

BILL ANALYSIS

Senate Research Center

H.B. 2324
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Criminal Justice
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Engrossed

DIGEST

The multiple statutes governing prison industry within the Texas Department of Criminal Justice (TDCJ) have become somewhat confusing and internally contradictory. In addition, despite the long-standing existence of industry programs that do not yield an identifiable "article of product," the law does not clearly allow inmates to engage in such activities. H.B. 2324 rearranges the statutes governing prison industry in a more logical format, with Subchapter A containing the general provisions, and Subchapter B focusing on sales of inmate-made goods. In addition, this bill repeals the TDCJ "direct purchase" statute; defines "articles and products" to include inmate service activities; allows the purchase of real property using the industrial revolving fund; gives the Texas Board of Criminal Justice discretion as to whether to utilize an Industry Advisory Committee; and amends the Penal Code to make it a felony for an inmate to possess personal information gained by working in an industry program.

PURPOSE

As proposed, H.B. 2324 provides for the organization and operation of certain prison industries in the Texas Department of Criminal Justice (TDCJ), the Texas Youth Commission, and certain county correctional facilities; establishes the organization and operation of TDCJ agricultural and work programs; and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Board of Criminal Justice in SECTION 1 (Section 497.003(b), Government Code) and SECTION 4 (Section 497.113(b), Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapters 497A and B, Government Code, as follows:

SUBCHAPTER A. TEXAS CORRECTIONAL INDUSTRIES

Sec. 497.001. New heading: **TEXAS CORRECTIONAL INDUSTRIES; DEFINITIONS.** Provides that Texas Correctional Industries, rather than the prison industries office, is an office in the Texas Department of Criminal Justice (TDCJ). Defines "office" and "articles and products."

Sec. 497.002. **PURPOSE; IMPLEMENTATION.** Provides that the purposes of Texas Correctional Industries (office) are to implement this subchapter and Subchapter B to provide employment for the vocational training and rehabilitation of inmates, consistent with proper correctional purposes; use the labor of inmates for self-maintenance; reimburse the state for expenses; provide for the requisition and disbursement of TDCJ article and products through established state authorities; provide materials, products, or articles for sale to the public, to private enterprises, or to agencies of the state or political subdivisions of the state; and develop and expand public and private prison industry operations. Makes conforming changes.

Sec. 497.003. **ADVISORY COMMITTEE.** Authorizes the Texas Board of Criminal Justice (board) to establish a prison industries advisory committee (committee). Requires the

committee to be composed of nine members appointed by the board if the board establishes a committee. Makes conforming changes.

Sec. 497.004. INMATE LABOR, PAY. Requires TDCJ to use inmate labor in the prison industries, rather than in the prison industries program, to the greatest extent feasible. Authorizes the board, by rule, to develop an incentive pay scale for inmates who participate in prison industries, and authorizes TDCJ to administer the pay scale. Requires TDCJ to apportion pay earned by an inmate in the same manner as is required by Section 497.051. Deletes existing text requiring TDCJ to apportion pay earned by an inmate to certain persons and entities in amounts determined by TDCJ. Makes conforming changes.

Sec. 497.005. INDUSTRIAL REVOLVING ACCOUNT. Authorizes the legislature to appropriate money to an industrial revolving account (account) in the general revenue fund. Requires the office to administer the account, and to use money in the account to purchase real property, erect buildings, improve facilities, buy equipment and tools, install or replace equipment, and buy industrial raw materials and supplies, among other items. Requires the office to remit money received from the sale of articles and products produced to the comptroller to be deposited in the account. Sets forth the terms by which the comptroller is required to transfer an excess amount in the account to the unobligated portion of the general revenue fund. Provides that Section 403.095, Government Code, does not apply to the account. Deletes existing text regarding proceeds from prison industries.

Sec. 497.006. New heading: CONTRACTS WITH PRIVATE BUSINESS. Authorizes the prison industries office to enter into necessary contracts to produce articles and products to be sold on the open market. Deletes existing text authorizing the prison industries office to enter into contracts related to the prison industries program. Requires a contract entered into under this section to comply with the Private Sector/Prison Industry Enhancement Certification Program. Sets forth the method for determining under Section 497.051 the number of inmates employed in conditional work programs.

Sec. 497.007. GRANTS. Makes a conforming change.

Sec. 497.008. LEASE OF LAND. Makes conforming changes.

Sec. 497.009. CERTIFICATION FOR FRANCHISE TAX CREDIT. Makes a conforming change.

Sec. 497.010. OFFENSE: SALE OR OFFER OF SALE OF PRISON-PRODUCED ARTICLES OR PRODUCTS. Provides that a person commits a Class B misdemeanor if the person intentionally sells or offers to sell on the open market an article or product the person knows was manufactured by an inmate of TDCJ or an inmate in any correctional facility or reformatory institution in this state or in any other state, with certain exceptions. Deletes existing text regarding the terms under which the prison industries office is authorized to enter into a contract with certain private businesses.

