.

4 (C) THE ADMINISTRATION SHALL DEVELOP, IN CONSULTATION WITH
5 INTERESTED STAKEHOLDERS, THE PLANNING PROTOCOL AND FORMAT FOR THE
6 SUPPLEMENTAL PLAN.

7 (D) (1) ON AN ANNUAL BASIS AND AT ANY OTHER TIME REQUESTED BY AN
8 INDIVIDUAL WHO IS PAID LESS THAN THE MINIMUM WAGE UNDER § 3-414 OF THE
9 LABOR AND EMPLOYMENT ARTICLE, THE INDIVIDUAL AND THE INDIVIDUAL'S
10 RESOURCE COORDINATOR AND TEAM SHALL DISCUSS THE MOST INTEGRATED
11 EMPLOYMENT SETTING THAT IS APPROPRIATE FOR THE INDIVIDUAL IN
12 ACCORDANCE WITH THE FEDERAL AMERICANS WITH DISABILITIES ACT.

13 (2) THE RESOURCE COORDINATOR SHALL DOCUMENT IN THE
14 INDIVIDUAL'S ANNUAL INDIVIDUAL PLAN:

15 (I) ANY DISCUSSIONS HELD UNDER PARAGRAPH (1) OF THIS
16 SUBSECTION; AND

17 (II) ANY RECOMMENDATIONS THAT RESULTED FROM THE
18 DISCUSSIONS.

19 (E) (1) THE ADMINISTRATION SHALL TRACK THE PROGRESS OF
20 INDIVIDUALS WITH A SUPPLEMENTAL PLAN BY COLLECTING THE FOLLOWING DATA:

21 (I) THE WAGES OF THE INDIVIDUALS;

22 (II) THE UNEMPLOYMENT RATES OF THE INDIVIDUALS;

23 (III) THE NUMBER OF INDIVIDUALS WHO MOVE FROM
24 SUBMINIMUM WAGE POSITIONS TO COMPETITIVE, INTEGRATED EMPLOYMENT; AND

25 (IV) THE NUMBER OF INDIVIDUALS WHO MOVE FROM
26 SUBMINIMUM WAGE POSITIONS TO NONPAYING ACTIVITIES.

27 (2) ON OR BEFORE SEPTEMBER 1, 2018, 2019, AND 2020, THE
28 ADMINISTRATION SHALL SUBMIT TO THE GOVERNOR AND, IN ACCORDANCE WITH §
29 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY A
30 SUMMARY OF THE DATA COLLECTED UNDER PARAGRAPH (1) OF THIS SUBSECTION
31 ON A STATEWIDE AND REGIONAL BASIS.

1 7-1014.

2 A NEW EMPLOYEE EMPLOYED AT LESS THAN THE MINIMUM WAGE UNDER §
3 3-414 OF THE LABOR AND EMPLOYMENT ARTICLE SHALL:

4 (1) BE INFORMED BY THE EMPLOYEE'S EMPLOYER OF ALL
5 OPPORTUNITIES TO OBTAIN COMPETITIVE, INTEGRATED EMPLOYMENT;

6 (2) HAVE A PLAN OF HABILITATION UNDER § 7-1006 OF THIS
7 SUBTITLE THAT INCLUDES:

8 (I) A GOAL TO ACHIEVE A SPECIFIC EMPLOYMENT OUTCOME;

9 (II) A DESCRIPTION OF THE SUPPORTS NEEDED TO ACHIEVE
10 THE GOAL;

11 (III) A PLAN FOR MONITORING PROGRESS TOWARD THE GOAL;

12 (IV) THE BARRIERS TO COMPETITIVE, INTEGRATED
13 EMPLOYMENT; AND

14 (V) GOALS AND ACTIVITIES FOR THE EMPLOYEE WHEN WORK IS
15 NOT AVAILABLE OR THE EMPLOYEE CHOOSES NOT TO WORK ON A SPECIFIC DAY OR
16 DURING A SPECIFIC SHIFT;

17 (3) WHEN CHOOSING TO WORK, BE ENGAGED IN WORK THAT IS
18 CONSISTENT WITH THE EMPLOYEE'S UNIQUE STRENGTHS, RESOURCES, PRIORITIES,
19 CONCERNS, ABILITIES, CAPABILITIES, INTERESTS, AND INFORMED CHOICE;

20 (4) CHOOSE THE EMPLOYER AND THE EMPLOYMENT; AND

21 (5) BE INFORMED OF THE EMPLOYEE'S RIGHT TO CHOOSE WHEN TO
22 WORK.

