

# HOUSE BILL 420

K3, P2

(6lr1807)

## ENROLLED BILL

— Economic Matters/Finance —

Introduced by **Delegates Waldstreicher, Aumann, D. Barnes, Barve, Beidle, Bromwell, Brooks, Carey, Carr, Clippinger, Cullison, Davis, Ebersole, Fraser-Hidalgo, Frick, Frush, Gilchrist, Hammen, Hixson, Holmes, Impallaria, Lierman, Luedtke, McKay, A. Miller, Morales, Patterson, Pendergrass, Platt, Sanchez, Simonaire, Smith, Vaughn, M. Washington, West, C. Wilson, Wivell, ~~and Zucker~~ Zucker, Barkley, Branch, Glenn, Jameson, Lisanti, Queen, and Valderrama**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.  
\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

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 (Ken Capone Equal Employment Act)

6 FOR the purpose of prohibiting the Commissioner of Labor and Industry, ~~except~~ under  
7 certain circumstances, from authorizing certain work activities centers and certain  
8 sheltered workshops to pay employees with disabilities less than a certain minimum  
9 wage; ~~requiring that a certain State certificate issued by the Commissioner under a~~

**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.

*Italics indicate opposite chamber/conference committee amendments.*



~~1 certain provision of law expires no later than a certain date~~ authorizing certain work  
2 activities centers and certain sheltered workshops to pay new employees a certain  
3 wage only under certain circumstances; requiring the ~~Department of Labor,~~  
4 ~~Licensing, and Regulation~~ Developmental Disabilities Administration and the  
5 Department of Disabilities, in partnership with certain State agencies, to develop  
6 and implement a certain plan to phase out certain authorizations under a certain  
7 provision of law; providing for the scope of the plan; requiring the Administration  
8 and the Department to engage with certain organizations representing those  
9 impacted by the phase-out to implement a certain plan; requiring the  
10 Administration and the Department to submit a certain plan to the Governor and  
11 the General Assembly on or before a certain date; requiring the Department to report  
12 certain benchmarks, outcomes, and recommendations to the Governor and the  
13 General Assembly on or before a certain date each year dates; ~~prohibiting a certain~~  
14 ~~work activities center or other sheltered workshop from receiving State funds on or~~  
15 ~~after a certain date under certain circumstances;~~ requiring a certain individual and  
16 a certain resource coordinator, in consultation with certain individuals, to develop a  
17 certain supplemental plan; requiring a certain resource coordinator to use  
18 appropriate communication devices and techniques to facilitate the involvement of a  
19 certain individual in the development of the individual's supplemental plan;  
20 requiring that an individual's plan include certain information; requiring the  
21 Administration, in consultation with certain stakeholders, to develop the planning  
22 protocol and format for a supplemental plan; requiring a certain individual and the  
23 individual's resource coordinator and team to discuss a certain job setting on an  
24 annual basis and at any other time requested by the individual; requiring the  
25 resource coordinator to document certain information in a certain individual's  
26 annual individual plan; requiring the Administration to track the progress of certain  
27 individuals by collecting certain data; requiring the Administration to report certain  
28 information to the Governor and the General Assembly on or before certain dates;  
29 prohibiting the Administration from funding certain providers beginning on a  
30 certain date; requiring a certain new employee to be informed by the employee's  
31 employer of certain opportunities, have a plan of habilitation that includes certain  
32 information, be engaged in certain work when choosing to work, choose the employer  
33 and employment, and be informed of certain rights; repealing certain provisions of  
34 law relating to the authorization of certain work activities centers and certain  
35 sheltered workshops to pay certain employees with disabilities less than a certain  
36 minimum wage; repealing certain provisions of law requiring the Administration  
37 and the Department to develop and implement a certain plan and make certain  
38 reports; repealing certain provisions of law requiring certain individuals to have a  
39 certain supplemental plan; repealing certain provisions of law requiring that a  
40 certain new employee be informed by the employee's employer of certain  
41 opportunities, have a plan of habilitation that includes certain information, be  
42 engaged in certain work when choosing to work, choose the employer and  
43 employment, and be informed of certain rights; authorizing certain work activities  
44 centers and other workshops, beginning on a certain date, to pay less than the federal  
45 prevailing wage of pay to the extent authorized under federal law and under certain  
46 circumstances; requiring the Administration and the Department to conduct a  
47 certain study, determine certain information, and make certain recommendations;

