

STATE OF NEW YORK

3481--B

2021-2022 Regular Sessions

IN ASSEMBLY

January 27, 2021

Introduced by M. of A. EPSTEIN, JACKSON -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Correction in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the correction law, in relation to establishing a New York state prison labor board to create, monitor and enforce an equitable and rehabilitative system of prison labor; abolishing penal servitude by prohibiting the forced labor of incarcerated individuals; providing fair wages and treatment of incarcerated individuals; and prohibiting the use of the labor of incarcerated individuals for earnings which inure to the benefit of the state of New York, the government of the United States, any state of the United States, any public corporation, or any private shareholder or individual

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Incarcerated Individuals Fair Labor Practices and Dignity for All
3 Act."

4 § 2. The correction law is amended by adding a new section 43-a to
5 read as follows:

6 § 43-a. Prison labor board; organization, functions, powers and
7 duties. 1. a. There shall be within the commission a prison labor board
8 which, for the purposes of this section, shall be referred to as the
9 "labor board".

10 b. The labor board shall be comprised of eleven voting and two ex-of-
11 ficio members, all of whom shall serve five-year terms to be appointed
12 as follows:

13 (i) two members to be appointed by the governor;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 (ii) one member to be appointed by the temporary president of the
2 senate;
3 (iii) one member to be appointed by the speaker of the assembly;
4 (iv) the commissioner of the department of corrections and community
5 supervision or his or her designee;
6 (v) the commissioner of the department of education or his or her
7 designee;
8 (vi) the commissioner of the department of labor or his or her desig-
9 nee;
10 (vii) the commissioner of the division of human rights or his or her
11 designee;
12 (viii) the commissioner of the office of general services or his or
13 her designee;
14 (ix) two members who are formerly incarcerated individuals who partic-
15 ipated in prison labor enterprises or programs while incarcerated, one
16 of whom participated in the labor or enterprise while incarcerated at a
17 women's correctional institution and one of whom participated in the
18 labor or enterprise while incarcerated at a men's correctional institu-
19 tion, and one of whom shall be appointed by the senate chair of the
20 committee on crime victims, crime and correction and one of whom shall
21 be appointed by the assembly chair of the committee on correction; and
22 (x) two members who are members of a not-for-profit organization oper-
23 ating in the field of career and workforce development training and
24 community re-entry for incarcerated individuals, one of whom shall be
25 appointed by the senate chair of the committee on crime victims, crime
26 and corrections and one of whom shall be appointed by the assembly chair
27 of the committee on correction, both of whom shall serve as ex-officio
28 members;
29 c. The chairman of the commission of corrections shall serve as the
30 chair of the labor board.
31 2. Every individual appointed to the labor board shall have demon-
32 strated knowledge and experience with Corcraft Industries or other
33 enterprises or programs that relate to employment for incarcerated indi-
34 viduals, and experience with or skills in penology, vocational and occu-
35 pational training, and community reentry programming.
36 3. Any member chosen to fill in a vacancy created other than by expi-
37 ration of term shall be appointed for the unexpired term of the member
38 whom he or she is to succeed. Vacancies caused by the expiration of term
39 or otherwise shall be filled in the same manner as original appoint-
40 ments.
41 4. Appointments to the labor board shall be made within ninety days of
42 the effective date of this section. The labor board may begin its duties
43 when a majority of the total number of positions have been appointed
44 pursuant to subdivision one of this section.
45 5. All nongovernmental labor board members shall be reimbursed for
46 reasonable and necessary expenses related to their official duties.
47 6. The labor board and each member thereof shall have the following
48 functions, powers and duties:
49 a. To develop policies, plans and programs for the operation of an
50 equitable and rehabilitative system of prison labor in all enterprises
51 which employ incarcerated individuals and all labor programs which
52 provide vocational or advanced occupational training, or apprentice-
53 ships, which enterprises and programs may be located either within state
54 correctional facilities or local correctional facilities or elsewhere,
55 including the development and implementation of:

1 (i) uniform rules, regulations, standards, processes and best prac-
2 tices that all prison labor enterprises and programs shall meet;

3 (ii) rules, regulations, standards and processes that govern the
4 responsibilities of the department of corrections in implementing prison
5 labor enterprises and programs;

6 (iii) standards for assessing prison labor enterprises and programs to
7 determine whether they result in career readiness and employability of
8 incarcerated individuals upon their release; and

9 (iv) methods for expanding access to quality prison labor enterprises
10 and programming which shall consider the funding and resources needed to
11 adequately prepare incarcerated individuals for success upon release and
12 the funding and resources needed to provide re-entry services.

