

Act No. 537
Public Acts of 1996
Approved by the Governor
January 12, 1997
Filed with the Secretary of State
January 13, 1997

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Reps. Nye, Walberg, Cropsey, Law, Geiger, McBryde, Bobier, McNutt, Hill, Middleton and Bush

ENROLLED HOUSE BILL No. 4464

AN ACT to amend the title and sections 2, 4, 5, 6, 7, 11, and 12 of Act No. 15 of the Public Acts of 1968, entitled as amended "An act to provide for the employment of inmate labor in the correctional institutions of this state; to provide for certain powers and duties of the commission of corrections, the governor, and other officers and agencies in relation to correctional institutions; to provide for the requisitioning and disbursement of correctional industries products; to provide for the disposition of the proceeds of correctional industries and farms; to provide for purchasing and accounting procedures; to regulate the sale or disposition of inmate labor and products; to provide for the requisitioning, purchases, and supply of correctional industries products; to provide penalties for violations of this act; and to repeal certain acts and parts of acts," sections 2, 4, 5, 7, 11, and 12 as amended by Act No. 245 of the Public Acts of 1980 and section 6 as amended by Act No. 24 of the Public Acts of 1990, being sections 800.322, 800.324, 800.325, 800.326, 800.327, 800.331, and 800.332 of the Michigan Compiled Laws; and to add section 7a.

The People of the State of Michigan enact:

Section 1. The title and sections 2, 4, 5, 6, 7, 11, and 12 of Act No. 15 of the Public Acts of 1968, sections 2, 4, 5, 7, 11, and 12 as amended by Act No. 245 of the Public Acts of 1980 and section 6 as amended by Act No. 24 of the Public Acts of 1990, being sections 800.322, 800.324, 800.325, 800.326, 800.327, 800.331, and 800.332 of the Michigan Compiled Laws, are amended and section 7a is added to read as follows:

TITLE

An act to provide for the employment of inmate labor in the correctional institutions of this state; to provide for the employment of inmate labor in certain private enterprises under certain conditions; to provide for certain powers and duties of the department of corrections, the governor, and other officers and agencies in relation to correctional institutions; to provide for the requisitioning and disbursement of correctional industries products; to provide for the disposition of the proceeds of correctional industries and farms; to provide for purchasing and accounting procedures; to regulate the sale or disposition of inmate labor and products; to provide for the requisitioning, purchases, and supply of correctional industries products; to provide penalties for violations of this act; and to repeal acts and parts of acts.

Sec. 2. As used in this act:

(a) "Correctional industries products" means all services provided, goods, wares, and merchandise manufactured or produced, wholly or in part, by inmates in any state correctional institution, but does not include products manufactured

with inmate labor or services rendered with inmate labor in a private manufacturing or service enterprise established under section 7a.

(b) "Youth correctional facility" means a facility established under section 20g of Act No. 232 of the Public Acts of 1953, being section 791.220g of the Michigan Compiled Laws.

Sec. 4. The department of corrections may do any of the following:

(a) Construct, use, equip, and maintain buildings, machinery, boilers, and equipment that may be necessary to provide for the employment of inmate labor in the state correctional institutions for the manufacture of goods, wares, and merchandise and the operation of services.

(b) Purchase new material to be used in the manufacture of goods, wares, merchandise, and operation of services.

(c) Dispose of the manufactured products or provide services in the manner provided by law.

(d) Continue to use and maintain the buildings, machinery, boilers, and equipment in the manufacture of goods, wares, and merchandise in the manner in the operation on April 5, 1968 and use the facilities in the operation of service programs.

(e) Recruit and employ agents and assistants through the department of civil service as may be necessary to carry out the purposes of this act and recommend to the department of civil service classes and selection procedures that recognize the unique needs of correctional industries in this state.

(f) Establish an advisory council for correctional industries in this state, which shall include representatives of organized labor, private industry, state government, and the general public.

(g) Enter into any agreements necessary for assigning inmates to employment in private manufacturing or service enterprises under section 7a.

Sec. 5. Except as provided in section 7a, all money collected from the sale or disposition of goods, wares, and merchandise manufactured by inmate labor, or received for services provided by labor in the correctional institutions pursuant to this act, shall be turned over to the state treasurer and credited to the correctional industries revolving fund, and shall be paid out only for the cost of doing business incurred in carrying out the purpose of this act. An expenditure for a structure from the revolving fund that would otherwise require the approval of the joint capital outlay subcommittee of the legislature shall be submitted for approval to that subcommittee before the commencement of any construction.

Sec. 6. (1) Correctional industries products may be sold, exchanged, or purchased by institutions of this or any other state or political subdivision of this or any other state, the federal government or agencies of the federal government, a foreign government or agencies of a foreign government, a private vendor that operates the youth correctional facility, or any organization that is a tax exempt organization under section 501(c)(3) of the internal revenue code.

