

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 303*

Short Title: Correction Enterprises.

(Public)

Sponsors: Representatives Warner, McAllister, Mitchell, Nichols, Nye; and Shaw.

Referred to: Business and Labor.

February 23, 1995

A BILL TO BE ENTITLED

AN ACT CONCERNING THE OPERATION OF CORRECTION ENTERPRISES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-58 reads as rewritten:

"§ 66-58. Sale of merchandise by governmental units.

(a) Except as may be provided in this section, it shall be unlawful for any unit, department or agency of the State government, or any division or subdivision of any such unit, department or agency, or any individual employee or employees of any such unit, department or agency in his, or her, or their capacity as employee or employees thereof, to engage directly or indirectly in the sale of goods, wares or merchandise in competition with citizens of the State, or to engage in the operation of restaurants, cafeterias or other eating places in any building owned by or leased in the name of the State, or to maintain service establishments for the rendering of services to the public ordinarily and customarily rendered by private enterprises, or to contract with any person, firm or corporation for the operation or rendering of any such businesses or services on behalf of any such unit, department or agency, or to purchase for or sell to any person, firm or corporation any article of merchandise in competition with private enterprise. The leasing or subleasing of space in any building owned, leased or operated by any unit, department or agency or division or subdivision thereof of the State for the purpose of

1 operating or rendering of any of the businesses or services herein referred to is hereby
2 prohibited.

3 (b) The provisions of subsection (a) of this section shall not apply to:

4 (1) Counties and municipalities.

5 (2) The Department of Human Resources, the Department of Environment,
6 Health, and Natural Resources, or the Department of Agriculture for the
7 sale of serums, vaccines, and other like products.

8 (3) The Department of Administration, except that said agency shall not
9 exceed the authority granted in the act creating the agency.

10 (4) The State hospitals for the insane.

11 (5) The Department of Human Resources.

12 (6) The North Carolina School for the Blind at Raleigh.

13 (7) The North Carolina Schools for the Deaf.

14 (8) The Greater University of North Carolina with regard to its utilities and
15 other services now operated by it nor to the sale of articles produced
16 incident to the operation of instructional departments, articles incident
17 to educational research, articles of merchandise incident to classroom
18 work, meals, books, or to articles of merchandise not exceeding twenty-
19 five cents (25¢) in value when sold to members of the educational staff
20 or staff auxiliary to education or to duly enrolled students or
21 occasionally to immediate members of the families of members of the
22 educational staff or of duly enrolled students nor to the sale of meals or
23 merchandise to persons attending meetings or conventions as invited
24 guests nor to the operation by the University of North Carolina of an inn
25 or hotel and dining and other facilities usually connected with a hotel or
26 inn, nor to the hospital and Medical School of the University of North
27 Carolina, nor to the Coliseum of North Carolina State College, and the
28 other schools and colleges for higher education maintained or supported
29 by the State, nor to the comprehensive student health services or the
30 comprehensive student infirmaries maintained by the constituent
31 institutions of the University of North Carolina.

32 (9) The Department of Environment, Health, and Natural Resources, except
33 that said Department shall not construct, maintain, operate or lease a
34 hotel or tourist inn in any park over which it has jurisdiction. The North
35 Carolina Wildlife Resources Commission may sell wildlife memorabilia
36 as a service to members of the public interested in wildlife conservation.

37 (10) Child-caring institutions or orphanages receiving State aid.

38 (11) Highlands School in Macon County.

39 (12) The North Carolina State Fair.

40 (13) Rural electric memberships corporations.

41 (13a) State Farm Operations Commission.

42 (13b) The Department of Agriculture with regard to its lessees at farmers'
43 markets operated by the Department.

