

HOUSE BILL NO. 617

INTRODUCED BY GRADY, HOCKETT, BECK, DRISCOLL

IN THE HOUSE

FEBRUARY 13, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
FEBRUARY 17, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1993	PRINTING REPORT.
FEBRUARY 19, 1993	SECOND READING, DO PASS.
FEBRUARY 20, 1993	ENGROSSING REPORT.
FEBRUARY 22, 1993	THIRD READING, PASSED. AYES, 98; NOES, 0.
FEBRUARY 23, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON FINANCE & CLAIMS.
	FIRST READING.
MARCH 4, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 6, 1993	SECOND READING, CONCURRED IN.
	ON MOTION, SEGREGATED FROM COMMITTEE OF THE WHOLE REPORT AND PLACED ON SECOND READING.
MARCH 8, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
MARCH 9, 1993	ON MOTION, CONSIDERATION PASSED UNTIL THE 58TH LEGISLATIVE DAY.
MARCH 15, 1993	ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO THE COMMITTEE ON BUSINESS AND LABOR.

MARCH 19, 1993

COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 20, 1993

SECOND READING, CONCURRED IN.

MARCH 22, 1993

THIRD READING, CONCURRED IN.
AYES, 48; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993

ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

APRIL 2, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 5, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 rehabilitation training or other on-the-job training under a
 2 state or federal vocational training program, whether or not
 3 under an appointment or contract of hire with an employer as
 4 defined in this chapter and whether or not receiving payment
 5 from a third party. However, this subsection does not apply
 6 to students enrolled in vocational training programs as
 7 outlined above while they are on the premises of a public
 8 school or community college.

9 (d) students enrolled and in attendance in programs of
 10 vocational-technical education at designated
 11 vocational-technical centers;

12 (e) an airman or other person employed as a volunteer
 13 under 67-2-105; or

14 (f) a person, other than a juvenile as defined in
 15 subsection (1)(b), performing community service for a
 16 nonprofit organization or association or for a federal,
 17 state, or local government entity under a court order, or an
 18 order from a hearings officer as a result of a probation or
 19 parole violation, whether or not under appointment or
 20 contract of hire with an employer as defined in this chapter
 21 and whether or not receiving payment from a third party. For
 22 a person covered by the definition in this subsection (f):

23 (i) compensation benefits must be limited to medical
 24 expenses pursuant to 39-71-704 and an impairment award
 25 pursuant to 39-71-703 that is based upon the minimum wage

1 established under Title 39, chapter 3, part 4, for a
 2 full-time employee at the time of the injury; and

3 (ii) premiums must be paid by the employer, as defined
 4 in 39-71-117(3), and must be based upon the minimum wage
 5 established under Title 39, chapter 3, part 4, for the
 6 number of hours of community service required under the
 7 order from the court or hearings officer.

8 (g) an inmate working in a federally certified prison
 9 industries program authorized under 53-1-301.

10 (2) The term "volunteer firefighter" means a
 11 firefighter who is an enrolled and active member of a fire
 12 company organized and funded by a county, a rural fire
 13 district, or a fire service area.

14 (3) (a) If the employer is a partnership or sole
 15 proprietorship, such the employer may elect to include as an
 16 employee within the provisions of this chapter any member of
 17 such the partnership or the owner of the sole proprietorship
 18 devoting full time to the partnership or proprietorship
 19 business.

20 (b) In the event of such an election, the employer must
 21 serve upon the employer's insurer written notice naming the
 22 partners or sole proprietor to be covered and stating the
 23 level of compensation coverage desired by electing the
 24 amount of wages to be reported, subject to the limitations
 25 in subsection (3)(d). A partner or sole proprietor is not

1 considered an employee within this chapter until such notice
2 has been given.

3 (c) A change in elected wages must be in writing and is
4 effective at the start of the next quarter following
5 notification.

6 (d) All weekly compensation benefits must be based on
7 the amount of elected wages, subject to the minimum and
8 maximum limitations of this subsection. For premium
9 ratemaking and for the determination of weekly wage for
10 weekly compensation benefits, the electing employer may
11 elect not less than \$900 a month and not more than 1 1/2
12 times the average weekly wage as defined in this chapter.

13 (4) The trustees of a rural fire district, a county
14 governing body providing rural fire protection, or the
15 county commissioners or trustees for a fire service area may
16 elect to include as an employee within the provisions of
17 this chapter any volunteer firefighter. A volunteer
18 firefighter who receives workers' compensation coverage
19 under this section may not receive disability benefits under
20 Title 19, chapter 12.

21 (5) An employee, workman, or worker in this state whose
22 services are furnished by a person, association, contractor,
23 firm, or corporation, other than a temporary service
24 contractor, to an employer as defined in 39-71-117 is
25 presumed to be under the control and employment of the

1 employer. This presumption may be rebutted as provided in
2 39-71-117(3).

