

SB 280

FILED

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WEST VIRGINIA LEGISLATURE

OFFICE OF THE SECRETARY OF STATE

SEVENTY-NINTH LEGISLATURE  
REGULAR SESSION, 2009

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 280**

(SENATORS GREEN, WHITE  
AND CHAFIN, *original sponsors*)

[Passed April 11, 2009; to take effect July 1, 2009.]

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AN ACT to repeal §28-5B-1, §28-5B-2, §28-5B-3, §28-5B-4, §28-5B-5, §28-5B-6, §28-5B-7, §28-5B-8, §28-5B-9, §28-5B-10, §28-5B-11, §28-5B-12, §28-5B-13, §28-5B-14, §28-5B-15, §28-5B-16, §28-5B-17 and §28-5B-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §25-7-1, §25-7-2, §25-7-3, §25-7-4, §25-7-5, §25-7-6, §25-7-7, §25-7-8, §25-7-9, §25-7-10, §25-7-11, §25-7-12, §25-7-13, §25-7-14, §25-7-15, §25-7-16 and §25-7-17, all relating to enacting the Correctional Industries Act of 2009; authorizing the Commissioner of the Division of Corrections to enter into correctional industries contracts, develop a marketing plan, create catalogues and a website and determine prices; purchasing inmate-made articles and products by state agencies mandatory; providing exceptions; creating the Correctional Industries Account; prohibiting sale of inmate-made goods on the open market; providing penalties; authorizing the establishment of prison industry

enhancement certification programs pursuant to Title 18 U. S. C. §1761(c); providing for agreements between private entities and the commissioner or the director of the Division of Juvenile Services to establish the federal programs; providing for the contents of the agreements; and updating certain terms.

*Be it enacted by the Legislature of West Virginia:*

That §28-5B-1, §28-5B-2, §28-5B-3, §28-5B-4, §28-5B-5, §28-5B-6, §28-5B-7, §28-5B-8, §28-5B-9, §28-5B-10, §28-5B-11, §28-5B-12, §28-5B-13, §28-5B-14, §28-5B-15, §28-5B-16, §28-5B-17 and §28-5B-18 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new article, designated §25-7-1, §25-7-2, §25-7-3, §25-7-4, §25-7-5, §25-7-6, §25-7-7, §25-7-8, §25-7-9, §25-7-10, §25-7-11, §25-7-12, §25-7-13, §25-7-14, §25-7-15, §25-7-16 and §25-7-17, all to read as follows:

**ARTICLE 7. CORRECTIONAL INDUSTRIES ACT OF 2009.**

**§25-7-1. Legislative findings.**

1 The Legislature finds that the means now provided for  
2 the use of inmate labor are inadequate to furnish a suffi-  
3 cient number of inmates with employment. It is the intent  
4 of this article:

5 (a) To provide more adequate, regular and suitable  
6 employment for the inmates and confined juvenile or  
7 youthful offenders of this state;

8 (b) To use the labor of inmates and confined juvenile or  
9 youthful offenders for self-maintenance and to reimburse  
10 this state for expenses incurred by reason of their crimes  
11 and confinement;

12 (c) To provide for the requisition and distribution of  
13 correctional industries articles and products directly  
14 through established state authorities, with no possibility

15 of private profit except for those specific articles and  
16 products manufactured and sold pursuant to 18 U. S. C.  
17 §1761(c), the Prison Industry Enhancement (PIE) Certifi-  
18 cation Program, and pursuant to sections thirteen, four-  
19 teen, fifteen and sixteen of this article; and

20 (d) To provide for correctional industries to be profitable  
21 in view of the fact that it is a self-sufficient authority.