- 1 (13c) The Western North Carolina Agricultural Center.
- 2 (14) Nothing herein contained shall be construed to prohibit the engagement
3 in any of the activities described in subsection (a) hereof by a firm,
4 corporation or person who or which is a lessee of space only of the State
5 of North Carolina or any of its departments or agencies; provided such
6 leases shall be awarded by the Department of Administration to the
7 highest bidder, as provided by law in the case of State contracts and
8 which lease shall be for a term of not less than one year and not more
9 than five years.
- 10 ~~(15) The State Department of Correction is authorized to purchase and install~~
11 ~~automobile license tag plant equipment for the purpose of~~
12 ~~manufacturing license tags for the State and local governments and for~~
13 ~~such other purposes as the Department may direct.~~
14 ~~The Commissioner of Motor Vehicles, or such other authority as may~~
15 ~~exercise the authority to purchase automobile license tags is hereby~~
16 ~~directed to purchase from, and to contract with, the State Department of~~
17 ~~Correction for the State automobile license tag requirements from year~~
18 ~~to year.~~
19 ~~The price to be paid to the State Department of Correction for~~
20 ~~such tags shall be fixed and agreed upon by the Governor, the~~
21 ~~State Department of Correction, and the Motor Vehicle~~
22 ~~Commissioner, or such authority as may be authorized to~~
23 ~~purchase such supplies.~~
- 24 (16) ~~Laundry services performed by the Department of Correction may be~~
25 ~~provided only for agencies and instrumentalities of the State which are~~
26 ~~supported by State funds and for county or municipally controlled and~~
27 ~~supported hospitals presently being served by the Department of~~
28 ~~Correction, or for which services have been contracted or applied for in~~
29 ~~writing, as of May 22, 1973. In addition to the prior sentence, laundry~~
30 ~~services performed by the Department of Correction may be provided~~
31 ~~for the Governor Morehead School and the North Carolina School for~~
32 ~~the Deaf.~~
33 ~~Such services shall be limited to wet washing, drying and ironing of~~
34 ~~flatwear or flat goods such as towels, sheets and bedding, linens and~~
35 ~~those uniforms prescribed for wear by such institutions and further~~
36 ~~limited to only flat goods or apparel owned, distributed or controlled~~
37 ~~entirely by such institutions and shall not include processing by any dry-~~
38 ~~cleaning methods; provided, however, those garments and items~~
39 ~~presently being serviced by wet washing, drying and ironing may in the~~
40 ~~future, at the election of the Department of Correction, be processed by~~
41 ~~a dry-cleaning method.~~
- 42 (17) The North Carolina Air Cargo Airport Authority or a lessee of the
43 Authority.

- 1 ~~(18) The activities and products of private enterprise carried on or~~
2 ~~manufactured within a State prison facility pursuant to G.S. 148-70.~~
- 3 (c) The provisions of subsection (a) shall not prohibit:
- 4 (1) The sale of products of experiment stations or test farms.
- 5 (2) The sale of learned journals, works of art, books or publications of the
6 Department of Cultural Resources or other agencies, or the Supreme
7 Court Reports or Session Laws of the General Assembly.
- 8 (3) The business operation of endowment funds established for the purpose
9 of producing income for educational purposes; for purposes of this
10 section, the phrase "operation of endowment funds" shall include the
11 operation by public postsecondary educational institutions of campus
12 stores, the profits from which are used exclusively for awarding
13 scholarships to defray the expenses of students attending the institution;
14 provided, that the operation of such stores must be approved by the
15 board of trustees of the institution, and the merchandise sold shall be
16 limited to educational materials and supplies, gift items and
17 miscellaneous personal-use articles. Provided further that sales at
18 campus stores are limited to employees of the institution and members
19 of their immediate families, to duly enrolled students and their
20 immediate families, to other campus stores and to other persons who are
21 on campus other than for the purpose of purchasing merchandise from
22 campus stores. It is the intent of this subdivision that campus stores be
23 established and operated for the purpose of assuring the availability of
24 merchandise described in this Article for sale to persons enumerated
25 herein and not for the purpose of competing with stores operated in the
26 communities surrounding the campuses of the University of North
27 Carolina.
- 28 (4) The operation of lunch counters by the Department of Human
29 Resources as blind enterprises of the type operated on January 1, 1951,
30 in State buildings in the City of Raleigh.
- 31 (5) The operation of a snack bar and cafeteria in the State Legislative
32 Building.
- 33 (6) The maintenance by the prison system authorities of eating and sleeping
34 facilities at units of the State prison system for prisoners and for
35 members of the prison staff while on duty, or the maintenance by the
36 highway system authorities of eating and sleeping facilities for working
37 crews on highway construction or maintenance when actually engaged
38 in such work on parts of the highway system.
- 39 (7) The operation by penal, correctional or facilities operated by the
40 Department of Human Resources or by the State Department of
41 Agriculture, of dining rooms for the inmates or clients or members of
42 the staff while on duty and for the accommodation of persons visiting
43 such inmates or clients, and other bona fide visitors.