23 **Article – Labor and Employment**

24 3-414.

25 (a) In this section, "federal certificate" means a certificate that the United States
26 Department of Labor issues to a work activities center or other sheltered workshop to allow
27 the workshop to pay an individual less than the wage otherwise required for that individual
28 under the federal Act.

29 ~~(b) This section does not apply to a blind individual who works in a sheltered~~
30 ~~workshop of Blind Industries and Services of Maryland.~~

1 ~~(e)~~ **(B)** **(1)** Subject to the limitations in this section, the Commissioner may
 2 ~~NOT~~ authorize a work activities center or other sheltered workshop to pay [a mentally or
 3 physically disabled employee of the workshop] **AN EMPLOYEE WITH A DISABILITY** less
 4 than the minimum wage otherwise required under this subtitle for the employee ~~UNLESS:~~

5 ~~(1) THE COMMISSIONER AUTHORIZED THE WORKSHOP BEFORE~~
 6 ~~OCTOBER 1, 2016, TO PAY THE EMPLOYEE WITH A DISABILITY LESS THAN THE~~
 7 ~~MINIMUM WAGE OTHERWISE REQUIRED UNDER THIS SUBTITLE FOR THE EMPLOYEE;~~
 8 ~~AND~~

9 ~~(2) THE COMMISSIONER PROHIBITS THE WORKSHOP FROM PAYING~~
 10 ~~ADDITIONAL EMPLOYEES LESS THAN THE MINIMUM WAGE OTHERWISE REQUIRED~~
 11 ~~UNDER THIS SUBTITLE.~~

12 **(2) THE COMMISSIONER MAY NOT AUTHORIZE A WORK ACTIVITIES**
 13 **CENTER OR OTHER SHELTERED WORKSHOP TO PAY AN EMPLOYEE WITH A**
 14 **DISABILITY LESS THAN THE MINIMUM WAGE UNDER PARAGRAPH (1) OF THIS**
 15 **SUBSECTION IF THE WORK ACTIVITIES CENTER OR WORKSHOP WAS NOT**
 16 **AUTHORIZED TO DO SO BEFORE OCTOBER 1, 2016.**

17 **(3) A WORK ACTIVITIES CENTER OR OTHER SHELTERED WORKSHOP**
 18 **MAY PAY A NEW EMPLOYEE WITH A DISABILITY LESS THAN THE MINIMUM WAGE**
 19 **UNDER PARAGRAPH (1) OF THIS SUBSECTION ONLY IF THE REQUIREMENTS OF §**
 20 **7-1014 OF THE HEALTH – GENERAL ARTICLE ARE MET.**

21 ~~(d)~~ **(C)** **(1)** To authorize a work activities center or other sheltered workshop
 22 to pay less than the minimum wage, the Commissioner shall:

23 (i) issue a State certificate that sets wages for employees of the
 24 workshop;

25 (ii) accept a federal certificate for the workshop; or

26 (iii) grant an exception for the workshop but only if:

27 1. the Commissioner has not issued a State certificate for the
 28 workshop;

29 2. the workshop is not eligible for a federal certificate; and

30 3. the Commissioner investigates and holds a hearing on the
 31 exception.

1 (2) The Commissioner shall accept a federal certificate if a work activities
2 center or other sheltered workshop submits that certificate to the Commissioner within 10
3 days after the workshop receives the certificate.

4 ~~(D)~~ (1) Each certificate that the Commissioner issues under this section
5 shall:

6 ~~(I)~~ state the period for which the certificate is in effect; ~~AND~~

7 ~~(II)~~ ~~EXPIRE NO LATER THAN OCTOBER 1, 2019.~~

8 (2) The acceptance of a federal certificate does not apply automatically to
9 an individual whom a work activities center or other sheltered workshop continues to
10 employ after the individual completes a training program that the workshop runs.

