
WEST VIRGINIA CODE CHAPTER 25
ARTICLE 7

WV Legislature

§25-7-1. Legislative findings.

The Legislature finds that the means now provided for the use of inmate labor are inadequate to furnish a sufficient number of inmates with employment. It is the intent of this article:

- (a) To provide more adequate, regular and suitable employment for the inmates and confined juvenile or youthful offenders of this state;
- (b) To use the labor of inmates and confined juvenile or youthful offenders for self-maintenance and to reimburse this state for expenses incurred by reason of their crimes and confinement;
- (c) To provide for the requisition and distribution of correctional industries articles and products directly through established state authorities, with no possibility of private profit except for those specific articles and products manufactured and sold pursuant to 18 U.S.C. §1761(c), the Prison Industry Enhancement (PIE) Certification Program, and pursuant to sections thirteen, fourteen, fifteen and sixteen of this article; and
- (d) To provide for correctional industries to be profitable in view of the fact that it is a self-sufficient authority.

§25-7-2. Citation of article.

This article may be cited as the Correctional Industries Act of 2009.

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§25-7-3. Establishment of industries at correctional facilities; purposes and extent.

The Commissioner of the Division of Corrections or the commissioner's designee has exclusive authority to execute contracts for the sale of products manufactured or serviced at state correctional facilities, as necessary to carry out the provisions of this article. The commissioner or designee is authorized to purchase equipment, raw materials and supplies and to employ necessary supervisory personnel to establish and maintain, at state correctional facilities and institutions under the commissioner's control, industries which use the services of inmates to manufacture and produce articles and products for use by any office, department, institution or agency supported, in whole or in part, by this state or its political subdivisions.

§25-7-4. Correctional industries service contracts.

(a) The commissioner may enter into contracts with private entities under which inmate or resident labor is provided through correctional industries for work involving the delivery of products or for service work. Service work means work which includes, but is not limited to, repairs, replacement of original manufactured items, packaging, sorting, recycling, labeling or similar work that is not original equipment manufacturing. The use of inmate or resident labor may not result in the displacement of civilian workers employed in the local region where the work is performed. The division may negotiate the wage for inmate or resident labor under correctional industries contracts and, except as provided in sections thirteen, fourteen, fifteen and sixteen of this article, the wage may be less than the prevailing wage for work of a similar nature in the private sector.

(b) The Division of Corrections, in cooperation with the Department of Commerce, shall develop and maintain a marketing plan encouraging private sector businesses to employ inmates through the correctional industries program.

§25-7-5. Purchase of inmate-made goods by state agencies.

(a) On and after the effective date of this article, all offices, departments, institutions and agencies of this state supported, in whole or in part, by state funds shall purchase all articles or products which they require from the commissioner, if those articles or products are produced or manufactured by correctional industries, as provided by this article. No state office, department, institution or agency may purchase an article or product which correctional industries produces from any other source, unless specifically excepted from the provisions of this section pursuant to section six of this article.

(b) Purchases of correctional industries articles or products by state offices, departments, institutions and agencies shall be made on requisition by the office, department, institution or agency requiring the articles or products.

(c) Political subdivisions, not-for-profit corporations and charitable agencies chartered in West Virginia, units of the federal government and units of government of other states may purchase articles and products produced by correctional industries. Entities which contract with the state, its political subdivisions, its agencies or its public institutions may purchase from correctional industries articles and products used in the performance of their contracts.

§25-7-6. Exceptions to mandatory purchase requirement.

Exceptions from the mandatory purchase provisions of section five of this article may be granted when a correctional industries article or product does not meet the reasonable requirements of the requesting state office, department, institution or agency, or when the requisition cannot be fulfilled because of insufficient supply or other reason. No state office, department, institution or agency may evade the requirements of section five of this article, or of this section, making insubstantial variations from the characteristics of correctional industries products or articles.

§25-7-7. Catalogues and a website of articles and products made and produced.