- 1 (8) The sale by the Department of Agriculture of livestock, poultry and
2 publications in keeping with its present livestock and farm program.
- 3 (9) The operation by the public schools of school cafeterias.
- 4 ~~(10) Sale by any State correctional or other institution of farm, dairy,~~
5 ~~livestock or poultry products raised or produced by it in its normal~~
6 ~~operations as authorized by the act creating it.~~
- 7 ~~(11)~~(10) The sale of textbooks, library books, forms, bulletins, and
8 instructional supplies by the State Board of Education, State
9 Department of Public Instruction, and local school authorities.
- 10 ~~(12)~~(11) The sale of North Carolina flags by or through the auspices of
11 the Department of Administration, to the citizens of North
12 Carolina.
- 13 ~~(13) The operation by the Department of Correction of forestry management~~
14 ~~programs on State-owned lands, including the sale on the open market~~
15 ~~of timber cut as a part of such management program.~~
- 16 ~~(14) The operation by the Department of Correction of facilities to~~
17 ~~manufacture and produce traffic and street name signs for use on the~~
18 ~~public streets and highways of the State.~~
- 19 ~~(15) The operation by the Department of Correction of facilities to~~
20 ~~manufacture and produce paint for use on the public streets and~~
21 ~~highways of the State.~~
- 22 (12) The operation of the Correction Enterprises Program in accordance with
23 the provisions of G.S. 148-70.1 and G.S. 148-70.2.
- 24 (d) A department, agency or educational unit named in subsection (b) shall not
25 perform any of the prohibited acts for or on behalf of any other department, agency or
26 educational unit.
- 27 (e) Any person, whether employee of the State of North Carolina or not, who shall
28 violate, or participate in the violation of this section, shall be guilty of a Class 1
29 misdemeanor.
- 30 ~~(f) Notwithstanding the provisions of G.S. 66-58(a), the operation by the~~
31 ~~Department of Correction of facilities for the manufacture of any product or the~~
32 ~~providing of any service pursuant to G.S. 148-70 not regulated by the provisions of~~
33 ~~subsection (c) hereof, shall be subject to the prior approval of the Governor, with biennial~~
34 ~~review by the General Assembly, at the beginning of each fiscal year commencing after~~
35 ~~October 1, 1975. The Department of Correction shall file with the Director of the Budget~~
36 ~~quarterly reports detailing prison enterprise operations in such a format as shall be~~
37 ~~required by the Director of the Budget.~~
- 38 ~~(g)~~ (f) The North Carolina School of Science and Mathematics may engage in any
39 of the activities permitted by G.S. 66-58(b)(8) and (c)(3)."
- 40 Sec. 2. G.S. 148-70 reads as rewritten:
- 41 **"§ 148-70. Management and care of inmates; ~~prison industries; disposition of~~**
42 **~~products of inmate labor. inmates; private enterprises.~~**

1 (a) The State Department of Correction in all contracts for labor shall provide for
2 feeding and clothing the inmates and shall maintain, control and guard the quarters in
3 which the inmates live during the time of the contracts; and the Department shall provide
4 for the guarding and working of such inmates under its sole supervision and control. The
5 Department may make such contracts for the hire of the inmates confined in the State
6 prison as may in its discretion be proper.

