



Sen. Daniel Biss

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1 AMENDMENT TO SENATE BILL 201

2 AMENDMENT NO. _____. Amend Senate Bill 201 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Declaration of policy and intent. Section 14(c)
5 of the Fair Labor Standards Act of 1938 authorizes the United
6 States Department of Labor to grant special wage certificates
7 to certain entities, which may then pay special minimum wages
8 less than the federal minimum wage to workers who have
9 disabilities. 119 Illinois entities are permitted to employ
10 11,555 individuals with disabilities under certificates issued
11 to Community Rehabilitation Programs under Section 14(c) of the
12 Fair Labor Standards Act of 1938. Among those now working for
13 less than minimum wage are people with autism, cerebral palsy,
14 spina bifida, Down syndrome, and other intellectual,
15 developmental, and sensory disabilities including blindness
16 and deafness. Employees with disabilities rarely transition
17 from Section 14(c) programs to integrated employment at

1 competitive wages. The practice of paying workers with
2 disabilities less than the federal minimum wage dates back to
3 the 1930s, a time when there was virtually no employment
4 opportunities for workers with disabilities in the mainstream
5 workforce. The Illinois Employment First Act stipulates that
6 "competitive and integrated employment shall be considered the
7 first option when serving persons with disabilities of working
8 age". Advancements in vocational rehabilitation, technology,
9 and training now provide greater opportunities to workers with
10 disabilities.

11 Section 5. The Department of Human Services Act is amended
12 by adding Sections 1-75 and 1-80 as follows:

13 (20 ILCS 1305/1-75 new)

14 Sec. 1-75. Phase-out plan.

15 (a) The Department, in partnership with other State
16 agencies, including the Department of Labor, the Department of
17 Healthcare and Family Services, the Department of Central
18 Management Services, the Department of Commerce and Economic
19 Opportunity, the Department of Employment Security, and the
20 State Board of Education, shall develop and implement a plan to
21 phase out, on or before July 1, 2022, authorizations under
22 Sections 5 and 10 of the Minimum Wage Law to pay an employee
23 with a disability less than the minimum wage otherwise required
24 for the employee under Illinois law.

1 (b) The phase-out plan shall include all of the following:

2 (1) Benchmarks and desired outcomes for each year of
3 the phase-out.

4 (2) A list of the resources necessary, including
5 changes to State policy or service and program
6 reimbursement rates, to ensure that individuals with
7 disabilities receive support according to the needs and
8 preferences of the individuals and in an integrated
9 setting, regardless of the nature or severity of the
10 individuals' disabilities.

11 (3) A description of alternative revenue options,
12 including non-subminimum wage programs, for holders of
13 certificates issued under Section 14(c) of the Fair Labor
14 Standards Act of 1938.

15 (4) An examination of the measures needed to improve
16 future employment and day service options for people with
17 disabilities, including recommendations for new or
18 reformulated day service strategies and approaches
19 designed to strengthen statewide capacity to assure
20 informed choice for integrated employment and integrated
21 avocational leisure and volunteer options for every
22 individual with a disability.

23 (5) A timeline and estimated costs for comprehensive
24 training and certification of individual staff in
25 supported employment and customized employment. The
26 training shall also include benefits counseling and

1 education to reduce misinformation that promotes
2 dependency and discourages income-producing work. Training
3 audiences shall include the following persons and
4 organizations:

5 (A) Counselors from the Department's Division of
6 Rehabilitation Services.

7 (B) Staff from the Department's Division of
8 Developmental Disabilities.

9 (C) Organizations affiliated with the Department's
10 Division of Rehabilitation Services or Division of
11 Developmental Disabilities that are certified to serve
12 persons with disabilities by the State or federal
13 government.

14 (D) High school special education and transition
15 staff.

16 (E) Independent Service Coordination agency staff.

17 (F) Community Work Incentives Coordinators.

18 Training content developed or approved by federal
19 agencies shall be used, if possible, including training
20 content from the following agencies:

21 (i) The Office of Disability Employment Policy in
22 the United States Department of Labor.

23 (ii) The Rehabilitation Services Administration in
24 the United States Department of Education.