(2) An agricultural product that is produced on a correctional farm may be utilized within the correctional institutions or within a youth correctional facility notwithstanding its operation by a private vendor or sold to an institution, governmental agency, or organization described in subsection (1) or sold for utilization in the food production facilities of the department of corrections notwithstanding the operation of those facilities by a private vendor. An agricultural product that is not utilized or sold as provided in this subsection shall be made available without charge to nonprofit charitable organizations or to the family independence agency for use in food banks, bulk food distributions, or similar charitable food distribution programs. This subsection does not apply to an agricultural product that is not in a form suitable for use in the manner prescribed in this section, such as bulk grain, live cattle, and hogs, which may be sold on the open market.

(3) Except as provided in subsections (4) and (5), the labor of inmates shall not be sold, hired, leased, loaned, contracted for, or otherwise used for private or corporate profit or for any purpose other than the construction, maintenance, or operation of public works, ways, or property as directed by the governor. This act does not prohibit the sale at retail of articles made by inmates for the personal benefit of themselves or their dependents or the payment to inmates for personal services rendered in the correctional institutions, subject to regulations approved by the department of corrections, or the use of inmate labor upon agricultural land that has been rented or leased by the department of corrections upon a sharecropping or other basis.

(4) If more than 80% of a particular product sold in the United States is manufactured outside the United States and none of that product is manufactured in this state, or if a particular service is not performed in this state, as determined by the department of corrections in conjunction with the advisory council for correctional industries, inmate labor may be used in the manufacture of that product or the rendering of that service in a private manufacturing or service enterprise established under section 7a. A determination by the department of corrections under this subsection shall be made at the time the individual or business entity applies to the department for approval to produce that product or render that service pursuant to section 7a.

(5) Inmate labor may be used in the youth correctional facility notwithstanding the operation of that facility by a private vendor.

Sec. 7. The department of corrections shall provide as fully as practicable for the employment of inmates in tasks consistent with the penal and rehabilitative purposes of their imprisonment and with the public economy. The types of employment shall be as follows:

(a) Routine maintenance and operation of correctional institutions.

(b) Educational and rehabilitation activities, whether formal or through productive or socialized activities, determined on the basis of individual needs and educability.

(c) Productive or maintenance labor on or in connection with the institution farms, or other land rented or leased by the department of corrections, factories, shops, or other available facilities for the production and distribution of correctional industries products and services.

(d) Labor assignments on state public works, ways, or properties when and as requisitioned by the governor or on county, township, or district roads when requested by the county board of commissioners pursuant to section 1 of Act No. 181 of the Public Acts of 1911, being section 800.101 of the Michigan Compiled Laws.

(e) Labor assignments in private manufacturing or service enterprises established under section 7a.

Sec. 7a. (1) Inmates may be assigned to work in a private manufacturing or service enterprise that meets all of the following requirements:

(a) The enterprise is suitably designed for the utilization of inmate labor. Prisoners shall not be granted access to any employee, customer or client information including, but not limited to, personal addresses, telephone numbers, e-mail addresses, credit card information or other financial information, health records, or any information contained in personnel, client or customer files.

(b) The enterprise either is located within 10 miles of a correctional facility or is located within a correctional facility pursuant to a lease agreement executed between the department of corrections and the enterprise. If the enterprise is located within a correctional facility, the enterprise shall pay to the local taxing authority an amount in lieu of ad valorem property taxes equivalent to the amount of ad valorem property taxes that would have been required if the enterprise had been located outside the correctional facility.

(c) The enterprise manufactures products or renders services that are permitted to be manufactured or rendered using inmate labor, as determined under section 6(4).

(d) The ratio of the number of employees of the enterprise to the number of inmates assigned to work in the enterprise shall not be less than 1 employee to 3 inmates.

(2) Only those inmates who reside in a correctional institution having a security designation of level I, who are not serving a sentence of life imprisonment, and who volunteer for the assignment are eligible to be assigned to work in a private manufacturing or service enterprise. As used in this subsection, "security designation" means 1 of 6 levels of restrictiveness enforced at each correctional institution, as determined by the department, with security level I being the least restrictive and security level VI being the most restrictive.

(3) The contract between the department and the private manufacturing or service enterprise shall ensure that a wage that is the higher of the prevailing wage or the minimum wage established pursuant to the minimum wage law of 1964, Act No. 154 of the Public Acts of 1964, being sections 408.381 to 408.398 of the Michigan Compiled Laws, shall be paid by the department to the inmate for work performed by the inmate in the private manufacturing or service enterprise. The wages of an inmate under this section shall be distributed in the following order:

(a) The department shall withhold and pay the inmate's applicable state and local income taxes and federal income, social security, and medicare taxes.