7 ~~In accordance with the provisions of Article 11 of Chapter 66 of the General Statutes,~~
8 ~~the Department may use the labor of inmates confined in the State prison in work on~~
9 ~~farms and manufacturing, either within or without the State prison. The Department may~~
10 ~~dispose of the products of the labor of the inmates, either in farming or in manufacturing~~
11 ~~or in other industry at the State Prison System to any public institution owned, managed,~~
12 ~~or controlled by the State, or to any county, city or town in this State, or to any federal,~~
13 ~~state, or local public institution in any other state of the union. Provided however, no~~
14 ~~manufacturing or other industry shall be established, supervised or controlled by the~~
15 ~~Department unless specifically approved by the Governor pursuant to G.S. 66-58(f).~~

16 ~~All agencies shall give preference to Department of Correction products in purchasing~~
17 ~~articles, products, and commodities which these departments, institutions, and agencies~~
18 ~~require and which are manufactured or produced within the State prison system by and~~
19 ~~offered for sale to them by the Department of Correction, and no article or commodity~~
20 ~~available from the Department of Correction shall be purchased by any such State~~
21 ~~department, institution, or agency from any other source unless the prison product does~~
22 ~~not meet the standard specifications and the reasonable requirements of the department,~~
23 ~~institution, or agency as determined by the Secretary of Administration, or the requisition~~
24 ~~cannot be complied with because of an insufficient supply of the articles or commodities~~
25 ~~required. The provisions of Article 3 of Chapter 143 of the General Statutes respecting~~
26 ~~contracting for the purchase of all supplies, materials and equipment required by the State~~
27 ~~government or any of its departments, institutions or agencies under competitive bidding~~
28 ~~shall not apply to articles or commodities available from the Department of Correction,~~
29 ~~but the Department of Correction shall be required to keep the price of such articles or~~
30 ~~commodities substantially in accord with that paid by governmental agencies for similar~~
31 ~~articles and commodities of equivalent quality as determined by the Secretary by~~
32 ~~reference to competitive bidding as required by law.~~

33 (b) In addition, the Secretary of Correction may lease one or more buildings or
34 portions of buildings on the grounds of any State correctional institution or location under
35 Department of Correction control, together with the real estate needed for reasonable
36 access to such buildings, for a term not to exceed 20 years, to a private corporation for
37 the purpose of establishing and operating a factory for the manufacture and processing of
38 products or any other commercial enterprise deemed by the Secretary to provide
39 employment opportunities for inmates in meaningful jobs for wages. A lease entered into
40 pursuant to this section may include provisions for the remodeling or construction of
41 buildings. Each lease shall be approved by the Governor and Council of State and may be
42 entered into only after consultation with the Joint Legislative Commission on
43 Governmental Operations. Each lease negotiated and concluded pursuant to this section

1 shall include and shall be valid only so long as the lessee adheres to the following
2 provisions:

- 3 (1) All persons employed in the factory or other commercial enterprise
4 operated in or on the leased property, except the lessee's supervisory
5 employee and necessary training personnel, shall be inmates who are
6 approved for such employment by the Secretary or his designee.
- 7 (2) The factory or other commercial enterprise operated in or on the leased
8 property shall observe at all times such practices and procedures
9 regarding security as the lease may specify or as the Secretary may
10 stipulate.
- 11 (3) The factory or other commercial enterprise operated on the leased
12 property shall be deemed a private enterprise and subject to all the laws
13 and lawfully adopted rules of this State governing the operation of
14 similar business enterprises elsewhere, except that the provisions of
15 G.S. 66-58 shall not apply to the industries or products of such private
16 enterprise.

17 The Secretary shall adopt rules for the administration and management of personnel
18 policies for prisoner workers including wages, working hours, and conditions of
19 employment.

20 Except as prohibited by applicable provisions of the United States Code, inmates of
21 correctional institutions of this State may be employed in the manufacture and processing
22 of products and services for introduction into interstate commerce, so long as they are
23 paid no less than the prevailing minimum wage."