25 (iii) The Administration for Community Living in
26 the United States Department of Health and Human

1 Services.

2 (iv) The Centers for Medicare and Medicaid
3 Services in the United States Department of Health and
4 Human Services.

5 (6) A proposal to modify the Business Enterprise
6 Program and the State Use Program to ensure future State
7 contracts are not awarded to entities paying workers less
8 than the minimum wage and instead are awarded to entities
9 that promote fully integrated work opportunities.

10 (7) Application for and use of all federal and State
11 funding programs, including programs available under
12 Medicaid waiver amendments and resources under the federal
13 Workforce Innovation and Opportunity Act, to assist
14 individuals with disabilities to obtain competitive,
15 integrated employment.

16 (8) The tracking of outcomes of individuals with
17 disabilities on the basis of:

18 (A) wages;

19 (B) hours worked;

20 (C) unemployment rates;

21 (D) the number of individuals who move from
22 subminimum wage positions to competitive, integrated
23 employment;

24 (E) the number of individuals who move from
25 subminimum wage positions to nonpaying activities;

26 (F) the number of hours of paid supports; and

1 (G) the use and costs of Medicaid for acute health
2 care and outpatient mental health care costs.

3 (9) In the formulation of the phase-out plan, special
4 attention must be paid to building adequate capacity in the
5 disability provider ecosystem to ensure individuals with
6 all levels of disability can secure competitive,
7 integrated employment as defined in the federal Workforce
8 Innovation and Opportunity Act. Special attention must be
9 given to prevent any systematic shift of income-earning
10 activity to unpaid day habilitation activity.

11 (c) In implementing the phase-out plan, the Department
12 shall consult with:

13 (1) the State agencies listed in subsection (a);

14 (2) the ARC of Illinois;

15 (3) the Illinois Association of Rehabilitation
16 Facilities;

17 (4) the Illinois Network of Centers for Independent
18 Living;

19 (5) the Illinois Task Force on Employment and Economic
20 Opportunity for Persons with Disabilities;

21 (6) the Illinois Self-Advocacy Alliance;

22 (7) the Institute on Public Policy for People with
23 Disabilities;

24 (8) the Great Lakes ADA Center;

25 (9) holders of certificates issued to Community
26 Rehabilitation Programs under Section 14(c) of the Fair

1 Labor Standards Act of 1938;

2 (10) the Association of People Supporting Employment
3 First;

4 (11) the Illinois Association of the Deaf;

5 (12) the University Center of Excellence in
6 Developmental Disabilities;

7 (13) the National Federation of the Blind of Illinois;

8 and

9 (14) any other relevant stakeholders.

10 (d) (1) On or before January 1, 2019, the Secretary of Human
11 Services shall submit the phase-out plan to the Governor and
12 the General Assembly.

13 (2) On or before January 1, 2020, January 1, 2021, and
14 January 1, 2022, the Secretary shall report to the Governor and
15 the General Assembly on:

16 (A) the benchmarks and status of achieving the outcomes
17 included in the phase-out plan; and

18 (B) recommendations for funding levels or other
19 resources necessary to implement the phase-out plan.

20 (20 ILCS 1305/1-80 new)

21 Sec. 1-80. Customized work plans.

22 (a) (1) For each individual who is paid less than the
23 minimum wage under Sections 5 and 10 of the Minimum Wage Law,
24 the Department shall develop a written individualized
25 customized work plan on or before January 1, 2020 that

1 addresses how community integration and employment will be
2 accomplished.

3 (2) The customized work plan shall be developed with input
4 from the individual receiving services, and, where applicable,
5 from the individual's family, the individual's vocational
6 rehabilitation counselor, and any staff from the Department's
7 Division of Developmental Disabilities or a Pre-Admission
8 Screening/Independent Service Coordination agency who have
9 interacted with the individual concerning employment and other
10 life goals.

11 (3) The Department shall use appropriate communication
12 devices and techniques, including sign language, to facilitate
13 the involvement of the individual in the development of each
14 customized work plan.

15 (b) Customized work plans shall include all of the
16 following:

17 (1) A recommendation on jobs and careers that allow the
18 job seeker to thrive and contribute to an employer's needs.

19 (2) A description of the supports required for the
20 individual to work, if so desired by the individual, in the
21 most integrated setting appropriate to complete the tasks
22 and requirements of his or her job with minimal intrusion.