1 requiring the Administration and the Department to consult certain State agencies,  
 2 other entities, and relevant stakeholders in carrying out certain duties; requiring the  
 3 Administration and the Department to report their findings and recommendations  
 4 to the Governor and certain committees of the General Assembly on or before a  
 5 certain date; altering certain terminology; providing for a delayed effective date for  
 6 certain provisions of this Act; and generally relating to the payment of wages ~~under~~  
 7 ~~the Maryland Wage and Hour Law and~~ to and community integration of individuals  
 8 with disabilities.

9 BY adding to

10 Article – Health – General  
 11 Section 7–207, 7–1012, 7–1013, and 7–1014  
 12 Annotated Code of Maryland  
 13 (2015 Replacement Volume)

14 BY repealing and reenacting, with amendments,

15 Article – Labor and Employment  
 16 Section 3–414  
 17 Annotated Code of Maryland  
 18 (2008 Replacement Volume and 2015 Supplement)

19 ~~BY adding to~~

20 ~~Article – Labor and Employment~~  
 21 ~~Section 3–414.1~~  
 22 ~~Annotated Code of Maryland~~  
 23 ~~(2008 Replacement Volume and 2015 Supplement)~~

24 ~~BY adding to~~

25 ~~Article – State Finance and Procurement~~  
 26 ~~Section 2–801 to be under the new subtitle “Subtitle 8. Miscellaneous”~~  
 27 ~~Annotated Code of Maryland~~  
 28 ~~(2015 Replacement Volume)~~

29 BY repealing

30 Article – Health – General  
 31 Section 7–1012, 7–1013, and 7–1014  
 32 Annotated Code of Maryland  
 33 (2015 Replacement Volume)  
 34 (As enacted by Section 1 of this Act)

35 BY repealing and reenacting, with amendments,

36 Article – Labor and Employment  
 37 Section 3–414 ~~and 3–414.1~~  
 38 Annotated Code of Maryland  
 39 (2008 Replacement Volume and 2015 Supplement)  
 40 (As enacted by Section 1 of this Act)

## Preamble

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

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

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

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

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

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

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

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

**Article – Health – General**

**7–207.**

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

**7–1012.**

1       **(A) THE ADMINISTRATION AND THE DEPARTMENT OF DISABILITIES, IN**  
2 **PARTNERSHIP WITH RELEVANT STATE AGENCIES, INCLUDING THE DEPARTMENT OF**  
3 **ECONOMIC COMPETITIVENESS AND COMMERCE, THE STATE DEPARTMENT OF**  
4 **EDUCATION, AND THE DIVISION OF REHABILITATION SERVICES, SHALL DEVELOP**  
5 **AND IMPLEMENT A PLAN TO PHASE OUT ON OR BEFORE OCTOBER 1, 2020,**  
6 **AUTHORIZATIONS UNDER § 3-414 OF THE LABOR AND EMPLOYMENT ARTICLE TO**  
7 **PAY AN EMPLOYEE WITH A DISABILITY LESS THAN THE MINIMUM WAGE OTHERWISE**  
8 **REQUIRED FOR THE EMPLOYEE UNDER TITLE 3, SUBTITLE 4 OF THE LABOR AND**  
9 **EMPLOYMENT ARTICLE.**