The commissioner shall arrange for the creation and updating of catalogues and a website containing descriptions of the correctional industries articles and products manufactured or produced pursuant to the provisions of this article. The commissioner shall make copies of the catalogue and the website address available to entities eligible to acquire correctional industries articles and products.

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§25-7-8. Commissioner to determine prices.

The commissioner or the commissioner's designee shall determine the prices of correctional industries articles and products. The prices shall be uniform for all and as near as is practicable to the fair market price.

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§25-7-9. Annual statements by the commissioner.

At the close of each fiscal year, the commissioner shall prepare a financial report on the financial condition of the correctional industries operation, in accordance with generally accepted accounting principles. Within sixty days after the end of the fiscal year, the commissioner shall file the report with the Secretary of the Department of Military Affairs and Public Safety, the Secretary of the Department of Administration and the Office of the Legislative Auditor.

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§25-7-10. Indebtedness for capital outlay projects.

To carry out the provisions of this article, the commissioner is authorized to enter into contracts to acquire and purchase equipment, tools, supplies and materials, with payment to be made over a period not exceeding five years.

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§25-7-11. Correctional industries account.

(a) The Correctional Industries Account is continued in the State Treasury. All funds collected from the sale or disposition of articles and products manufactured or produced by correctional industries in accordance with this article shall be deposited in this account.

(b) Except as provided in subsection (c) of this section, funds collected and deposited may be used only to purchase manufacturing supplies, equipment, machinery and materials used to carry out the purposes of this article; to pay necessary personnel; and to defray necessary expenses, including inmate earnings, all of which are under the direction of the commissioner and subject to the commissioner's approval.

(c) The Correctional Industries Account may not be maintained in excess of the amount necessary to efficiently and properly carry out the purposes of this article. In no event may the Correctional Industries Account be maintained in excess of \$2 million. Any moneys in the account exceeding \$2 million shall be transferred at the end of each fiscal year into the Division of Corrections Additional Operations Account established pursuant to subsection (d) of this section.

(d) There is hereby created in the State Treasury a special revenue account known as the Additional Operations Account. The commissioner is authorized to use funds from the account to offset operational costs, for building and maintenance, purchases, equipment repair or replacement for the Division of Corrections and to defray necessary expenses incident to those activities.

§25-7-12. Sale of inmate-made goods on open market prohibited; penalty; exceptions.

(a) Subject to the provisions of subsections (e) and (f) of this section and section five of this article, it is unlawful to sell or offer for sale on the open market any articles or products manufactured or produced, wholly or in part, by inmates of this state or any other state. This section does not apply to articles or products manufactured and sold pursuant to sections thirteen, fourteen, fifteen and sixteen of this article; pursuant to the requirements of 18 U.S.C. §1761(c), the Prison Industry Enhancement (PIE) Certification Program; or products made with waste tires. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$200 nor more than \$5,000 or confined not less than three months nor more than one year, or both. Each sale or offer for sale shall constitute a separate offense under this subsection.

(b) Any use of waste tires shall comply with applicable laws and with the rules of the Division of Environmental Protection.

(c) Products made by inmates from waste tires and sold on the open market must be competitively priced with privately produced goods of the same nature and may not be sold at a loss.

(d) Profits earned from the sale of products made by inmates from waste tires shall be deposited in the Correctional Industries Account to reimburse funds expended collecting waste tires and producing waste tire products, and to cover the reasonable cost of periodic replacement of outdated, obsolete or inoperable machinery or equipment used in such collection or production. Any funds remaining shall be divided equally between the Correctional Industries Account and the Crime Victims Compensation Fund created by article two-a, chapter fourteen of this code.

(e) Notwithstanding the provisions of subsection (a) of this section, any article or product manufactured or produced, wholly or in part, by inmates of West Virginia correctional facilities which is designed and intended to be used solely by blind and persons with disabilities, including, but not limited to, braille books and reading materials, may be sold or distributed on the open market by the Division of Corrections or other state department or agency.