**§25-7-2. Citation of article.**

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

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

1 The Commissioner of the Division of Corrections or the  
2 commissioner's designee has exclusive authority to execute  
3 contracts for the sale of products manufactured or ser-  
4 viced at state correctional facilities, as necessary to carry  
5 out the provisions of this article. The commissioner or  
6 designee is authorized to purchase equipment, raw materi-  
7 als and supplies and to employ necessary supervisory  
8 personnel to establish and maintain, at state correctional  
9 facilities and institutions under the commissioner's  
10 control, industries which use the services of inmates to  
11 manufacture and produce articles and products for use by  
12 any office, department, institution or agency supported in  
13 whole or in part by this state or its political subdivisions.

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

1 (a) The commissioner may enter into contracts with  
2 private entities under which inmate or resident labor is  
3 provided through correctional industries for work involv-  
4 ing the delivery of products or for service work. Service  
5 work means work which includes, but is not limited to,  
6 repairs, replacement of original manufactured items,  
7 packaging, sorting, recycling, labeling or similar work that

8 is not original equipment manufacturing. The use of  
9 inmate or resident labor may not result in the displace-  
10 ment of civilian workers employed in the local region  
11 where the work is performed. The division may negotiate  
12 the wage for inmate or resident labor under correctional  
13 industries contracts and, except as provided in sections  
14 thirteen, fourteen, fifteen and sixteen of this article, the  
15 wage may be less than the prevailing wage for work of a  
16 similar nature in the private sector.

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

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

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

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

17 (c) Political subdivisions, not-for-profit corporations and  
18 charitable agencies chartered in West Virginia, units of the  
19 federal government and units of government of other

20 states may purchase articles and products produced by  
21 correctional industries. Entities which contract with the  
22 state, its political subdivisions, its agencies or its public  
23 institutions may purchase from correctional industries  
24 articles and products used in the performance of their  
25 contracts.

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

1 Exceptions from the mandatory purchase provisions of  
2 section five of this article may be granted when a correc-  
3 tional industries article or product does not meet the  
4 reasonable requirements of the requesting state office,  
5 department, institution or agency, or when the requisition  
6 cannot be fulfilled because of insufficient supply or other  
7 reason. No state office, department, institution or agency  
8 may evade the requirements of section five of this article,  
9 or of this section, making insubstantial variations from the  
10 characteristics of correctional industries products or  
11 articles.

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

1 The commissioner shall arrange for the creation and  
2 updating of catalogues and a website containing descrip-  
3 tions of the correctional industries articles and products  
4 manufactured or produced pursuant to the provisions of  
5 this article. The commissioner shall make copies of the  
6 catalogue and the website address available to entities  
7 eligible to acquire correctional industries articles and  
8 products.

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

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

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

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

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

1 To carry out the provisions of this article, the commis-  
2 sioner is authorized to enter into contracts to acquire and  
3 purchase equipment, tools, supplies and materials, with  
4 payment to be made over a period not exceeding five  
5 years.

**§25-7-11. Correctional industries account.**

1 (a) There is hereby created in the State Treasury a  
2 special revenue account designated the Correctional  
3 Industries Account. All funds collected from the sale or  
4 disposition of articles and products manufactured or  
5 produced by correctional industries in accordance with  
6 this article shall be deposited in this account.

7 (b) Except as provided in subsection (c) of this section,  
8 funds collected and deposited may be used only to pur-  
9 chase manufacturing supplies, equipment, machinery and  
10 materials used to carry out the purposes of this article; to  
11 pay necessary personnel; and to defray necessary expenses,  
12 including inmate earnings, all of which are under the  
13 direction of the commissioner and subject to the commis-  
14 sioner's approval.

15 (c) The Correctional Industries Account may not be  
16 maintained in excess of the amount necessary to effi-

17 ciently and properly carry out the purposes of this article.  
18 In no event may the Correctional Industries Account be  
19 maintained in excess of \$1,500,000. Any moneys in the  
20 account exceeding \$1,500,000 shall be transferred to the  
21 State Treasury and credited to the General Revenue Fund  
22 of the state.

