SPONSOR: Rep. Heffernan & Rep. Bennett & Rep. Griffith & Rep. Longhurst & Rep. K. Williams & Sen. Poore & Sen. Paradee
Reps. Brady, Dorsey Walker, Kowalko, Lambert; Sens. Bonini, Ennis, Mantzavinos, S. McBride, Richardson, Walsh

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 122
AS AMENDED BY
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYMENT OF AND WAGES PAYABLE TO PERSONS WITH DISABILITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 7, Title 19 of the Delaware Code by making additions shown by underline as follows:

Subchapter VI Jamie Wolfe Employment Act

§ 750. Short title.

This subchapter may be known as the "Jamie Wolfe Employment Act."

§ 751. Statement of Purpose.

The General Assembly finds as follows:

In 1938, Section 14(c) of the federal Fair Labor Standards Act (29 U.S.C. 214(c)) authorized the United States Secretary of Labor to grant special wage certificates to certain entities, allowing those entities to pay individuals with disabilities subminimum wages. Section 905 of Title 19 of the Delaware Code authorizes the Department of Labor to promulgate regulations permitting the employment of persons with disabilities at wages lower than the minimum wage. While the special wage certificate program was considered progressive when initiated, advances in vocational rehabilitation, technology, and training as well as changes in attitudes and laws regarding the ability of, and opportunities for, both students and adults with disabilities to work and live in the community now provide persons with disabilities greater employment opportunities. Persons with disabilities, regardless of their work environment, should be compensated like their peers without disabilities. Competitive employment opportunities as well as meaningful alternatives should be offered to individuals who are currently participating in programs that pay less than the minimum wage. In order to effectuate the purpose of the Employment First Act contained in this chapter, authorization to pay subminimum wages will be phased out and ultimately eliminated.

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§ 752. Commencing January 31, 2024, an employer who is authorized to employ an individual with a disability at a subminimum wage pursuant to a special certificate issued under 29 U.S.C. 214(c) or under regulations promulgated under §905 of this title may not employ or agree to employ or otherwise remunerate or compensate an individual with a disability at an hourly rate lower than the effective rate payable under § 902 of this title.

§ 753. The Employment First Oversight Commission established under § 745 of this title shall oversee the development and implementation of a plan to phase out on or before January 31, 2024 authorizations under § 905 of this title to pay an individual with a disability less than the minimum wage otherwise required under §902 of this title. The plan shall be developed by a task force comprised of representatives appointed by the Commission consisting of representatives from the Commission, the State Council for Persons with Disabilities, the Division of Industrial Affairs, the Division of Vocational Rehabilitation, the Division of Developmental Disabilities Services, the Developmental Disabilities Council, family members and individuals currently being served by sheltered workshops, service providers who have experience in transitioning from providing sheltered workshop services to providing competitive employment in integrated settings for persons with disabilities, current sheltered workshop providers, the Disabilities Law Program of the Community Legal Aid Society, Inc., and a range of national experts on the use of transitioning services out of 14(c) in order to determine what model of service might work best for Delaware. The Employment First Oversight Commission plan shall be completed and provided to the General Assembly by January 31, 2024 and include all of the following:

(a) Benchmarks and expected outcomes for each year of the phase-out.

(b) A list of the resources to assist each individual with a disability in receiving supports according to the needs and preferences of the individual in order to be employed in an integrated setting, or participate in a meaningful alternative program, regardless of the nature or severity of the individual's disability,

(c) Federal and state funding programs available to assist an individual with a disability to obtain competitive employment in an integrated setting, and assure adequate funding is available for more intensive services that may be necessary in the future.

(d) Individualized person-centered planning for people currently participating in programs authorized under Section 14(c) of the federal Fair Labor Standards Act, 29 U.S. C. 214(c), during the phase out process designed to address individual wishes and service needs with respect to avoiding disruption of location and relationships with friends where feasible.

(e) A means for tracking the effect of transitioning to integrated and meaningful employment on individuals with disabilities on the basis of the following factors:

(1) Wages.

