

SENATE BILL 305

K3, C2, P2

3lr0595
CF 3lr0594

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

Introduced and read first time: January 23, 2013

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 committees of the General Assembly on or before a certain date; requiring the
2 Workplace Fraud Unit to submit a certain report to the General Assembly on or
3 before a certain date; requiring the Commissioner to submit a certain report to
4 the Governor and the General Assembly on or before a certain date; repealing a
5 certain definition; and generally relating to the Division of Labor and Industry
6 and associated boards and councils.

7 BY adding to
8 Article – Business Regulation
9 Section 3–315
10 Annotated Code of Maryland
11 (2010 Replacement Volume and 2012 Supplement)

12 BY repealing
13 Article – Business Regulation
14 Section 3–601; 9–201 and 9–202 and the Subtitle “Subtitle 2. Administration
15 and Enforcement”; and 9–301
16 Annotated Code of Maryland
17 (2010 Replacement Volume and 2012 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Business Regulation
20 Section 9–101
21 Annotated Code of Maryland
22 (2010 Replacement Volume and 2012 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article – Labor and Employment
25 Section 2–107(f), 3–103, 3–704, 3–712, 3–801, 3–802, 3–914, 3–920, and 11–402
26 Annotated Code of Maryland
27 (2008 Replacement Volume and 2012 Supplement)

28 BY repealing
29 Article – Labor and Employment
30 Section 2–109, 3–706, and 5–607
31 Annotated Code of Maryland
32 (2008 Replacement Volume and 2012 Supplement)

33 BY adding to
34 Article – Labor and Employment
35 Section 3–306.1, 3–608, 3–1008, and 5–306
36 Annotated Code of Maryland
37 (2008 Replacement Volume and 2012 Supplement)

38 BY repealing and reenacting, with amendments,
39 Article – Public Safety
40 Section 12–904 and 12–919

1 Annotated Code of Maryland
 2 (2011 Replacement Volume and 2012 Supplement)

3 BY repealing
 4 Article – State Finance and Procurement
 5 Section 17–203
 6 Annotated Code of Maryland
 7 (2009 Replacement Volume and 2012 Supplement)

8 BY repealing and reenacting, with amendments,
 9 Article – State Government
 10 Section 8–403(b)(2), (3), (9), (33), and (42)
 11 Annotated Code of Maryland
 12 (2009 Replacement Volume and 2012 Supplement)

13 BY repealing
 14 Article – State Government
 15 Section 8–403(b)(55)
 16 Annotated Code of Maryland
 17 (2009 Replacement Volume and 2012 Supplement)

18 BY renumbering
 19 Article – State Government
 20 Section 8–403(b)(56) through (69), respectively
 21 to be Section 8–403(b)(55) through (68), respectively
 22 Annotated Code of Maryland
 23 (2009 Replacement Volume and 2012 Supplement)

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

Article – Business Regulation

27 **3–315.**

28 **SUBJECT TO THE EVALUATION AND REESTABLISHMENT PROVISIONS OF**
 29 **THE MARYLAND PROGRAM EVALUATION ACT, §§ 3–301 AND 3–303 THROUGH**
 30 **3–311 OF THIS SUBTITLE SHALL TERMINATE ON JULY 1, 2024.**

31 **[3–601.**

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

35 9–101.

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

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

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

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

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

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

8 2. employment for a client;

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

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

14 1. a ballet;

15 2. a circus;

16 3. a concert;

17 4. the legitimate theater;

18 5. modeling;

19 6. a motion picture;

20 7. an opera;

21 8. a phonograph recording;

22 9. the radio;

23 10. a transcription;

24 11. television;

25 12. the variety field; or

1 13. vaudeville; or

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

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

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

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

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

12 (iii) conducts a business that:

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

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

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

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

20 [Subtitle 2. Administration and Enforcement.]

21 [9–201.

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

24 [9–202.

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

27 [9–301.

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

1 (b) The bond shall:

2 (1) run to the State;

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

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

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

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

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

18 (1) to submit the required bond; or

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

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

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

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

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

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

1 **Article – Labor and Employment**

2 2–107.

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

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

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

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

15 [2–109.

16 Subject to the evaluation and reestablishment provisions of the Maryland
17 Program Evaluation Act, this title shall terminate and be of no effect after July 1,
18 2014.]

19 3–103.

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

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

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

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

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

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

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

10 **[(3)] (4)** The Commissioner may investigate whether § 3–710 of this
11 title has been violated on receipt of a written complaint of an employee as provided in
12 § 3–710(d)(1) of this title.

