

SENATE BILL 305

K3, C2, P2

3lr0595
CF HB 296

By: **Chair, Finance Committee (By Request – Department of Legislative Services)**

Introduced and read first time: January 23, 2013

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 14, 2013

CHAPTER _____

1 AN ACT concerning

2 **Division of Labor and Industry and Associated Boards and Councils – Sunset**
3 **Extension and Program Evaluation**

4 FOR the purpose of continuing the State Amusement Ride Safety Advisory Board, the
5 Occupational Safety and Health Advisory Board, the Apprenticeship and
6 Training Council, and the Board of Boiler Rules in accordance with the
7 provisions of the Maryland Program Evaluation Act (Sunset Law) by extending
8 to a certain date the termination provisions relating to the statutory and
9 regulatory authority of the boards and council; altering certain termination
10 provisions to apply only to certain boards and a certain council; repealing the
11 termination provision for the Division of Labor and Industry; repealing a
12 certain termination provision that applies to the regulation of the employment
13 of minors and wages and hours; requiring that an evaluation be made of the
14 Division of Labor and Industry on or before a certain date; repealing the
15 Advisory Council on Prevailing Wage Rates; repealing the requirement that
16 certain employment agencies submit to the Commissioner of Labor and
17 Industry a certain penal bond and related provisions of law; requiring the
18 Prevailing Wage Unit to advise and submit recommendations to the
19 Commissioner regarding the Commissioner's functions under certain provisions
20 of law; authorizing the Commissioner to ask certain units of State and local
21 governments to provide certain information to the Prevailing Wage Unit;
22 authorizing the Commissioner to conduct, under certain circumstances, an
23 investigation regarding whether certain provisions of law have been violated;
24 authorizing the Commissioner to take certain actions regarding the violation of

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 certain provisions of law; authorizing the Attorney General to take certain
 2 actions under certain provisions of this Act; authorizing the Commissioner to
 3 assess a certain civil fine for a violation of a certain provision of law; altering a
 4 certain reporting requirement; altering the minimum number of times the State
 5 Board of Stationary Engineers is required to meet with and consult the Board of
 6 Boiler Rules each year; requiring the Board of Boiler Rules to meet with and
 7 consult the State Board of Stationary Engineers at least ~~a certain number of~~
 8 ~~times a~~ one time each year; requiring the Division to submit a certain report to
 9 certain committees of the General Assembly on or before a certain date;
 10 requiring the Workplace Fraud Unit to submit a certain report to the General
 11 Assembly on or before a certain date; requiring the Commissioner to submit a
 12 certain report to the Governor and the General Assembly on or before a certain
 13 date; repealing a certain definition; and generally relating to the Division of
 14 Labor and Industry and associated boards and councils.

15 BY repealing and reenacting, with amendments,
 16 Article – Business Occupations and Professions
 17 Section 6.5–204(b)
 18 Annotated Code of Maryland
 19 (2010 Replacement Volume and 2012 Supplement)

20 BY adding to
 21 Article – Business Regulation
 22 Section 3–315
 23 Annotated Code of Maryland
 24 (2010 Replacement Volume and 2012 Supplement)

25 BY repealing
 26 Article – Business Regulation
 27 Section 3–601; 9–201 and 9–202 and the Subtitle “Subtitle 2. Administration
 28 and Enforcement”; and 9–301
 29 Annotated Code of Maryland
 30 (2010 Replacement Volume and 2012 Supplement)

31 BY repealing and reenacting, with amendments,
 32 Article – Business Regulation
 33 Section 9–101
 34 Annotated Code of Maryland
 35 (2010 Replacement Volume and 2012 Supplement)

36 BY repealing and reenacting, with amendments,
 37 Article – Labor and Employment
 38 Section 2–107(f), 3–103, 3–704, 3–712, 3–801, 3–802, 3–914, 3–920, and 11–402
 39 Annotated Code of Maryland
 40 (2008 Replacement Volume and 2012 Supplement)

41 BY repealing

1 Article – Labor and Employment
2 Section 2–109, 3–706, and 5–607
3 Annotated Code of Maryland
4 (2008 Replacement Volume and 2012 Supplement)

5 BY adding to
6 Article – Labor and Employment
7 Section 3–306.1, 3–608, 3–1008, and 5–306
8 Annotated Code of Maryland
9 (2008 Replacement Volume and 2012 Supplement)

10 BY repealing and reenacting, with amendments,
11 Article – Public Safety
12 Section 12–904 and 12–919
13 Annotated Code of Maryland
14 (2011 Replacement Volume and 2012 Supplement)

15 BY repealing
16 Article – State Finance and Procurement
17 Section 17–203
18 Annotated Code of Maryland
19 (2009 Replacement Volume and 2012 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – State Government
22 Section 8–403(b)(2), (3), (9), (33), and (42)
23 Annotated Code of Maryland
24 (2009 Replacement Volume and 2012 Supplement)

25 BY repealing
26 Article – State Government
27 Section 8–403(b)(55)
28 Annotated Code of Maryland
29 (2009 Replacement Volume and 2012 Supplement)

30 BY renumbering
31 Article – State Government
32 Section 8–403(b)(56) through (69), respectively
33 to be Section 8–403(b)(55) through (68), respectively
34 Annotated Code of Maryland
35 (2009 Replacement Volume and 2012 Supplement)

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

38 **Article – Business Occupations and Professions**

1 6.5-204.