3 (6) For purposes of this section, an "employee,
4 workman, or worker in this state" means:

5 (a) a resident of Montana who is employed by an
6 employer and whose employment duties are primarily carried
7 out or controlled within this state; or

8 (b) a nonresident of Montana whose principal employment
9 duties are conducted within this state on a regular basis
10 for an employer."

11 **Section 2.** Section 53-1-301, MCA, is amended to read:

12 "53-1-301. Permitted institutional industries, powers
13 of department, and incentive pay to inmates. (1) Except as
14 provided in subsection (3) (4), the department may:

15 (a) establish industries in institutions which that
16 will result in the production or manufacture of such
17 products and the rendering of such services as may be needed
18 by any department or agency of the state or any political
19 subdivision thereof of the state, by any agency of the
20 federal government, by any other states or their political
21 subdivisions, or by nonprofit organizations and that will
22 assist in the rehabilitation of residents in institutions;

23 (b) obtain federal certification of specific prison
24 industries programs in order to gain access to interstate
25 markets for prison industries products;

1 (c) contract with private industry for the sale of
2 goods or components manufactured or produced in shops under
3 its jurisdiction and for the employment of inmates in
4 federally certified prison industries programs;

5 (d) print catalogs describing goods manufactured or
6 produced by institutions and distribute the catalogs;

7 (e) fix the sale price for goods produced or
8 manufactured at institutions. Prices ~~shall~~ may not exceed
9 prices existing in the open market for goods of comparable
10 quality.

11 (f) require institutions to purchase needed goods
12 from other institutions;

13 (g) provide for the repair and maintenance of
14 property and equipment of institutions by residents of
15 institutions;

16 (h) provide for construction projects, up to the
17 aggregate sum of \$25,000 per project, performed by residents
18 of institutions; ~~---provided;---however;---said, except when the~~
19 construction work is ~~not~~ covered by a collective bargaining
20 agreement;

21 (i) provide for the repair and maintenance at an
22 institution of furniture and equipment of any state agency;

23 (j) provide for the manufacture at an institution of
24 motor vehicle license plates and other related articles;

25 (k) ~~with---the---approval---of---the---department;~~ sell

1 manufactured or agricultural products and livestock on the
2 open market;

3 (l) provide for the manufacture at an institution of
4 highway, road, and street marking signs for the use of the
5 state or any of its political subdivisions, except when the
6 manufacture of the signs is in violation of a collective
7 bargaining contract;

8 (m) pay an inmate or resident of an institution from
9 receipts from the sale of products produced or manufactured
10 or services rendered in a program in which he the inmate or
11 resident is working;

12 (n) collect 15% of the net wages paid to an inmate
13 employed in a federally certified prison industries program
14 for deposit in the Montana crime victims compensation and
15 assistance account established under 53-9-109; and

16 (o) collect from an inmate employed in a federally
17 certified prison industries program charges for room and
18 board consistent with charges established by the director
19 for inmates assigned to prerelease centers.

20 (2) (a) Payment Except as provided for in subsection
21 (2)(b), payment for the performance of work may be based on
22 the following criteria:

- 23 (i) knowledge and skill;
24 (ii) attitude toward authority;
25 (iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) The maximum rate of pay ~~shall~~ must be determined by the appropriation established for each program, except that inmates employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(3) Reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department by the private company contracting with the federally certified prison industries program for services and products.

(4) Except as provided in subsection ~~(4)~~ (5), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

~~(4)~~ (5) Any state institution, facility, or program operated by the department may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4."

Section 3. Section 53-30-131, MCA, is amended to read:

"53-30-131. Prison industries training program --

purpose and scope. (1) In addition to any institutional industry operated at the Montana state prison under Title 53, chapter 1, part 3, the department of corrections and human services shall conduct a prison industries training program.

(2) The purpose of the prison industries training program is to:

(a) provide innovative and progressive inmate reformation and rehabilitation possibilities by exposing inmates to worthwhile training;

(b) prepare inmates for release by providing industries at the prison that utilize their skills, thus providing experience beyond mere training, inculcating inmates with good production and work habits, and providing them with a means to earn money that will be available to them upon release.

(3) The prison industries training program consists of vocational training, on-the-job training, and production experience. The department may contract with public and private vocational education entities to provide this training.

(4) The program may provide training and experience involving cultivation, production, repair, construction, refurbishment, service, and related processes involving personal property, including but not limited to such items

as crops, livestock, furniture, office and electrical equipment, and motor vehicles. Such The products and services, with the exception of livestock and agricultural products produced from the Montana state prison ranch and products or services of a federally certified prison industries program, may be provided only to state agencies, local government units, school districts, authorities, and other governmental entities."