11 ~~(E)~~ (1) The Commissioner may revoke acceptance of a federal certificate if:

12 (i) the United States Department of Labor revokes the federal
13 certificate; or

14 (ii) at any time before revocation by the Department of Labor and
15 after an investigation and hearing, the Commissioner finds good cause to revoke the
16 acceptance.

17 (2) The Commissioner shall send notice of a hearing under this subsection,
18 by certified mail, to the holder of the federal certificate at least 30 days before the hearing.

19 ~~§ 414.1.~~

20 ~~(A) IN THIS SECTION, "DEPARTMENT" MEANS THE DEPARTMENT OF~~
21 ~~LABOR, LICENSING, AND REGULATION.~~

22 ~~(B) THE DEPARTMENT, IN PARTNERSHIP WITH RELEVANT STATE~~
23 ~~AGENCIES, INCLUDING THE DEPARTMENT OF ECONOMIC COMPETITIVENESS AND~~
24 ~~COMMERCE, THE DEPARTMENT OF DISABILITIES, THE DEVELOPMENTAL~~
25 ~~DISABILITIES ADMINISTRATION, THE STATE DEPARTMENT OF EDUCATION, AND~~
26 ~~THE DIVISION OF REHABILITATION SERVICES, SHALL DEVELOP AND IMPLEMENT A~~
27 ~~PLAN TO PHASE OUT BY OCTOBER 1, 2019, AUTHORIZATIONS UNDER § 3-414 OF~~
28 ~~THIS SUBTITLE TO PAY AN EMPLOYEE WITH A DISABILITY LESS THAN THE MINIMUM~~
29 ~~WAGE OTHERWISE REQUIRED FOR THE EMPLOYEE UNDER THIS SUBTITLE.~~

30 ~~(C) THE PLAN DEVELOPED AND IMPLEMENTED UNDER SUBSECTION (B) OF~~
31 ~~THIS SECTION SHALL INCLUDE:~~

1 ~~(1) BENCHMARKS AND DESIRED OUTCOMES FOR EACH YEAR OF THE~~
2 ~~PHASE OUT;~~

3 ~~(2) A LIST OF THE RESOURCES NECESSARY TO ENSURE THAT~~
4 ~~INDIVIDUALS WITH DISABILITIES RECEIVE SUPPORT ACCORDING TO THE NEEDS~~
5 ~~AND PREFERENCES OF THE INDIVIDUALS WITH DISABILITIES IN AN INTEGRATED~~
6 ~~SETTING, REGARDLESS OF THE NATURE OR SEVERITY OF THE INDIVIDUALS'~~
7 ~~DISABILITIES;~~

8 ~~(3) APPLICATION TO AND USE OF ALL FEDERAL AND STATE FUNDING~~
9 ~~PROGRAMS, INCLUDING MEDICAID WAIVER AMENDMENTS AND RESOURCES UNDER~~
10 ~~THE WORKFORCE INNOVATION AND OPPORTUNITY ACT, TO ASSIST INDIVIDUALS~~
11 ~~WITH DISABILITIES TO OBTAIN COMPETITIVE, INTEGRATED EMPLOYMENT; AND~~

12 ~~(4) THE TRACKING OF OUTCOMES OF INDIVIDUALS WITH~~
13 ~~DISABILITIES ON THE BASIS OF:~~

14 ~~(I) WAGES;~~

15 ~~(II) UNEMPLOYMENT RATES;~~

16 ~~(III) THE NUMBER OF INDIVIDUALS WHO MOVE FROM~~
17 ~~SUBMINIMUM WAGE POSITIONS TO COMPETITIVE, INTEGRATED EMPLOYMENT; AND~~

18 ~~(IV) THE NUMBER OF INDIVIDUALS WHO MOVE FROM~~
19 ~~SUBMINIMUM WAGE POSITIONS TO NONPAYING ACTIVITIES.~~

20 ~~(D) THE DEPARTMENT SHALL ENGAGE STATEWIDE ORGANIZATIONS~~
21 ~~REPRESENTING THOSE IMPACTED BY THE PHASE OUT, INCLUDING THE MARYLAND~~
22 ~~DEVELOPMENTAL DISABILITIES COUNCIL AND ADVOCACY, PROVIDER, FAMILY,~~
23 ~~AND OTHER STATEWIDE ORGANIZATIONS, IN IMPLEMENTING THE PLAN DEVELOPED~~
24 ~~UNDER SUBSECTION (B) OF THIS SECTION.~~