2 (b) (1) The Board shall meet at least twice a year at a location and in an
3 office provided by the State.

4 (2) The Board may hold special meetings as provided in its
5 regulations.

6 (3) The Board shall meet with and consult the Board of Boiler Rules as
7 necessary but [not less than two times] AT LEAST ONE TIME each year.

8 **Article – Business Regulation**

9 **3-315.**

10 **SUBJECT TO THE EVALUATION AND REESTABLISHMENT PROVISIONS OF**
11 **THE MARYLAND PROGRAM EVALUATION ACT, §§ 3-301 AND 3-303 THROUGH**
12 **3-311 OF THIS SUBTITLE SHALL TERMINATE ON JULY 1, 2024.**

13 [3-601.

14 Subject to the evaluation and reestablishment provisions of the Maryland
15 Program Evaluation Act, this title and all regulations adopted under this title shall
16 terminate on July 1, 2014.]

17 9-101.

18 (a) In this title the following words have the meanings indicated.

19 (b) “Client” means an individual who seeks employment through an
20 employment agency.

21 (c) [“Commissioner” means the Commissioner of Labor and Industry.

22 (d)] (1) “Employment agency” means a person who, for a fee:

23 (i) obtains, offers to obtain, or attempts to obtain:

24 1. an employee for a person who seeks an employee; or

25 2. employment for a client;

26 (ii) provides to a client information to enable the client to obtain
27 employment;

1 (iii) obtains, offers to obtain, or attempts to obtain employment
2 or an engagement in connection with an entertainment, exhibition, or performance,
3 including:

- 4 1. a ballet;
- 5 2. a circus;
- 6 3. a concert;
- 7 4. the legitimate theater;
- 8 5. modeling;
- 9 6. a motion picture;
- 10 7. an opera;
- 11 8. a phonograph recording;
- 12 9. the radio;
- 13 10. a transcription;
- 14 11. television;
- 15 12. the variety field; or
- 16 13. vaudeville; or

17 (iv) 1. obtains, offers to obtain, or attempts to obtain an
18 alien labor certification or immigrant visa for an individual; and

19 2. participates directly or indirectly in the recruitment
20 or supply of an individual who resides outside of the continental United States for
21 employment in the continental United States.

22 (2) "Employment agency" does not include a person who merely:

23 (i) conducts a business that directly employs individuals to
24 provide part-time or temporary services to another person;

25 (ii) as a lawyer, directly obtains an immigrant visa for an
26 individual;

27 (iii) conducts a business that:

- 1 1. receives a fee that is paid wholly by an employer;
 - 2 2. does not collect money from an individual seeking
3 employment; and
 - 4 3. does not require an individual seeking employment to
5 make a contract; or
- 6 (iv) operates a nursing referral service agency that is licensed
7 under Title 19, Subtitle 4B of the Health – General Article.

8 [Subtitle 2. Administration and Enforcement.]

9 [9–201.

10 The Commissioner may delegate any power or duty of the Commissioner under
11 this title.]

12 [9–202.

13 The Commissioner shall pay all money collected under this title into the
14 General Fund of the State.]

15 [9–301.

16 (a) An employment agency shall submit to the Commissioner a penal bond.

17 (b) The bond shall:

18 (1) run to the State;

19 (2) be in the amount of \$7,000;

20 (3) be signed by an individual authorized to do so by the employment
21 agency as principal and by a surety company authorized to do business in the State as
22 surety; and

23 (4) be conditioned that the employment agency will comply with this
24 title and will pay to any person all damages caused by deceit, fraud,
25 misrepresentation, or misstatement of the employment agency or an agent or
26 employee of the employment agency.

27 (c) To ensure that each employment agency submits the penal bond in
28 accordance with this section, the Commissioner may initiate an investigation or
29 investigate a complaint that an employment agency has failed to submit a penal bond.

1 (d) If, after investigation, the Commissioner finds that an employment
2 agency has failed to submit a penal bond as required by this section, the
3 Commissioner shall give written notice that directs the employment agency, within 15
4 days after receipt of the notice:

5 (1) to submit the required bond; or

6 (2) to show written cause why the employment agency is not required
7 to comply with this section.

8 (e) (1) If the employment agency complies with the requirement to submit
9 a bond or otherwise submits a timely response, the Commissioner may:

10 (i) terminate proceedings against the employment agency; or

11 (ii) schedule a hearing and, by certified mail, give the
12 employment agency written notice of the date, place, and time of the hearing.

13 (2) If the employment agency fails to comply with a lawful order of the
14 Commissioner or fails to submit a timely response, the Commissioner may impose a
15 civil penalty of not less than \$500 and not more than \$1,000 for each failure to comply
16 with the order or failure to submit a timely report.