13 b. To prohibit the forced labor of incarcerated individuals.

14 c. To ensure that wages paid to incarcerated individuals are not less
15 than the minimum wage established by article nineteen of the labor law.

16 d. To establish and maintain conditions in all prison labor enter-
17 prises and programs that are in compliance with all workplace health and
18 safety protections required by federal and state law.

19 e. To prohibit use of the labor of incarcerated individuals for earn-
20 ings which inure to the benefit of the state of New York, the government
21 of the United States, any state of the United States, or any public
22 corporation, or any private shareholder or individual.

23 f. To investigate, review or take such other action as shall be deemed
24 necessary or proper with respect to any prison labor enterprise or
25 program.

26 g. To have access, at any and all times, to any state correctional
27 facility or local correctional facility or part thereof and to all
28 books, records, and data pertaining to any state correctional facility
29 or local correctional facility which are deemed necessary for carrying
30 out the labor board's functions, powers and duties.

31 h. To obtain from administrators, officers or employees of any state
32 correctional facility or local correctional facility any information
33 deemed necessary for the purpose of carrying out its functions, powers
34 and duties.

35 i. To request and receive temporary office space in any state correc-
36 tional facility or local correctional facility for the purpose of carry-
37 ing out its functions, powers and duties.

38 j. To establish, expand, diminish, or discontinue prison enterprises
39 or programs to provide as much employment for incarcerated individuals
40 as is feasible, for the fair and equitable distribution of enterprise
41 and program assignments, and to provide diversified work activities to
42 minimize the impact on existing private industry in the state.

43 k. To foster and promote research and study in areas of prison labor
44 policy and program development deemed necessary or desirable by the
45 commission.

46 § 3. Subdivision 3 of section 170 of the correction law, as amended by
47 chapter 322 of the laws of 2021, is amended and three new subdivisions
48 4, 5 and 6 are added to read as follows:

49 3. Notwithstanding any other provision of law, an incarcerated indi-
50 vidual may be permitted to leave the institution under guard to volun-
51 tarily perform work for a nonprofit organization. As used in this
52 section, the term "nonprofit organization" means an organization oper-
53 ated exclusively for religious, charitable, or educational purposes, no
54 part of the net earnings of which inures to the benefit of the state of
55 New York, the government of the United States, any state of the United
56 States or political subdivision thereof, any public corporation or

eleemosynary association or corporation funded in whole or in part by any federal, state or local funds or any private shareholder or individual.

4. (a) No incarcerated individual shall be compelled or induced to provide labor against his or her will by means of actual or threatened force, punishment, sexual assault, or by any other means reasonably likely to cause the incarcerated individual to believe that, if they do not provide such labor, that they or another person would suffer physical, emotional, or mental harm or other adverse consequences.

(b) For the purposes of this subdivision, the failure to pay, or underpayment of, all wages due for work performed shall also constitute a violation of this section.

5. Any incarcerated individual alleging a violation of subdivision four of this section against any state or local correctional facility in the state shall have a cause of action in the court of appropriate jurisdiction for damages and injunctive relief and such other remedies as may be appropriate.

6. (a) Any incarcerated individual alleging a violation of subdivision four of this section against any officer or employee of any state or local correctional facility in the state shall within ten years after the acts alleged to have violated this subdivision have a cause of action for damages, including punitive damages, and for injunctive relief and such other remedies as may be appropriate together with all reasonable attorney's fees and costs.

(b) The immunity granted pursuant to subdivision one of section twenty-four of this chapter shall not extend to actions brought pursuant to subdivision four of this section, and any action commenced under subdivision four of this section may be brought in any court of competent jurisdiction, including the supreme court.

(c) A violation of any of the foregoing provisions shall constitute sufficient cause for the removal of such employee by the duly constituted authority having jurisdiction.