23 (3) A listing of barriers that prevent the individual
24 from receiving the services and supports required for the
25 individual to work in the most integrated setting
26 appropriate to meet the individual's needs, including:

1 (A) barriers to accessing funding and resources,
2 including for staffing, transportation, and other
3 needed services and supports;

4 (B) decision-making by the individual or the
5 individual's representative, as appropriate;

6 (C) barriers to accessing medical or behavioral
7 support needs;

8 (D) family members' concerns or opposition; and

9 (E) options for activity other than compensated
10 employment in the person's life and community.

11 (4) An update on the status and progress made toward
12 addressing and resolving barriers identified under
13 paragraph (3) in a previous customized work plan.

14 (c) The Department shall develop, in consultation with
15 interested stakeholders, the protocol and format for the
16 customized work plan.

17 (d) (1) The Department shall track the progress of
18 individuals who have customized work plans by collecting the
19 following data:

20 (A) the wages of the individuals;

21 (B) the unemployment rates of the individuals;

22 (C) the number of individuals who moved from subminimum
23 wage positions to competitive, integrated employment;

24 (D) the number of individuals who moved from subminimum
25 wage positions to nonpaying activities; and

26 (E) the health costs, including outpatient mental

1 health costs, paid by Medicaid for the individuals.

2 (2) On or before January 1, 2021, January 1, 2022, and
3 January 1, 2023, the Secretary shall submit to the Governor and
4 the General Assembly a summary of the data collected under
5 paragraph (1) on a statewide and regional basis. The report to
6 the General Assembly shall be filed with the Clerk of the House
7 of Representatives and the Secretary of the Senate in
8 electronic form only, in the manner that the Clerk and the
9 Secretary shall direct.

10 Section 10. The Department of Labor Law of the Civil
11 Administrative Code of Illinois is amended by adding Section
12 1505-215 as follows:

13 (20 ILCS 1505/1505-215 new)

14 Sec. 1505-215. Special wage certificates; persons with
15 disabilities.

16 (a) As used in this Section:

17 "Director" means the Director of Labor.

18 "Federal certificate" means a certificate that the United
19 States Department of Labor issues to a work activities center
20 or other sheltered workshop to allow the work activities center
21 or sheltered workshop to pay an individual less than the wage
22 otherwise required for that individual under the federal Fair
23 Labor Standards Act of 1938.

24 (b) (1) Subject to the limitations in this Section, the

1 Director may not authorize a work activities center or other
2 sheltered workshop to pay an employee who has a disability less
3 than the minimum wage otherwise required under the Minimum Wage
4 Law for the employee.

5 (2) Beginning January 1, 2020, the Director may not
6 authorize a work activities center or other sheltered workshop
7 to pay an employee with a disability less than the minimum wage
8 if the work activities center or sheltered workshop was not
9 authorized to do so before January 1, 2019 by the United States
10 Department of Labor.

11 (c)(1) To authorize a work activities center or other
12 sheltered workshop to pay less than the minimum wage, the
13 Director shall:

14 (A) issue a State certificate that sets wages for
15 employees of the work activities center or sheltered
16 workshop;

17 (B) accept a federal certificate for the work
18 activities center or sheltered workshop; or

19 (C) grant an exception for the work activities center
20 or sheltered workshop, but only if:

21 (i) the Director has not issued a State certificate
22 to the work activities center or sheltered workshop;

23 (ii) the work activities center or sheltered
24 workshop is not eligible for a federal certificate; and

25 (iii) the Director investigates and holds a
26 hearing on the exception.

1 (2) The Director shall accept a federal certificate if a
2 work activities center or other sheltered workshop submits that
3 federal certificate to the Director within 10 days after the
4 work activities center or sheltered workshop receives the
5 federal certificate.

6 (d) (1) Each certificate that the Director issues under this
7 Section shall state the period for which the certificate is in
8 effect.