17 (f) If after a hearing, the Commissioner finds that the employment agency
18 has violated the provisions of this section, the Commissioner may impose a civil
19 penalty of not less than \$500 and not more than \$1,000 for each violation of this
20 section.]

21 Article – Labor and Employment

22 2–107.

23 (f) (1) There is a Prevailing Wage Unit in the Division.

24 (2) Under the direction of the Commissioner, the Prevailing Wage
25 Unit shall administer and enforce Title 17, Subtitle 2 of the State Finance and
26 Procurement Article.

27 **(3) (I) THE PREVAILING WAGE UNIT SHALL ADVISE AND**
28 **SUBMIT RECOMMENDATIONS TO THE COMMISSIONER ON THE COMMISSIONER'S**
29 **FUNCTIONS UNDER TITLE 17, SUBTITLE 2 OF THE STATE FINANCE AND**
30 **PROCUREMENT ARTICLE.**

31 **(II) THE COMMISSIONER MAY ASK OTHER UNITS OF THE**
32 **STATE GOVERNMENT OR UNITS OF LOCAL GOVERNMENTS TO PROVIDE**

1 **STATISTICAL DATA, REPORTS, AND OTHER INFORMATION TO HELP THE**
2 **PREVAILING WAGE UNIT CARRY OUT ITS DUTIES.**

3 [2–109.

4 Subject to the evaluation and reestablishment provisions of the Maryland
5 Program Evaluation Act, this title shall terminate and be of no effect after July 1,
6 2014.]

7 3–103.

8 (a) [The] **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE**
9 Commissioner may conduct an investigation [under Subtitle 2 of] **TO DETERMINE**
10 **WHETHER A PROVISION OF** this title[,] **HAS BEEN VIOLATED** on the Commissioner's
11 own initiative or may require a written complaint.

12 (b) The Commissioner may conduct an investigation under Subtitle [4] **3** of
13 this title, on the Commissioner's own initiative or on receipt of a written complaint **OF**
14 **AN EMPLOYEE.**

15 (c) The Commissioner may conduct an investigation to determine whether
16 Subtitle 5 of this title has been violated on receipt of a written complaint of an
17 employee.

18 **(D) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO**
19 **DETERMINE WHETHER SUBTITLE 6 OF THIS TITLE HAS BEEN VIOLATED ON**
20 **RECEIPT OF A WRITTEN COMPLAINT OF A SALES REPRESENTATIVE.**

21 [(d)] **(E)** (1) The Commissioner may investigate whether § 3–701 of this
22 title has been violated on receipt of a written complaint of an applicant for
23 employment.

24 (2) The Commissioner may investigate whether § 3–702 of this title
25 has been violated on receipt of a written complaint of an applicant for employment or
26 an employee.

27 **(3) THE COMMISSIONER MAY INVESTIGATE WHETHER § 3–704 OF**
28 **THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT OF AN**
29 **EMPLOYEE.**

30 [(3)] **(4)** The Commissioner may investigate whether § 3–710 of this
31 title has been violated on receipt of a written complaint of an employee as provided in
32 § 3–710(d)(1) of this title.

1 **(5) THE COMMISSIONER MAY INVESTIGATE WHETHER § 3-711 OF**
2 **THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT OF AN**
3 **EMPLOYEE AS PROVIDED IN § 3-711(D)(1) OF THIS TITLE.**

4 **(6) THE COMMISSIONER MAY INVESTIGATE WHETHER § 3-712 OF**
5 **THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT OF AN**
6 **EMPLOYEE OR APPLICANT.**

7 **(F) (1) THE COMMISSIONER MAY INVESTIGATE WHETHER § 3-801 OF**
8 **THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT OF AN**
9 **EMPLOYEE.**

10 **(2) THE COMMISSIONER MAY INVESTIGATE WHETHER § 3-802 OF**
11 **THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT OF AN**
12 **EMPLOYEE.**

13 **[(e)] (G)** The Commissioner may investigate whether Subtitle 9 of this title
14 has been violated:

15 (1) on the Commissioner's own initiative;

16 (2) on receipt of a written complaint signed by the person submitting
17 the complaint; or

18 (3) on referral from another unit of State government.

19 **(H) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO**
20 **DETERMINE WHETHER SUBTITLE 10 OF THIS TITLE HAS BEEN VIOLATED ON**
21 **RECEIPT OF A WRITTEN COMPLAINT OF AN EMPLOYEE.**

22 **3-306.1.**

23 **(A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE**
24 **HAS BEEN VIOLATED, THE COMMISSIONER MAY:**

25 **(1) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION**
26 **INFORMALLY BY MEDIATION; OR**

27 **(2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON**
28 **BEHALF OF THE APPLICANT OR EMPLOYEE.**

29 **(B) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER THIS**
30 **SECTION IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED FOR**
31 **INJUNCTIVE RELIEF, DAMAGES, OR OTHER RELIEF.**

1 **3-608.**

2 (A) **WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE**
3 **HAS BEEN VIOLATED, THE COMMISSIONER MAY:**

4 (1) **TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION**
5 **INFORMALLY BY MEDIATION; OR**

6 (2) **ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON**
7 **BEHALF OF THE APPLICANT OR EMPLOYEE.**

8 (B) **THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER THIS**
9 **SECTION IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED FOR**
10 **INJUNCTIVE RELIEF, DAMAGES, OR OTHER RELIEF.**

11 **3-704.**

12 (a) (1) In this section the following words have the meanings indicated.

