

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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(BY MR. SPEAKER, MR. THOMAS)

[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 authorized to purchase in the manner provided by law, equipment, raw materials and supplies and to engage the supervisory personnel necessary to establish and maintain for this state at the penitentiary or any penal farm or institution now or hereafter under control of this board, industries for the utilization of services of convicts in the manufacture or production of such articles or products as may be needed for the construction, operation, maintenance or use of any office, department, institution or agency supported in whole or in part by this state and the political subdivisions thereof.

Sec. 4. On and after the effective date of this act all offices, departments, institutions and agencies of this state which are supported in whole or in part by this state shall purchase and all political subdivisions of this state may purchase from the West Virginia board of control all articles or products required by such offices, departments, institutions, agencies or political subdivisions of this state, produced or manufactured by the West Virginia board of control, by convict labor, as provided for by this act, and no such article or product shall be purchased by any such office, department, institution,

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-

16 ticles or products produced or manufactured by it, in ac-
17 cordance with its standards, are reasonably adapted to the
18 actual needs of such office, department, institution, or agency.

Sec. 6. No voucher, certificate, or warrant issued on the
2 state auditor by any such office, department, institution, or
3 agency shall be questioned by him or by the state treasurer
4 on the grounds that this act has not been complied with by
5 such office, department, institution, or agency, but if inten-
6 tional violation of this act by any such office, department,
7 institution, or agency continues, after notice from the Gov-
8 ernor to desist, such shall constitute a malfeasance in office
9 and shall subject the person or persons responsible for this
10 violation to suspension or removal from office.

Sec. 7. The West Virginia board of control shall cause
2 to be prepared, annually, at such times as it may determine,
3 catalogues containing the description of all articles and
4 products manufactured or produced by it pursuant to the
5 provisions of this act; copies of which catalogue shall be sent
6 by it to all offices, departments, institutions and agencies of
7 this state and made accessible to all political subdivisions
8 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
2 or authorities by whatever name known having charge of
3 the penal institutions of this state shall, annually, make a
4 full detailed statement of all materials, machinery, or other
5 property procured, and the cost thereof, and of the expendi-
6 tures made during the last preceding year for manufacturing
7 purposes, together with a statement of all materials then on
8 hand to be manufactured, or in process of manufacture, or
9 manufactured, and all machinery, fixtures or other appur-
10 tenances for the purpose of carrying on the labor of the
11 convicts and the earnings realized during the last preceding
12 year as the proceeds of the labor of the convicts at the peni-
13 tentiary or such penal institutions of this state, which state-
14 ment shall be verified by the oath of the warden or such
15 manager or authorities having charge of such penal institu-
16 tions to be just and true, and shall be by him or them for-
17 warded to the West Virginia board of control within thirty
18 days after the end of such last preceding year.

Sec. 11. Such warden, or manager or authorities having
2 charge of a penal institution of this state, shall quarterly,
3 make an estimate and detailed statement of all materials,

4 machinery, fixtures, tools or other appurtenances or accom-
5 modations, and the cost thereof, which will in his or their
6 judgment be necessary for carrying on the activities authorized
7 by this act at such penal institution for the next ensuing
8 quarter, or which in his or their judgment should be con-
9 tracted for during such ensuing quarter, which estimate shall
10 be forwarded to the West Virginia board of control for its
11 consideration and proper action relative thereto, at least ten
12 days before the beginning of such ensuing quarter.

13 Sec. 12. The West Virginia board of control shall have
14 power and authority to prepare and promulgate rules and
15 regulations which are necessary to give effect to the provisions
16 of this act with respect to matters of administration and pro-
17 cedure respecting the same.

18 Sec. 13. In order to carry out the provisions of this act
19 there is hereby appropriated out of the moneys in the state
20 fund general revenue, not otherwise appropriated, the sum
21 of fifty thousand dollars, and the West Virginia board of
22 control is authorized to expend such moneys from such
23 appropriation as may be necessary to erect buildings, to pur-
24 chase equipment, to procure tools, supplies and materials, to

8 purchase, install or replace equipment, to employ personnel,
9 and otherwise to defray the necessary expenses incident to
10 the employment of convicts as herein provided, and further
11 to aid in the above purposes the West Virginia board of con-
12 trol is empowered to enter into contracts and agreements with
13 any person or persons upon a self-liquidating basis respecting
14 the acquisition and purchase of any such equipment, tools,
15 supplies and materials, to the end that the same may be paid
16 for over a period of not exceeding three years, and the aggre-
17 gate amount of such purchases or acquisitions not to exceed
18 two hundred thousand dollars, such amounts to be payable
19 solely out of the revenues derived from the activities author-
20 ized by this act. Nothing in this section shall be so construed
21 or interpreted as to authorize or permit the incurring of a
22 state debt of any kind or nature as contemplated by the con-
23 stitution of this state in relation to such debt.

Sec. 14. All moneys collected by the West Virginia board of
2 control from the sale or disposition of articles and products
3 manufactured or produced by convict labor in accordance with
4 the provisions of this act, shall be forthwith deposited with the
5 state treasurer to be there kept and maintained as a special

6 revolving account designated "Prison Industries Account",
7 and such moneys so collected and deposited shall be used
8 solely for the purchase of manufacturing supplies, equip-
9 ment, machinery and materials used to carry out the purposes
10 of this act, as well as for the payment of the necessary per-
11 sonnel in charge thereof and to otherwise defray the neces-
12 sary expenses incident thereto, all of which shall be under
13 the direction and subject to the approval of the West Vir-
14 ginia board of control: *Provided, however,* That such "Prison
15 Industries Account" shall never be maintained in excess of
16 the amount necessary to efficiently and properly carry out
17 the intentions of this act, and in no event shall the "Prison
18 Industries Account" be maintained in excess of the sum of
19 two hundred thousand dollars. When, in the opinion of the
20 Governor, the "Prison Industries Account" has reached a
21 sum in excess of the requirements of this act, such excess
22 shall be transferred by the West Virginia board of control
23 to the state fund, general revenue, and if the Governor does
24 not make such determination, any excess above two hundred
25 thousand dollars shall be transferred to the state fund,

26 general revenue, by the West Virginia board of control at
27 the end of each fiscal year.

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

Sec. 16. Any person who wilfully violates any of the pro-
2 visions of this act, other than section fifteen hereof, shall be
3 guilty of a misdemeanor and, upon conviction, shall be con-
4 fined in jail not less than ten days, nor more than one year,
5 or fined not less than ten dollars nor more than five hundred
6 dollars, or both, in the discretion of the court.

Sec. 17. If any section, subsection, provision or sentence
2 of this act or the application thereof to any person, or any
3 circumstance, be held invalid, the remainder of the act and
4 the application of any such section, subsection, provision or
5 sentence to other persons or circumstances shall not be affected
6 thereby.

Sec. 18. All acts and parts of acts inconsistent herewith are
2 hereby repealed; however, this act is to be considered as
3 supplementary, or additional, to other provisions of law now
4 existing relative to the employment of convicts.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

E. O. Wiseman

Chairman Senate Committee

Depe B. Walter

Chairman House Committee

Originated in the

House of Delegates

Takes effect

ninety days from passage.

Chauncey Miller

Clerk of the Senate

Wm. S. Hall

Clerk of the House of Delegates

Wm. M. Hanson

President of the Senate

James Key Thomas

Speaker House of Delegates

The within

approved

this the

16th

day of

March

, 1939.

John A. Holt

Governor.



Filed in the office of the Secretary of State of West Virginia. **MAR 17 1939**

Wm. S. O'BRIEN, Secretary of State