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:

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

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

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

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

(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.

LBD02712-05-2

(ii) one member to be appointed by the temporary president of the senate;

(iii) one member to be appointed by the speaker of the assembly;

(iv) the commissioner of the department of corrections and community supervision or his or her designee;

(v) the commissioner of the department of education or his or her designee;

(vi) the commissioner of the department of labor or his or her designee;

(vii) the commissioner of the division of human rights or his or her designee;

(viii) the commissioner of the office of general services or his or her designee;

(ix) two members who are formerly incarcerated individuals who participated in prison labor enterprises or programs while incarcerated, one of whom participated in the labor or enterprise while incarcerated at a women's correctional institution and one of whom participated in the labor or enterprise while incarcerated at a men's correctional institution, and one of whom shall be appointed by the senate chair of the committee on crime victims, crime and correction and one of whom shall be appointed by the assembly chair of the committee on correction; and

(x) two members who are members of a not-for-profit organization operating in the field of career and workforce development training and community re-entry for incarcerated individuals, one of whom shall be appointed by the senate chair of the committee on crime victims, crime and corrections and one of whom shall be appointed by the assembly chair of the committee on correction, both of whom shall serve as ex-officio members;

c. The chairman of the commission of corrections shall serve as the chair of the labor board.

2. Every individual appointed to the labor board shall have demonstrated knowledge and experience with Corcraft Industries or other enterprises or programs that relate to employment for incarcerated individuals, and experience with or skills in penology, vocational and occupational training, and community reentry programming.

3. Any member chosen to fill in a vacancy created other than by expiration of term shall be appointed for the unexpired term of the member whom he or she is to succeed. Vacancies caused by the expiration of term or otherwise shall be filled in the same manner as original appointments.

4. Appointments to the labor board shall be made within ninety days of the effective date of this section. The labor board may begin its duties when a majority of the total number of positions have been appointed pursuant to subdivision one of this section.

5. All nongovernmental labor board members shall be reimbursed for reasonable and necessary expenses related to their official duties.

6. The labor board and each member thereof shall have the following functions, powers and duties:

a. To develop policies, plans and programs for the operation of an equitable and rehabilitative system of prison labor in all enterprises which employ incarcerated individuals and all labor programs which provide vocational or advanced occupational training, or apprenticeships, which enterprises and programs may be located either within state correctional facilities or local correctional facilities or elsewhere, including the development and implementation of:

(i) uniform rules, regulations, standards, processes and best practices that all prison labor enterprises and programs shall meet;

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

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

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

b. To prohibit the forced labor of incarcerated individuals.

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

d. To establish and maintain conditions in all prison labor enterprises and programs that are in compliance with all workplace health and safety protections required by federal and state law.

e. To prohibit 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, or any public corporation, or any private shareholder or individual.

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

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

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

i. To request and receive temporary office space in any state correctional facility or local correctional facility for the purpose of carrying out its functions, powers and duties.

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

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

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

3. Notwithstanding any other provision of law, an incarcerated individual may be permitted to leave the institution under guard to voluntarily perform work for a nonprofit organization. As used in this section, the term "nonprofit organization" means an organization operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of the state of New York, the government of the United States, any state of the United 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

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

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

§ 178. Participation in work release and other community activities. [~~Nothing contained in this article shall be construed or applied so as to prohibit private employment of incarcerated individuals in the community under a work release program, or a residential treatment facility program formulated pursuant to any provision of this chapter.~~] Any incarcerated individual who is employed under a work release program or a residential treatment facility program formulated pursuant to any provision of this chapter shall be compensated for his or her labor in an amount that is not less than the minimum wage established by article nineteen of the labor law for work performed or work for which a wage is paid. For the purposes of this section, "work for which a wage is paid" includes any task assigned to an incarcerated individual for which a wage would have been due except for his or her status as an incarcerated individual.

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

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

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

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

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

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

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