13 (2) "Managerial employee" means an employee who:

14 (i) is not covered by a collective bargaining agreement;

15 (ii) as primary duty of the employee, manages an enterprise or a
16 unit of the enterprise that customarily is considered a department or subdivision of
17 the enterprise;

18 (iii) customarily and regularly supervises at least 2 other
19 employees in the enterprise or unit;

20 (iv) customarily and regularly exercises discretionary powers;
21 and

22 (v) may hire or fire another employee or makes
23 recommendations that affect the hiring, advancement, firing, or any other change in
24 status of another employee.

25 (3) "Part-time employee" means an employee who is employed for a
26 workweek of less than 25 hours.

27 (4) "Professional employee" means an employee whose primary duty is
28 to work in a field that requires advanced knowledge that customarily is acquired by a
29 prolonged course of specialized instruction and study.

30 (b) (1) This subsection does not apply during an emergency that a federal,
31 State, or local governmental authority declares.

1 (2) An employee in a retail establishment may choose, as a day of rest,
2 Sunday or the sabbath of the employee unless:

3 (i) outside Wicomico County, the employee is a managerial
4 employee, professional employee, or part-time employee; and

5 (ii) in Wicomico County, the employee is a managerial employee
6 or professional employee.

7 (3) An employee who chooses a day of rest:

8 (i) shall give written notice to the employer; and

9 (ii) during the course of employment, may change the day of rest
10 by giving written notice of the change to the employer at least 30 days before its
11 effective date.

12 (c) (1) This subsection does not apply to a managerial employee or
13 professional employee or, outside Wicomico County, a part-time employee.

14 (2) If an employer compels an employee to work on the day of rest that
15 the employee chooses under subsection (b) of this section, the employee is entitled to
16 bring an action against the employer to recover 3 times the regular rate of pay of the
17 employee for each hour the employee works on that day.

18 (d) This section may not be applied to abridge any right that a collective
19 bargaining agreement grants to a part-time employee or other employee.

20 (e) This section does not affect the laws that relate to:

21 (1) the sale of alcoholic beverages on Sunday; or

22 (2) service of process on Sunday.

23 (f) An employer may not:

24 (1) discharge, discipline, discriminate against, or otherwise penalize
25 an employee who chooses a day of rest; or

26 (2) require an applicant for employment who seeks a workweek of at
27 least 25 hours to answer any question to identify the day that the applicant chooses as
28 a day of rest.

29 **(G) (1) WHENEVER THE COMMISSIONER DETERMINES THAT THIS**
30 **SECTION HAS BEEN VIOLATED, THE COMMISSIONER MAY:**

1 **(I) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE**
2 **VIOLATION INFORMALLY BY MEDIATION; OR**

3 **(II) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON**
4 **BEHALF OF THE APPLICANT OR EMPLOYEE.**

5 **(2) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER**
6 **THIS SUBSECTION IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY**
7 **OCCURRED FOR INJUNCTIVE RELIEF, DAMAGES, OR OTHER RELIEF.**

8 **[(g)] (H)** (1) This subsection does not apply to an agent or supervisory
9 employee of an employer who violates any provision of this section if the employer
10 authorizes, directs, or otherwise causes the agent or supervisory employee to violate
11 the provision.

12 (2) Outside Wicomico County, an employer who violates any provision
13 of this section is guilty of a misdemeanor and on conviction is subject to a fine of not
14 less than \$250 or more than \$500.

15 (3) In Wicomico County, a person who violates any provision of this
16 section is guilty of a misdemeanor and on conviction, for each employee who is caused,
17 directed, permitted, or authorized to work:

18 (i) for a first conviction, is subject to a fine not exceeding \$500;
19 and

20 (ii) for a second conviction, is subject to a fine not exceeding
21 \$1,000.

22 **[(h)] (I)** In Wicomico County, the State's Attorney may file a complaint to
23 enjoin a violation of this section.

24 **[3-706.**

25 Subject to the evaluation and reestablishment provisions of the Maryland
26 Program Evaluation Act, Subtitles 2 and 4 of this title shall terminate and be of no
27 effect after July 1, 2014.]

28 **3-712.**

29 (a) (1) In this section the following words have the meanings indicated.

30 (2) "Applicant" means an applicant for employment.

31 (3) (i) "Electronic communications device" means any device that
32 uses electronic signals to create, transmit, and receive information.

1 (ii) “Electronic communications device” includes computers,
2 telephones, personal digital assistants, and other similar devices.

3 (4) (i) “Employer” means:

4 1. a person engaged in a business, an industry, a
5 profession, a trade, or other enterprise in the State; or

6 2. a unit of State or local government.

7 (ii) “Employer” includes an agent, a representative, and a
8 designee of the employer.