Section 4. Section 53-30-132, MCA, is amended to read:

"53-30-132. Inmate participation and status -- prison industries training program -- wages and benefits. (1) An inmate participating in the prison industries training program may be granted a good time allowance, not to exceed 15 days per month, notwithstanding the limits contained in 53-30-105, for outstanding participation in the program as defined by rules adopted by the department of corrections and human services. Such The good time allowance has the same effect as a good time allowance granted under 53-30-105, and the provisions of subsections (2) and (3) of 53-30-105 apply to such the good time allowance. However, no an inmate may not receive good time for participation in this program under any other section or rule which that would duplicate the good time authorized herein in this section.

(2) While engaged in on-the-job training and

production, inmates not employed in a federally certified prison industries program may be paid a wage commensurate with their production function. Such-wages-shall Wages must be established at a rate that encourages efficient production and effective levels of inmate participation. Inmates employed in a federally certified prison industries program must be paid as provided in 53-1-301(2).

(3) Inmates not working in the a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to such the inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 53-1-301(3).

(4) Able-bodied persons committed to the Montana state prison as adult offenders shall be required to perform work as provided for by the department of corrections and human services."

Section 5. Section 53-30-133, MCA, is amended to read:

"53-30-133. Administration of prison industries training program. (1) (a) The prison industries training program need not be a self-supporting program. The department of corrections and human services may enter into contracts and establish prices for products or services produced by this program. Within budgetary restrictions, the

1 department shall establish prices that tend to maximize the
 2 amount of work available for inmates. All revenue raised
 3 through the program may be used only for the program and
 4 payment of inmate wages.

5 (b) State agencies, local governments, school
 6 districts, authorities, and other local government entities
 7 are encouraged to explore the possibilities of using the
 8 prison industries training program. State agencies shall
 9 cooperate with the department of corrections and human
 10 services in notifying governmental entities within the state
 11 of the program and of the services and products that are
 12 available.

13 (2) (a) The department of corrections and human
 14 services shall adopt rules implementing this program and
 15 shall, as provided in 5-11-210, report to the legislature
 16 its continuing plans and recommendations in implementing
 17 this program. Any price lists established by the department
 18 are exempt from the provisions of Title 2, chapter 4 (the
 19 ~~Montana-Administrative-Procedure-Act~~), but the department
 20 may, if it considers it an effective method of
 21 dissemination, publish such the price lists in the Montana
 22 Administrative Register or the Administrative Rules of
 23 Montana, or both.

24 (b) The department of corrections and human services is
 25 subject to program audits of the prison industries training

1 program by the legislative auditor."

2 NEW SECTION. **Section 6.** Effective date. [This act] is
 3 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

HOUSE BILL NO. 617

INTRODUCED BY GRADY, HOCKETT, BECK, DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES MAY OBTAIN FEDERAL CERTIFICATION FOR SPECIFIC PRISON INDUSTRIES PROGRAMS; PROVIDING THAT THE DEPARTMENT MAY CONTRACT WITH PRIVATE COMPANIES FOR THE EMPLOYMENT OF INMATES IN A FEDERALLY CERTIFIED PRISON INDUSTRIES PROGRAM; ALLOWING THE DEPARTMENT TO COLLECT 15 PERCENT OF AN INMATE'S NET WAGES FOR DEPOSIT IN THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT; ALLOWING THE DEPARTMENT TO CHARGE INMATES WHO ARE PARTICIPATING IN FEDERALLY CERTIFIED PRISON INDUSTRIES PROGRAMS FOR ROOM AND BOARD; PROVIDING THAT INMATES EMPLOYED BY A PRIVATE COMPANY MUST BE PAID THE SAME RATE AS THE RATE PAID FOR SIMILAR WORK AND MUST BE COVERED BY THE STATE COMPENSATION MUTUAL INSURANCE FUND; ALLOWING PRODUCTS OR SERVICES OF A CERTIFIED PRISON INDUSTRIES PROGRAM TO BE PROVIDED TO PUBLIC AND PRIVATE ENTITIES; CLARIFYING THAT REVENUE RAISED FROM A PRISON INDUSTRIES PROGRAM MAY BE USED FOR THE PAYMENT OF INMATE WAGES; AND AMENDING SECTIONS 39-71-118, 53-1-301, 53-30-131, 53-30-132, AND 53-30-133, MCA; ~~AND PROVIDING AN IMMEDIATE REPETITIVE BATH.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. ~~Employee, worker,--workman,~~ and volunteer firefighter defined. (1) The terms "employee"~~,"--workman,"~~ or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational

1 rehabilitation training or other on-the-job training under a
 2 state or federal vocational training program, whether or not
 3 under an appointment or contract of hire with an employer as
 4 defined in this chapter and whether or not receiving payment
 5 from a third party. However, this subsection does not apply
 6 to students enrolled in vocational training programs as
 7 outlined above while they are on the premises of a public
 8 school or community college.