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

14 (e) (1) The Director may revoke acceptance of a federal
15 certificate if:

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

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

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

24 Section 15. The Illinois Council on Developmental
25 Disabilities Law is amended by adding Section 2008 as follows:

1 (20 ILCS 4010/2008 new)

2 Sec. 2008. Independent study on phase-out and customized
3 work plans.

4 (a) The Illinois Council on Developmental Disabilities
5 shall:

6 (1) commission an independent study of the phase-out
7 plan and the customized work plans described in Sections
8 1-75 and 1-80 of the Department of Human Services Act;

9 (2) determine through the study:

10 (A) whether the plans are having their intended
11 effects;

12 (B) how many people have transitioned from
13 subminimum wage work to competitive, integrated
14 employment opportunities;

15 (C) whether there are any significant, related,
16 regional, or demographic trends; and

17 (D) whether there are health care savings or costs
18 as a result of the plans; and

19 (3) make any related recommendations for possible
20 changes in State law or policy regarding the employment of
21 individuals with disabilities.

22 (b) On or before July 1, 2021, the Illinois Council on
23 Developmental Disabilities shall report its findings and
24 recommendations to the Governor and the General Assembly. The
25 report to the General Assembly shall be filed with the Clerk of

1 the House of Representatives and the Secretary of the Senate in
2 electronic form only, in the manner that the Clerk and the
3 Secretary shall direct.

4 Section 20. The Minimum Wage Law is amended by changing
5 Section 10 as follows:

6 (820 ILCS 105/10) (from Ch. 48, par. 1010)

7 Sec. 10. (a) The Director shall make and revise
8 administrative regulations, including definitions of terms, as
9 he deems appropriate to carry out the purposes of this Act, to
10 prevent the circumvention or evasion thereof, and to safeguard
11 the minimum wage established by the Act. Regulations governing
12 employment of learners may be issued only after notice and
13 opportunity for public hearing, as provided in subsection (c)
14 of this Section.

15 (b) (Blank). ~~In order to prevent curtailment of~~
16 ~~opportunities for employment, avoid undue hardship, and~~
17 ~~safeguard the minimum wage rate under this Act, the Director~~
18 ~~may also issue regulations providing for the employment of~~
19 ~~workers with disabilities at wages lower than the wage rate~~
20 ~~applicable under this Act, under permits and for such periods~~
21 ~~of time as specified therein; and providing for the employment~~
22 ~~of learners at wages lower than the wage rate applicable under~~
23 ~~this Act. However, such regulation shall not permit lower wages~~
24 ~~for persons with disabilities on any basis that is unrelated to~~

1 ~~such person's ability resulting from his disability, and such~~
2 ~~regulation may be issued only after notice and opportunity for~~
3 ~~public hearing as provided in subsection (c) of this Section.~~

4 (c) Prior to the adoption, amendment or repeal of any rule
5 or regulation by the Director under this Act, except
6 regulations which concern only the internal management of the
7 Department of Labor and do not affect any public right provided
8 by this Act, the Director shall give proper notice to persons
9 in any industry or occupation that may be affected by the
10 proposed rule or regulation, and hold a public hearing on his
11 proposed action at which any such affected person, or his duly
12 authorized representative, may attend and testify or present
13 other evidence for or against such proposed rule or regulation.
14 Rules and regulations adopted under this Section shall be filed
15 with the Secretary of State in compliance with "An Act
16 concerning administrative rules", as now or hereafter amended.
17 Such adopted and filed rules and regulations shall become
18 effective 10 days after copies thereof have been mailed by the
19 Department to persons in industries affected thereby at their
20 last known address.

21 (d) The commencement of proceedings by any person aggrieved
22 by an administrative regulation issued under this Act does not,
23 unless specifically ordered by the Court, operate as a stay of
24 that administrative regulation against other persons. The
25 Court shall not grant any stay of an administrative regulation
26 unless the person complaining of such regulation files in the

1 Court an undertaking with a surety or sureties satisfactory to
2 the Court for the payment to the employees affected by the
3 regulation, in the event such regulation is affirmed, of the
4 amount by which the compensation such employees are entitled to
5 receive under the regulation exceeds the compensation they
6 actually receive while such stay is in effect.

7 (Source: P.A. 99-143, eff. 7-27-15.)

8 (820 ILCS 105/5 rep.)

9 Section 25. The Minimum Wage Law is amended by repealing
10 Section 5.

11 Section 99. Effective date. This Act takes effect upon
12 becoming law."