9 (b) (1) Subject to paragraph (2) of this subsection, an employer may not
10 request or require that an employee or applicant disclose any user name, password, or
11 other means for accessing a personal account or service through an electronic
12 communications device.

13 (2) An employer may require an employee to disclose any user name,
14 password, or other means for accessing nonpersonal accounts or services that provide
15 access to the employer’s internal computer or information systems.

16 (c) An employer may not:

17 (1) discharge, discipline, or otherwise penalize or threaten to
18 discharge, discipline, or otherwise penalize an employee for an employee’s refusal to
19 disclose any information specified in subsection (b)(1) of this section; or

20 (2) fail or refuse to hire any applicant as a result of the applicant’s
21 refusal to disclose any information specified in subsection (b)(1) of this section.

22 (d) An employee may not download unauthorized employer proprietary
23 information or financial data to an employee’s personal Web site, an Internet Web site,
24 a Web-based account, or a similar account.

25 (e) This section does not prevent an employer:

26 (1) based on the receipt of information about the use of a personal Web
27 site, Internet Web site, Web-based account, or similar account by an employee for
28 business purposes, from conducting an investigation for the purpose of ensuring
29 compliance with applicable securities or financial law, or regulatory requirements; or

30 (2) based on the receipt of information about the unauthorized
31 downloading of an employer’s proprietary information or financial data to a personal
32 Web site, Internet Web site, Web-based account, or similar account by an employee,
33 from investigating an employee’s actions under subsection (d) of this section.

1 **(F) (1) WHENEVER THE COMMISSIONER DETERMINES THAT THIS**
2 **SECTION HAS BEEN VIOLATED, THE COMMISSIONER MAY:**

3 **(I) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE**
4 **VIOLATION INFORMALLY BY MEDIATION; OR**

5 **(II) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON**
6 **BEHALF OF THE APPLICANT OR EMPLOYEE.**

7 **(2) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER**
8 **THIS SUBSECTION IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY**
9 **OCCURRED FOR INJUNCTIVE RELIEF, DAMAGES, OR OTHER RELIEF.**

10 3-801.

11 (a) (1) In this section, “employer” means a person engaged in a business,
12 industry, profession, trade, or other enterprise in the State.

13 (2) “Employer” includes:

14 (i) a unit of State or local government that employs individuals
15 who are not subject to the provisions of Title 9, Subtitle 5 of the State Personnel and
16 Pensions Article; and

17 (ii) a person who acts directly or indirectly in the interest of
18 another employer with an employee.

19 (b) This section applies to an employer who provides leave with pay to an
20 employee following the birth of the employee’s child.

21 (c) An employer who provides leave with pay to an employee following the
22 birth of the employee’s child shall provide the same leave with pay to an employee
23 when a child is placed with the employee for adoption.

24 **(D) (1) WHENEVER THE COMMISSIONER DETERMINES THAT THIS**
25 **SECTION HAS BEEN VIOLATED, THE COMMISSIONER MAY:**

26 **(I) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE**
27 **VIOLATION INFORMALLY BY MEDIATION; OR**

28 **(II) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON**
29 **BEHALF OF THE APPLICANT OR EMPLOYEE.**

1 5. a disability benefit; or

2 6. a similar benefit.

3 (6) “Parent” means an adoptive, biological, or foster parent, a
4 stepparent, a legal guardian, or a person standing in loco parentis.

5 (b) (1) This section applies to an employee who is primarily employed in
6 the State.

7 (2) This section applies to an employer that:

8 (i) provides leave with pay under the terms of a collective
9 bargaining agreement or an employment policy; and

10 (ii) employs 15 or more employees for each working day in each
11 of 20 or more calendar weeks in the current or preceding calendar year.

12 (c) The purpose of this section is to allow an employee of an employer to use
13 leave with pay to care for an immediate family member who is ill under the same
14 conditions and policy rules that would apply if the employee took leave for the
15 employee’s own illness.

16 (d) An employee of an employer may use leave with pay for the illness of the
17 employee’s immediate family.

18 (e) (1) An employee of an employer:

19 (i) may only use leave with pay under this section that has
20 been earned; and

21 (ii) who earns more than one type of leave with pay may elect
22 the type and amount of leave with pay to be used under this section.

23 (2) Except as provided in paragraph (3) of this subsection, an
24 employee of an employer who uses leave under this section shall comply with the
25 terms of a collective bargaining agreement or employment policy.

26 (3) If the terms of a collective bargaining agreement with an employer
27 or an employment policy of an employer provide a leave with pay benefit that is equal
28 to or greater than the benefit provided under this section, the collective bargaining
29 agreement or employment policy prevails.

30 (f) An employer may not discharge, demote, suspend, discipline, or otherwise
31 discriminate against an employee or threaten to take any of these actions against an
32 employee because the employee:

- 1 (1) has taken leave authorized under this section;
- 2 (2) has opposed a practice made unlawful by this section; or
- 3 (3) has made a charge, testified, assisted, or participated in an
4 investigation, proceeding, or hearing under this section.

