

HOUSE BILL 420

K3, P2

6lr1807
CF 6lr1706

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**

Introduced and read first time: January 29, 2016

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Minimum Wage – Individuals With Disabilities**
3 **(Ken Capone Equal Employment Act)**

4 FOR the purpose of prohibiting the Commissioner of Labor and Industry, except under
5 certain circumstances, from authorizing certain work activities centers and certain
6 sheltered workshops to pay employees with disabilities less than a certain minimum
7 wage; requiring that a certain State certificate issued by the Commissioner under a
8 certain provision of law expires no later than a certain date; requiring the
9 Department of Labor, Licensing, and Regulation, in partnership with certain State
10 agencies, to develop and implement a certain plan to phase out certain
11 authorizations under a certain provision of law; providing for the scope of the plan;
12 requiring the Department to engage with certain organizations representing those
13 impacted by the phase-out to implement a certain plan; requiring the Department
14 to report certain benchmarks, outcomes, and recommendations to the Governor and
15 the General Assembly on or before a certain date each year; prohibiting a certain
16 work activities center or other sheltered workshop from receiving State funds on or
17 after a certain date under certain circumstances; repealing certain provisions of law
18 relating to the authorization of certain work activities centers and certain sheltered
19 workshops to pay certain employees with disabilities less than a certain minimum
20 wage; repealing certain provisions of law requiring the Department to develop and
21 implement a certain plan and make certain reports; altering certain terminology;
22 providing for a delayed effective date for certain provisions of this Act; and generally
23 relating to the payment of wages under the Maryland Wage and Hour Law and
24 individuals with disabilities.

25 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Labor and Employment
2 Section 3–414
3 Annotated Code of Maryland
4 (2008 Replacement Volume and 2015 Supplement)

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

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

15 BY repealing
16 Article – Labor and Employment
17 Section 3–414 and 3–414.1
18 Annotated Code of Maryland
19 (2008 Replacement Volume and 2015 Supplement)
20 (As enacted by Section 1 of this Act)

21 Preamble

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

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

30 WHEREAS, During 2015, 3,589 Maryland residents were employed under Section
31 14(c) certificates; and

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

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

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

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

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

8 **Article – Labor and Employment**

9 3–414.

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

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

16 (c) Subject to the limitations in this section, the Commissioner may NOT
17 authorize a work activities center or other sheltered workshop to pay [a mentally or
18 physically disabled employee of the workshop] **AN EMPLOYEE WITH A DISABILITY** less
19 than the minimum wage otherwise required under this subtitle for the employee **UNLESS:**

20 **(1) THE COMMISSIONER AUTHORIZED THE WORKSHOP BEFORE**
21 **OCTOBER 1, 2016, TO PAY THE EMPLOYEE WITH A DISABILITY LESS THAN THE**
22 **MINIMUM WAGE OTHERWISE REQUIRED UNDER THIS SUBTITLE FOR THE EMPLOYEE;**
23 **AND**

24 **(2) THE COMMISSIONER PROHIBITS THE WORKSHOP FROM PAYING**
25 **ADDITIONAL EMPLOYEES LESS THAN THE MINIMUM WAGE OTHERWISE REQUIRED**
26 **UNDER THIS SUBTITLE.**

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

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

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

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

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

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

9 (e) (1) Each certificate that the Commissioner issues under this section shall:

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

11 (II) **EXPIRE NO LATER THAN OCTOBER 1, 2019.**

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

15 (f) (1) The Commissioner may revoke acceptance of a federal certificate if:

16 (i) the United States Department of Labor revokes the federal
17 certificate; or

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

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

23 **3-414.1.**

24 **(A) IN THIS SECTION, "DEPARTMENT" MEANS THE DEPARTMENT OF**
25 **LABOR, LICENSING, AND REGULATION.**

26 **(B) THE DEPARTMENT, IN PARTNERSHIP WITH RELEVANT STATE**
27 **AGENCIES, INCLUDING THE DEPARTMENT OF ECONOMIC COMPETITIVENESS AND**
28 **COMMERCE, THE DEPARTMENT OF DISABILITIES, THE DEVELOPMENTAL**
29 **DISABILITIES ADMINISTRATION, THE STATE DEPARTMENT OF EDUCATION, AND**
30 **THE DIVISION OF REHABILITATION SERVICES, SHALL DEVELOP AND IMPLEMENT A**
31 **PLAN TO PHASE OUT BY OCTOBER 1, 2019, AUTHORIZATIONS UNDER § 3-414 OF**

1 THIS SUBTITLE TO PAY AN EMPLOYEE WITH A DISABILITY LESS THAN THE MINIMUM
2 WAGE OTHERWISE REQUIRED FOR THE EMPLOYEE UNDER THIS SUBTITLE.