(f) Notwithstanding the provisions of subsection (a) of this section, arts and crafts produced by inmates may be sold to the general public by the Division of Corrections or by such other state agencies or departments as the commissioner designates. The arts and crafts may be sold only on consignment, so that the inmates whose arts and crafts products are sold receive payment for the products. Payments shall be deposited in accounts or funds and managed as provided in section three-a, article one of this chapter: Provided, That when the Division of Corrections or other agency or department of state government provides materials used in the production of an arts and crafts product, the fair market value of such materials may be deducted from the account of the individual inmate after the sale of the

product.

(g) For purposes of this section, "arts and crafts" means articles produced individually by artistic or craft skill such as painting, sculpture, pottery, jewelry or similar articles.

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§25-7-13. Establishment of programs authorized by the federal Prison Industry Enhancement (PIE) Certification Program for employment of inmates by private persons; lease of land and improvements.

(a) The Commissioner of the Division of Corrections may establish programs for the employment of inmates by a private person or entity for the manufacture of articles and products as part of a program authorized pursuant to 18 U.S.C. §1761(c), the Prison Industry Enhancement (PIE) Certification Program. In establishing these programs, the commissioner may enter into agreements with private persons or entities to construct or lease facilities at a state adult correctional facility, or at another agreed location, for manufacturing and processing goods or for any other business, commercial or agricultural enterprise.

(b) In connection with an agreement made under subsection (a) of this section, the commissioner may lease land and improvements on the grounds of a state correctional facility for use by the private party to the agreement. Any such lease shall be for a term of not more than twenty years and may contain options for renewal.

§25-7-14. Agreement between commissioner and private person for manufacturing pursuant to Prison Industry Enhancement (PIE) Certification Program; wages; inmate participation on voluntary basis; and workers' compensation.

(a) The Commissioner of the Division of Corrections and a private person or entity may enter into an agreement to establish a program for inmates to manufacture articles and products pursuant to the federal Prison Industry Enhancement (PIE) Certification Program. The agreement shall include the following:

(1) That a participating inmate be paid at a rate not less than that paid for similar work in the same locality's private sector, including applicable wage increases for overtime work;

(2) That an inmate's work or participation in a PIE certification program shall be only on a voluntary basis and only after the inmate has been informed of the conditions of participation;

(3) That, in the discretion of the commissioner or the commissioner's designee, any inmate may be removed from or refused participation in the PIE certification program;

(4) That the agreement will not result in the displacement of civilian workers; and

(5) That the private person or entity shall provide for workers' compensation insurance, or equivalent coverage, to inmates participating in the PIE certification program: Provided, That the commissioner of the division of corrections may provide workers compensation or equivalent insurance coverage for persons participating in the PIE certification program, if reimbursement is made to the division by the private person or entity for all costs of the workers' compensation insurance or equivalent coverage, as a condition of the agreement.

(b) The provisions of this section shall not apply to correctional industry service contracts under section four of this article or to operations authorized in section three of this article that are restricted from sale in the open market.

(c) A commercial or agricultural enterprise established under this chapter is a private enterprise subject to federal and state laws governing the operation of similar enterprises.

(d) The earnings of an inmate participating in a PIE certification program under this article shall be deposited in the Inmate Trust Account with the Division of Corrections. The earnings shall be paid to the inmate after withholding of state, federal and local taxes, and after other deductions provided for in this chapter, including expenses for room and board: Provided, That the commissioner shall adopt policies and procedures for the additional deduction from an inmate's earnings of not less than five percent nor more than twenty percent, to be paid into the Crime Victims Compensation Fund created by article two-a, chapter fourteen of this code. Total deductions shall not exceed eighty percent of the inmate's gross earnings. Earnings deposited by the commissioner, with accrued interest, shall be paid to the inmate no later than at the inmate's discharge or release on parole.

(e) Spousal support or child support shall be deducted from an inmate's earnings as directed by the inmate or by court order. If the inmate's dependents are receiving Temporary Assistance for Needy Families (TANF), the disbursements shall be made to the Bureau for Child Support Enforcement or any other state's public assistance agency.