25 ~~(E) ON OR BEFORE OCTOBER 1 EACH YEAR, THE DEPARTMENT SHALL~~
26 ~~REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE~~
27 ~~GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON THE BENCHMARKS AND~~
28 ~~RESULTS OF OUTCOMES DESCRIBED IN PARAGRAPH (C) OF THIS SECTION AND~~
29 ~~RECOMMENDATIONS FOR FUNDING LEVELS OR OTHER RESOURCES NECESSARY TO~~
30 ~~IMPLEMENT THE PLAN DEVELOPED UNDER SUBSECTION (B) OF THIS SECTION.~~

31 ~~Article State Finance and Procurement~~

32 ~~SUBTITLE 8. MISCELLANEOUS.~~

1 ~~2-801.~~

2 ~~BEGINNING JANUARY 1, 2019, A WORK ACTIVITIES CENTER OR OTHER~~
3 ~~SHELTERED WORKSHOP THAT PAYS AN EMPLOYEE WITH A DISABILITY LESS THAN~~
4 ~~THE MINIMUM WAGE OTHERWISE REQUIRED UNDER TITLE 3, SUBTITLE 4 OF THE~~
5 ~~LABOR AND EMPLOYMENT ARTICLE MAY NOT RECEIVE STATE FUNDS.~~

6 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
7 as follows:

8 Article – Health – General

9 [7-1012.

10 (a) The Administration and the Department of Disabilities, in partnership with
11 relevant State agencies, including the Department of Economic Competitiveness and
12 Commerce, the State Department of Education, and the Division of Rehabilitation Services,
13 shall develop and implement a plan to phase out on or before October 1, 2020,
14 authorizations under § 3-414 of the Labor and Employment Article to pay an employee
15 with a disability less than the minimum wage otherwise required for the employee under
16 Title 3, Subtitle 4 of the Labor and Employment Article.

17 (b) The plan developed and implemented under subsection (a) of this section shall
18 include:

19 (1) Benchmarks and desired outcomes for each year of the phase-out;

20 (2) A list of the resources necessary to ensure that individuals with
21 disabilities receive support according to the needs and preferences of the individuals and
22 in an integrated setting, regardless of the nature or severity of the individuals' disabilities;

23 (3) Application for and use of all federal and State funding programs,
24 including programs available under Medicaid waiver amendments and resources under the
25 Workforce Innovation and Opportunity Act, to assist individuals with disabilities to obtain
26 competitive, integrated employment; and

27 (4) The tracking of outcomes of individuals with disabilities on the basis of:

28 (i) Wages;

29 (ii) Unemployment rates;

30 (iii) The number of individuals who move from subminimum wage
31 positions to competitive, integrated employment; and

1 (iv) The number of individuals who move from subminimum wage
2 positions to nonpaying activities.

3 (c) In implementing the plan developed under subsection (a) of this section, the
4 Administration and the Department of Disabilities shall engage statewide organizations,
5 including the Maryland Developmental Disabilities Council, and provider and family
6 statewide advocacy organizations representing those impacted by the phase-out.

7 (d) (1) On or before October 1, 2017, the Administration and the
8 Department of Disabilities shall submit the plan developed under subsection (a) of this
9 section to the Governor and, in accordance with § 2-1246 of the State Government Article,
10 the General Assembly.

11 (2) On or before October 1, 2018, 2019, and 2020, the Administration and
12 the Department of Disabilities shall report to the Governor and, in accordance with §
13 2-1246 of the State Government Article, the General Assembly on:

14 (i) The benchmarks and status of achieving the outcomes included
15 in the plan under subsection (b)(1) of this section; and

16 (ii) Recommendations for funding levels or other resources necessary
17 to implement the plan developed under subsection (a) of this section.]

18 [7-1013.

19 (a) (1) Each individual who is being paid less than the minimum wage under
20 § 3-414 of the Labor and Employment Article and the individual's resource coordinator, in
21 consultation with members from the individual's team, shall develop as part of the
22 individual's annual individual plan a supplemental plan that addresses how community
23 integration and employment will be accomplished.

24 (2) The resource coordinator shall use appropriate communication devices
25 and techniques, including sign language, to facilitate the involvement of the individual in
26 the development of the individual's supplemental plan.

