



AN ACT AUTHORIZING THE MONTANA CORRECTIONAL ENTERPRISES PROGRAM; REORGANIZING STATUTES DEALING WITH MONTANA CORRECTIONAL ENTERPRISES; AMENDING SECTIONS 39-71-118, 53-1-202, 53-30-131, 53-30-132, 53-30-133, AND 61-3-478, MCA; REPEALING SECTIONS 53-1-301, 53-1-302, 53-1-303, AND 53-1-304, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY 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, volunteer, and volunteer firefighter defined.** (1) As used in this chapter, the term "employee" or "worker" means:

(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, except those officers identified in 39-71-401(2), while rendering actual service for the 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 employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community

college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

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

(f) an inmate working in a federally certified prison industries program authorized under ~~53-4-304~~ 53-30-132;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1; and

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for

work of a similar nature at the assigned worksite.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner,

sole proprietor, or member is not considered an employee within this chapter until 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 (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until 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 (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.

(7) (a) 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 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope

of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. 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 make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, 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).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee 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;

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

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not

meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

**Section 2.** Section 53-1-202, MCA, is amended to read:

**"53-1-202. Department of corrections.** (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs:

(a) the prisons listed in 53-30-101;

(b) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs; ~~and~~

(c) the boot camp authorized by 53-30-403; and

(d) the Montana correctional enterprises prison industries training program authorized by 53-30-131.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or correctional facility may not be moved, discontinued, or abandoned without the consent of the legislature."

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

**"53-30-131. Prison Montana correctional enterprises prison industries training program -- purpose and scope.** (1) ~~In addition to any correctional facility industry operated at the Montana state prison, the department of corrections 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. There is a Montana correctional enterprises program within the department of corrections to operate a prison industries training program. The Montana correctional enterprises program shall:~~

~~(a) prepare inmates for release by providing vocational education training and work programs at facilities owned, operated, and contracted with by the department; and~~

~~(b) provide inmates the opportunity to earn money to pay restitution, fines, and fees, to pay for hygiene and commissary items, and to save for their eventual release from incarceration.~~

~~\_\_\_\_\_ (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.~~

~~(2) The prison industries training program consists of vocational education, on-the-job training, and production experience. The Montana correctional enterprises program may contract with public and private educational entities to provide this training.~~

~~(4)(3) The Montana correctional enterprises program may:~~

~~(a) provide training and experience involving within the prison system in:~~

~~(i) cultivation, production, processing, manufacture, repair, construction, refurbishment, service, and related processes involving personal property, including but not limited to such items as crops, milk and milk products, wood products, livestock, furniture, and office and electrical equipment, ~~and motor vehicles;~~~~

~~(ii) animal training and boarding;~~

~~(iii) vehicle and equipment maintenance and repair;~~

~~(iv) wildland fire suppression; and~~

~~(v) approved community work programs for governmental entities and not-for-profit organizations; ~~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.~~~~

(b) provide for the repair and maintenance of property and equipment of institutions or facilities by inmates;

(c) provide for construction projects, up to the aggregate sum of \$200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection (3)(c) from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4.

(d) provide for the manufacture by prison industries of highway, road, and general information 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; and

(e) provide for the manufacture of motor vehicle license plates and other related articles.

(4) The Montana correctional enterprises program may provide its products and services to government agencies, school districts, and nonprofit and for-profit organizations through contracts and dealer networks. Furniture, print, and sign shop products may be sold to the general public only through dealer networks.

(5) Except as provided in subsection (6), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4.

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

(5)(7) The department Montana correctional enterprises program may donate surplus food grown or produced at the prison to local food banks, nonprofit organizations, and low-income persons.

(8) The Montana correctional enterprises program is authorized to sell livestock on the open market."

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

**"53-30-132. Inmate participation and status in prison work programs -- Montana correctional enterprises prison industries and vocational training program -- wages and benefits.** (1) ~~The department of corrections may:~~

~~(a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision~~

~~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 inmates in institutions; Able-bodied persons committed to a state prison as adult offenders may be required to perform work as provided for by the department of corrections, including work in the Montana correctional enterprises prison industries training program involving the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work.~~

~~(b)(2)~~ The Montana correctional enterprises prison industries training program may:

~~(a)~~ obtain federal certification, as required by federal law, 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;

~~(d)~~ print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;

~~(c)~~ fix the sale price for goods produced or manufactured by prison industries. Prices may not exceed prices existing in the open market for goods of comparable quality. Prices may be set according to market standards and prices for goods or services of comparable quality. The price of products must include the cost of all raw materials and labor used to manufacture or produce the product.

~~(d)~~ require a correctional facility to purchase needed goods and services from other correctional facilities; the Montana correctional enterprises program.