SUBCHAPTER B. SALES OF PRISON-MADE ARTICLES OR PRODUCTS

Sec. 497.021. New heading: AUTHORITY. Provides that this subchapter governs the sale of prison-made products to governmental agencies. Deletes the provision authorizing this subchapter to be cited as the Prison Made Goods Act of 1963.

Sec. 497.022. CONTRACTS. Authorizes TDCJ to contract with another state, federal government, a foreign government, or an agency of any of those governments to manufacture for or sell to those governments prison-made articles or products; or to contract with a private school or a visually handicapped person in this state to manufacture Braille textbooks or other instructional aids for the education of visually handicapped persons. Deletes existing text regarding the purpose of this subchapter.

Sec. 497.023. PRIORITIES. Deletes existing text, regarding rules authorized to be adopted

by the board. Requires the office to produce products and articles under this subchapter and Subchapter A, first to fulfill the needs of agencies of the state and second to fulfill the needs of political subdivisions or other purchasers. Deletes existing text regarding priorities, and former Section 497.025, regarding purchase of equipment and supplies and employment of personnel.

Sec. 497.024. AGENCIES AND POLITICAL SUBDIVISIONS; DUTIES TO PURCHASE. Makes conforming changes. Redesignated from former Section 497.026.

Sec. 497.025. PURCHASING PROCEDURE. Authorizes the purchase of articles or products not included in an established contract and that do not exceed the dollar limits established under Section 2155.132, rather than Section 3.08(a), Article 601b, V.T.C.S., to be acquired directly from the office under certain circumstances. Authorizes a political subdivision to decline to purchase goods or articles from the office if the political subdivision determines, after giving the office a final opportunity to negotiate the price, that the goods or articles can be purchased elsewhere at a lower price. Deletes existing text providing that nothing herein shall be interpreted to require the same. Makes conforming changes. Redesignated from former Section 497.027.

Sec. 497.026. PRICES. Makes conforming and nonsubstantive changes. Redesignated from former Section 497.028.

Sec. 497.027. SPECIFICATIONS. Makes conforming changes. Redesignated from former Section 497.029.

Sec. 497.028. CATALOGS. Makes conforming changes. Redesignated from former Section 497.030.

Sec. 497.029. NEW ARTICLES AND PRODUCTS. Makes conforming changes. Redesignated from former Section 497.031.

Sec. 497.030. GENERAL SERVICES COMMISSION REPORTS. Deletes Section 497.033, regarding the industrial revolving fund; Section 497.034, regarding surplus property and agricultural products; and Section 497.035, regarding the offense of sale or offer of sale of prison produced articles or products. Makes conforming changes. Redesignated from former Section 497.032.

SECTION 2. Amends Section 497.051, Government Code, as follows:

Sec. 497.051. New heading: OVERSIGHT. Requires the committee to approve, certify, and oversee the operation of private sector prison industries programs in TDCJ, the Texas Youth Commission, and in county correctional facilities in compliance with the prison enhancement certification program. Deletes existing text regarding the administration of a conditional work program.

SECTION 3. Amends Section 497.091, Government Code, by adding Subsection (d), to authorize TDCJ to contract with nonprofit organizations that provide services to the general public and enhance social welfare and the general well-being of the community to provide inmate labor to those organizations.

SECTION 4. Amends Chapter 497F, Government Code, by adding Section 497.113, as follows:

Sec. 497.113. SURPLUS AGRICULTURAL PROPERTY AND PRODUCTS. Authorizes the board to authorize the sale or disposal of surplus agricultural products and personal property owned by TDCJ, other than products or property produced for sale by TDCJ. Requires products and property to be sold under rules adopted by the board and at prices and terms set pursuant to those rules. Authorizes TDCJ to use surplus agricultural capacity to provide agricultural products to a nonprofit organization at no profit to TDCJ.

SECTION 5. Amends Section 38.111(a), Penal Code, to provide that an inmate of the institutional division or a person confined in a state jail felony facility commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, the inmate or person possesses information about another that the inmate or person has access to by means of participation in a work program operated by or for the institutional division or state jail division.

SECTION 6. Repealer: Section 496.051, Government Code (Purchasing Procedures) and Section 1, Article 9007, V.T.C.S. (regarding the sale of merchandise made by convicts or prisoners being prohibited).

SECTION 7. Makes application of this Act prospective regarding Section 497.010, Government Code and Section 38.111, Penal Code.

SECTION 8. Effective date: September 1, 1997.

SECTION 9. Emergency clause.