9 (d) students enrolled and in attendance in programs of
 10 vocational-technical education at designated
 11 vocational-technical centers;

12 (e) an airman or other person employed as a volunteer
 13 under 67-2-105; or

14 (f) a person, other than a juvenile as defined in
 15 subsection (1)(b), performing community service for a
 16 nonprofit organization or association or for a federal,
 17 state, or local government entity under a court order, or an
 18 order from a hearings officer as a result of a probation or
 19 parole violation, whether or not under appointment or
 20 contract of hire with an employer as defined in this chapter
 21 and whether or not receiving payment from a third party. For
 22 a person covered by the definition in this subsection (f):

23 (i) compensation benefits must be limited to medical
 24 expenses pursuant to 39-71-704 and an impairment award
 25 pursuant to 39-71-703 that is based upon the minimum wage

1 established under Title 39, chapter 3, part 4, for a
 2 full-time employee at the time of the injury; and

3 (ii) premiums must be paid by the employer, as defined
 4 in 39-71-117(3), and must be based upon the minimum wage
 5 established under Title 39, chapter 3, part 4, for the
 6 number of hours of community service required under the
 7 order from the court or hearings officer.

8 (g) an inmate working in a federally certified prison
 9 industries program authorized under 53-1-301.

10 (2) The term "volunteer firefighter" means a
 11 firefighter who is an enrolled and active member of a fire
 12 company organized and funded by a county, a rural fire
 13 district, or a fire service area.

14 (3) (a) If the employer is a partnership or sole
 15 proprietorship, such the employer may elect to include as an
 16 employee within the provisions of this chapter any member of
 17 such the partnership or the owner of the sole proprietorship
 18 devoting full time to the partnership or proprietorship
 19 business.

20 (b) In the event of such an election, the employer must
 21 serve upon the employer's insurer written notice naming the
 22 partners or sole proprietor to be covered and stating the
 23 level of compensation coverage desired by electing the
 24 amount of wages to be reported, subject to the limitations
 25 in subsection (3)(d). A partner or sole proprietor is not

considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

(4) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 12.

(5) An employee, workman, or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the

employer. This presumption may be rebutted as provided in 39-71-117(3).

(6) For purposes of this section, an "employee, workman, or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state; or

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer."

Section 2. Section 53-1-301, MCA, is amended to read:

"53-1-301. Permitted institutional industries, powers of department, and incentive pay to inmates. (1) Except as provided in subsection ~~†3†~~ (4), the department may:

(a) establish industries in institutions ~~which that~~ will result in the production or manufacture of ~~such~~ products and the rendering of ~~such~~ services as may be needed by any department or agency of the state or any political subdivision ~~thereof of the state~~, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(c)(d) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(d)(e) fix the sale price for goods produced or manufactured at institutions. Prices ~~shall~~ may not exceed prices existing in the open market for goods of comparable quality.

(e)(f) require institutions to purchase needed goods from other institutions;

(f)(g) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(g)(h) provide for construction projects, up to the aggregate sum of \$25,000 per project, performed by residents of institutions; ~~provided; however, said,~~ except when the construction work is not covered by a collective bargaining agreement;

(h)(i) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(i)(j) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(j)(k) ~~with the approval of the department,~~ sell

manufactured or agricultural products and livestock on the open market;

(k)(l) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(l)(m) pay an inmate or resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which he the inmate or resident is working;

(n) collect 15% of the net wages paid to an inmate employed in a federally certified prison industries program for deposit in the Montana crime victims compensation and assistance account established under 53-9-109; and

(o) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) (a) Payment Except as provided for in subsection (2)(b), payment for the performance of work may be based on the following criteria:

- (i) knowledge and skill;
- (ii) attitude toward authority;
- (iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) The maximum rate of pay ~~shall~~ must be determined by the appropriation established for each program, except that inmates employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(3) Reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department by the private company contracting with the federally certified prison industries program for services and products.

(4) Except as provided in subsection ~~(4)~~ (5), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

~~(4)~~(5) Any state institution, facility, or program operated by the department may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4."

Section 3. Section 53-30-131, MCA, is amended to read:

"53-30-131. Prison industries training program --

purpose and scope. (1) In addition to any institutional industry operated at the Montana state prison under Title 53, chapter 1, part 3, the department of corrections and human services shall conduct a prison industries training program.

(2) The purpose of the prison industries training program is to:

(a) provide innovative and progressive inmate reformation and rehabilitation possibilities by exposing inmates to worthwhile training;

(b) prepare inmates for release by providing industries at the prison that utilize their skills, thus providing experience beyond mere training, inculcating inmates with good production and work habits, and providing them with a means to earn money that will be available to them upon release.

(3) The prison industries training program consists of vocational training, on-the-job training, and production experience. The department may contract with public and private vocational education entities to provide this training.

