



**HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901**

COMMITTEES
Economic Development, Banking,
Insurance & Commerce, Chair
Energy, Chair
Agriculture, Vice-Chair
Education
Judiciary
Natural Resources
Public Safety & Homeland Security
Transportation, Land Use & Infrastructure
Veterans Affairs

**House Economic Development, Banking, Insurance & Commerce Meeting Minutes
3.31.21**

Chair Bush called the virtual meeting to order at 3:00 p.m. He stated that the meeting was planned in accordance with HCR 1 and took the roll call of the committee's members. Members present included Vice-Chair Bennett, and Reps. Bolden, Baumbach, Wilson-Anton, Lambert, Hensley, Ramone, Smith, Spiegelman, and Yearick. For a list of guests present, please see the speaker list below.

Chair Bush introduced **HB 45, AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO ALCOHOLIC LIQUORS**. He explained the bill changes the number of permitted establishments to brew, bottle, and sell beer from three to five for Delaware licensed brewery-pubs. The bill increases the number of establishments for off-premises consumption from three to five for brewery-pubs or from two to four for microbrewery licensees. He noted breweries are a staple for the tourism industry and the importance of expansion within Delaware.

Rep. Baumbach asked John Cordrey of the Office of the Delaware Alcoholic Beverage Control Commissioner about the implications, strengths, and weaknesses of the bill.

With permission from the Chair, Commissioner Cordrey explained the bill allows brewery-pubs and micro-breweries at their establishment limit to grow. He stated the limit was previously increased from two to three and additional increased permissions should be looked at by the General Assembly. He noted brewery-pubs may only sell what they make at the premises whereas package stores may sell any amount of alcohol from many sources.

Rep. Baumbach asked if workload is expected to increase with the bill.

Commissioner Cordrey stated the bill is not seen as a major resource problem for the Office.

Chair Bush opened the floor for public comment.

Robert Boyle, owner of Bellefonte Brewing Company, voiced support for the bill. He stated current restrictions limit future expansion within Delaware.

Patrick Staggs, on behalf of Revelation Craft Brewery Company, voiced support for the bill. He shared experiences of passing on expansion opportunities in smaller locations due to current limits.

Lauren Bigelow, on behalf of Thompson Island Brewing Company, voiced support for the bill.

She stated increasing the limit will help Delaware attract and retain talent.

Eric Williams voiced support for the bill on behalf of Mispillion River Brewing, Brick Works Brewing and Eats, and Delaware Brewers Guild. He noted the Delaware Brewers Guild has worked with Chair Bush on the bill.

A motion was made by Rep. Smith and seconded by Rep. Baumbach to release HB 45 from committee; motion carried. Yes= 11 (Bush, Bennett, Bolden, Baumbach, Wilson-Anton, Lambert, Hensley, Ramone, Smith, Spiegelman, and Yearick); No= 0; Absent= 2 (Griffith and Dorsey Walker). HB 45 was released from committee with a F=4, M=6 U=0 vote.

Chair Bush introduced **HB 122, AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO EMPLOYMENT OF AND WAGES PAYABLE TO PERSONS WITH DISABILITIES**. He referred to the sponsor, Rep. Heffernan, to explain the bill.

Rep. Heffernan introduced HB 122 as an anti-discrimination bill which prohibits individuals with disabilities from being paid less than minimum wage by phasing out the use of federal 14(c) certificates. She stated in 2014 seven organizations used 14(c) certificates and in 2021 only two organizations use certificates. She noted the importance of participant evaluations for accessing meaningful opportunities.

Rep. Hensley asked for an estimate of participants impacted by the bill.

Rep. Heffernan stated less than 300 people are impacted.

Rep. Hensley asked about the bills impact on a participant's ability to gain appropriate employment or transition to day programs. He voiced concerns for the settings participants may transition into compared to their current employment.

Rep. Heffernan stated participants in sheltered workshops are paid a low, per-piece wage and deferred to the Department of Labor for more information.

With permission from the Chair, Andrea Guest, Director of Division of Vocational Rehabilitation at the Department of Labor, restated less than 300 people are in sheltered employment, down from over 1,000 people 10 years ago. She explained new opportunities such as supported employment and project search help with employment. She noted a need for new vocational programming as not everyone will transition into existing opportunities. She stated the Workforce Innovation and Opportunity Act (WIOA) requires consultations with those wanting to move into community employment and that no one would be left without programming.

Rep. Hensley asked if the state has seen an increase in supported employment.

Ms. Guest stated supported employment opportunities have increased and that opportunities are expanding. She explained that improved school programming for students with disabilities has decreased the number going into sheltered employment, with 1,600 students participating in pre-employment transitions services last year. She noted a provision in President Biden's

American Jobs Plan which eliminates sub-minimum wages, and stated it would be beneficial for Delaware to have support already outlined.

Rep. Ramone shared constituent concerns for participant job loss if 14(c) certificates are phased out. He asked if an increased minimum wage would impact supported employment opportunities.

Rep. Heffernan stated the bill only addresses the discriminatory practice of sub-minimum wage with 14(c) certificates.

Rep. Ramone asked what wage the impacted individuals will be paid with the bills passing.

Ms. Guest explained individuals in minimum wage positions will be the paid minimum wage. She stated support for introductory training may be provided and that sheltered workshop wages are set by time studies based on the minimum wage which would increase with a minimum wage increase.

Rep. Ramone stated concerns for lost opportunities for individuals with disabilities.

At the request of the sponsor, Michael Shriver, the Director of Penn-Mar Human Services, stated their organization stopped using 14(c) certificates in 2009 with a four-year phase out process. The Maryland Developmental Disabilities Administration provided grants to plan a transition and to restructure their organization to include transportation and customized employment, instead of transitional contracts. He noted that of the 600 Maryland and Pennsylvania residents they support, one third are involved in individual employment. The average participant makes \$10.33 an hour, works 13 hours per week, and has been employed for 4 years 3 months.

Rep. Ramone asked if Mr. Shriver would make the same transition away from their 14(c) certificate without grants and with the impacts from the pandemic.

Mr. Shriver stated he would still make the transition.

Rep. Wilson-Anton shared constituent concerns for lost opportunities and lack of inclusion of impacted individuals during the bill's drafting.

Rep. Heffernan stated she has worked with a team of stakeholders for over a year. She noted there is a three-year phasing period for adjustments to be made.

Rep. Wilson-Anton asked for testimony from participants in sheltered workshop programs.

John McNeal, from the State Council for Persons with Disabilities, stated there was not a person who could provide that perspective in the stakeholder group. He shared companies with 14(c) certificates were initially involved in the process.

Rep. Baumbach noted the U.S. Commission on Civil Rights recommends moving away from the use of 14(c) certificates and that having a transition period is the right approach.

Rep. Smith reiterated concerns for impact on opportunities and recommended continued dialogue

to make it better. He asked for Rita Landgraf to provide testimony, as the former Cabinet Secretary of the Delaware Department of Health and Social Services.

With the permission of the Chair, Rita Landgraf explained that 14(c) certificates impact those who have mental disabilities, mental illnesses, or are blind. She shared she was able to transition out 14(c) certificate use with the Delaware Psychiatric Center. She noted national recommendations to eliminate the use 14(c) certificates included a phase out period, individual consultations, and providing technical assistance.

Rep. Smith shared constituent concerns over the loss of Medicaid if their income were to increase with the bill.

Rep. Griffith stated if an individual is working, they should be paid the minimum wage and that the phasing out period has been successful with other facilities in Delaware.

Rep. Yearick shared concerns over the ability to integrate into community employment for some individuals with disabilities based on visits to Kent-Sussex Industries and the John S. Charlton program. He noted potential loss of community for participants during the transition period.

Rep. Heffernan stated Kent-Sussex Industries and Easter Seals have discontinued use of 14(c) certificates.

Rep. Yearick clarified his experience was while the companies were classified as sheltered workshops.

Chair Bush opened the floor for public comment.

John McNeal, on behalf of the State Council for Persons with Disabilities, voiced support for the bill. He stated 14(c) certificates create loopholes for employment protections provided by the Rehabilitation Act and the American with Disabilities Act.

Daniese McMullin-Powell, on behalf of the Delaware Developmental Disabilities Council, voiced support for the bill. She noted many sheltered workshops do not teach transferrable skills.

Rep. Johnson voiced opposition to the bill. She emphasized the bill was drafted without input from those directly impacted. She stated line 43 of the bill puts organizations at risk of closing due to required funding, staff, vehicles, and more, as they are already underfunded and facing effects from the pandemic. She noted Delaware has a unique opportunity to create a best practice for other states, as there are only two companies left with 14(c) certificates.

Joseph Grande voiced support for the bill, noting financial responsibilities of individuals with disabilities and their families.

Gary Heckert, on behalf of The Arc of Delaware and as a parent of an individual with disabilities, voiced support for the bill. He stated increased support for children with disabilities prepares them with skills for competitive employment and post-secondary education.