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

~~(h)~~ provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;

~~(i)~~ provide for construction projects, up to the aggregate sum of \$200,000 for each project, performed by inmates. The department of administration may:

~~(i)~~ exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

~~(ii)~~ exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5).

~~\_\_\_\_\_ (j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency;~~

~~\_\_\_\_\_ (k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;~~

~~\_\_\_\_\_ (l) sell manufactured or agricultural products and livestock on the open market;~~

~~\_\_\_\_\_ (m) provide for the manufacture by prison industries 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;~~

~~(n)(3) The Montana correctional enterprises program may:~~

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

~~(b) collect 15% of the gross wages paid to an inmate employed in a federally certified prison industries program; to be deposited in a department restitution fund and used to satisfy any unpaid court-ordered obligations, including restitution obligation of the inmate or, if the obligation has on previously discharged sentences for which restitution remains owing. If the inmate's court-ordered obligations have been fully paid or no restitution was ordered, the Montana correctional enterprises program shall collect 15% of the gross wages paid to an inmate for transfer quarterly to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund as provided in Title 53, chapter 9, part 1; and~~

~~(c) collect charges for room and board 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. The Montana correctional enterprises program shall deposit inmates' room and board charges into its enterprise fund to help defray the cost of prison industries training programs.~~

~~(2) Except as provided in subsection (3), 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.~~

~~\_\_\_\_\_ (3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.~~

(4) While engaged in on-the-job training and production, inmates not employed in a federally certified

prison industries program may be paid a wage in accordance with subsection (5). Inmates employed in a federally certified prison industries program must be paid as provided in subsection (5)(b).

(5) (a) Except as provided for in subsection (5)(b), the maximum rate of pay must be determined by the appropriation established for the program, and 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 must be determined by the appropriation established for the program, except that an inmate~~ Inmates employed in a federally certified prison industries program must be paid the federal minimum wage or be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work as determined by the federal bureau of justice.

(6) Premiums for workers' compensation and occupational disease coverage for federally certified prison industries programs must be paid by the Montana correctional enterprises prison industries training program or by the department of corrections. If the department of corrections pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.

(7) Inmates not working in 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 the inmates. Inmates working in a federally certified prison ~~industry~~ industries program are entitled to coverage and benefits as provided in 39-71-744.

~~(8) Able-bodied persons committed to a state prison as adult offenders must be required to perform work as provided for by the department of corrections, including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work."~~

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

**"53-30-133. Administration of ~~prison industries training~~ Montana correctional enterprises program.** (1) (a) The ~~prison industries training~~ Montana correctional enterprises program need not be a self-supporting program. ~~The department of corrections 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 including the~~ 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~~ use the ~~prison industries training program~~ Montana correctional enterprises program's products and services. State agencies shall cooperate with the department of corrections 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 shall adopt rules implementing this program.~~ Any price lists established by the department are exempt from the provisions of Title 2, chapter 4, but the department may, if it considers it an effective method of dissemination, publish the price lists ~~in the Montana Administrative Register or the Administrative Rules of Montana, or both.~~

(b) ~~The department of corrections~~ Montana correctional enterprises program is subject to program audits ~~of the prison industries training program~~ by the legislative auditor."

**Section 6.** Section 61-3-478, MCA, is amended to read:

**"61-3-478. Generic specialty license plate sponsor fee -- exception.** (1) Except as provided in subsection (2), upon approval of an organization's application to sponsor a generic specialty license plate and before a sponsor's generic specialty license plates may be manufactured, the department shall assess and the sponsor shall pay a \$4,000 fee to ~~reimburse~~ the department of corrections ~~for the~~ Montana correctional enterprises prison industries training program enterprise fund for the initial costs incurred in producing the generic specialty license plates for the sponsor.

(2) In lieu of the fee required in subsection (1), a minimum of 400 applications for a sponsor's generic specialty license plates must be filed and prepaid with the department before the generic specialty license plates may be manufactured and issued."

**Section 7. Repealer.** Sections 53-1-301, 53-1-302, 53-1-303, and 53-1-304, MCA, are repealed.

**Section 8. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to any money that Montana correctional enterprises collected from inmates for room and board reimbursement before October 1, 2009.

- END -

I hereby certify that the within bill,  
SB 0084, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

SENATE BILL NO. 84  
INTRODUCED BY K. GILLAN  
BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

AN ACT AUTHORIZING THE MONTANA CORRECTIONAL ENTERPRISES PROGRAM; REORGANIZING STATUTES DEALING WITH MONTANA CORRECTIONAL ENTERPRISES; AMENDING SECTIONS 39-71-118, 53-1-202, 53-30-131, 53-30-132, 53-30-133, AND 61-3-478, MCA; REPEALING SECTIONS 53-1-301, 53-1-302, 53-1-303, AND 53-1-304, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.