(2) Unemployment rates.

(3) The number of individuals who move from positions paying subminimum wages to competitive employment in an integrated setting.

(4) The number of individuals who move from subminimum wage positions to non-compensated activities including those that may lose a job opportunity as a result of a minimum wage increase.

(f) A means for tracking the effect of transitioning to meaningful alternative programing for those who do not engage in competitive integrated employment. Meaningful alternative employment shall include the following services:

(1) Regular opportunities for community-based recreational, social, educational, cultural, and athletic activities, including community volunteer and training activities.

(2) Regularly occurring non-facility based activities of a person's choosing provided in settings which allow individuals with disabilities to interact with individuals without disabilities in a community setting to the fullest extent possible for the individual.

(g) The plan referred to in § 753(a)-(e) shall be provided to the State Council for Persons with Disabilities for inclusion in the annual report required by § 8210(b)(8) of Title 29.

§ 754. The Department may promulgate regulations necessary for implementation of the Jamie Wolfe Employment Act,

Section 2. Amend § 905, Title 19 of the Delaware Code by making deletions as shown by strike through as follows:

~~§ 905. Wage rate for handicapped workers.~~

~~For any occupation, the Department may provide by regulations, after public hearing, upon reasonable notice, at which any person may be heard, for the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury at such wages lower than the minimum wage rate under this chapter as the Department may deem necessary or appropriate to avoid hardship or prevent curtailment of opportunities for employment. No employee shall be employed at wages fixed pursuant to this section except under special license issued under the applicable regulations of the Department. Such regulations shall, except as may be otherwise provided by the Department, take effect upon publication.~~

Section 3. Amend Chapter 10, Title 19 of the Delaware Code by making deletions as shown by strike through as follows:

~~§ 1001. Definitions.~~

~~The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~(1) "Accredited" means a program which has been surveyed and approved by the Commission on Accreditation of Rehabilitation Facilities for not less than a 1-year period.~~

~~(2) "Department" means the Department of Labor or its authorized representatives.~~

~~(3) "Extended employee" means a severely disabled person who:~~

~~a. Shall have completed an accredited program of evaluation and work adjustment training, including a prescribed work services program.~~

~~b. Shall have been found, due to the nature and severity of a disability, to be incapable of competing in the open or customary labor market.~~

~~(4) "Sheltered workshop" means an accredited occupationally-oriented facility, including a work activities center, operated by a private nonprofit agency, which, except for its administrative and support staff, employs disabled persons certified under special provisions of federal minimum wage laws by the Wage and Hour Division, United States Department of Labor.~~

~~§ 1002. Eligibility of individuals for participation; client progress standards.~~

~~(a) The sheltered workshop shall certify the eligibility of individuals for participation in an extended employment program under this chapter immediately upon cessation of third-party sponsorship.~~

~~(b) Client progress will be monitored by the Department through the Division of Vocational Rehabilitation on an annual basis under guidelines established by the Department that can simultaneously meet the standards of CARF, United States Department of Labor's Wage and Hour Certificates for Sheltered and Work Activity Employees, United States Department of Education, Rehabilitation Act of 1973 [29 U.S.C. § 701 et seq.] and subsequent amendments, as well as the intent of this bill.~~

~~§ 1003. Financial assistance in extended employment.~~

~~(a) The Department shall have the authority to enter into a contract with sheltered workshops for the purpose of providing an extended employment program.~~

~~(b) The Department shall approve a method for determining the maximum allotment for each eligible sheltered workshop.~~

~~§ 1004. Federal grants.~~

~~The Department is authorized to apply for whatever federal grants may become available from time to time in order to carry out the purposes of this chapter.~~

~~§ 1005. Regulations.~~

~~The Department shall have the power to make and revise and rescind such regulations as it may deem necessary or appropriate to administer and implement this chapter. Such regulations shall, except as may be otherwise provided by the Department, take effect upon publication.~~

Section 4. Sections 2 and 3 of this Act take effect three years following its enactment into law.