24 Sec. 3. Chapter 148 of the General Statutes is amended by adding the
25 following new sections:

26 **"§ 148-70.1 Correction Enterprises.**

27 (a) Creation; Use of Labor. – The Correction Enterprises program is created within
28 the Department of Correction. Correction Enterprises may use the labor of inmates
29 confined in the State prison system in work authorized under this section, either within or
30 without the correctional facilities in the State prison system.

31 (b) Authorized Enterprises. – Correction Enterprises may operate the following
32 enterprises, subject to the applicable provisions of this section and G.S. 148-70.2. No
33 other enterprises may be operated except as provided in subsection (h) of this section:

- 34 (1) License tag manufacturing.
35 (2) Laundry services.
36 (3) Sign manufacturing.
37 (4) Paint manufacturing.
38 (5) Printing and duplication.
39 (6) Sewing.
40 (7) Metal products manufacturing and installation.
41 (8) Tailoring.
42 (9) Shirt manufacturing.
43 (10) Janitorial products manufacturing.

- 1 (11) Upholstery.
- 2 (12) Woodworking.
- 3 (13) Reupholstery and mattress manufacturing.
- 4 (14) Drapery manufacturing.
- 5 (15) Canning.
- 6 (16) Meat processing.
- 7 (17) Agricultural operations.
- 8 (18) Manpower services.
- 9 (19) Packaging and distribution.
- 10 (20) Forestry management.

11 (c) Restrictions; Special Provisions. – The following restrictions or special
12 provisions are applicable to laundry services, upholstery, woodworking, and open market
13 sales:

- 14 (1) Laundry services. – Laundry services may be provided only for agencies
15 and instrumentalities of the State which are supported by State funds
16 and for county or municipally controlled and supported hospitals
17 presently being served by the Department of Correction, or for which
18 services have been contracted or applied for in writing, as of May 22,
19 1973. In addition, laundry services performed by the Department of
20 Correction may be provided for the Governor Morehead School and the
21 North Carolina Schools for the Deaf.

22 Such services shall be limited to wet washing, drying, and ironing of
23 flatwear or flat goods such as towels, sheets and bedding, linens, and
24 those uniforms prescribed for wear by such institutions and further
25 limited to only flat goods or apparel owned, distributed, or controlled
26 entirely by such institutions and shall not include processing by any dry-
27 cleaning methods; provided, however, those garments and items
28 presently being serviced by wet washing, drying, and ironing may in the
29 future, at the election of the Department of Correction, be processed by
30 a dry-cleaning method.

- 31 (2) Upholstery and woodworking. – The Department of Correction shall
32 obtain its woodworking and upholstery requirements and those of its
33 correctional facilities from Correction Enterprises, subject to the
34 provisions of G.S. 148-70.2. Notwithstanding the provisions of G.S.
35 148-70.2, all other State agencies may, but are not required to, purchase
36 their woodworking and upholstery requirements from Correction
37 Enterprises.

38 The number of inmates and employees assigned to the woodworking
39 and upholstery plants shall not exceed the number working in those
40 plants as of July 1, 1994.

- 41 (3) Open market sales. – Open market sales are permitted only for timber
42 cut as a part of the forest management program and crops, livestock,
43 poultry, and other products produced in agricultural operations.

1 (d) Correction Enterprises Board. – The Correction Enterprises Board is created.
2 The Board shall consist of the members of the State Procurement Policy Council, as set
3 out in G.S. 143-50.1, the Secretary of Correction or the Secretary's designee, and a
4 representative of private industry appointed by the Governor. A majority of the Board
5 shall constitute a quorum. The Board may meet at facilities provided by the Department
6 of Administration or the Department of Correction.

7 The initial private industry representative appointed by the Governor shall serve an
8 initial term ending June 30, 1996. Thereafter, his successors shall serve three-year terms.

9 (e) Expansion; Production Increases; Capital Investment. – Effective January 1,
10 1996, each significant production increase, new product, or capital investment requires
11 prior approval by the Correction Enterprises Board. Before granting approval, the Board
12 shall determine the impact of the proposal on private vendors, after considering the
13 following applicable factors:

14 (1) The size of the government market and the private market for the
15 product.

