

Act No. 261
Public Acts of 2012
Approved by the Governor
June 26, 2012
Filed with the Secretary of State
July 2, 2012
EFFECTIVE DATE: July 2, 2012

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Rep. Haveman

ENROLLED HOUSE BILL No. 5658

AN ACT to amend 1968 PA 15, entitled "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," by amending sections 2, 6, and 7a (MCL 800.322, 800.326, and 800.327a), section 2 as amended and section 7a as added by 1996 PA 537 and section 6 as amended by 2010 PA 308.

The People of the State of Michigan enact:

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 either of the following:

(i) Products manufactured with inmate labor or services rendered with inmate labor in a private manufacturing or service enterprise established under section 7a.

(ii) Goods or services provided by inmate labor assigned to a private contractor to be used solely within a correctional institution, jail, or reentry facility.

(b) "Correctional institution" means a state prison, prison facility, or other prison institution, correctional camp, community corrections center, correctional farm, state reformatory, or probation recovery camp, owned, operated, leased, supervised, or contracted for by this state.

Sec. 6. (1) Correctional industries products may be sold, exchanged, or purchased by any of the following:

(a) An institution 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, or, except as provided in subsection (6), a private vendor that operates a correctional facility in this state.

(b) Except as provided in subsection (6), any organization that is a tax exempt organization under section 501(c)(3) of the internal revenue code, or any organization or individual that acts as a fiduciary for a tax exempt organization under section 501(c)(3) of the internal revenue code and certifies that the product sold or exchanged under this act is intended for use by a tax exempt organization under section 501(c)(3) of the internal revenue code.

(c) Except as provided in subsection (6), any private business or individual, if the products are cut and sewn textiles, but only if the same or a comparable in style product is not manufactured by a private business in this state. However, this subdivision no longer applies beginning on the later of the following dates:

(i) The date cut and sewn textiles are being manufactured under the prisoner industry enhancement certification program under section 4(h) and sold, exchanged, or purchased under subdivision (d).

(ii) June 1, 2015.

(d) Except as provided in subsection (6), any private individual, corporation, partnership, or association in this state and in interstate commerce if the products are manufactured under section 4(h).

(2) An agricultural product that is produced on a correctional farm may be utilized within the correctional institutions or within a correctional facility in this state 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 (2), (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) This act does not prohibit the assignment of prison labor to a private contractor for the production of goods or services to be used solely within a correctional institution, jail, or reentry facility that houses a prisoner population under the jurisdiction of the department. Inmates assigned by the department for the production of goods or services that are solely used within a correctional facility or institution that houses a prisoner population under the jurisdiction of the department are not subject to the prevailing or minimum wage.

(5) 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 under section 7a.

(6) An individual who is a member of the state senate or house of representatives shall not be permitted to participate, directly or indirectly, either personally or through an affiliate, in any program involving the sale, exchange, purchase, or manufacture of correctional industries products until 2 years after the date on which the individual's term of service in the senate or house of representatives ends.

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(5).

(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 under the minimum wage law of 1964, 1964 PA 154, MCL 408.381 to 408.398, 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 1989 PA 196, MCL 780.904, 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, 1939 PA 280, MCL 400.1 to 400.119b, 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.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor