

# HOUSE . . . . . No. 1348

By Mr. Casey of Winchester, petition of Paul C. Casey relative to wages paid to an inmate in consideration of employment within a prison industries enhancement program. The Judiciary.

## The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO PRISONER INCOME DURING INCARCERATION.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 51 of Chapter 127 of the General Laws, as  
2 appearing in the 2002 Official Edition, is hereby amended by  
3 inserting after the word “prisoners”, in line 7, the following  
4 words:— , except for those prisoners engaged in a prison industries  
5 enhancement program business established pursuant to the provi-  
6 sions of Section 51A.

1 SECTION 2. Chapter 127 of the General Laws, as so appearing,  
2 is hereby amended by inserting, after Section 51, the following three  
3 sections:—

4 Section 51A. The commissioner and the superintendents of  
5 county correctional facilities may, consistent with the provisions of  
6 18 USC 1761(c), as amended by the federal Justice Assistance Act  
7 of 1984 (P.L. 101-647), contract with private entities to:—

8 (1) employ inmates, who voluntarily elect to be so employed and  
9 who signify such election by signing a statement provided to said  
10 inmate by said the commissioner or his designee;

11 (2) invest in prison-based businesses owned by the Common-  
12 wealth;

13 (3) purchase goods and services from prison-based businesses;

14 (4) manage prison-based businesses owned by the Common-  
15 wealth; and

16 (5) establish prison-based businesses.

17 Section 51B. Wages paid to an inmate in consideration of employ-  
18 ment within a prison industries enhancement program business  
19 established pursuant to the provisions of this section and Section  
20 51A shall be paid at a rate which is not less than that paid for work  
21 of a similar nature in the locality in which the work is performed;  
22 provided, however, that the commissioner and the superintendents of  
23 county correctional facilities shall be authorized to deduct and dis-  
24 perse from wages so paid, financial contributions sufficient to  
25 qualify said business under the eligibility requirements set forth in  
26 18 USC 1761(c), as amended by the federal Justice Assistance Act  
27 of 1984 (P.L. 101-647), including deductions and disbursements for  
28 federal, state and local taxes.

29 Inmates engaged in employment within a prison industries  
30 enhancement program business established pursuant to the provi-  
31 sions of this section and Section 51A shall not be deemed employees  
32 of the Commonwealth; and, further, such inmates shall not be eli-  
33 gible for any earned income credit nor any statutory entitlements  
34 other than those specifically provided for the care and treatment of  
35 incarcerated inmates under this chapter.

36 In addition to said tax deductions, one-third of said inmates' gross  
37 wages shall be expended to satisfy the victim and witness assess-  
38 ment ordered by a court pursuant to Section 8 of chapter 258B. After  
39 said deductions, the remainder shall be allocated by the commis-  
40 sioner the following uses:—

41 (1) to offset the costs of incarceration; (2) for purchases within the  
42 institution by the inmate and for deposit into an interest-bearing  
43 account by the commissioner in a state-chartered approved by the  
44 state treasurer and paid to the inmate upon release from incarcera-  
45 tion, with the accrued interest in such installments and at such times  
46 as may be prescribed by the applicable rules and regulations or as  
47 the commissioner shall designate.

48 Section 51C. There shall be established an advisory commission,  
49 to be known as the prison industries enhancement advisory commis-  
50 sion, to provide general oversight over the prison industries  
51 enhancement program and all businesses established and operated  
52 pursuant to the provisions of Sections 51A and 51B. Said commis-  
53 sion shall consist of eight members, including the commissioner,  
54 who shall serve as chair, and seven others to be appointed by the  
55 governor who shall serve staggered terms of not more than four

56 years. Said appointed members shall include:— one representative  
57 of the State Labor Council/AFL-CIO; one representative of the  
58 Associated Industries of Massachusetts; one representative of the  
59 Massachusetts Bar Association; one representative of the Criminal  
60 Justice Policy Coalition; one representative of the Massachusetts  
61 Office for Victim Assistance; one representative of the manufactur-  
62 ing industry; and one representative of the general public.

63 Said advisory commission shall meet not less than two times per  
64 calendar year and at such other times as the chair deems necessary.  
65 Each proposed new prison industries enhancement program business  
66 shall be reviewed by said advisory commission to ensure compliance  
67 with all applicable state and federal laws, rules and regulations.

68 Any joint venture with the private sector entered into by the com-  
69 missioner or a superintendent of a county correctional facility shall  
70 require the prior approval of said advisory commission by vote of a  
71 simple majority; provided, however, that no such vote shall be valid  
72 unless a quorum, consisting of not less than five members, is pre-  
73 sent.

1 SECTION 3. Section 74 of Chapter 152 of the General Laws, as  
2 appearing in the 2002 Official Edition, is hereby amended by  
3 inserting after the word “twenty-seven”, in line 9, the following  
4 words:—; provided, however, that said section shall apply to those  
5 inmates performing labor for and engaged in a prison industries  
6 enhancement program business established pursuant to the provi-  
7 sions of Sections 51A and 51B of Chapter 127.

1 SECTION 4. Section 87 of Chapter 276 of the General Laws, as  
2 appearing in the 2002 Official Edition, is hereby amended in line 16  
3 by inserting after the word “sentence” the following paragraphs:—  
4 At any time following a conviction or guilty plea of a defendant  
5 for any crime punishable by a term of imprisonment in the state  
6 prison, the prosecuting authority may petition the court in the name  
7 of the Commonwealth to order, or the court may upon its own initia-  
8 tive order, as a special condition to the defendant’s incarceration that  
9 the defendant be prohibited from directly or indirectly engaging in  
10 any profit or money-generating activity relating to the publication of  
11 facts or circumstances pertaining to the defendant’s involvement in  
12 the criminal conduct upon which the defendant’s conviction or guilty

13 plea was based. The prosecuting authority shall give proper notice to  
14 the defendant prior to sentencing of said petition and shall certify to  
15 the court that such notice was duly made. For purposes of this  
16 section, “publication of facts” shall include, but not be limited to,  
17 contracting with any person, firm, corporation, partnership, associa-  
18 tion or other legal entity with respect to the commission or reenact-  
19 ment of the criminal conduct, crime or crimes, by way of movie,  
20 book, magazine article, tape recording, disc recording, phonograph  
21 record, radio or television presentation, live entertainment of any  
22 kind, or from the expression by the defendant of his thoughts, feel-  
23 ings, opinions or emotions regarding such criminal conduct in any  
24 other manner providing the defendant, his assigns, heirs, executors  
25 or representatives with economic gain.

26 Notwithstanding the provisions of this section, where the defen-  
27 dant undertakes any profit or monetary generating activity relating to  
28 the publication of facts, as defined herein, regarding his involvement  
29 in the criminal conduct for which he was convicted or to which he  
30 plead guilty, following his arrest, but prior to his conviction or entry  
31 of a guilty plea, the prosecuting authority may petition the court to  
32 order, or the court may upon its own initiative order, that the defen-  
33 dant, his assigns, heirs, executors or representatives forfeit all or any  
34 part of the proceeds received, or to be received by the defendant, his  
35 assigns, heirs, executors or representatives pursuant to that activity.  
36 The prosecuting authority shall give proper notice to the defendant  
37 and all other interested parties, as defined herein, of said petition and  
38 shall certify to the court that such notice was duly made. Unless the  
39 defendant or his assigns, heirs, executors or representatives, where  
40 applicable, consent to forfeiture in writing, the court shall, at the  
41 time of sentencing, or subject to order of the court, conduct a hearing  
42 on said petition and may make such orders regarding the forfeiture  
43 of profits as it so determines necessary in the interests of justice.

44 For purposes of this section, the term “interested party” shall  
45 include the defendant and any transferee of proceeds due to the  
46 defendant pursuant to any contract or agreement concerning the pub-  
47 lication of facts, as defined herein, regarding the criminal conduct  
48 for which the defendant was convicted or to which he plead guilty,  
49 the person with whom the defendant has contracted, and any person  
50 physically harmed as a result of the offense for which the defendant  
51 has been convicted or to which he plead guilty.

52 Any person or entity so entering a contract or agreement with a  
53 defendant subject to a forfeiture order, or a special condition of  
54 incarceration, ordered pursuant to this section, shall pay to the state  
55 treasurer all proceeds, if any, due to the defendant or his assigns,  
56 heirs, executors or representatives under such contract or agreement.  
57 The state treasurer shall deposit any such monies received into an  
58 escrow account within the Victim and Witness Assistance Fund, as  
59 set forth in Chapter 10 of the General Laws, and such proceeds shall  
60 be held in escrow for a period not to exceed three years after the date  
61 of an order issued pursuant to this section. Such proceeds may be  
62 levied upon the victim, or may be used to satisfy a settlement, a  
63 judgment of liability, or money judgment rendered pursuant to  
64 Chapter 258C by the division of victim compensation and assis-  
65 tance, or other such division authorized under that chapter, in favor  
66 of the victim, or his legal representative, against the defendant in an  
67 action concerning the criminal conduct for which the defendant was  
68 convicted or to which he plead guilty.

69 Under the expiration of the three year period, the state treasurer  
70 shall release the proceeds remaining in the escrow account into the  
71 Victim and Witness Assistance Fund.

72 Any action taken by said defendant by way of execution of power  
73 of attorney, creation of corporate entities, or like action to avoid  
74 compliance with any special conditions of incarceration or probation  
75 imposed pursuant to this section shall be deemed a violation of his  
76 sentence or probation.

1 SECTION 5. Section 49 of Chapter 10 of the General Laws, as  
2 appearing in the 2002 Official Edition, is hereby amended in line 4  
3 by inserting after the words “two hundred fifty-eight B,” the  
4 following words:— proceeds collected pursuant to a court order  
5 issued pursuant to chapter two hundred and seventy-six,.

1 SECTION 6. This act shall take effect upon passage.