

Chapter 224

(Senate Bill 305)

AN ACT concerning

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

FOR the purpose of continuing the State Amusement Ride Safety Advisory Board, the Occupational Safety and Health Advisory Board, the Apprenticeship and Training Council, and the Board of Boiler Rules in accordance with the provisions of the Maryland Program Evaluation Act (Sunset Law) by extending to a certain date the termination provisions relating to the statutory and regulatory authority of the boards and council; altering certain termination provisions to apply only to certain boards and a certain council; repealing the termination provision for the Division of Labor and Industry; repealing a certain termination provision that applies to the regulation of the employment of minors and wages and hours; requiring that an evaluation be made of the Division of Labor and Industry on or before a certain date; repealing the Advisory Council on Prevailing Wage Rates; repealing the requirement that certain employment agencies submit to the Commissioner of Labor and Industry a certain penal bond and related provisions of law; requiring the Prevailing Wage Unit to advise and submit recommendations to the Commissioner regarding the Commissioner's functions under certain provisions of law; ~~authorizing~~ requiring the Commissioner to ask certain units of State and local governments to provide certain information to the Prevailing Wage Unit; authorizing the Commissioner to conduct, under certain circumstances, an investigation regarding whether certain provisions of law have been violated; ~~authorizing~~ requiring the Commissioner to take certain actions regarding the violation of certain provisions of law; authorizing the Attorney General to take certain actions under certain provisions of this Act; authorizing the Commissioner to assess a certain civil fine for a violation of a certain provision of law; altering a certain reporting requirement; altering the minimum number of times the State Board of Stationary Engineers is required to meet with and consult the Board of Boiler Rules each year; requiring the Board of Boiler Rules to meet with and consult the State Board of Stationary Engineers at least ~~a certain number of times a~~ one time each year; requiring the Division to submit a certain report to certain committees of the General Assembly on or before a certain date; requiring the Workplace Fraud Unit to submit a certain report to the General Assembly on or before a certain date; requiring the Commissioner to submit a certain report to the Governor and the General Assembly on or before a certain date; repealing a certain definition; and generally relating to the Division of Labor and Industry and associated boards and councils.

BY repealing and reenacting, with amendments,

Article – Business Occupations and Professions

Section 6.5–204(b)

Annotated Code of Maryland

(2010 Replacement Volume and 2012 Supplement)

BY adding to

Article – Business Regulation

Section 3–315

Annotated Code of Maryland

(2010 Replacement Volume and 2012 Supplement)

BY repealing

Article – Business Regulation

Section 3–601; 9–201 and 9–202 and the Subtitle “Subtitle 2. Administration and Enforcement”; and 9–301

Annotated Code of Maryland

(2010 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,

Article – Business Regulation

Section 9–101

Annotated Code of Maryland

(2010 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,

Article – Labor and Employment

Section 2–107(f), 3–103, 3–704, 3–712, 3–801, 3–802, 3–914, 3–920, and 11–402

Annotated Code of Maryland

(2008 Replacement Volume and 2012 Supplement)

BY repealing

Article – Labor and Employment

Section 2–109, 3–706, and 5–607

Annotated Code of Maryland

(2008 Replacement Volume and 2012 Supplement)

BY adding to

Article – Labor and Employment

Section 3–306.1, 3–608, 3–1008, and 5–306

Annotated Code of Maryland

(2008 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,

Article – Public Safety

Section 12–904 and 12–919

Annotated Code of Maryland
(2011 Replacement Volume and 2012 Supplement)

BY repealing

Article – State Finance and Procurement
Section 17–203
Annotated Code of Maryland
(2009 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,

Article – State Government
Section 8–403(b)(2), (3), (9), (33), and (42)
Annotated Code of Maryland
(2009 Replacement Volume and 2012 Supplement)

BY repealing

Article – State Government
Section 8–403(b)(55)
Annotated Code of Maryland
(2009 Replacement Volume and 2012 Supplement)

BY renumbering

Article – State Government
Section 8–403(b)(56) through (69), respectively
to be Section 8–403(b)(55) through (68), respectively
Annotated Code of Maryland
(2009 Replacement Volume and 2012 Supplement)

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

Article – Business Occupations and Professions

6.5–204.

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

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

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

Article – Business Regulation

3-315.

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

[3-601.

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

9-101.

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

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

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

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

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

1. an employee for a person who seeks an employee; or
2. employment for a client;

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

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

1. a ballet;
2. a circus;
3. a concert;
4. the legitimate theater;
5. modeling;

6. a motion picture;
7. an opera;
8. a phonograph recording;
9. the radio;
10. a transcription;
11. television;
12. the variety field; or
13. vaudeville; or

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

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

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

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

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

(iii) conducts a business that:

1. receives a fee that is paid wholly by an employer;

2. does not collect money from an individual seeking employment; and

3. does not require an individual seeking employment to make a contract; or

(iv) operates a nursing referral service agency that is licensed under Title 19, Subtitle 4B of the Health – General Article.

[Subtitle 2. Administration and Enforcement.]

[9–201.

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

[9–202.

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

[9–301.