27 (b) An individual's supplemental plan shall include:

28 (1) The resource coordinator's recommendation on the most integrated
29 setting appropriate to meet the individual's needs;

30 (2) A description of the services and supports that are required for the
31 individual to receive services in the most integrated setting appropriate to meet the
32 individual's needs;

33 (3) A listing of barriers that prevent the individual from receiving the
34 services and supports required for the individual to work in the most integrated setting
35 appropriate to meet the individual's needs, including:

1 (i) Barriers to accessing funding and resources, including for
2 staffing, transportation, and other needed services and supports;

3 (ii) Decision making by the individual or the individual's
4 representative, as appropriate;

5 (iii) Barriers to accessing medical or behavioral support needs; and

6 (iv) Family members' concerns or opposition; and

7 (4) An update on the status and progress toward addressing and resolving
8 barriers identified under item (3) of this subsection in a previous supplemental plan.

9 (c) The Administration shall develop, in consultation with interested
10 stakeholders, the planning protocol and format for the supplemental plan.

11 (d) (1) On an annual basis and at any other time requested by an individual
12 who is paid less than the minimum wage under § 3-414 of the Labor and Employment
13 Article, the individual and the individual's resource coordinator and team shall discuss the
14 most integrated employment setting that is appropriate for the individual in accordance
15 with the federal Americans with Disabilities Act.

16 (2) The resource coordinator shall document in the individual's annual
17 individual plan:

18 (i) Any discussions held under paragraph (1) of this subsection; and

19 (ii) Any recommendations that resulted from the discussions.

20 (e) (1) The Administration shall track the progress of individuals with a
21 supplemental plan by collecting the following data:

22 (i) The wages of the individuals;

23 (ii) The unemployment rates of the individuals;

24 (iii) The number of individuals who move from subminimum wage
25 positions to competitive, integrated employment; and

26 (iv) The number of individuals who move from subminimum wage
27 positions to nonpaying activities.

28 (2) On or before September 1, 2018, 2019, and 2020, the Administration
29 shall submit to the Governor and, in accordance with § 2-1246 of the State Government
30 Article, the General Assembly a summary of the data collected under paragraph (1) of this
31 subsection on a statewide and regional basis.]

1 [7-1014.

2 A new employee employed at less than the minimum wage under § 3-414 of the
3 Labor and Employment Article shall:

4 (1) Be informed by the employee's employer of all opportunities to obtain
5 competitive, integrated employment;

6 (2) Have a plan of habilitation under § 7-1006 of this subtitle that includes:

7 (i) A goal to achieve a specific employment outcome;

8 (ii) A description of the supports needed to achieve the goal;

9 (iii) A plan for monitoring progress toward the goal;

10 (iv) The barriers to competitive, integrated employment; and

11 (v) Goals and activities for the employee when work is not available
12 or the employee chooses not to work on a specific day or during a specific shift;

13 (3) When choosing to work, be engaged in work that is consistent with the
14 employee's unique strengths, resources, priorities, concerns, abilities, capabilities,
15 interests, and informed choice;

16 (4) Choose the employer and the employment; and

17 (5) Be informed of the employee's right to choose when to work.]

18 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
19 as follows:

20 **Article – Labor and Employment**

21 ~~§~~3-414.

22 (a) In this section, “federal certificate” means a certificate that the United States
23 Department of Labor issues to a work activities center or other sheltered workshop to allow
24 the workshop to pay an individual less than the wage otherwise required for that individual
25 under the federal Act.

26 ~~(b) This section does not apply to a blind individual who works in a sheltered~~
27 ~~workshop of Blind Industries and Services of Maryland.~~

28 ~~(b)~~ (B) Subject to the limitations in this section, the Commissioner may ~~not~~
29 authorize a work activities center or other sheltered workshop to pay an employee with a

1 disability less than the minimum wage otherwise required under this subtitle for the
2 employee ~~unless:~~

3 ~~(1) the Commissioner authorized the workshop before October 1, 2016, to~~
4 ~~pay the employee with a disability less than the minimum wage otherwise required under~~
5 ~~this subtitle for the employee; and~~

6 ~~(2) the Commissioner prohibits the workshop from paying additional~~
7 ~~employees less than the minimum wage otherwise required under this subtitle.~~