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

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

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

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

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

27 (1) on the Commissioner’s own initiative;

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

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

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

1 **3-306.1.**

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

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

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

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

11 **3-608.**

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

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

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

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

21 **3-704.**

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

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

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

25 (ii) as primary duty of the employee, manages an enterprise or a
26 unit of the enterprise that customarily is considered a department or subdivision of
27 the enterprise;

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

1 (iv) customarily and regularly exercises discretionary powers;
2 and

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

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

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

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

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

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

17 (ii) in Wicomico County, the employee is a managerial employee
18 or professional employee.

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

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

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

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

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

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

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

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

2 (2) service of process on Sunday.

3 (f) An employer may not:

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

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

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

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

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

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

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

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

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

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

29 and

30 (ii) for a second conviction, is subject to a fine not exceeding
31 \$1,000.

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

3 **[3–706.**

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

7 **3–712.**

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

9 (2) “Applicant” means an applicant for employment.

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

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

14 (4) (i) “Employer” means:

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

17 2. a unit of State or local government.

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

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

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

27 (c) An employer may not:

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

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

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

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

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

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

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

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

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

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

24 3-801.

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

27 (2) "Employer" includes:

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

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

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

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

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

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

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

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

15 3-802.

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

17 (2) "Child" means an adopted, biological, or foster child, a stepchild, or
18 a legal ward who is:

19 (i) under the age of 18 years; or

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

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

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

26 (4) "Immediate family" means a child, spouse, or parent.

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

29 1. based on hours worked; or

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

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

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

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

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

15 (1) has taken leave authorized under this section;

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

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

19 (g) This section does not:

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

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

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

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

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

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

1 3-914.

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

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

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

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

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

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

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

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

20 (c) The written notice shall:

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

24 (2) be provided in English and Spanish.

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

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

31 3-920.

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

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

6 (2) the number of investigations conducted;

7 (3) the number of citations issued;

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

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

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

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

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

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

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

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

24 **3-1008.**

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

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

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

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

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

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

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

9 (vii) one shall be a stationary engineer;

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

12 (ix) one shall be a consumer member.

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

14 (i) shall be a member of the public;

15 (ii) may not be a licensee or otherwise be subject to regulation
16 by the Board;

17 (iii) may not be required to meet the qualifications for the
18 professional members of the Board; and

19 (iv) may not, within 1 year before appointment, have had a
20 financial interest in or have received compensation from a person regulated by the
21 Board.

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

23 (i) have a financial interest in or receive compensation from a
24 person regulated by the Board; or

25 (ii) grade any examination given by or for the Board.

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

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

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

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

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

6 (f) The Commissioner may not vote.

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

9 (2) An appointed member of the Board:

10 (i) may not receive a salary as a member of the Board; but

11 (ii) is entitled to:

12 1. compensation in accordance with the State budget;
13 and

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

16 **(H) THE BOARD SHALL MEET WITH AND CONSULT THE STATE BOARD**
17 **OF STATIONARY ENGINEERS AS NECESSARY BUT NOT LESS THAN TWO TIMES**
18 **EACH YEAR.**

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

22 12-919.

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

28 **Article – State Finance and Procurement**

29 [17-203.

1 (a) In this section, "Advisory Council" means the Advisory Council on
2 Prevailing Wage Rates.

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

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

6 (1) 2 individuals from management in the building and construction
7 industry;

8 (2) 2 individuals from labor in the building and construction industry;
9 and

10 (3) 2 individuals from the general public.

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

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

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

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

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

22 (2) The chairman of the Advisory Council:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (l) Subject to the evaluation and reestablishment provisions of the Maryland
18 Program Evaluation Act, this section shall terminate and be of no effect after July 1,
19 2014.]

20 Article – State Government

21 8–403.

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

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

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

30 (9) Boiler Rules, Board of (§ 12–904 of the Public Safety Article: July
31 1, [2013] **2023**);

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

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

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

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

10 SECTION 3. AND BE IT FURTHER ENACTED, That:

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

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

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

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

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

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

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

26 SECTION 4. AND BE IT FURTHER ENACTED, That, on or before December
27 31, 2013, the Workplace Fraud Unit shall submit a report to the General Assembly, in
28 accordance with § 2-1246 of the State Government Article, on the progress of the
29 development of a long-term data management system.

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

31 (a) On or before December 31, 2014, the Commissioner of Labor and Industry
32 shall submit a report to the Governor and, in accordance with § 2-1246 of the State

1 Government Article, the General Assembly on the status of the Workplace Fraud Unit
2 as required by Chapter 188, § 3 of the Acts of 2009.

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

4 (1) summarize the level of activity under the Unit's new
5 implementation strategy and assess the effectiveness of the Unit's strategy and its
6 outreach program;

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

10 (3) include the development status of the Unit's long-term data
11 management system and the system's ability to support the Unit; and

12 (4) at a minimum, evaluate:

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

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

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

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