3 (C) THE PLAN DEVELOPED AND IMPLEMENTED UNDER SUBSECTION (B) OF
4 THIS SECTION SHALL INCLUDE:

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

7 (2) A LIST OF THE RESOURCES NECESSARY TO ENSURE THAT
8 INDIVIDUALS WITH DISABILITIES RECEIVE SUPPORT ACCORDING TO THE NEEDS
9 AND PREFERENCES OF THE INDIVIDUALS WITH DISABILITIES IN AN INTEGRATED
10 SETTING, REGARDLESS OF THE NATURE OR SEVERITY OF THE INDIVIDUALS'
11 DISABILITIES;

12 (3) APPLICATION TO AND USE OF ALL FEDERAL AND STATE FUNDING
13 PROGRAMS, INCLUDING MEDICAID WAIVER AMENDMENTS AND RESOURCES UNDER
14 THE WORKFORCE INNOVATION AND OPPORTUNITY ACT, TO ASSIST INDIVIDUALS
15 WITH DISABILITIES TO OBTAIN COMPETITIVE, INTEGRATED EMPLOYMENT; AND

16 (4) THE TRACKING OF OUTCOMES OF INDIVIDUALS WITH
17 DISABILITIES ON THE BASIS OF:

18 (I) WAGES;

19 (II) UNEMPLOYMENT RATES;

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

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

24 (D) THE DEPARTMENT SHALL ENGAGE STATEWIDE ORGANIZATIONS
25 REPRESENTING THOSE IMPACTED BY THE PHASE-OUT, INCLUDING THE MARYLAND
26 DEVELOPMENTAL DISABILITIES COUNCIL AND ADVOCACY, PROVIDER, FAMILY,
27 AND OTHER STATEWIDE ORGANIZATIONS, IN IMPLEMENTING THE PLAN DEVELOPED
28 UNDER SUBSECTION (B) OF THIS SECTION.

29 (E) ON OR BEFORE OCTOBER 1 EACH YEAR, THE DEPARTMENT SHALL
30 REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE
31 GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON THE BENCHMARKS AND
32 RESULTS OF OUTCOMES DESCRIBED IN PARAGRAPH (C) OF THIS SECTION AND

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

3 **Article – State Finance and Procurement**

4 **SUBTITLE 8. MISCELLANEOUS.**

5 **2–801.**

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

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

12 **Article – Labor and Employment**

13 **[3–414.**

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

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

20 (c) Subject to the limitations in this section, the Commissioner may not authorize
21 a work activities center or other sheltered workshop to pay an employee with a disability
22 less than the minimum wage otherwise required under this subtitle for the employee
23 unless:

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

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

29 (d) (1) To authorize a work activities center or other sheltered workshop to pay
30 less than the minimum wage, the Commissioner shall:

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

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

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

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

10 days after the workshop receives the certificate.

11 (e) (1) Each certificate that the Commissioner issues under this section shall:

12 (i) state the period for which the certificate is in effect; and

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

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

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

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

17 (f) (1) The Commissioner may revoke acceptance of a federal certificate if:

18 (i) the United States Department of Labor revokes the federal

19 certificate; or

20 (ii) at any time before revocation by the Department of Labor and

21 after an investigation and hearing, the Commissioner finds good cause to revoke the

22 acceptance.

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

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

25 [3-414.1.

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

27 Regulation.

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

29 Department of Economic Competitiveness and Commerce, the Department of Disabilities,

30 the Developmental Disabilities Administration, the State Department of Education, and

1 the Division of Rehabilitation Services, shall develop and implement a plan to phase out by
2 October 1, 2019, authorizations under § 3–414 of this subtitle to pay an employee with a
3 disability less than the minimum wage otherwise required for the employee under this
4 subtitle.

5 (c) The plan developed and implemented under subsection (b) of this section shall
6 include:

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

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

11 (3) application to and use of all federal and State funding programs,
12 including Medicaid waiver amendments and resources under the Workforce Innovation and
13 Opportunity Act, to assist individuals with disabilities to obtain competitive, integrated
14 employment; and

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

16 (i) wages;

17 (ii) unemployment rates;

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

20 (iv) the number of individuals who move from subminimum wage
21 positions to nonpaying activities.

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

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

31 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take
32 effect October 1, 2019.

33 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section
34 3 of this Act, this Act shall take effect October 1, 2016.