Nancy Lemus, a parent of an individual with disabilities, voiced support for the bill. She stated people with disabilities should be engaged with in communities and valued the same as everyone else.

Laura Waterland, from the Disabilities Law Program, voiced support for the bill. She explained that impacted individuals will continue to be serviced by the Division of Developmental Disabilities Services with other available program choices.

Greg Bulger echoed Rep. Yearick's concerns over the lack of detailed plan for transition. He urged the committee to retract the bill and outline a plan of support before voting it out.

Terri Hancharick, cofounder of EPIC, voiced support for the bill. She stated there are missed opportunities for those working in sheltered workshops.

Emmanuel Jenkins, founder of We Stand 4 Something and a disability self-advocate, voiced support for the bill. He stated the use of 14(c) certificates is discriminatory and does not fairly value people with disabilities.

Calvin Sparks, on behalf of Delaware United, voiced support for the bill.

Kayla Bronner, a parent of a sheltered workshop participant, voiced opposition to the bill. She explained Elwyn is at risk of closing if the is bill passed due to the lack of support for impacted facilities. She noted Elwyn's social programs for the disability community are at risk as well.

Patricia Maichle, as a parent of an individual with disabilities, voiced support for the bill.

Ken Capone, on behalf of People on the Go of Maryland and as a disability self-advocate, voiced support for the bill. He shared the average sheltered workshop participant in Maryland worked two hours a week. He noted Maryland was able to improve the pay and participation for former sheltered workshop employees through partnerships, grants, and better outcome measurements.

Jayson Crouch, owner of Kent-Sussex Industries, stated their company support for the 14(c) certificate program. He shared that when their facility stopped using a 14(c) certificate, over 100 people lost employment due to low levels of productivity. He noted they lost two major contracts because of increased labor costs. He clarified the certificate allows for commensurate wages, not sub-minimum wages.

Junika Woodall, the director of Elwyn, voiced opposition to the bill. She stated Elwyn supports almost 100 people in community programming and that requests for workshop participants to be included in the stakeholder group were denied. She explained wages can be up to \$12.36 an hour and that their time studies are not based on the minimum wage.

Max Grovosky stated that sheltered workshops are meant to be transitional facilities, not permanent solutions, and that a 2007 study found 82% of participants would prefer to work in the community.

Rep. Lambert shared concerns over the absences of sheltered workshop participants in

the stakeholder group.

Vice-Chair Bennett asked about the impact of earning minimum wage on social security benefits.

Andrea Guest stated that increasing pay to the minimum wage impacts social security but does not lower the total amount of money received. She explained Delaware has a Medicaid buy in program that can provide access to care if an individual becomes ineligible. She stated their program has benefit counselors to explain the impacts of the transition on benefits and how to maintain them.

Rep. Ramone asked the sponsor to table the bill so changes could be made.

Rep. Heffernan stated an amendment can be made to better the bill with increased input from stakeholders.

Rep. Griffith stated the conversation needed to advance. She emphasized the importance of equal pay for equal work and the support required for impacted individuals.

Micki Edelson, on behalf of A-Team Delaware, voiced opposition to the bill. She explained the slogan “nothing about us without us” means no decision should be made without input from the impacted community. She noted the sheltered workshops are run by non-profits are supportive and accommodating.

Kyle Hodges, on behalf of the Employment First Oversight Commission, voiced support for the bill. He stated all viewpoints will be heard and considered when designing the commission’s plan.

A motion was made by Rep. Griffith and seconded by Rep. Bennett to release HB 122 from committee; motion carried. Yes=7 (Bush, Bennett, Griffith, Bolden, Baumbach, Lambert, Ramone, Smith); No= 4 (Wilson-Anton, Hensley, Spiegelman, and Yearick); Absent= 2 (Dorsey Walker and Bolden). HB 122 was released from committee with a F=1 M=6 U=1 vote.

Chair Bush adjourned the meeting at 5:14 p.m.

