AN ACT

Amending Title 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, establishing the Prison Industry Enhancement Authority; providing for employment of prisoners by private industry and for subcontracts with correctional agencies; establishing guidelines for prisoner compensation; and providing for location of private sector prison industry.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 61 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 19

PRISON INDUSTRY ENHANCEMENT AUTHORITY

Sec.

1901. Scope of chapter.

1902. Intent.

1903. Definitions.


1905. Powers and duties of authority.

1906. Cooperation with private industry.

1907. Minimum requirements of private sector prison industry.
1908. Wages and deductions.
1909. Administrative support.
1910. Immunities not waived.
1911. Civil actions.
1912. Construction of chapter.
1913. Monetary limitations.

§ 1901. Scope of chapter.
This chapter relates to the Prison Industry Enhancement Authority.

§ 1902. Intent.
It is the intent of the General Assembly that joint ventures between correctional facilities and private industry be established so that prisoners incarcerated in correctional facilities be productively engaged. Private industry in this Commonwealth will become more competitive in the marketplace while not displacing job opportunities for civilian labor in the community. Nothing in this chapter shall be construed to authorize the privatization of correctional facilities in this Commonwealth. It is further the intent of the General Assembly to structure the use and availability of prisoner labor and regulate its use to assure that prisoner labor will not be used to replace work opportunities for unemployed or underemployed residents of this Commonwealth. The private sector prison industry will not result in bargaining agreements for civilian laborers. Prisoners who volunteer and are deemed eligible for these jobs will be better able to:

1. Develop positive work habits that will assist them in securing and holding gainful employment in the public and private sectors subsequent to their release from incarceration.
(2) Pay a reasonable portion of the room and board in a correctional facility.

(3) Accept responsibility for the consequences of their actions by compensating victims of crime through deductions from their earnings.

(4) Provide financial assistance to their dependents, thus strengthening and promoting family ties while reducing the likelihood that their families may eventually have to rely upon public assistance.

§ 1903. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Authority." The Prison Industry Enhancement Authority.

"Certification." The process where an applicant demonstrates assurances of authority, compliance with mandatory program criteria and describes key project elements as required by Federal law.

"Correctional facility." Any jail, prison or detention facility operated by the Commonwealth or by a county or jointly by more than one county and used for the detention and confinement of persons convicted and under sentence for violations of the criminal laws of this Commonwealth. For purposes of this chapter, the term shall also include any motivational boot camp as defined in section 3903 (relating to definitions). The term does not include any correctional facility used for the detention and confinement of juvenile offenders.

"Cost accounting center." A specific industry program operated under the private sector prison industry enhancement
"County commissioners." Elected county commissioners or the equivalent governing body of any county, regardless of form of government.

"Customer model." An arrangement under which:

1. the private business, private enterprise or nonprofit entity purchases all or a significant portion of the output of a prison-based business owned and operated by a government entity, political subdivision or an instrumentality thereof; and

2. the private sector partner assumes no major role in the industry operation, does not direct production and exercises no control over prisoner labor.

"Director of correctional industries." An individual who has authority to operate and manage the Prison Industry Enhancement Certification Program under the direct supervision of the Secretary of Corrections and the Prison Industry Enhancement Authority.

"Employer model." An arrangement under which a private business, private enterprise or nonprofit entity owns and operates the cost accounting center with limited State or local government involvement by controlling the hiring, firing, training, supervision and payment of the prisoner work force, and the Department of Corrections assumes no major role in the industry operation, does not direct production and exercises minimum control over prisoner labor performance.


"Municipality." A municipal corporation or quasi-municipal corporation, including counties.
"Office." The Office of Victims' Services within the Department of Corrections.

"Open market." An unrestricted stream of commerce within this Commonwealth and outside the borders of this Commonwealth in interstate commerce.

"Prisoner." An individual who has been convicted of a crime and is serving a sentence in a correctional facility.

"Private business," "private enterprise" or "nonprofit entity." An individual, firm, partnership, corporation or other lawful commercial enterprise or nonprofit organization that, under this chapter, operates a private sector prison industry and employs State or county prisoners.

"Private sector prison industry." A private business, private enterprise or nonprofit entity that produces goods or services employing prisoner labor in or on the property of a State or county correctional facility.

"Program." The Prison Industry Enhancement Certification Program established under Federal law.

"Superintendent." The person in primary charge of the administration and managers of a State correctional facility.

"Warden." The person in primary charge of the administration and management of a county or multicounty correctional facility.

§ 1904. Prison Industry Enhancement Authority.

(a) Establishment.--There is established an authority to be known as the Prison Industry Enhancement Authority.