(4) The program may provide training and experience involving cultivation, production, repair, construction, refurbishment, service, and related processes involving personal property, including but not limited to such items

as crops, livestock, furniture, office and electrical equipment, and motor vehicles. ~~Such~~ The products and services, with the exception of livestock and agricultural products produced from the Montana state prison ranch and products or services of a federally certified prison industries program, may be provided only to state agencies, local government units, school districts, authorities, and other governmental entities."

Section 4. Section 53-30-132, MCA, is amended to read:

"53-30-132. Inmate participation and status -- prison industries training program -- wages and benefits. (1) An inmate participating in the prison industries training program may be granted a good time allowance, not to exceed 15 days per month, notwithstanding the limits contained in 53-30-105, for outstanding participation in the program as defined by rules adopted by the department of corrections and human services. ~~Such~~ The good time allowance has the same effect as a good time allowance granted under 53-30-105, and the provisions of subsections (2) and (3) of 53-30-105 apply to ~~such the~~ good time allowance. However, no an inmate may not receive good time for participation in this program under any other section or rule ~~which that~~ would duplicate the good time authorized herein in this section.

(2) While engaged in on-the-job training and

production, inmates not employed in a federally certified prison industries program may be paid a wage commensurate with their production function. ~~Such-wages-shall~~ Wages must be established at a rate that encourages efficient production and effective levels of inmate participation. Inmates employed in a federally certified prison industries program must be paid as provided in 53-1-301(2).

(3) Inmates not working in the a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to ~~such the~~ inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 53-1-301(3).

(4) Able-bodied persons committed to the Montana state prison as adult offenders shall be required to perform work as provided for by the department of corrections and human services."

Section 5. Section 53-30-133, MCA, is amended to read:

"53-30-133. Administration of prison industries training program. (1) (a) The prison industries training program need not be a self-supporting program. The department of corrections and human services may enter into contracts and establish prices for products or services produced by this program. Within budgetary restrictions, the

1 department shall establish prices that tend to maximize the
 2 amount of work available for inmates. All revenue raised
 3 through the program may be used only for the program and
 4 payment of inmate wages.

5 (b) State agencies, local governments, school
 6 districts, authorities, and other local government entities
 7 are encouraged to explore the possibilities of using the
 8 prison industries training program. State agencies shall
 9 cooperate with the department of corrections and human
 10 services in notifying governmental entities within the state
 11 of the program and of the services and products that are
 12 available.

13 (2) (a) The department of corrections and human
 14 services shall adopt rules implementing this program and
 15 shall, as provided in 5-11-210, report to the legislature
 16 its continuing plans and recommendations in implementing
 17 this program. Any price lists established by the department
 18 are exempt from the provisions of Title 2, chapter 4 ~~(the~~
 19 ~~Montana-Administrative-Procedure-Act)~~, but the department
 20 may, if it considers it an effective method of
 21 dissemination, publish such the price lists in the Montana
 22 Administrative Register or the Administrative Rules of
 23 Montana, or both.

24 (b) The department of corrections and human services is
 25 subject to program audits of the prison industries training

1 program by the legislative auditor."

2 ~~NEW-SECTION--Section 6--Effective-date--(This-act)--is--~~
 3 ~~effective-on-passage-and-approval~~

-End-

1 HOUSE BILL NO. 617

2 INTRODUCED BY GRADY, HOCKETT, BECK, DRISCOLL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE
5 DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES MAY OBTAIN
6 FEDERAL CERTIFICATION FOR SPECIFIC PRISON INDUSTRIES
7 PROGRAMS; PROVIDING THAT THE DEPARTMENT MAY CONTRACT WITH
8 PRIVATE COMPANIES FOR THE EMPLOYMENT OF INMATES IN A
9 FEDERALLY CERTIFIED PRISON INDUSTRIES PROGRAM; ALLOWING THE
10 DEPARTMENT TO COLLECT 15 PERCENT OF AN INMATE'S NET WAGES
11 FOR DEPOSIT IN THE CRIME VICTIMS COMPENSATION AND ASSISTANCE
12 ACCOUNT; ALLOWING THE DEPARTMENT TO CHARGE INMATES WHO ARE
13 PARTICIPATING IN FEDERALLY CERTIFIED PRISON INDUSTRIES
14 PROGRAMS FOR ROOM AND BOARD; PROVIDING THAT INMATES EMPLOYED
15 BY A PRIVATE COMPANY MUST BE PAID THE SAME RATE AS THE RATE
16 PAID FOR SIMILAR WORK AND MUST BE COVERED BY THE STATE
17 COMPENSATION MUTUAL INSURANCE FUND; ALLOWING PRODUCTS OR
18 SERVICES OF A CERTIFIED PRISON INDUSTRIES PROGRAM TO BE
19 PROVIDED TO PUBLIC AND PRIVATE ENTITIES; CLARIFYING THAT
20 REVENUE RAISED FROM A PRISON INDUSTRIES PROGRAM MAY BE USED
21 FOR THE PAYMENT OF INMATE WAGES; AND AMENDING SECTIONS
22 39-71-118, 53-1-301, 53-30-131, 53-30-132, AND 53-30-133,
23 MCA, ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 Section 1. Section 39-71-118, MCA, is amended to read:

2 "39-71-118. Employee, worker,--workman, and volunteer
3 firefighter defined. (1) The terms "employee",--"workman", or
4 "worker" mean:

5 (a) each person in this state, including a contractor
6 other than an independent contractor, who is in the service
7 of an employer, as defined by 39-71-117, under any
8 appointment or contract of hire, expressed or implied, oral
9 or written. The terms include aliens and minors, whether
10 lawfully or unlawfully employed, and all of the elected and
11 appointed paid public officers and officers and members of
12 boards of directors of quasi-public or private corporations
13 while rendering actual service for such corporations for
14 pay. Casual employees as defined by 39-71-116 are included
15 as employees if they are not otherwise covered by workers'
16 compensation and if an employer has elected to be bound by
17 the provisions of the compensation law for these casual
18 employments, as provided in 39-71-401(2). Household or

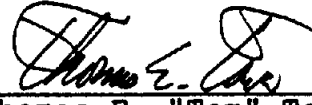
THERE ARE NO CHANGES IN THIS BILL
AND WILL NOT BE REPRINTED. PLEASE
REFER TO YELLOW COPY FOR COMPLETE TEXT.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 18, 1993

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 617 (first reading copy -- blue), respectfully report that House Bill No. 617 be amended as follows and as so amended be concurred in.

Signed: 
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Page 9, line 9.

Following: "(3)"

Strike: "Reimbursement"

Insert: "Premiums for workers' compensation and occupational disease coverage must be paid by the prison industries program or by the department of institutions. If the department pays the premium, reimbursement"

2. Page 12, line 14.

Strike: "53-1-301(3)"

Insert: "39-71-744"

-END-

SENATE

HB 617
611729SC.Sma

14- Amd. Coord.
Sec. of Senate

Beck
Senator Carrying Bill

HOUSE BILL NO. 617

INTRODUCED BY GRADY, HOCKETT, BECK, DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES MAY OBTAIN FEDERAL CERTIFICATION FOR SPECIFIC PRISON INDUSTRIES PROGRAMS; PROVIDING THAT THE DEPARTMENT MAY CONTRACT WITH PRIVATE COMPANIES FOR THE EMPLOYMENT OF INMATES IN A FEDERALLY CERTIFIED PRISON INDUSTRIES PROGRAM; ALLOWING THE DEPARTMENT TO COLLECT 15 PERCENT OF AN INMATE'S NET WAGES FOR DEPOSIT IN THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT; ALLOWING THE DEPARTMENT TO CHARGE INMATES WHO ARE PARTICIPATING IN FEDERALLY CERTIFIED PRISON INDUSTRIES PROGRAMS FOR ROOM AND BOARD; PROVIDING THAT INMATES EMPLOYED BY A PRIVATE COMPANY MUST BE PAID THE SAME RATE AS THE RATE PAID FOR SIMILAR WORK AND MUST BE COVERED BY THE STATE COMPENSATION MUTUAL INSURANCE FUND; ALLOWING PRODUCTS OR SERVICES OF A CERTIFIED PRISON INDUSTRIES PROGRAM TO BE PROVIDED TO PUBLIC AND PRIVATE ENTITIES; CLARIFYING THAT REVENUE RAISED FROM A PRISON INDUSTRIES PROGRAM MAY BE USED FOR THE PAYMENT OF INMATE WAGES; AND AMENDING SECTIONS 39-71-118, 53-1-301, 53-30-131, 53-30-132, AND 53-30-133, MCA;--AND-PROVIDING-AN-IMMEDIATE-EFFECTIVE-DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. **Employee, worker,--workman, and volunteer firefighter defined.** (1) The terms "employee",--"workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational

1 rehabilitation training or other on-the-job training under a
 2 state or federal vocational training program, whether or not
 3 under an appointment or contract of hire with an employer as
 4 defined in this chapter and whether or not receiving payment
 5 from a third party. However, this subsection does not apply
 6 to students enrolled in vocational training programs as
 7 outlined above while they are on the premises of a public
 8 school or community college.