10       **(B) THE PLAN DEVELOPED AND IMPLEMENTED UNDER SUBSECTION (A) OF**  
11 **THIS SECTION SHALL INCLUDE:**

12           **(1) BENCHMARKS AND DESIRED OUTCOMES FOR EACH YEAR OF THE**  
13 **PHASE-OUT;**

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

18           **(3) APPLICATION FOR AND USE OF ALL FEDERAL AND STATE**  
19 **FUNDING PROGRAMS, INCLUDING PROGRAMS AVAILABLE UNDER MEDICAID**  
20 **WAIVER AMENDMENTS AND RESOURCES UNDER THE WORKFORCE INNOVATION AND**  
21 **OPPORTUNITY ACT, TO ASSIST INDIVIDUALS WITH DISABILITIES TO OBTAIN**  
22 **COMPETITIVE, INTEGRATED EMPLOYMENT; AND**

23           **(4) THE TRACKING OF OUTCOMES OF INDIVIDUALS WITH**  
24 **DISABILITIES ON THE BASIS OF:**

25                   **(i) WAGES;**

26                   **(ii) UNEMPLOYMENT RATES;**

27                   **(iii) THE NUMBER OF INDIVIDUALS WHO MOVE FROM**  
28 **SUBMINIMUM WAGE POSITIONS TO COMPETITIVE, INTEGRATED EMPLOYMENT; AND**

29                   **(iv) THE NUMBER OF INDIVIDUALS WHO MOVE FROM**  
30 **SUBMINIMUM WAGE POSITIONS TO NONPAYING ACTIVITIES.**

31       **(C) IN IMPLEMENTING THE PLAN DEVELOPED UNDER SUBSECTION (A) OF**  
32 **THIS SECTION, THE ADMINISTRATION AND THE DEPARTMENT OF DISABILITIES**  
33 **SHALL ENGAGE STATEWIDE ORGANIZATIONS, INCLUDING THE MARYLAND**

1 DEVELOPMENTAL DISABILITIES COUNCIL, AND PROVIDER AND FAMILY STATEWIDE  
2 ADVOCACY ORGANIZATIONS REPRESENTING THOSE IMPACTED BY THE PHASE-OUT.

3 (D) (1) ON OR BEFORE OCTOBER 1, 2017, THE ADMINISTRATION AND  
4 THE DEPARTMENT OF DISABILITIES SHALL SUBMIT THE PLAN DEVELOPED UNDER  
5 SUBSECTION (A) OF THIS SECTION TO THE GOVERNOR AND, IN ACCORDANCE WITH §  
6 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.

7 (2) ON OR BEFORE OCTOBER 1, 2018, 2019, AND 2020, THE  
8 ADMINISTRATION AND THE DEPARTMENT OF DISABILITIES SHALL REPORT TO THE  
9 GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT  
10 ARTICLE, THE GENERAL ASSEMBLY ON:

11 (I) THE BENCHMARKS AND STATUS OF ACHIEVING THE  
12 OUTCOMES INCLUDED IN THE PLAN UNDER SUBSECTION (B)(1) OF THIS SECTION;  
13 AND

14 (II) RECOMMENDATIONS FOR FUNDING LEVELS OR OTHER  
15 RESOURCES NECESSARY TO IMPLEMENT THE PLAN DEVELOPED UNDER  
16 SUBSECTION (A) OF THIS SECTION.

17 7-1013.

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

24 (2) THE RESOURCE COORDINATOR SHALL USE APPROPRIATE  
25 COMMUNICATION DEVICES AND TECHNIQUES, INCLUDING SIGN LANGUAGE, TO  
26 FACILITATE THE INVOLVEMENT OF THE INDIVIDUAL IN THE DEVELOPMENT OF THE  
27 INDIVIDUAL'S SUPPLEMENTAL PLAN.