- (a) An employment agency shall submit to the Commissioner a penal bond.
- (b) The bond shall:
 - (1) run to the State;
 - (2) be in the amount of \$7,000;
 - (3) be signed by an individual authorized to do so by the employment agency as principal and by a surety company authorized to do business in the State as surety; and
 - (4) be conditioned that the employment agency will comply with this title and will pay to any person all damages caused by deceit, fraud, misrepresentation, or misstatement of the employment agency or an agent or employee of the employment agency.
- (c) To ensure that each employment agency submits the penal bond in accordance with this section, the Commissioner may initiate an investigation or investigate a complaint that an employment agency has failed to submit a penal bond.
- (d) If, after investigation, the Commissioner finds that an employment agency has failed to submit a penal bond as required by this section, the Commissioner shall give written notice that directs the employment agency, within 15 days after receipt of the notice:
 - (1) to submit the required bond; or
 - (2) to show written cause why the employment agency is not required to comply with this section.
- (e) (1) If the employment agency complies with the requirement to submit a bond or otherwise submits a timely response, the Commissioner may:

- (i) terminate proceedings against the employment agency; or
- (ii) schedule a hearing and, by certified mail, give the employment agency written notice of the date, place, and time of the hearing.

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

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

Article – Labor and Employment

2–107.

- (f) (1) There is a Prevailing Wage Unit in the Division.
- (2) Under the direction of the Commissioner, the Prevailing Wage Unit shall administer and enforce Title 17, Subtitle 2 of the State Finance and Procurement Article.

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

(II) THE COMMISSIONER ~~MAY~~ SHALL ASK OTHER UNITS OF THE STATE GOVERNMENT OR UNITS OF LOCAL GOVERNMENTS TO PROVIDE STATISTICAL DATA, REPORTS, AND OTHER INFORMATION TO HELP THE PREVAILING WAGE UNIT CARRY OUT ITS DUTIES.

[2–109.

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

3–103.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) on the Commissioner's own initiative;
- (2) on receipt of a written complaint signed by the person submitting the complaint; or
- (3) on referral from another unit of State government.

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

3-306.1.

(A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE HAS BEEN VIOLATED, THE COMMISSIONER ~~MAY~~ SHALL:

- (1) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION INFORMALLY BY MEDIATION; OR**
- (2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON BEHALF OF THE APPLICANT OR EMPLOYEE.**

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

3-608.

(A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE HAS BEEN VIOLATED, THE COMMISSIONER ~~MAY~~ SHALL:

- (1) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION INFORMALLY BY MEDIATION; OR**
- (2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON BEHALF OF THE APPLICANT OR EMPLOYEE.**

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

3-704.

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Managerial employee” means an employee who:
- (i) is not covered by a collective bargaining agreement;
 - (ii) as primary duty of the employee, manages an enterprise or a unit of the enterprise that customarily is considered a department or subdivision of the enterprise;
 - (iii) customarily and regularly supervises at least 2 other employees in the enterprise or unit;
 - (iv) customarily and regularly exercises discretionary powers;
- and
- (v) may hire or fire another employee or makes recommendations that affect the hiring, advancement, firing, or any other change in status of another employee.
- (3) “Part-time employee” means an employee who is employed for a workweek of less than 25 hours.
- (4) “Professional employee” means an employee whose primary duty is to work in a field that requires advanced knowledge that customarily is acquired by a prolonged course of specialized instruction and study.
- (b) (1) This subsection does not apply during an emergency that a federal, State, or local governmental authority declares.
- (2) An employee in a retail establishment may choose, as a day of rest, Sunday or the sabbath of the employee unless:
- (i) outside Wicomico County, the employee is a managerial employee, professional employee, or part-time employee; and
 - (ii) in Wicomico County, the employee is a managerial employee or professional employee.

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

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

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

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

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

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

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

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

(2) service of process on Sunday.

(f) An employer may not:

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

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

(G) (1) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SECTION HAS BEEN VIOLATED, THE COMMISSIONER ~~MAY~~ SHALL:

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

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

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

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

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

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

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

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

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

[3-706.

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

3-712.

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

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

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

(ii) "Electronic communications device" includes computers, telephones, personal digital assistants, and other similar devices.

(4) (i) "Employer" means:

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

2. a unit of State or local government.

(ii) "Employer" includes an agent, a representative, and a designee of the employer.

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

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

(c) An employer may not:

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

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

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

(e) This section does not prevent an employer:

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

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

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

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

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

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

3-801.

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

(2) “Employer” includes:

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

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

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

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

(D) (1) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SECTION HAS BEEN VIOLATED, THE COMMISSIONER ~~MAY~~ SHALL:

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

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

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

3-802.

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

(2) “Child” means an adopted, biological, or foster child, a stepchild, or a legal ward who is:

(i) under the age of 18 years; or

(ii) at least 18 years old and incapable of self-care due to a mental or physical disability.

(3) (i) “Employer” means a person that is engaged in a business, industry, profession, trade, or other enterprise in the State.

(ii) “Employer” includes a person who acts directly or indirectly in the interest of another employer with an employee.

(4) “Immediate family” means a child, spouse, or parent.