(b) Composition.--The authority shall consist of the following members:

(1) The secretary or a designee who shall serve as chairman.

(2) The director of correctional industries.
Two representatives from organized labor appointed by the Governor from a list submitted by the Statewide labor organizations in this Commonwealth.

One county commissioner nominated by the County Commissioners Association of Pennsylvania and appointed by the Governor.

One warden appointed by the Governor.

One representative from the business community appointed by the Governor from a list submitted by the business community.

One superintendent appointed by the secretary.

One representative from the Office of Victim Advocate.

Terms.—Terms for members shall be as follows:

(1) Three years for the county commissioner.

(2) Two years for the representative from the business community.

(3) Two years for the warden and the superintendent.

(4) Two years for the representatives from organized labor.

(5) The secretary, the director of correctional industries and the representative from the Office of Victim Advocate shall serve continuously.

Reappointment.—A member of the authority may be eligible for reappointment. A member shall continue to serve after the expiration of the member's term until a successor is appointed.

Vacancies.—A vacancy shall be filled by the original appointing authority for the remainder of the expired term. A vacancy shall be filled within 90 days of the occurrence of the
meetings may or may not be open to the public at the discretion of the secretary or the authority.

(g) Quorum.--For the transaction of general business of the authority, four members shall constitute a quorum. A majority vote of the members present will be necessary for a private sector prison industry application to be approved. Each approval of a private sector prison industry application shall be made by a vote at a duly constituted meeting of the authority.

(h) Compensation.--Notwithstanding any other provision of law, members shall receive no compensation for their services on the authority, but shall be reimbursed by the department from the department's Manufacturing Fund under section 3122 (relating to Manufacturing Fund) for reasonable and necessary expenses.

(i) Administration of authority.--The department shall furnish administrative support to the authority. Legal counsel for the authority shall be furnished by the Office of General Counsel.

§ 1905. Powers and duties of authority.

The authority shall have the powers and duties to:

(1) Authorize the department to apply to the United States Department of Justice, Bureau of Justice Assistance or any successors for certification, as an umbrella authority, to assist other units of government seeking to participate in the program.

(2) Act as an intermediary between the department, and its designees, and the United States Department of Justice, Bureau of Justice Assistance or any successors in complying
with the mandatory criteria and program requirements for
private sector prison industries in this Commonwealth.

(3) Adopt procedures for determining whether a
prospective private sector prison industry proposed by the
department or any county correctional agency complies with
the requirements of the program and other State law not
inconsistent with this chapter.

(4) Approve or disapprove proposals submitted to the
authority from the department, or its designees, for private
sector prison industry for inclusion or continuation in the
program.

(5) Monitor the department and its designees to ensure
continuing compliance with this chapter and Federal law and
provide proper notification of violations and proposed
actions taken to ensure compliance.

(6) Designate which services to be performed or articles
manufactured or assembled by prisoners are conforming to the
program regulations and can be sold on the open market.

§ 1906. Cooperation with private industry.

(a) General rule.—Upon the approval of the authority, the
department or a county correctional facility, with the approval
of its governing board, may enter into contracts with a private
business, private enterprise or nonprofit organization to permit
the employment of prisoners to perform designated work. The
department shall remain responsible for the custody of State
prisoners who are working for a cost accounting center operated
by the department. The county shall remain responsible for the
custody of county prisoners who are working for a cost
accounting center operated by the county. The contractual
arrangement authorized by this chapter shall not create any
third-party rights in any prisoner.

(b) Status of prisoner.--No prisoner compensated for participation in the program shall be considered to be an employee of the Commonwealth or the county nor shall the prisoner be afforded the rights and privileges of Commonwealth or county employees.


(d) Consent to deduction.--A prisoner may participate in the program established under this chapter only on a voluntary basis and must consent, in advance, to the specific deductions from gross wages, as set forth under section 1908 (relating to wages and deductions). A prisoner performing services for a cost accounting center shall indicate, in writing, that he or she:
(1) agrees voluntarily to participate in the cost accounting center activities; and
(2) agrees voluntarily, and in advance, to specific deductions made from gross wages, as well as all other financial arrangements made as to wages earned through participation in the cost accounting center's activities.

§ 1907. Minimum requirements of private sector prison industry.
(a) Requirements enumerated.--A private business, private enterprise or nonprofit organization may not enter into a contract under section 1906 (relating to cooperation with private industry) unless it demonstrates all of the following:

(1) The private business, private enterprise or nonprofit organization, the department or the governing authority of the county correctional system, whichever is applicable, consulted with local union central bodies and with local businesses that may be affected by the private business, private enterprise or nonprofit organization participating in the program.