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§25-7-15. Establishment of programs authorized by the federal Prison Industry Enhancement (PIE) Certification Program for employment of juvenile residents by private persons; lease of land and improvements.

(a) The Director of the Division of Juvenile Services may establish programs for the employment of residents by a private person or entity for the manufacture of articles and products as part of a program authorized pursuant to 18 U.S.C. §1761(c), the Prison Industry Enhancement (PIE) Certification Program. In establishing these programs, the director may enter into agreements with private persons or entities to construct or lease facilities at a state juvenile correctional facility, or at another agreed location, for manufacturing and processing goods or for any other business, commercial or agricultural enterprise.

(b) In connection with any agreement made under subsection (a) of this section, the director may lease land and improvements on the grounds of a juvenile correctional facility for use by the private party to the agreement. Any such lease shall be for a term of not more than twenty years and may contain options for renewal.

§25-7-16. Agreement between director and private person for manufacturing pursuant to Prison Industry Enhancement (PIE) Certification Program; wages; resident participation on voluntary basis; workers' compensation and unemployment compensation.

(a) The Director of the Division of Juvenile Services and a private person or entity may enter into an agreement to establish a program for residents to manufacture articles and products pursuant to the federal Prison Industry Enhancement (PIE) Certification Program. The agreement shall include the following:

(1) That a participating resident be paid at a rate not less than that paid for similar work in the same locality's private sector, including applicable wage increases for overtime work;

(2) That a resident's work or participation in a PIE certification program shall be only on a voluntary basis and only after the resident has been informed of the conditions of participation;

(3) That, in the discretion of the director or the director's designee, any resident may be removed from or refused participation in the PIE certification program;

(4) That the agreement will not result in the displacement of civilian workers; and

(5) That the private person or entity shall provide for workers' compensation insurance, or equivalent coverage, to residents participating in the PIE certification program: Provided, That, the director of the division of juvenile services may provide workers compensation or equivalent insurance coverage for persons participating in the PIE certification program, if reimbursement is made to the division by the private person or entity for all costs of the workers' compensation insurance or equivalent coverage, as a condition of the agreement.

(b) The provisions of this section shall not apply to correctional industry service contracts provided for in section four of this article or to operations authorized by section three of this article that are restricted from sale in the open market. (c) A commercial or agricultural enterprise established under this chapter is a private enterprise subject to federal and state laws governing the operation of similar enterprises.

(d) The earnings of a resident participating in a PIE certification program under this article shall be deposited in the Resident Trust Account with the Division of Juvenile Services. The earnings shall be paid to the resident after withholding of state, federal and local taxes, and after other deductions provided for in this chapter. The expenses of room and board, as fixed by the director and the budget agency for facilities operated by the director or, if the resident is housed in a facility not operated by the director, the amount paid by the Division of Juvenile Services to the operator of the facility or other appropriate authority for room and board, and other incidentals as established by agreement between the Division of Juvenile Services and the appropriate authority, shall be deducted: Provided, That the director shall adopt policies and procedures for the additional deduction from a resident's

earnings of not less than five percent nor more than twenty percent, to be paid into the Crime Victims Compensation Fund created by article two-a, chapter fourteen of this code. Total deductions shall not exceed eighty percent of the resident's gross earnings. Earnings deposited by the director, with accrued interest, shall be paid to the resident no later than at the resident's discharge or release on parole.

When special circumstances warrant, or for just cause, the director may waive room and board charges by a facility operated by the Division of Juvenile Services or, if the resident is housed in a facility not operated by the Division of Juvenile Services, authorize payment of room and board charges from other available funds.

(e) Spousal support or child support shall be deducted from a resident's earnings as directed by the resident or by court order. If the resident's dependents are receiving Temporary Assistance for Needy Families (TANF), the disbursements shall be made to the Bureau for Child Support Enforcement or any other state's public assistance agency.