WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1939

ENROLLED

HOUSE BILL No. 322

(By Mr. Speaker, Mr. Thomas)

PASSED March 9, 1939

In Effect ninety days from Passage
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[Passed March 9, 1939; in effect ninety days from passage.]

AN ACT to amend chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, by adding thereto a new article designated article five-a, providing for the further utilization and employment of convict labor, by authorizing the manufacture or production of articles or products needed for the construction, operation, maintenance or use of any office, department, institution or agency supported in whole or in part by the state of West Virginia and of the political subdivisions thereof; providing for the control and supervision of such manufacture or production, sale or disposal of such articles or products and the financial and fiscal management relating thereto by the West Virginia board of control; appropriating and providing funds and means to accomplish the aforesaid purposes; providing for the regulation of the
sale of prison-made goods; and providing penalties for violations respecting the aforesaid.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, be amended, by adding thereto a new article designated as article five-a, to read as follows:

Section 1. Whereas, the means now provided for the employment of convict labor are inadequate to furnish a sufficient number of convicts with employment, it is hereby declared to be the intent of this act:

(a) To further provide more adequate, regular and suitable employment for the convicts of this state, consistent with proper penal purposes;

(b) To further utilize the labor of convicts for self-maintenance and for reimbursing this state for expenses incurred by reason of their crimes and imprisonment;

(c) To effect the requisitioning and disbursement of prison products directly through established state authorities with no possibility of private profits therefrom.

Sec. 2. This act may be cited as the "Prison-Made Goods Act of 1939".
Sec. 3. The West Virginia board of control is hereby au-

1. thorized to purchase in the manner provided by law, equip-
2 ment, raw materials and supplies and to engage the super-
3 visory personnel necessary to establish and maintain for this
4 state at the penitentiary or any penal farm or institution
5 now or hereafter under control of this board, industries for
6 the utilization of services of convicts in the manufacture or
7 production of such articles or products as may be needed
8 for the construction, operation, maintenance or use of any
9 office, department, institution or agency supported in whole
10 or in part by this state; and the political subdivisions thereof.

Sec. 4. On and after the effective date of this act all offices,

1. departments, institutions and agencies of this state which are
2 supported in whole or in part by this state shall purchase and
3 all political subdivisions of this state, may purchase from the
4 West Virginia board of control all articles or products re-
5 quired by such offices, departments, institutions, agencies or
6 political subdivisions of this state, produced or manufactured
7 by the West Virginia board of control, by convict labor, as
8 provided for by this act, and no such article or product shall
9 be purchased by any such office, department, institution,
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11 or agency, from any other source, unless excepted from the
12 provisions of this section, as hereinafter provided.
13 All purchases shall be made through the department of
14 purchases, upon requisition by the proper authority of the
15 office, department, institution, agency or political subdivision
16 of this state requiring such articles or products.

Sec. 5. Exceptions from the operation of the mandatory
2 provisions of section four hereof may be made in any case
3 where, in the opinion of the president of the West Virginia
4 board of control, the state director of purchases, and the
5 director of the budget, or a majority of them, who are hereby
6 constituted a board for such purposes, the article or articles
7 or product or products so produced or manufactured does or
8 do not meet the reasonable requirements of or for such offices,
9 departments, institutions, agencies or, in any case, where
10 the requisition made cannot be reasonably complied with on
11 account of an insufficient supply of the articles or products
12 required, or otherwise. No such office, department, institu-
13 tion or agency, shall be allowed to evade the intent and
14 meaning of this section by slight variations from standards
15 adopted by the West Virginia board of control, when the ar-
articles or products produced or manufactured by it, in accordance with its standards, are reasonably adapted to the actual needs of such office, department, institution, or agency.

Sec. 6. No voucher, certificate, or warrant issued on the state auditor by any such office, department, institution, or agency shall be questioned by him or by the state treasurer on the grounds that this act has not been complied with by such office, department, institution, or agency, but if intentional violation of this act by any such office, department, institution, or agency continues, after notice from the Governor to desist, such shall constitute a malfeasance in office and shall subject the person or persons responsible for this violation to suspension or removal from office.

Sec. 7. The West Virginia board of control shall cause to be prepared, annually, at such times as it may determine, catalogues containing the description of all articles and products manufactured or produced by it pursuant to the provisions of this act; copies of which catalogue shall be sent by it to all offices, departments, institutions and agencies of this state and made accessible to all political subdivisions of this state referred to in the preceding sections. At least
9. thirty days before the commencement of each fiscal year, the
10. proper official of each such office, department, institution, or
11. agency, when required by the West Virginia board of con-
12. trol, shall report to the West Virginia board of control esti-
13. mates for such fiscal year of the kind and amount of articles
14. and products reasonably required for such ensuing year, re-
15. ferring in such estimates to the catalogue issued by the West
16. Virginia board of control insofar as articles and products
17. indicated are included in this catalogue.

Sec. 8. The articles or products manufactured or produced
2. by convict labor in accordance with the provisions of this
3. act shall be devoted, first, to fulfilling the requirements of the
4. offices, departments, institutions and agencies of this state
5. which are supported in whole or in part by this state, and,
6. secondly, to supply the political subdivisions of this state
7. with such articles and products.