(b) Of the balance remaining:

(i) If the inmate has been ordered by the court to pay restitution to the victim of his or her crime, 20% shall be paid for that restitution on the inmate's behalf, in accordance with the court order, until the amount of restitution is satisfied. If restitution is satisfied or if the inmate was not made subject to restitution, 10% shall be added to the escrow account under subparagraph (iv) and 10% shall be deposited with the state treasurer and credited to the crime victims rights fund created in section 4 of Act No. 196 of the Public Acts of 1989, being section 780.904 of the Michigan Compiled Laws, in addition to the amount in subparagraph (v).

(ii) If the inmate has a spouse or children, 20% shall be paid to the inmate's spouse or children for the purpose of family support. If the inmate's spouse or children receive aid to families with dependent children or general assistance under the social welfare act, Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.119b of the Michigan Compiled Laws, while the inmate is incarcerated, the 20% designated in this subdivision shall be deposited with the state treasurer and credited to the general fund as repayment of that aid or assistance, until that amount of aid or assistance is repaid.

(iii) Ten percent shall be paid to the inmate for his or her personal use while incarcerated.

(iv) Ten percent shall be held by the department in an escrow account for the inmate, and shall be returned to the inmate upon his or her release.

(v) The balance remaining after the deductions specified in subparagraphs (i) to (iv) shall be deposited with the state treasurer and credited to the general fund, as partial reimbursement to the state for the cost of that inmate's imprisonment and care.

(vi) The inmate shall not be eligible for unemployment compensation or retirement benefits upon his or her release from a work assignment or from imprisonment.

(4) The contract between the department and the private manufacturing or service enterprise shall provide that the department shall pay the applicable employer's share of federal social security and medicare taxes and state worker's disability compensation payments or contributions.

(5) The contract between the department and the private manufacturing or service enterprise shall provide that the enterprise shall reimburse the department for the amounts paid by the department for the purposes described in subsections (3) and (4). The contract also shall require the enterprise to pay to the department an annual administrative fee equal to 1% of the total amounts paid annually to the department by the enterprise for the purposes described in subsections (3) and (4).

(6) The contract provisions created in this section shall not be construed as making the prisoner an employee of the state of Michigan.

Sec. 11. (1) It is the intent of this act to do all of the following:

(a) Provide adequate, regular, diversified, and suitable employment for inmates of the state for the purpose of enhancing job skills consistent with proper penal purposes.

(b) Utilize the labor of inmates for self-maintenance and for reimbursing the state for expenses incurred by reason of their crimes and imprisonment, and for employment in private manufacturing or service enterprises established under section 7a.

(c) Provide a means for inmates to earn wages for support of their families, reimbursement to the state for part of the cost of their imprisonment, restitution to crime victims, and other purposes consistent with their imprisonment.

(d) Effect the requisitioning and disbursement of correctional industries products and services directly through established state authorities without possibility of private profits and without any intermediating financial considerations, appropriations, or expenditures.

(e) Permit the management of correctional industries to operate in a manner as similar as possible to similar private industrial operations.

(2) Within 5 years after October 1, 1980, correctional industries shall be changed from a system that requires intermediating financial assistance to a total self-supporting system.

(3) The governor shall require the director of the department of management and budget to establish suitable methods of purchasing and accounting, which shall provide as may be necessary or advisable for all of the following:

(a) The purchasing and supply of supplies and materials necessary for the institutional manufacture or production of correctional industries products.

(b) Crediting correctional industries accounts and debiting accounts of consuming institutions or departments for products requisitioned and disbursed, at prices fixed to recapture all direct and indirect costs. In addition, the methods of purchasing, accounting, and pricing may provide for the setting of a margin in excess of direct and indirect costs, which may be expended for purposes consistent with this act.

(c) The purchase of all commodities or requirements other than correctional industries products as provided in this act, by competitive bidding or other methods established by law or approved practice. All agencies, offices, and departments of this state shall order goods from correctional industries if the goods are produced by correctional industries of this state, are comparable in price and quality to the goods normally purchased by governmental agencies, and can be supplied in a reasonable time period as determined by the department of management and budget.

(d) An equitable basis to be proposed by the department of corrections and approved by the department of management and budget for determining costs between the correctional institutions and correctional industries that requires the institutions to absorb that portion of the supervisory costs that directly relate to custody and security responsibilities.

Sec. 12. The department of corrections may adopt a schedule of payments or allowances to inmates or to their dependents from the funds as may be provided for the payment. This section does not apply to the payment of wages to inmates assigned to work in private manufacturing or service enterprises under section 7a.

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.