9 (d) students enrolled and in attendance in programs of
 10 vocational-technical education at designated
 11 vocational-technical centers;

12 (e) an airman or other person employed as a volunteer
 13 under 67-2-105; or

14 (f) a person, other than a juvenile as defined in
 15 subsection (1)(b), performing community service for a
 16 nonprofit organization or association or for a federal,
 17 state, or local government entity under a court order, or an
 18 order from a hearings officer as a result of a probation or
 19 parole violation, whether or not under appointment or
 20 contract of hire with an employer as defined in this chapter
 21 and whether or not receiving payment from a third party. For
 22 a person covered by the definition in this subsection (f):

23 (i) compensation benefits must be limited to medical
 24 expenses pursuant to 39-71-704 and an impairment award
 25 pursuant to 39-71-703 that is based upon the minimum wage

1 established under Title 39, chapter 3, part 4, for a
 2 full-time employee at the time of the injury; and

3 (ii) premiums must be paid by the employer, as defined
 4 in 39-71-117(3), and must be based upon the minimum wage
 5 established under Title 39, chapter 3, part 4, for the
 6 number of hours of community service required under the
 7 order from the court or hearings officer.

8 (g) an inmate working in a federally certified prison
 9 industries program authorized under 53-1-301.

10 (2) The term "volunteer firefighter" means a
 11 firefighter who is an enrolled and active member of a fire
 12 company organized and funded by a county, a rural fire
 13 district, or a fire service area.

14 (3) (a) If the employer is a partnership or sole
 15 proprietorship, such the employer may elect to include as an
 16 employee within the provisions of this chapter any member of
 17 such the partnership or the owner of the sole proprietorship
 18 devoting full time to the partnership or proprietorship
 19 business.

20 (b) In the event of such an election, the employer must
 21 serve upon the employer's insurer written notice naming the
 22 partners or sole proprietor to be covered and stating the
 23 level of compensation coverage desired by electing the
 24 amount of wages to be reported, subject to the limitations
 25 in subsection (3)(d). A partner or sole proprietor is not

1 considered an employee within this chapter until such notice
2 has been given.

3 (c) A change in elected wages must be in writing and is
4 effective at the start of the next quarter following
5 notification.

6 (d) All weekly compensation benefits must be based on
7 the amount of elected wages, subject to the minimum and
8 maximum limitations of this subsection. For premium
9 ratemaking and for the determination of weekly wage for
10 weekly compensation benefits, the electing employer may
11 elect not less than \$900 a month and not more than 1 1/2
12 times the average weekly wage as defined in this chapter.

13 (4) The trustees of a rural fire district, a county
14 governing body providing rural fire protection, or the
15 county commissioners or trustees for a fire service area may
16 elect to include as an employee within the provisions of
17 this chapter any volunteer firefighter. A volunteer
18 firefighter who receives workers' compensation coverage
19 under this section may not receive disability benefits under
20 Title 19, chapter 12.

21 (5) An employee, workman, or worker in this state whose
22 services are furnished by a person, association, contractor,
23 firm, or corporation, other than a temporary service
24 contractor, to an employer as defined in 39-71-117 is
25 presumed to be under the control and employment of the

1 employer. This presumption may be rebutted as provided in
2 39-71-117(3).

3 (6) For purposes of this section, an "employee,
4 workman, or worker in this state" means:

5 (a) a resident of Montana who is employed by an
6 employer and whose employment duties are primarily carried
7 out or controlled within this state; or

8 (b) a nonresident of Montana whose principal employment
9 duties are conducted within this state on a regular basis
10 for an employer."

11 **Section 2.** Section 53-1-301, MCA, is amended to read:

12 "53-1-301. Permitted institutional industries, powers
13 of department, and incentive pay to inmates. (1) Except as
14 provided in subsection ~~(3)~~ (4), the department may:

15 (a) establish industries in institutions which that
16 will result in the production or manufacture of such
17 products and the rendering of such services as may be needed
18 by any department or agency of the state or any political
19 subdivision thereof of the state, by any agency of the
20 federal government, by any other states or their political
21 subdivisions, or by nonprofit organizations and that will
22 assist in the rehabilitation of residents in institutions;

23 (b) obtain federal certification of specific prison
24 industries programs in order to gain access to interstate
25 markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured at institutions. Prices ~~shall~~ may not exceed prices existing in the open market for goods of comparable quality.

(f) require institutions to purchase needed goods from other institutions;

(g) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(h) provide for construction projects, up to the aggregate sum of \$25,000 per project, performed by residents of institutions, ~~provided, however, said,~~ except when the construction work is ~~not~~ covered by a collective bargaining agreement;

(i) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(j) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(k) ~~with the approval of the department,~~ sell

manufactured or agricultural products and livestock on the open market;

(l) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(m) pay an inmate or resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which he the inmate or resident is working;

(n) collect 15% of the net wages paid to an inmate employed in a federally certified prison industries program for deposit in the Montana crime victims compensation and assistance account established under 53-9-109; and

(o) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) (a) Payment Except as provided for in subsection (2)(b), payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) The maximum rate of pay ~~shall~~ must be determined by the appropriation established for each program, except that inmates employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(3) Reimbursement PREMIUMS FOR WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE COVERAGE MUST BE PAID BY THE PRISON INDUSTRIES PROGRAM OR BY THE DEPARTMENT OF INSTITUTIONS. IF THE DEPARTMENT PAYS THE PREMIUM, REIMBURSEMENT for premium payments for workers' compensation and occupational disease coverage must be made to the department by the private company contracting with the federally certified prison industries program for services and products.