5 (g) This section does not:

- 6 (1) extend the maximum period of leave an employee has under the
7 federal Family and Medical Leave Act of 1993; or
- 8 (2) limit the period of leave to which an employee is entitled under the
9 federal Family and Medical Leave Act of 1993.

10 **(H) (1) WHENEVER THE COMMISSIONER DETERMINES THAT THIS**
11 **SECTION HAS BEEN VIOLATED, THE COMMISSIONER MAY:**

12 **(I) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE**
13 **VIOLATION INFORMALLY BY MEDIATION; OR**

14 **(II) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON**
15 **BEHALF OF THE APPLICANT OR EMPLOYEE.**

16 **(2) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER**
17 **THIS SUBSECTION IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY**
18 **OCCURRED FOR INJUNCTIVE RELIEF, DAMAGES, OR OTHER RELIEF.**

19 3-914.

20 (a) An employer shall keep, for at least 3 years, in or about its place of
21 business, records of the employer containing the following information:

22 (1) the name, address, occupation, and classification of each employee
23 or independent contractor;

24 (2) the rate of pay of each employee or method of payment for the
25 independent contractor;

26 (3) the amount that is paid each pay period to each employee or, if
27 applicable, independent contractor;

28 (4) the hours that each employee or independent contractor works
29 each day and each workweek;

1 (5) for all individuals who are not classified as employees, evidence
2 that each individual is an exempt person or an independent contractor or its employee;
3 and

4 (6) other information that the Commissioner requires, by regulation,
5 as necessary to enforce this subtitle.

6 (b) An employer shall provide each individual classified as an independent
7 contractor or exempt person with written notice of the classification of the individual
8 at the time the individual is hired.

9 (c) The written notice shall:

10 (1) include an explanation of the implications of the individual's
11 classification as an independent contractor or exempt person rather than as an
12 employee; and

13 (2) be provided in English and Spanish.

14 (d) The Commissioner shall adopt regulations establishing the specific
15 requirements for the contents and form of the notice.

16 **(E) IF AN EMPLOYER FAILS TO PROVIDE NOTICE UNDER SUBSECTION**
17 **(B) OF THIS SECTION, THE COMMISSIONER MAY ASSESS A CIVIL PENALTY OF**
18 **NOT MORE THAN \$100 FOR EACH DAY THAT THE EMPLOYER FAILS TO PROVIDE**
19 **NOTICE.**

20 3-920.

21 (a) The Commissioner shall prepare an annual report for the Secretary **AND,**
22 **IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE**
23 **GENERAL ASSEMBLY** on the administration and enforcement of this subtitle, that
24 shall include:

25 (1) the number and nature of complaints received;

26 (2) the number of investigations conducted;

27 (3) the number of citations issued;

28 (4) the number of informal resolutions of the citations;

29 (5) the number of [final administrative orders, with a description, that
30 shall include:

31 (i) whether the alleged violation was found; and

1 (ii) whether the order affirmed or overturned a proposed
2 decision of the Office of Administrative Hearings;] **CITATIONS APPEALED TO THE**
3 **OFFICE OF ADMINISTRATIVE HEARINGS AND THE OUTCOMES OF THOSE**
4 **HEARINGS;**

5 (6) [the number of orders of the Commissioner reviewed by the
6 Secretary and whether they were affirmed or overturned; and

7 (7)] the number of requests for judicial review of [administrative]
8 **FINAL** orders and whether the orders were affirmed or overturned[.]; **AND**

9 **(7) THE NUMBER OF CIVIL PENALTIES ASSESSED, THE TOTAL**
10 **DOLLAR AMOUNT OF THOSE PENALTIES, AND THE TOTAL DOLLAR AMOUNT**
11 **COLLECTED.**

12 (b) The Commissioner's report shall be a public record.

13 **3-1008.**

14 **(A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE**
15 **HAS BEEN VIOLATED, THE COMMISSIONER MAY:**

16 **(1) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION**
17 **INFORMALLY BY MEDIATION; OR**

18 **(2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON**
19 **BEHALF OF THE APPLICANT OR EMPLOYEE.**

20 **(B) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER THIS**
21 **SECTION IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED FOR**
22 **INJUNCTIVE RELIEF, DAMAGES, OR OTHER RELIEF.**

23 **5-306.**

24 **SUBJECT TO THE EVALUATION AND REESTABLISHMENT PROVISIONS OF**
25 **THE MARYLAND PROGRAM EVALUATION ACT, THIS PART I OF THIS SUBTITLE**
26 **SHALL TERMINATE ON JULY 1, 2024.**

27 [5-607.

28 Subject to the evaluation and reestablishment provisions of the Maryland
29 Program Evaluation Act, this title shall terminate and be of no effect after July 1,
30 2014.]

1 11-402.

2 Subject to the evaluation and reestablishment provisions of the Maryland
3 Program Evaluation Act, [provisions of this subtitle creating the Apprenticeship and
4 Training Council and related to the regulation of apprentices and trainees are of no
5 effect after] **§§ 11-403 THROUGH 11-405 OF THIS SUBTITLE SHALL TERMINATE**
6 **ON July 1, [2014] 2024.**

7 **Article – Public Safety**

8 12-904.