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

1 (a) Subject to the provisions of subsections (e) and (f) of  
2 this section and section five of this article, it is unlawful to  
3 sell or offer for sale on the open market any articles or  
4 products manufactured or produced, wholly or in part, by  
5 inmates of this state or any other state. This section does  
6 not apply to articles or products manufactured and sold  
7 pursuant to sections thirteen, fourteen, fifteen and sixteen  
8 of this article; pursuant to the requirements of 18 U. S. C.  
9 §1761(c), the Prison Industry Enhancement (PIE) Certifi-  
10 cation Program; or products made with waste tires. Any  
11 person violating the provisions of this subsection is guilty  
12 of a misdemeanor and, upon conviction thereof, shall be  
13 fined not less than \$200 nor more than \$5,000 or confined  
14 not less than three months nor more than one year, or  
15 both. Each sale or offer for sale shall constitute a separate  
16 offense under this subsection.

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

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

24 (d) Profits earned from the sale of products made by  
25 inmates from waste tires shall be deposited in the Correc-  
26 tional Industries Account to reimburse funds expended

27 collecting waste tires and producing waste tire products,  
28 and to cover the reasonable cost of periodic replacement  
29 of outdated, obsolete or inoperable machinery or equip-  
30 ment used in such collection or production. Any funds  
31 remaining shall be divided equally between the Correc-  
32 tional Industries Account and the Crime Victims Compens-  
33 ation Fund created by article two-a, chapter fourteen of  
34 this code.

35 (e) Notwithstanding the provisions of subsection (a) of  
36 this section, any article or product manufactured or  
37 produced, wholly or in part, by inmates of West Virginia  
38 correctional facilities which is designed and intended to be  
39 used solely by blind and persons with disabilities, includ-  
40 ing, but not limited to, braille books and reading materi-  
41 als, may be sold or distributed on the open market by the  
42 Division of Corrections or other state department or  
43 agency.

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

59 (g) For purposes of this section, "arts and crafts" means  
60 articles produced individually by artistic or craft skill

61 such as painting, sculpture, pottery, jewelry or similar articles.

**§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.**

1 (a) The Commissioner of the Division of Corrections may  
2 establish programs for the employment of inmates by a  
3 private person or entity for the manufacture of articles  
4 and products as part of a program authorized pursuant to  
5 18 U. S. C. §1761(c), the Prison Industry Enhancement  
6 (PIE) Certification Program. In establishing these pro-  
7 grams, the commissioner may enter into agreements with  
8 private persons or entities to construct or lease facilities at  
9 a state adult correctional facility, or at another agreed  
10 location, for manufacturing and processing goods or for  
11 any other business, commercial or agricultural enterprise.

12 (b) In connection with an agreement made under subsec-  
13 tion (a) of this section, the commissioner may lease land  
14 and improvements on the grounds of a state correctional  
15 facility for use by the private party to the agreement. Any  
16 such lease shall be for a term of not more than twenty  
17 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.**

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

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

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

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

19 (4) That the agreement will not result in the displace-  
20 ment of civilian workers; and

21 (5) That the private person or entity shall provide for  
22 workers' compensation insurance, or equivalent coverage,  
23 to inmates participating in the PIE certification program.

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

29 (c) A commercial or agricultural enterprise established  
30 under this chapter is a private enterprise subject to federal  
31 and state laws governing the operation of similar enter-  
32 prises.

33 (d) The earnings of an inmate participating in a PIE  
34 certification program under this article shall be deposited  
35 in the Inmate Trust Account with the Division of Correc-  
36 tions. The earnings shall be paid to the inmate after  
37 withholding of state, federal and local taxes, and after  
38 other deductions provided for in this chapter, including  
39 expenses for room and board: *Provided*, That the commis-

40 sioner shall adopt policies and procedures for the addi-  
41 tional deduction from an inmate's earnings of not less than  
42 five percent nor more than twenty percent, to be paid into  
43 the Crime Victims Compensation Fund created by article  
44 two-a, chapter fourteen of this code. Total deductions  
45 shall not exceed eighty percent of the inmate's gross  
46 earnings. Earnings deposited by the commissioner, with  
47 accrued interest, shall be paid to the inmate no later than  
48 at the inmate's discharge or release on parole.