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

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

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

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

5           **(I) BARRIERS TO ACCESSING FUNDING AND RESOURCES,**  
6 **INCLUDING FOR STAFFING, TRANSPORTATION, AND OTHER NEEDED SERVICES AND**  
7 **SUPPORTS;**

8           **(II) DECISION MAKING BY THE INDIVIDUAL OR THE**  
9 **INDIVIDUAL'S REPRESENTATIVE, AS APPROPRIATE;**

10           **(III) BARRIERS TO ACCESSING MEDICAL OR BEHAVIORAL**  
11 **SUPPORT NEEDS; AND**

12           **(IV) FAMILY MEMBERS' CONCERNS OR OPPOSITION; AND**

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

16           **(C) THE ADMINISTRATION SHALL DEVELOP, IN CONSULTATION WITH**  
17 **INTERESTED STAKEHOLDERS, THE PLANNING PROTOCOL AND FORMAT FOR THE**  
18 **SUPPLEMENTAL PLAN.**

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

25           **(2) THE RESOURCE COORDINATOR SHALL DOCUMENT IN THE**  
26 **INDIVIDUAL'S ANNUAL INDIVIDUAL PLAN:**

27           **(I) ANY DISCUSSIONS HELD UNDER PARAGRAPH (1) OF THIS**  
28 **SUBSECTION; AND**

29           **(II) ANY RECOMMENDATIONS THAT RESULTED FROM THE**  
30 **DISCUSSIONS.**

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

1           (I) THE WAGES OF THE INDIVIDUALS;

2           (II) THE UNEMPLOYMENT RATES OF THE INDIVIDUALS;

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

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

7           (2) ON OR BEFORE SEPTEMBER 1, 2018, 2019, AND 2020, THE  
8 ADMINISTRATION SHALL SUBMIT TO THE GOVERNOR AND, IN ACCORDANCE WITH §  
9 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY A  
10 SUMMARY OF THE DATA COLLECTED UNDER PARAGRAPH (1) OF THIS SUBSECTION  
11 ON A STATEWIDE AND REGIONAL BASIS.

12 7-1014.

13           A NEW EMPLOYEE EMPLOYED AT LESS THAN THE MINIMUM WAGE UNDER §  
14 3-414 OF THE LABOR AND EMPLOYMENT ARTICLE SHALL:

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

17           (2) HAVE A ~~PLAN OF HABILITATION~~ SUPPLEMENTAL PLAN UNDER  
18 ~~§ 7-1006~~ § 7-1013 OF THIS SUBTITLE THAT INCLUDES:

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

20           (II) A DESCRIPTION OF THE SUPPORTS NEEDED TO ACHIEVE  
21 THE GOAL;

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

23           (IV) THE BARRIERS TO COMPETITIVE, INTEGRATED  
24 EMPLOYMENT; AND

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

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



- 1 (i) issue a State certificate that sets wages for employees of the  
2 workshop;
- 3 (ii) accept a federal certificate for the workshop; or
- 4 (iii) grant an exception for the workshop but only if:
- 5 1. the Commissioner has not issued a State certificate for the  
6 workshop;
- 7 2. the workshop is not eligible for a federal certificate; and
- 8 3. the Commissioner investigates and holds a hearing on the  
9 exception.

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

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

- 15 ~~(H)~~ state the period for which the certificate is in effect; ~~AND~~
- 16 ~~(H)~~ ~~EXPIRE NO LATER THAN OCTOBER 1, 2019.~~

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

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

- 21 (i) the United States Department of Labor revokes the federal  
22 certificate; or
- 23 (ii) at any time before revocation by the Department of Labor and  
24 after an investigation and hearing, the Commissioner finds good cause to revoke the  
25 acceptance.