(2) The private business, private enterprise or nonprofit organization has verified with the Department of Labor and Industry that its participation in the program will not:

(i) demonstrably result in the displacement of employees in the surrounding community;
(ii) be applied in skills, crafts or trades in which there is a surplus of available gainful labor in the locality; or
(iii) impair existing contracts for goods and services. A contract may not be executed by or with a private sector prison industry employer that will permit
the employment of prisoners in the same job classifications or similar work duties or assignments as individuals who are on strike as a result of a labor dispute as defined in the act of June 1, 1937 (P.L.1168, No.294), known as the Pennsylvania Labor Relations Act, or who are otherwise involved in a labor dispute as that term is defined by Federal law, including a lockout.

(b) Priorities.--When reviewing a potential private sector prison industry, the authority shall consider the impact on the employment of persons in the private business sector of this Commonwealth and consider establishing joint ventures that will retain or reclaim jobs in this Commonwealth, support emerging Commonwealth industries or create jobs for a deficient labor market.

§ 1908. Wages and deductions.

(a) Wages.--All prisoners participating in a cost accounting center's activities shall be compensated at a rate that is not less than the wages paid for work of a similar nature in private industry in the locality in which the activity is performed, as determined after consultation with the Department of Labor and Industry. A prisoner may not receive compensation that is less than the minimum wage established by Federal or State law unless the lesser compensation is consistent with Federal and State law. Wages shall be paid no less frequently than biweekly. Any wages remaining after the deductions under subsection (b) shall be maintained by the appropriate correctional authority in a fund in the prisoner's name. The amount remaining shall be returned to the prisoner at the time of release. The correctional authority may permit the prisoner to draw a portion of the money for other purposes deemed to be appropriate by the
correctional authority.

(b) Deductions.--

(1) A prisoner shall have deducted from any compensation received:

(i) Federal, State and local taxes.

(ii) Contributions to the Crime Victim's Compensation Fund or equivalent fund established by law to compensate victims of crime, which contributions shall not be less than 5% nor more than 20% of the prisoner's gross wages.

(iii) A reasonable portion of room and board and administrative costs for the prisoner in a correctional facility as determined by the department or the governing body of the county correctional agency.

(iv) An allocation for support of the prisoner's immediate family under statute or court order or under any other financial obligation acknowledged in writing by the prisoner.

(v) All deductions in their entirety shall not exceed 80% of a prisoner's gross wages. The prisoner employee shall be paid, credited with, or otherwise benefit from, the 20% gross remainder. The benefit may include directing the remaining 20% to workers' expense accounts, or to the settling of the workers' legal obligations, including the payment of fines and restitution.

(2) No other deductions shall be permitted unless otherwise permitted pursuant to Federal or State law. Deductions shall not in the aggregate exceed 80% of gross wages. Each prisoner employed shall receive a written
statement of the description and amount of each deduction.

(c) Workers' compensation.--The provision of benefits and compensation to prisoners for injuries sustained in the course of employment provided for under this chapter shall be subject to any limitations set forth under the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act.

(d) Unemployment insurance.--No prisoner may qualify for unemployment insurance payments.

§ 1909. Administrative support.

The department shall provide the authority with reasonable administrative and clerical support services subject to the availability of funds.

§ 1910. Immunities not waived.

No provision of this chapter shall waive or impair any sovereign, government, qualified or other immunity from or defense against suit available to the Commonwealth and its departments, boards, officers, employees and agents or the political subdivisions of this Commonwealth and their agencies, officers and employees.

§ 1911. Civil actions.

No prisoner may bring a civil action before any court, independent commission or authority of this Commonwealth against the authority, the Commonwealth or its agencies, officers or employees or the political subdivisions of this Commonwealth and their agencies, officers and employees based upon a contractual arrangement authorized under this chapter.

§ 1912. Construction of chapter.

No provision of this chapter may be construed:

(1) To establish a civil cause of action against the authority, the Commonwealth or its agencies, officers or
employees or the political subdivisions of this Commonwealth
and their agencies, officers and employees.

(2) To establish an enforceable right in any person to
obtain or retain employment in the private sector prison
industry.

(3) To require the department or any county to propose
or permit a private sector prison industry within the
correctional facility.

(4) To affect or change the method or manner of prisoner
work assignments within a correctional facility or the
statutory authority to compel the labor on behalf of the
Commonwealth or any political subdivision thereof.

§ 1913. Monetary limitations.
There shall be no monetary limitations on the amount of goods
and services supplied to the open market unless otherwise stated
by the authority.

Section 2. All acts and parts of acts are repealed insofar
as they are inconsistent with the addition of 61 Pa.C.S. Ch. 19.

Section 3. This act shall take effect in 90 days.