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

**§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.**

1 (a) The Director of the Division of Juvenile Services may  
2 establish programs for the employment of residents by a  
3 private person or entity for the manufacture of articles  
4 and products as part of a program authorized pursuant to  
5 18 U. S. C. §1761(c), the Prison Industry Enhancement  
6 (PIE) Certification Program. In establishing these pro-  
7 grams, the director may enter into agreements with  
8 private persons or entities to construct or lease facilities at  
9 a state juvenile correctional facility, or at another agreed  
10 location, for manufacturing and processing goods or for  
11 any other business, commercial or agricultural enterprise.

12 (b) In connection with any agreement made under  
13 subsection (a) of this section, the director may lease land  
14 and improvements on the grounds of a juvenile correc-  
15 tional facility for use by the private party to the agree-

16 ment. Any such lease shall be for a term of not more than  
17 twenty years and may contain options for renewal.

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

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

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

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

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

18 (4) That the agreement will not result in the displace-  
19 ment of civilian workers; and

20 (5) That the private person or entity shall provide for  
21 workers' compensation insurance, or equivalent coverage,  
22 to residents participating in the PIE certification program.

23 (b) The provisions of this section shall not apply to  
24 correctional industry service contracts provided for in  
25 section four of this article or to operations authorized by

26 section three of this article that are restricted from sale in  
27 the open market.

28 (c) A commercial or agricultural enterprise established  
29 under this chapter is a private enterprise subject to federal  
30 and state laws governing the operation of similar enter-  
31 prises.

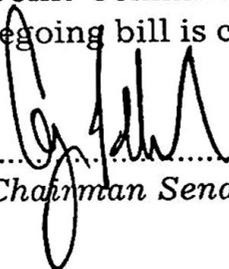
32 (d) The earnings of a resident participating in a PIE  
33 certification program under this article shall be deposited  
34 in the Resident Trust Account with the Division of Juve-  
35 nile Services. The earnings shall be paid to the resident  
36 after withholding of state, federal and local taxes, and  
37 after other deductions provided for in this chapter. The  
38 expenses of room and board, as fixed by the director and  
39 the budget agency for facilities operated by the director or,  
40 if the resident is housed in a facility not operated by the  
41 director, the amount paid by the Division of Juvenile  
42 Services to the operator of the facility or other appropriate  
43 authority for room and board, and other incidentals as  
44 established by agreement between the Division of Juvenile  
45 Services and the appropriate authority, shall be deducted:  
46 *Provided*, That the director shall adopt policies and  
47 procedures for the additional deduction from a resident's  
48 earnings of not less than five percent nor more than  
49 twenty percent, to be paid into the Crime Victims Com-  
50 pensation Fund created by article two-a, chapter fourteen  
51 of this code. Total deductions shall not exceed eighty  
52 percent of the resident's gross earnings. Earnings depos-  
53 ited by the director, with accrued interest, shall be paid to  
54 the resident no later than at the resident's discharge or  
55 release on parole.

56 When special circumstances warrant, or for just cause,  
57 the director may waive room and board charges by a  
58 facility operated by the Division of Juvenile Services or, if  
59 the resident is housed in a facility not operated by the

60 Division of Juvenile Services, authorize payment of room  
61 and board charges from other available funds.

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

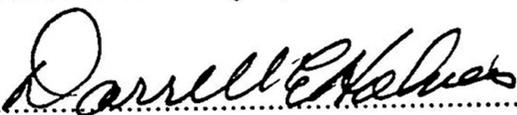
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

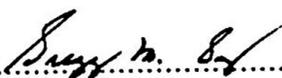
  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

Originated in the Senate.

Takes effect July 1, 2009.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is approved* ..... this the *12<sup>th</sup>* .....  
Day of *May* ....., 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAY - 8 2009

Time 10:35 *hr*