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

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

3       ~~(B) THE DEPARTMENT, IN PARTNERSHIP WITH RELEVANT STATE~~  
4 ~~AGENCIES, INCLUDING THE DEPARTMENT OF ECONOMIC COMPETITIVENESS AND~~  
5 ~~COMMERCE, THE DEPARTMENT OF DISABILITIES, THE DEVELOPMENTAL~~  
6 ~~DISABILITIES ADMINISTRATION, THE STATE DEPARTMENT OF EDUCATION, AND~~  
7 ~~THE DIVISION OF REHABILITATION SERVICES, SHALL DEVELOP AND IMPLEMENT A~~  
8 ~~PLAN TO PHASE OUT BY OCTOBER 1, 2019, AUTHORIZATIONS UNDER § 3-414 OF~~  
9 ~~THIS SUBTITLE TO PAY AN EMPLOYEE WITH A DISABILITY LESS THAN THE MINIMUM~~  
10 ~~WAGE OTHERWISE REQUIRED FOR THE EMPLOYEE UNDER THIS SUBTITLE.~~

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

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

15               ~~(2) A LIST OF THE RESOURCES NECESSARY TO ENSURE THAT~~  
16 ~~INDIVIDUALS WITH DISABILITIES RECEIVE SUPPORT ACCORDING TO THE NEEDS~~  
17 ~~AND PREFERENCES OF THE INDIVIDUALS WITH DISABILITIES IN AN INTEGRATED~~  
18 ~~SETTING, REGARDLESS OF THE NATURE OR SEVERITY OF THE INDIVIDUALS'~~  
19 ~~DISABILITIES;~~

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

24               ~~(4) THE TRACKING OF OUTCOMES OF INDIVIDUALS WITH~~  
25 ~~DISABILITIES ON THE BASIS OF:~~

26                       ~~(I) WAGES;~~

27                       ~~(II) UNEMPLOYMENT RATES;~~

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

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

32       ~~(D) THE DEPARTMENT SHALL ENGAGE STATEWIDE ORGANIZATIONS~~  
33 ~~REPRESENTING THOSE IMPACTED BY THE PHASE OUT, INCLUDING THE MARYLAND~~

~~1 DEVELOPMENTAL DISABILITIES COUNCIL AND ADVOCACY, PROVIDER, FAMILY,  
2 AND OTHER STATEWIDE ORGANIZATIONS, IN IMPLEMENTING THE PLAN DEVELOPED  
3 UNDER SUBSECTION (B) OF THIS SECTION.~~

~~4 (E) ON OR BEFORE OCTOBER 1 EACH YEAR, THE DEPARTMENT SHALL  
5 REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE  
6 GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON THE BENCHMARKS AND  
7 RESULTS OF OUTCOMES DESCRIBED IN PARAGRAPH (C) OF THIS SECTION AND  
8 RECOMMENDATIONS FOR FUNDING LEVELS OR OTHER RESOURCES NECESSARY TO  
9 IMPLEMENT THE PLAN DEVELOPED UNDER SUBSECTION (B) OF THIS SECTION.~~

~~10 Article – State Finance and Procurement~~

~~11 SUBTITLE 8. MISCELLANEOUS.~~

~~12 2-801.~~

~~13 BEGINNING JANUARY 1, 2019, A WORK ACTIVITIES CENTER OR OTHER  
14 SHELTERED WORKSHOP THAT PAYS AN EMPLOYEE WITH A DISABILITY LESS THAN  
15 THE MINIMUM WAGE OTHERWISE REQUIRED UNDER TITLE 3, SUBTITLE 4 OF THE  
16 LABOR AND EMPLOYMENT ARTICLE MAY NOT RECEIVE STATE FUNDS.~~

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

19 Article – Health – General

20 [7-1012.

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

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

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

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

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

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

6                   (i) Wages;

7                   (ii) Unemployment rates;

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

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

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

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

20                   (2) On or before October 1, 2018, 2019, and 2020, the Administration and  
21 the Department of Disabilities shall report to the Governor and, in accordance with §  
22 2-1246 of the State Government Article, the General Assembly on:

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

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

27 [7-1013.