9 (a) There is a Board of Boiler Rules in the Division of Labor and Industry in
10 the Department of Labor, Licensing, and Regulation.

11 (b) (1) The Board consists of the following 10 members:

12 (i) as an ex officio member, the Commissioner; and

13 (ii) nine members appointed by the Governor with the advice of
14 the Secretary and with the advice and consent of the Senate.

15 (2) Of the nine appointed members of the Board:

16 (i) one shall be a representative of owners and users of power
17 boilers;

18 (ii) one shall be a representative of owners of agricultural,
19 model, or historical steam engine equipment;

20 (iii) one shall be a representative of owners and users of pressure
21 vessels;

22 (iv) one shall be a representative of manufacturers or
23 assemblers of boilers or pressure vessels;

24 (v) one shall be a representative of an insurer authorized to
25 insure boilers or pressure vessels;

26 (vi) one shall be a mechanical engineer on the faculty of a
27 recognized engineering college in the State;

28 (vii) one shall be a stationary engineer;

29 (viii) one shall be a professional engineer with boiler or pressure
30 vessel experience; and

- 1 (ix) one shall be a consumer member.
- 2 (c) (1) The consumer member of the Board:
- 3 (i) shall be a member of the public;
- 4 (ii) may not be a licensee or otherwise be subject to regulation
5 by the Board;
- 6 (iii) may not be required to meet the qualifications for the
7 professional members of the Board; and
- 8 (iv) may not, within 1 year before appointment, have had a
9 financial interest in or have received compensation from a person regulated by the
10 Board.
- 11 (2) While a member of the Board, the consumer member may not:
- 12 (i) have a financial interest in or receive compensation from a
13 person regulated by the Board; or
- 14 (ii) grade any examination given by or for the Board.
- 15 (d) (1) The term of an appointed member is 4 years.
- 16 (2) The terms of the appointed members are staggered as required by
17 the terms provided for members of the Board on October 1, 2003.
- 18 (3) At the end of a term, a member continues to serve until a successor
19 is appointed and qualifies.
- 20 (4) A member who is appointed after a term has begun serves only for
21 the rest of the term and until a successor is appointed and qualifies.
- 22 (e) The Board shall elect a chairman from among its members.
- 23 (f) The Commissioner may not vote.
- 24 (g) (1) The Commissioner may not receive additional compensation as a
25 member of the Board.
- 26 (2) An appointed member of the Board:
- 27 (i) may not receive a salary as a member of the Board; but
- 28 (ii) is entitled to:

1 1. compensation in accordance with the State budget;
2 and

3 2. reimbursement for expenses under the Standard
4 State Travel Regulations, as provided in the State budget.

5 **(H) THE BOARD SHALL MEET WITH AND CONSULT THE STATE BOARD**
6 **OF STATIONARY ENGINEERS AS NECESSARY BUT ~~NOT LESS THAN TWO TIMES AT~~**
7 **LEAST ONE TIME EACH YEAR.**

8 **[(h)] (I)** The exercise or performance of the powers, authority, duties, and
9 functions of the Board under this subtitle is subject to the power and authority of the
10 Secretary.

11 12-919.

12 [The provisions of this subtitle creating the Board and relating to the regulation
13 of boilers or pressure vessels and any regulations adopted under this subtitle are of no
14 effect and may not be enforced after] **SUBJECT TO THE EVALUATION AND**
15 **REESTABLISHMENT PROVISIONS OF THE MARYLAND PROGRAM EVALUATION**
16 **ACT, § 12-904 OF THIS SUBTITLE SHALL TERMINATE ON July 1, [2014] 2024.**

17 **Article – State Finance and Procurement**

18 [17-203.

19 (a) In this section, “Advisory Council” means the Advisory Council on
20 Prevailing Wage Rates.

21 (b) There is an Advisory Council on Prevailing Wage Rates in the Division of
22 Labor and Industry.

23 (c) The Advisory Council consists of the following 6 members:

24 (1) 2 individuals from management in the building and construction
25 industry;

26 (2) 2 individuals from labor in the building and construction industry;
27 and

28 (3) 2 individuals from the general public.

29 (d) (1) The Governor shall appoint each member with the advice of the
30 Secretary of Labor, Licensing, and Regulation and with the advice and consent of the
31 Senate.

1 (2) The 2 members from management shall be selected from a list
2 submitted by management organizations in the building and construction industry.

3 (3) The 2 members from labor shall be selected from a list submitted
4 by labor organizations in the building and construction industry.

5 (e) Before taking office, each appointee to the Advisory Council shall take the
6 oath required by Article I, § 9 of the Maryland Constitution.

7 (f) (1) From among the Advisory Council members, the Governor shall
8 appoint a chairman.

9 (2) The chairman of the Advisory Council:

10 (i) shall serve for 1 year from the day of appointment; and

11 (ii) is not eligible for reappointment as chairman for the
12 following year.

13 (g) (1) The term of a member is 3 years.

14 (2) The terms of members are staggered as required by the terms
15 provided for members of the Advisory Council on October 1, 1988.