8 **(1) [The] BEGINNING OCTOBER 1, 2020, THE Commissioner may not**
9 **authorize a work activities center or other sheltered workshop to pay an employee with a**
10 **disability less than the minimum wage [under paragraph (1) of this subsection if the work**
11 **activities center or workshop was not authorized to do so before October 1, 2016]**
12 **OTHERWISE REQUIRED UNDER THIS SUBTITLE FOR THE EMPLOYEE.**

13 **(2) BEGINNING OCTOBER 1, 2020, A WORK ACTIVITIES CENTER OR**
14 **WORKSHOP MAY PAY AN EMPLOYEE WITH A DISABILITY LESS THAN THE FEDERAL**
15 **PREVAILING WAGE OF PAY TO THE EXTENT AUTHORIZED BY FEDERAL LAW IF THE**
16 **WORK ACTIVITIES CENTER OR OTHER SHELTERED WORKSHOP:**

17 **(I) WAS AUTHORIZED BY THE COMMISSIONER BEFORE**
18 **OCTOBER 1, 2016, TO PAY AN EMPLOYEE WITH A DISABILITY LESS THAN THE**
19 **MINIMUM WAGE THAT WAS OTHERWISE REQUIRED UNDER THIS SUBTITLE FOR THE**
20 **EMPLOYEE THROUGH THE ACCEPTANCE OF A FEDERAL CERTIFICATE; AND**

21 **(II) THE WORK ACTIVITIES CENTER OR WORKSHOP MAINTAINS**
22 **THE FEDERAL CERTIFICATE.**

23 **[(3) A work activities center or other sheltered workshop may pay a new**
24 **employee with a disability less than the minimum wage under paragraph (1) of this**
25 **subsection only if the requirements of § 7-1014 of the Health – General Article are met.]**

26 ~~(d)~~ ~~(1)~~ **(c) [(1) To authorize a work activities center or other sheltered**
27 **workshop to pay less than the minimum wage, the Commissioner shall:**

28 **(i) issue a State certificate that sets wages for employees of the**
29 **workshop;**

30 **(ii) accept a federal certificate for the workshop; or**

31 **(iii) grant an exception for the workshop but only if:**

32 **1. the Commissioner has not issued a State certificate for the**
33 **workshop;**

- 1 2. the workshop is not eligible for a federal certificate; and
- 2 3. the Commissioner investigates and holds a hearing on the
- 3 exception.

4 (2) The Commissioner shall accept a federal certificate if a work activities

5 center or other sheltered workshop submits that certificate to the Commissioner within 10

6 days after the workshop receives the certificate.

- 7 ~~(D)~~ (1) Each certificate that the Commissioner issues under this section shall
- 8 ~~(i)~~ state the period for which the certificate is in effect, ~~and~~
- 9 ~~(ii)~~ ~~expire no later than October 1, 2019.~~

10 (2) The acceptance of a federal certificate does not apply automatically to

11 an individual whom a work activities center or other sheltered workshop continues to

12 employ after the individual completes a training program that the workshop runs.

13 ~~(E)~~ (1) The Commissioner may revoke acceptance of a federal certificate if:

- 14 (i) the United States Department of Labor revokes the federal
- 15 certificate; or
- 16 (ii) at any time before revocation by the Department of Labor and
- 17 after an investigation and hearing, the Commissioner finds good cause to revoke the
- 18 acceptance.

19 (2) The Commissioner shall send notice of a hearing under this subsection,

20 by certified mail, to the holder of the federal certificate at least 30 days before the hearing. ~~]~~

21 ~~§ 414.1.~~

22 ~~(a) In this section, "Department" means the Department of Labor, Licensing, and~~

23 ~~Regulation.~~

24 ~~(b) The Department in partnership with relevant State agencies, including the~~

25 ~~Department of Economic Competitiveness and Commerce, the Department of Disabilities,~~

26 ~~the Developmental Disabilities Administration, the State Department of Education, and~~

27 ~~the Division of Rehabilitation Services, shall develop and implement a plan to phase out by~~

28 ~~October 1, 2019, authorizations under § 3-414 of this subtitle to pay an employee with a~~

29 ~~disability less than the minimum wage otherwise required for the employee under this~~