16 (2) The projected growth in the government market's demand for the
17 product.

18 (3) The projected ability of the government market to sustain both
19 Correction Enterprises and private vendors.

20 (4) The proportion of the government market served by small and
21 disadvantaged vendors.

22 (f) New Enterprises. – The chair of any standing legislative committee to which a
23 bill authorizing the operation of a new enterprise has been assigned may request the
24 Correction Enterprises Board to analyze the need and merit of the new enterprise. The
25 Board's analysis shall be based on the factors listed in subsection (e) and the following:

26 (1) The rehabilitative value of the proposed enterprise.

27 (2) The inmate population and the placement needs of the State correctional
28 system.

29 (3) The availability and feasibility of alternative labor placements, such as
30 road crews and other prison labor outside of Correction Enterprises.

31 (g) Emergency. – When necessary to comply with legal requirements for prison
32 population or inmate rehabilitation, the Governor may authorize a new enterprise, new
33 products, increased production, or capital investment without prior approval of the Board
34 or General Assembly, provided that the Joint Legislative Commission on Governmental
35 Operations is informed in writing within 30 days of the emergency authorization and the
36 legal need therefor.

37 **"§ 148-70.2. Market and use of Correction Enterprise products.**

38 (a) Market. – The goods and services provided by Correction Enterprises may be
39 offered only to State and local governmental agencies in this State or other states,
40 political subdivisions of this State or other states, and the United States and its
41 governmental agencies.

42 (b) State Agency Use. – A State agency shall purchase its requirements for a
43 product from Correction Enterprises if:

- 1 (1) Correction Enterprises produces the product;
2 (2) The product produced by Correction Enterprises meets the applicable
3 standards, specifications, tests, sample submissions, and other
4 requirements imposed on private vendors of the product, as determined
5 by the State Purchasing Officer; and
6 (3) Correction Enterprises has sufficient quantities of the product and can
7 meet the agency's reasonable delivery needs.

8 The State Purchasing Officer shall certify Correction Enterprises as a source on each
9 State contract for which Correction Enterprises produces a product meeting the criteria of
10 this subsection. Correction Enterprises shall not bid against private vendors. The
11 Secretary of Administration, in accordance with rules adopted by the Correction
12 Enterprises Board, shall establish the prices for all products consistent with the prices
13 generally paid by agencies for those products in the public market."

14 Sec. 4. G.S. 148-2(b) reads as rewritten:

15 "(b) All revenues from the sale of articles and commodities manufactured or
16 produced by ~~prison enterprises~~ Correction Enterprises shall be deposited with the State
17 Treasurer to be kept and maintained as a special revolving working-capital fund
18 designated '~~Prison~~ Correction Enterprises Fund.' Revenue in the ~~Prison~~ Correction
19 Enterprises Fund shall be applied first to capital and operating expenditures, including
20 salaries and wages of supervisory personnel, necessary to develop and operate prison
21 industrial and forestry enterprises to provide diversified employment for prisoners, and
22 incentive wages for ~~non-Prison~~ non-Correction Enterprises inmates. ~~inmates~~. Of the
23 remaining revenue in the Fund, five percent (5%) of the net profits, before expansion
24 costs, shall be credited to the Crime Victims Compensation Fund established in G.S.
25 15B-23 as soon as practicable after profits have been determined for the previous year,
26 and at the direction of the Governor, the remainder shall be used for other purposes
27 within the State prison ~~system~~ system, subject to the approval of the Correction
28 Enterprises Board pursuant to G.S. 148-70.1, or shall be transferred to the General Fund.
29 The provisions of this section shall not apply to revenues generated from private prison
30 enterprises conducted pursuant to G.S. 148-70 except for lease and rental income."

31 Sec. 5. This act becomes effective January 1, 1996, provided that the
32 Correction Enterprises Board shall be appointed within 60 days after ratification of this
33 act and may adopt rules thereafter.