16 (3) At the end of a term, a member continues to serve until a successor
17 is appointed and qualifies.

18 (4) If a vacancy occurs, the Governor shall appoint a new member with
19 the advice of the Secretary of Labor, Licensing, and Regulation.

20 (5) A member who is appointed after a term has begun serves only for
21 the rest of the term and until a successor is appointed and qualifies.

22 (h) The Governor may remove a member for incompetence or misconduct.

23 (i) (1) The Advisory Council shall advise and submit recommendations to
24 the Commissioner on the Commissioner's functions under this subtitle.

25 (2) The Commissioner may ask other units of the State government or
26 units of local governments to provide statistical data, reports, and other information to
27 help the Advisory Council to carry out its duties.

28 (j) The Advisory Council shall meet at least twice a year and on other days
29 the Commissioner requests, at the times and places that it determines.

30 (k) Each member of the Advisory Council is entitled to:

- 1 (1) compensation in accordance with the State budget; and
- 2 (2) reimbursement for expenses under the Standard State Travel
3 Regulations, as provided in the State budget.
- 4 (l) Subject to the evaluation and reestablishment provisions of the Maryland
5 Program Evaluation Act, this section shall terminate and be of no effect after July 1,
6 2014.]

7 **Article – State Government**

8 8–403.

9 (b) Except as otherwise provided in subsection (a) of this section, on or before
10 the evaluation date for the following governmental activities or units, an evaluation
11 shall be made of the following governmental activities or units and the statutes and
12 regulations that relate to the governmental activities or units:

13 (2) Amusement Ride Safety, State Advisory Board (§ 3–303 of the
14 Business Regulation Article: July 1, **[2013] 2023**);

15 (3) Apprenticeship and Training Council (§ 11–403 of the Labor and
16 Employment Article: July 1, **[2013] 2023**);

17 (9) Boiler Rules, Board of (§ 12–904 of the Public Safety Article: July
18 1, **[2013] 2023**);

19 (33) Labor and Industry, Division of (Title 2 of the Labor and
20 Employment Article: July 1, **[2013] 2023**) **AND RELATED PROGRAMS**;

21 (42) Occupational Safety and Health Advisory Board (§ 5–302 of the
22 Labor and Employment Article: July 1, **[2013] 2023**);

23 **[(55) Prevailing Wage Rates, Advisory Council on (§ 17–203 of the State
24 Finance and Procurement Article: July 1, 2013);]**

25 **SECTION 2. AND BE IT FURTHER ENACTED**, That Section(s) 8–403(b)(56)
26 through (69), respectively, of Article – State Government of the Annotated Code of
27 Maryland be renumbered to be Section(s) 8–403(b)(55) through (68), respectively.

28 **SECTION 3. AND BE IT FURTHER ENACTED**, That:

29 (a) On or before October 31, 2013, the Division of Labor and Industry shall
30 submit a report to the Senate Finance Committee and the House Economic Matters
31 Committee, in accordance with § 2–1246 of the State Government Article, on the
32 continued use and effectiveness of wage orders.

1 (b) The report submitted under subsection (a) of this section shall, for each of
2 the immediately preceding 3 fiscal years, include:

3 (1) the number of wage orders issued by the Division;

4 (2) the number of wage orders forwarded to the Central Collection
5 Unit for collection;

6 (3) the number of wage orders forwarded to the Central Collection
7 Unit for which payment is collected;

8 (4) the number of wage orders forwarded to the Central Collection
9 Unit for which payment has not been collected; and

10 (5) to the extent feasible, the reasons for any substantial increase or
11 decrease in the backlog of wage orders that remain unpaid from a previous fiscal year.

12 SECTION 4. AND BE IT FURTHER ENACTED, That, on or before December
13 31, 2013, the Workplace Fraud Unit shall submit a report to the General Assembly, in
14 accordance with § 2–1246 of the State Government Article, on the progress of the
15 development of a long–term data management system.

16 SECTION 5. AND BE IT FURTHER ENACTED, That:

17 (a) On or before December 31, 2014, the Commissioner of Labor and Industry
18 shall submit a report to the Governor and, in accordance with § 2–1246 of the State
19 Government Article, the General Assembly on the status of the Workplace Fraud Unit
20 as required by Chapter 188, § 3 of the Acts of 2009.

21 (b) The report submitted under subsection (a) of this section shall:

22 (1) summarize the level of activity under the Unit’s new
23 implementation strategy and assess the effectiveness of the Unit’s strategy and its
24 outreach program;

25 (2) explain the difference between initial estimates of citations and
26 penalties and those experienced in practice, including the relatively few citations
27 issued for worker misclassification;

28 (3) include the development status of the Unit’s long–term data
29 management system and the system’s ability to support the Unit; and

30 (4) at a minimum, evaluate:

31 (i) the Unit’s annual data reports and the consistency between
32 those reports and other agency audits of worker misclassification;

1 (ii) the Unit's staffing composition relative to its
2 implementation strategy; and

3 (iii) the Unit's role in the larger context of the Task Force on
4 Workplace Fraud established by Executive Order No. 01.01.2009.09.

5 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 July 1, 2013.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.