30 ~~subtitle.~~

31 ~~(c) The plan developed and implemented under subsection (b) of this section shall~~

32 ~~include:~~

1 ~~(1) benchmarks and desired outcomes for each year of the phase out;~~

2 ~~(2) a list of the resources necessary to ensure that individuals with~~
3 ~~disabilities receive support according to their needs and preferences in an integrated~~
4 ~~setting, regardless of the nature or severity of the individuals' disabilities;~~

5 ~~(3) application to and use of all federal and State funding programs,~~
6 ~~including Medicaid waiver amendments and resources under the Workforce Innovation and~~
7 ~~Opportunity Act, to assist individuals with disabilities to obtain competitive, integrated~~
8 ~~employment; and~~

9 ~~(4) the tracking of outcomes of individuals with disabilities on the basis of:~~

10 ~~(i) wages;~~

11 ~~(ii) unemployment rates;~~

12 ~~(iii) the number of individuals who move from subminimum wage~~
13 ~~positions to competitive, integrated employment; and~~

14 ~~(iv) the number of individuals who move from subminimum wage~~
15 ~~positions to nonpaying activities.~~

16 ~~(d) The Department shall engage statewide organizations representing those~~
17 ~~impacted by the phase out, including the Maryland Developmental Disabilities Council~~
18 ~~and advocacy, provider, family, and other statewide organizations, in implementing the~~
19 ~~plan developed under subsection (b) of this section.~~

20 ~~(e) On or before October 1 each year, the Department shall report to the Governor~~
21 ~~and, in accordance with § 2-1246 of the State Government Article, the General Assembly~~
22 ~~on the benchmarks and results of outcomes described in paragraph (c) of this section and~~
23 ~~recommendations for funding levels or other resources necessary to implement the plan~~
24 ~~developed under subsection (b) of this section.]~~

25 SECTION 4. AND BE IT FURTHER ENACTED, That:

26 (a) The Developmental Disabilities Administration and the Department of
27 Disabilities shall:

28 (1) conduct a study of employees who earn at least the federal minimum
29 wage but less than the federal prevailing wage of pay for a nondisabled employee under a
30 federal certificate that authorizes the payment of a wage that is less than the wage
31 otherwise required for the employees under federal law;

32 (2) determine:

1 (i) the number and demographics of employees employed between
2 the federal minimum wage and federal prevailing wage of pay for nondisabled employees;

3 (ii) whether the employment of the employees complies with the
4 integration requirements under 42 C.F.R. § 441.71;

5 (iii) the type of employment of the employees, including whether
6 employees are employed under federal Ability One contracts;

7 (iv) whether any changes in federal law or policy regarding the
8 payment of lower wages to the employees occurred after October 1, 2016, or are likely to
9 occur and, if changes have occurred or are likely to occur, what the changes were or are
10 likely to be; and

11 (v) whether there are prospects for the employees to obtain
12 employment at similar rates of pay without federal certificates; and

13 (3) make any recommendations for State legislative or policy changes
14 regarding the employment of individuals with disabilities.

15 (b) In carrying out the duties described in subsection (a) of this section, the
16 Developmental Disabilities Administration and the Department of Disabilities shall
17 consult:

18 (1) the State agencies specified in § 7-1012(a) of the Health – General
19 Article, as enacted by Section 1 of this Act;

20 (2) Maryland Works;

21 (3) People on the Go;

22 (4) the Maryland Association of Community Services;

23 (5) the National Federation of the Blind;

24 (6) the Association of People Supporting Employment;

25 (7) the ARC Maryland; and

26 (8) any other relevant stakeholders.

27 (c) On or before October 1, 2017, the Developmental Disabilities Administration
28 and the Department of Disabilities shall report their findings and recommendations to the
29 Governor and, in accordance with § 2-1246 of the State Government Article, the Senate
30 Finance Committee, the House Economic Matters Committee, and the House Health and
31 Government Operations Committee.

1 SECTION ~~2~~ 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
2 take effect October 1, ~~2019~~ 2021.

3 SECTION 6. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take
4 effect October 1, 2020.

5 SECTION ~~4~~ 7. AND BE IT FURTHER ENACTED, That, except as provided in
6 ~~Section 3~~ Sections 5 and 6 of this Act, this Act shall take effect October 1, 2016.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.