Sec. 9. The West Virginia board of control shall fix and
2. determine the prices at which all articles or products manu-
3. factured or produced shall be furnished, which prices shall
4. be uniform and nondiscriminating to all, and shall be as near
5. the usual market price for such as may be practicable.
Sec. 10. The warden of the penitentiary and the manager or authorities by whatever name known having charge of the penal institutions of this state shall, annually, make a full detailed statement of all materials, machinery, or other property procured, and the cost thereof, and of the expenditures made during the last preceding year for manufacturing purposes, together with a statement of all materials then on hand to be manufactured, or in process of manufacture, or manufactured, and all machinery, fixtures or other appurtenances for the purpose of carrying on the labor of the convicts and the earnings realized during the last preceding year as the proceeds of the labor of the convicts at the penitentiary or such penal institutions of this state, which statement shall be verified by the oath of the warden or such manager or authorities having charge of such penal institutions to be just and true, and shall be by him or them forwarded to the West Virginia board of control within thirty days after the end of such last preceding year.

Sec. 11. Such warden, or manager or authorities having charge of a penal institution of this state, shall quarterly, make an estimate and detailed statement of all materials,
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machinery, fixtures, tools or other appurtenances or accommodations, and the cost thereof, which will in his or their judgment be necessary for carrying on the activities authorized by this act at such penal institution for the next ensuing quarter, or which in his or their judgment should be contracted for during such ensuing quarter, which estimate shall be forwarded to the West Virginia board of control for its consideration and proper action relative thereto, at least ten days before the beginning of such ensuing quarter.

Sec. 12. The West Virginia board of control shall have power and authority to prepare and promulgate rules and regulations which are necessary to give effect to the provisions of this act with respect to matters of administration and procedure respecting the same.

Sec. 13. In order to carry out the provisions of this act there is hereby appropriated out of the moneys in the state fund general revenue, not otherwise appropriated, the sum of fifty thousand dollars, and the West Virginia board of control is authorized to expend such moneys from such appropriation as may be necessary to erect buildings, to purchase equipment, to procure tools, supplies and materials, to
purchase, install or replace equipment, to employ personnel, and otherwise to defray the necessary expenses incident to the employment of convicts as herein provided, and further to aid in the above purposes the West Virginia board of control is empowered to enter into contracts and agreements with any person or persons upon a self-liquidating basis respecting the acquisition and purchase of any such equipment, tools, supplies and materials, to the end that the same may be paid for over a period of not exceeding three years, and the aggregate amount of such purchases or acquisitions not to exceed two hundred thousand dollars, such amounts to be payable solely out of the revenues derived from the activities authorized by this act. Nothing in this section shall be so construed or interpreted as to authorize or permit the incurring of a state debt of any kind or nature as contemplated by the constitution of this state in relation to such debt.

Sec. 14. All moneys collected by the West Virginia board of control from the sale or disposition of articles and products manufactured or produced by convict labor in accordance with the provisions of this act, shall be forthwith deposited with the state treasurer to be there kept and maintained as a special
revolving account designated "Prison Industries Account",
and such moneys so collected and deposited shall be used
solely for the purchase of manufacturing supplies, equip-
ment, machinery and materials used to carry out the purposes
of this act, as well as for the payment of the necessary per-
sonnel in charge thereof and to otherwise defray the neces-
sary expenses incident thereto, all of which shall be under
the direction and subject to the approval of the West Vir-
ginia board of control: Provided, however, That such "Prison
Industries Account" shall never be maintained in excess of
the amount necessary to efficiently and properly carry out
the intentions of this act, and in no event shall the "Prison
Industries Account" be maintained in excess of the sum of
two hundred thousand dollars. When, in the opinion of the
Governor, the "Prison Industries Account" has reached a
sum in excess of the requirements of this act, such excess
shall be transferred by the West Virginia board of control
to the state fund, general revenue, and if the Governor does
not make such determination, any excess above two hundred
thousand dollars shall be transferred to the state fund,
general revenue, by the West Virginia board of control at
the end of each fiscal year.

Sec. 15. On and after the effective date of this act, it shall
be unlawful to sell or offer for sale on the open market of
this state any articles or products manufactured or produced,
wholly or in part, in this or any other state by convicts or
prisoners of this state, or any other state, except convicts
or prisoners on parole or probation. Any person violating the
provisions of this section shall be guilty of a misdemeanor
and, upon conviction, be punished by a fine of not less than
two hundred dollars, nor more than five thousand dollars,
or by imprisonment in jail not less than three months, nor
more than one year, or by both such fine and imprisonment,
in the discretion of the court. Each such sale or offer for sale
shall constitute a separate offense under this section.

Sec. 16. Any person who wilfully violates any of the pro-
visions of this act, other than section fifteen hereof, shall be
guilty of a misdemeanor and, upon conviction, shall be con-
fined in jail not less than ten days, nor more than one year,
or fined not less than ten dollars nor more than five hundred
dollars, or both, in the discretion of the court.
Sec. 17. If any section, subsection, provision or sentence of this act or the application thereof to any person, or any circumstance, be held invalid, the remainder of the act and the application of any such section, subsection, provision or sentence to other persons or circumstances shall not be affected thereby.

Sec. 18. All acts and parts of acts inconsistent herewith are hereby repealed; however, this act is to be considered as supplementary, or additional, to other provisions of law now existing relative to the employment of convicts.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within this the day of March 1939.

Governor.

Filed in the office of the Secretary of State of West Virginia.

Wm. S. O'Brien,
Secretary of State