Respectfully submitted by:

A’lece Moore

Speaker List:

- John Cordrey (Office of the Delaware Alcoholic Beverage Control)
- Robert Boyle (Bellefonte Brewing Company)
- Patrick Staggs (Revelation Craft Brewing Company)
- Lauren Bigelow (Thompson Island Brewing Company)
- Eric Williams (Delaware Brewers Guild)
- Andrea Guest (Department of Labor)
- Michael Shriver (Penn-Mar Human Services)
- John McNeal (State Council for Persons with Disabilities)
- Rita Langraf
- Daniese McMullin-Powell (Delaware Developmental Disabilities Council)
- Joseph Grande
- Gary Heckert (The Arc of Delaware)
- Nancy Lemus,
- Laura Waterland (Disabilities Law Program)
- Greg Bulger
- Terri Hancharick (EPIC)
- Emmanuel Jenkins (We Stand 4 Something)
- Calvin Sparks (Delaware United)
- Kayla Bronner
- Patricia Maichle
- Ken Capone (People on the Go of Maryland)
- Jayson Crouch (KSI Inc.)
- Junika Woodall (Elwyn)
- Max Grozovsky
- Micki Edelsohn (A Team Delaware)
- Kyle Hodges (State Council for Persons with Disabilities)

Attendance List

- Amanda Kelly Thompson
- Andrew Volturo
- Bailey Brooks
- Beverly Dennis
- Carol Donahue
- Carolyn Petrak
- Carrie Cole
- Cianna Green
- Colleen McGahan
- David Walsh
- Debbie Rice
- Drake
- Emily Arneson
- Friends Of The Mary Campbell Center Friends

- Gail Womble
- Hafsah Mansoori
- James Dechene
- Javier Horstmann
- Jeff Porter
- Jenifer Batog
- Jody Roberts
- Jonathan Patterson
- Joseph Fitzgerald
- Judith Zucker
- Julie Price
- Kathi Karsnitz
- Katie Grande
- Kiki Evinger
- Kim Willson
- Krista Griffith
- Kyra Hoffner
- Lauren Gates
- Lincoln Willis
- Linda Barnett
- Linda Cardall
- Lisa Elias
- Lorraine Jones
- Maitri Campbell
- Marissa Catalon
- Martha McGahan
- Patrick Allen
- Patrick Donahue
- Paul Thornburg
- Robert Trostel
- Rosalyn Green
- Sandra Bihary-Waltz
- Sandra Miller
- Shauna Barnes
- Steve Baccino
- Tami Goldsmith
- Terry Truby
- Thomas Cook
- Verity Watson
- Verna Hensley
- Vicki Haschak
- Virginia Nobles

3.31.21 House Economic Development Meeting

Public Comment

HB 122 (Sponsor: Heffernan)

1. *Submitted by Lisa Elias | March 31, 2021 at 10:49 a.m.*
2. *Submitted by State Council for Persons with Disabilities | March 31, 2021 at 12:54 p.m.*
3. *Submitted by Terri Hancharick | March 31, 2021 at 1:19 p.m.*

Dear Committee Members,

If the commensurate wage-earning system (14c certification) is taken away, will the workers with significant disabilities be assured of meaningful and useful activities to take the place of the jobs they would lose? Is there a plan? What about the support staff they need? Will they be rehired to facilitate these activities? Where will these activities take place? Will people with significant intellectual & developmental disabilities comprehend why they can no longer earn a paycheck? Many many of them simply cannot work in a mainstream job due to physical, behavioral and cognitive challenges. The social connections as well as the pride in earning one's own money - commensurate with the person's ability to produce at their own pace - are incalculable losses. Great mental-emotional suffering and physical deterioration has been experienced by workers with I/DD already due to the isolation required by the pandemic. The work centers where they thrived may now disappear permanently. This will be a devastating state of affairs. Again, what is the plan?

Self-advocates who are able to speak loudly for themselves - an option not available to many with I/DD - say: "Nothing about us without us!" Parents, guardians and workers who have significant I/DD who very much want and need these specialized work centers feel unheard.. Will the committee listen to their voices?

Thank you.

Sincerely,

Lisa Elias

Townsend, Delaware



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STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: March 31, 2021

TO: House Economic Development/Banking/Insurance & Commerce Committee

FROM: Kyle Hodges, Policy Director
State Council for Persons with Disabilities (SCPD)

RE: HB 122 (Jamie Wolfe Employment Act)

Hello - Rep. Bush, Rep. Bennett and members of the House Economic Development, Banking, Insurance & Commerce Committee. My name is Kyle Hodges and I am the SCPD Policy Director. I am here today as staff for the Employment First Oversight Commission (EFOC) whose duties and responsibilities fall under the purview of SCPD and is a result of the Employment First Act being enacted in 2012. Rep. Heffernan was also the prime sponsor of that proactive legislation.

Change is difficult. Change can be very scary.