(4) Except as provided in subsection ~~(4)~~ (5), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

~~(4)~~(5) Any state institution, facility, or program operated by the department may purchase prison-made furniture without complying with the procurement provisions

under Title 18, chapter 4."

Section 3. Section 53-30-131, MCA, is amended to read:

"53-30-131. Prison industries training program -- purpose and scope. (1) In addition to any institutional industry operated at the Montana state prison under Title 53, chapter 1, part 3, the department of corrections and human services shall conduct a prison industries training program.

(2) The purpose of the prison industries training program is to:

(a) provide innovative and progressive inmate reformation and rehabilitation possibilities by exposing inmates to worthwhile training;

(b) prepare inmates for release by providing industries at the prison that utilize their skills, thus providing experience beyond mere training, inculcating inmates with good production and work habits, and providing them with a means to earn money that will be available to them upon release.

(3) The prison industries training program consists of vocational training, on-the-job training, and production experience. The department may contract with public and private vocational education entities to provide this training.

(4) The program may provide training and experience

1 involving cultivation, production, repair, construction,
 2 refurbishment, service, and related processes involving
 3 personal property, including but not limited to such items
 4 as crops, livestock, furniture, office and electrical
 5 equipment, and motor vehicles. ~~Such~~ The products and
 6 services, with the exception of livestock and agricultural
 7 products produced from the Montana state prison ranch and
 8 products or services of a federally certified prison
 9 industries program, may be provided only to state agencies,
 10 local government units, school districts, authorities, and
 11 other governmental entities."

12 **Section 4.** Section 53-30-132, MCA, is amended to read:
 13 "53-30-132. Inmate participation and status -- prison
 14 industries training program -- wages and benefits. (1) An
 15 inmate participating in the prison industries training
 16 program may be granted a good time allowance, not to exceed
 17 15 days per month, notwithstanding the limits contained in
 18 53-30-105, for outstanding participation in the program as
 19 defined by rules adopted by the department of corrections
 20 and human services. ~~Such~~ The good time allowance has the
 21 same effect as a good time allowance granted under
 22 53-30-105, and the provisions of subsections (2) and (3) of
 23 53-30-105 apply to ~~such~~ the good time allowance. However, no
 24 an inmate may not receive good time for participation in
 25 this program under any other section or rule ~~which~~ that

1 would duplicate the good time authorized herein in this
 2 section.

3 (2) While engaged in on-the-job training and
 4 production, inmates not employed in a federally certified
 5 prison industries program may be paid a wage commensurate
 6 with their production function. ~~Such-wages-shall~~ Wages must
 7 be established at a rate that encourages efficient
 8 production and effective levels of inmate participation.
 9 Inmates employed in a federally certified prison industries
 10 program must be paid as provided in 53-1-301(2).

11 (3) Inmates not working in the a federally certified
 12 prison industries training program are not employees, either
 13 public or private, and employment rights accorded other
 14 classes of workers do not apply to ~~such~~ the inmates. Inmates
 15 working in a federally certified prison industry program are
 16 entitled to coverage and benefits as provided in 53-1-301(3),
 17 39-71-744.

18 (4) Able-bodied persons committed to the Montana state
 19 prison as adult offenders shall be required to perform work
 20 as provided for by the department of corrections and human
 21 services."

22 **Section 5.** Section 53-30-133, MCA, is amended to read:
 23 "53-30-133. Administration of prison industries
 24 training program. (1) (a) The prison industries training
 25 program need not be a self-supporting program. The

department of corrections and human services may enter into contracts and establish prices for products or services produced by this program. Within budgetary restrictions, the department shall establish prices that tend to maximize the amount of work available for inmates. All revenue raised through the program may be used only for the program and payment of inmate wages.

(b) State agencies, local governments, school districts, authorities, and other local government entities are encouraged to explore the possibilities of using the prison industries training program. State agencies shall cooperate with the department of corrections and human services in notifying governmental entities within the state of the program and of the services and products that are available.

(2) (a) The department of corrections and human services shall adopt rules implementing this program and shall, as provided in 5-11-210, report to the legislature its continuing plans and recommendations in implementing this program. Any price lists established by the department are exempt from the provisions of Title 2, chapter 4 ~~(the Montana--Administrative--Procedure--Act)~~, but the department may, if it considers it an effective method of dissemination, publish such the price lists in the Montana Administrative Register or the Administrative Rules of

Montana, or both.

(b) The department of corrections and human services is subject to program audits of the prison industries training program by the legislative auditor."

~~NEW-SECTION--~~**Section 6--**~~Effective--date--{this-act}-is--~~
~~effective-on-passage-and-approval--~~

-End-