(5) (i) “Leave with pay” means paid time away from work that is earned and available to an employee:

1. based on hours worked; or

2. as an annual grant of a fixed number of hours or days of leave for performance of service.

(ii) “Leave with pay” includes sick leave, vacation time, paid time off, and compensatory time.

(iii) “Leave with pay” does not include:

1. a benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974;

2. an insurance benefit, including benefits from an employer’s self-insured plan;

3. workers’ compensation;

4. unemployment compensation;

5. a disability benefit; or

6. a similar benefit.

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

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

(2) This section applies to an employer that:

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

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

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

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

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

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

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

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

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

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

(1) has taken leave authorized under this section;

(2) has opposed a practice made unlawful by this section; or

(3) has made a charge, testified, assisted, or participated in an investigation, proceeding, or hearing under this section.

(g) This section does not:

(1) extend the maximum period of leave an employee has under the federal Family and Medical Leave Act of 1993; or

(2) limit the period of leave to which an employee is entitled under the federal Family and Medical Leave Act of 1993.

(H) (1) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SECTION HAS BEEN VIOLATED, THE COMMISSIONER ~~MAY~~ SHALL:

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

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

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

3-914.

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

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

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

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

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

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

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

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

(c) The written notice shall:

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

(2) be provided in English and Spanish.

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

(E) IF AN EMPLOYER FAILS TO PROVIDE NOTICE UNDER SUBSECTION (B) OF THIS SECTION, THE COMMISSIONER MAY ASSESS A CIVIL PENALTY OF NOT MORE THAN ~~\$100~~ \$50 FOR EACH DAY THAT THE EMPLOYER FAILS TO PROVIDE NOTICE.

3-920.

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

(1) the number and nature of complaints received;

(2) the number of investigations conducted;

(3) the number of citations issued;

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

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

(i) whether the alleged violation was found; and

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

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

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

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

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

3-1008.

(A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE HAS BEEN VIOLATED, THE COMMISSIONER ~~MAY~~ SHALL:

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

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

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

5-306.

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

[5-607.

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

11-402.

Subject to the evaluation and reestablishment provisions of the Maryland Program Evaluation Act, [provisions of this subtitle creating the Apprenticeship and Training Council and related to the regulation of apprentices and trainees are of no

effect after] **§§ 11-403 THROUGH 11-405 OF THIS SUBTITLE SHALL TERMINATE ON July 1, [2014] 2024.**

Article – Public Safety

12-904.

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

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

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

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

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

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

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

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

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

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

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

(vii) one shall be a stationary engineer;

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

(ix) one shall be a consumer member.

(c) (1) The consumer member of the Board:

- (i) shall be a member of the public;
- (ii) may not be a licensee or otherwise be subject to regulation by the Board;
- (iii) may not be required to meet the qualifications for the professional members of the Board; and
- (iv) may not, within 1 year before appointment, have had a financial interest in or have received compensation from a person regulated by the Board.

(2) While a member of the Board, the consumer member may not:

- (i) have a financial interest in or receive compensation from a person regulated by the Board; or
- (ii) grade any examination given by or for the Board.

(d) (1) The term of an appointed member is 4 years.

(2) The terms of the appointed members are staggered as required by the terms provided for members of the Board on October 1, 2003.

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

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

(e) The Board shall elect a chairman from among its members.

(f) The Commissioner may not vote.

(g) (1) The Commissioner may not receive additional compensation as a member of the Board.

(2) An appointed member of the Board:

- (i) may not receive a salary as a member of the Board; but
- (ii) is entitled to:

1. compensation in accordance with the State budget;

and

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

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

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

12-919.

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

Article – State Finance and Procurement

[17-203.

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

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

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

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

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

(3) 2 individuals from the general public.

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

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

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

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

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

(2) The chairman of the Advisory Council:

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

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

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

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

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

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

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

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

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

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

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

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

(1) compensation in accordance with the State budget; and

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

(l) Subject to the evaluation and reestablishment provisions of the Maryland Program Evaluation Act, this section shall terminate and be of no effect after July 1, 2014.]

Article – State Government

8–403.

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

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

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

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

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

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

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

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

SECTION 3. AND BE IT FURTHER ENACTED, That:

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

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

- (1) the number of wage orders issued by the Division;
- (2) the number of wage orders forwarded to the Central Collection Unit for collection;
- (3) the number of wage orders forwarded to the Central Collection Unit for which payment is collected;
- (4) the number of wage orders forwarded to the Central Collection Unit for which payment has not been collected; and
- (5) to the extent feasible, the reasons for any substantial increase or decrease in the backlog of wage orders that remain unpaid from a previous fiscal year.

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

SECTION 5. AND BE IT FURTHER ENACTED, That:

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

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

- (1) summarize the level of activity under the Unit's new implementation strategy and assess the effectiveness of the Unit's strategy and its outreach program;
- (2) explain the difference between initial estimates of citations and penalties and those experienced in practice, including the relatively few citations issued for worker misclassification;
- (3) include the development status of the Unit's long–term data management system and the system's ability to support the Unit; and
- (4) at a minimum, evaluate:

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

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

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

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

Approved by the Governor, May 2, 2013.