It is for those reasons that, in part, SCPD/EFOC truly empathizes with the parents and persons with disabilities that may be impacted by the passage of HB 122. However, the proposed legislation has provisions - and the current options for community-based programs are many – which could minimize some fears.

As background, in 1938, the federal Fair Labor Standards Act allowed the issuance of special wage certificates which permitted the payment of subminimum wages. While this may have been well-intended at the time, 83 years have passed and opportunities for persons with disabilities are vastly different and far greater now.

In addition to SCPD, DHSS and DOL, HB 122 mandates that EFOC collaborate with current employers paying subminimum wages, sheltered workshop facilities, family advocacy organizations and persons with disabilities affected by the implementation of the bill and requires that the plan implement recommendations to overcome obstacles regarding the phase-out of 14c certificates. We will ensure that the views and recommendations of all impacted people and organizations are heard, valued and considered. To implement a successful transition, this has to be a “team effort” and it will be.

I believe that everyone is employable given the opportunity and appropriate supports. However, even if you do not believe that, there are currently many meaningful community-based recreational, social, educational, cultural, volunteer and athletic programs available to persons with disabilities as an alternative to paying pennies per hour. Indeed, HB 122 requires a means for tracking such alternative programming.

The Division of Vocational Rehabilitation is required under the Workforce Innovation and Opportunity Act (WIOA) to provide career counseling to people who receive sub-minimum wages. As part of that process, from 2017-2020, they were asked if they wanted to open their DVR case for the purpose of gaining a part-time job. Of the 2 remaining sheltered employment facilities (Chimes and Elwyn), the numbers/percentages are as follows:

Chimes – 296 out of 498 = 59% wanted their DVR case opened.

Elwyn – 191 out of 326 = 59% wanted their DVR case opened.

Therefore, a majority of those in sheltered workshops want an opportunity for employment earning at least minimum wage. DVR also provides benefits counseling for those who worry or have questions about how this bill may impact disability benefits.

As noted earlier: Change is difficult. Change can be very scary. However, change is inevitable and change happens. **Sheltered** workshops are called **sheltered** for a reason – the programming does not adequately allow people to be in the community, interact with others without disabilities, hone skills which may be needed for integrated employment and simply grow as a human being. The time is now to change this archaic, unequitable and isolated programming, especially with the variety of other meaningful community-based options available for a person’s choosing.

Thank you for your consideration.

My name is Terri Hancharick and I am the co-founder of EPIC. A community based non-profit supporting people with disabilities in their health, fitness and social goals.

My uncle, who had a mild intellectual disability, was born in the 1930s, the same decade the 14(c) provision became law. He spent many years working in a 14(c) program and, though the staff were caring and supportive, there were so many missed opportunities. He was so capable but in paying him so much lower than others in the workforce we were constantly telling him that he wasn't good enough. He wanted so much to work in the community. His dream was to work in a grocery store. He wasn't asking for much and his dream should have been fulfilled. In 1987, I gave birth to a baby girl who ended up having cerebral palsy that significantly affected her life. But, unlike my uncle, the opportunities and supports now offered to people with disabilities have allowed her to live her life totally in the community, just like her five brothers. It's time to move on from the old 14(c) employment model for people with disabilities. Paying someone a subminimum wage is an outdated practice and it is everyone's civil right to fully participate in all aspects of life, including integrated employment if that's what they choose.

No one is denying that this will take some work. That is why the bill is giving a 3 year transition period. Being Brigitte's mom I know the fear of not having a place for your son or daughter to go during the day. But can't we do better than this? This provision is almost 100 years old. We need to get creative and look at ways for people to live their best lives, encouraging their dreams and aspirations. When Brigitte was not happy with what was available I created a non profit located in the YMCA. We have a waiting list of people with disabilities who want to be a part of the program. Her brothers go there every day and I wanted her to have the same opportunities they have. It's all about opportunities and supports. She is supported in the YMCA as part of their community. People know her. She has options there as to what to do during her day.

I would love to be a part of the group that looks at ways to transform workshops from subminimum wage to an innovative model. We have three years to do this. Let's include the clients from the workshops and find out what their best life looks like. Let's work with vocational rehab and look for at least minimum wage jobs for those that choose that option. Contrary to what many people believe people with disabilities can still work, receive at least minimum wage and still be supported by Medicaid.

Almost a century of telling people they are not good enough to work a job with equal pay or live a real life in the community is too long. We have an opportunity to transform Delaware. I hope you will consider voting the Jamie Wolfe Employment Act out of committee so we can begin the work of restoring the civil rights of people with disabilities.