28           (a) (1) Each individual who is being paid less than the minimum wage under  
29 § 3-414 of the Labor and Employment Article and the individual's resource coordinator, in  
30 consultation with members from the individual's team, shall develop as part of the  
31 individual's annual individual plan a supplemental plan that addresses how community  
32 integration and employment will be accomplished.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3                   (i)   The wages of the individuals;

4                   (ii)   The unemployment rates of the individuals;

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

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

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

13 [7–1014.

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

16                   (1)   Be informed by the employee’s employer of all opportunities to obtain  
17 competitive, integrated employment;

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

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

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

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

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

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

25                   (3)   When choosing to work, be engaged in work that is consistent with the  
26 employee’s unique strengths, resources, priorities, concerns, abilities, capabilities,  
27 interests, and informed choice;

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

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

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

3 **Article – Labor and Employment**

4 ~~§3-414.~~

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

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

11 ~~(e)~~ (b) **[(1)** Subject to the limitations in this section, the Commissioner may  
 12 ~~not~~ authorize a work activities center or other sheltered workshop to pay an employee with  
 13 a disability less than the minimum wage otherwise required under this subtitle for the  
 14 employee ~~unless:~~

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

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

20 **(2) (1) [The] BEGINNING OCTOBER 1, 2020, THE** Commissioner may  
 21 not authorize a work activities center or other sheltered workshop to pay an employee with  
 22 a disability less than the minimum wage [under paragraph (1) of this subsection if the work  
 23 activities center or workshop was not authorized to do so before October 1, 2016.]  
 24 **OTHERWISE REQUIRED UNDER THIS SUBTITLE FOR THE EMPLOYEE.**

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

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

1 (II) THE WORK ACTIVITIES CENTER OR WORKSHOP MAINTAINS  
 2 THE FEDERAL CERTIFICATE.

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

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

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

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

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

12 1. the Commissioner has not issued a State certificate for the  
 13 workshop;

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

15 3. the Commissioner investigates and holds a hearing on the  
 16 exception.

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

20 ~~(e)~~ (d) (1) Each certificate that the Commissioner issues under this section shall

21 ~~(i)~~ state the period for which the certificate is in effect, ~~and~~

22 ~~(ii)~~ ~~expire no later than October 1, 2019.~~

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

26 ~~(e)~~ (e) (1) The Commissioner may revoke acceptance of a federal certificate if:

27 (i) the United States Department of Labor revokes the federal  
 28 certificate; or

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

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

6 ~~§ 414.1.~~

7 (a) ~~In this section, "Department" means the Department of Labor, Licensing, and~~  
 8 ~~Regulation.~~

9 (b) ~~The Department in partnership with relevant State agencies, including the~~  
 10 ~~Department of Economic Competitiveness and Commerce, the Department of Disabilities,~~  
 11 ~~the Developmental Disabilities Administration, the State Department of Education, and~~  
 12 ~~the Division of Rehabilitation Services, shall develop and implement a plan to phase out by~~  
 13 ~~October 1, 2019, authorizations under § 3-414 of this subtitle to pay an employee with a~~  
 14 ~~disability less than the minimum wage otherwise required for the employee under this~~  
 15 ~~subtitle.~~

16 (c) ~~The plan developed and implemented under subsection (b) of this section shall~~  
 17 ~~include:~~

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

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

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

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

27 (i) ~~wages;~~

28 (ii) ~~unemployment rates;~~

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

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

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

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

SECTION 4. AND BE IT FURTHER ENACTED, That:

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

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

(2) determine:

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

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

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

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

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

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

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

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

3           (2) Maryland Works;

4           (3) People on the Go;

5           (4) the Maryland Association of Community Services;

6           (5) the National Federation of the Blind;

7           (6) the Association of People Supporting Employment;

8           (7) the ARC Maryland; and

9           (8) any other relevant stakeholders.

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

15          SECTION ~~3~~ 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall  
16 take effect October 1, ~~2019~~ 2021.

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

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.