§ 4. Subdivision 1 of section 171 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

~~1. [The commissioner and the superintendents and officials of all penitentiaries in the state may cause incarcerated individuals in the state correctional facilities and such penitentiaries who are physically capable thereof to be employed for not to exceed eight hours of each day other than Sundays and public holidays. Notwithstanding any other provision of this section, however, the commissioner and superintendents of state correctional facilities may employ inmates on a volunteer basis on Sundays and public holidays in specialized areas of the facility, including kitchen areas, vehicular garages, rubbish pickup and grounds maintenance, providing, however, that incarcerated individuals so employed shall be allowed an alternative free day within the normal work week.]~~ All persons incarcerated in any state or local correctional facility in the state who request employment shall be afforded an equal opportunity to be employed, and the commissioner, the superintendents and officials of all penitentiaries must make all efforts to ensure that job assignments are distributed equitably such that, to the extent practicable, work is provided to all who request employment.

§ 5. Subdivision 7 of section 177 of the correction law, as renumbered by chapter 256 of the laws of 2010, shall be renumbered subdivision 8 and a new subdivision 7 is added to read as follows:

7. Any incarcerated individual performing labor as described in this section shall be compensated for his or her labor in an amount that is

1 not less than the minimum wage established by article nineteen of the
2 labor law for work performed or work for which a wage is paid. For the
3 purposes of this subdivision, "work for which a wage is paid" includes
4 any task assigned to an incarcerated individual for which a wage would
5 have been due except for his or her status as an incarcerated individ-
6 ual.

7 § 6. Section 178 of the correction law, as amended by chapter 322 of
8 the laws of 2021, is amended to read as follows:

9 § 178. Participation in work release and other community activities.

10 ~~[Nothing contained in this article shall be construed or applied so as~~
11 ~~to prohibit private employment of incarcerated individuals in the commu-~~
12 ~~nity under a work release program, or a residential treatment facility~~
13 ~~program formulated pursuant to any provision of this chapter.]~~

14 Any incarcerated individual who is employed under a work release program or
15 a residential treatment facility program formulated pursuant to any
16 provision of this chapter shall be compensated for his or her labor in
17 an amount that is not less than the minimum wage established by article
18 nineteen of the labor law for work performed or work for which a wage is
19 paid. For the purposes of this section, "work for which a wage is paid"
20 includes any task assigned to an incarcerated individual for which a
21 wage would have been due except for his or her status as an incarcerated
22 individual.

23 § 7. Section 184 of the correction law is amended by adding a new
24 subdivision 3 to read as follows:

25 3. Any incarcerated individual performing work as described in this
26 section shall be compensated for his or her labor in an amount that is
27 not less than the minimum wage established by article nineteen of the
28 labor law for work performed or work for which a wage is paid. For the
29 purposes of this subdivision, "work for which a wage is paid" includes
30 any task assigned to an incarcerated individual for which a wage would
31 have been due except for his or her status as an incarcerated individ-
32 ual.

33 § 8. Section 186 of the correction law is amended by adding a new
34 subdivision 5 to read as follows:

35 5. Any service performed by an incarcerated individual as described in
36 this section shall be compensated in an amount that is not less than the
37 minimum wage established by article nineteen of the labor law for work
38 performed or work for which a wage is paid. For the purposes of this
39 subdivision, "work for which a wage is paid" includes any task assigned
40 to an incarcerated individual for which a wage would have been due
41 except for his or her status as an incarcerated individual.

42 § 9. Section 187 of the correction law is amended by adding a new
43 subdivision 5 to read as follows:

44 5. Notwithstanding any provision of law, rule or regulation to the
45 contrary, no incarcerated individual shall be compensated an amount that
46 is less than the minimum wage established by article nineteen of the
47 labor law for work performed or work for which a wage is paid. For the
48 purposes of this subdivision, "work for which a wage is paid" includes
49 any task assigned to an incarcerated individual for which a wage would
50 have been due except for his or her status as an incarcerated individ-
51 ual.

52 § 10. This act shall take effect one hundred eightieth day after it
53 shall have become a law. Effective immediately the addition, amendment
54 and/or repeal of any rule or regulation necessary for the implementation
55 of this act on its effective date are authorized to be made and
56 completed on or before such date.