

Assembly Bill No. 37–Select Committee on
Corrections, Parole, and Probation

CHAPTER.....

AN ACT relating to prisons; revising the provisions relating to the assistant directors of the Department of Corrections; providing the manner in which the interest and income earned on money in the Prisoners' Personal Property Fund is to be credited; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 1, 2, 3, 5 and 6 of this bill change the titles of the assistant directors of the Department of Corrections to deputy directors. Additionally, **section 2** removes the assistant directors from the classified service of the State.

Existing law creates the Prisoners' Personal Property Fund. (NRS 209.241) A prisoner in an institution or a facility of the Department of Corrections is required to deposit all the money he receives during incarceration in an individual account in the Prisoners' Personal Property Fund. (NRS 209.241) All interest and income earned on the money in the Prisoners' Personal Property Fund must be credited to the Offenders' Store Fund. (NRS 209.241) However, the United States Court of Appeals for the Ninth Circuit has ruled that prisoners have a property interest in the interest earned on the money in their individual accounts. (*Schneider v. California Dep't of Corrections*, 151 F.3d 1194, 1201 (9th Cir. 1998)) Whether the interest earned by the prisoner has been taken without just compensation in violation of the United States Constitution depends on "whether the interest earned by [a prisoner] is exceeded by his share of the costs of administering the prisoners' personal property fund." (*McIntyre v. Bayer*, 339 F.3d 1097, 1101 (9th Cir. 2003))

Section 4 of this bill provides that if the amount of interest and income earned by a prisoner is greater than the prisoner's share of the cost of administering the Prisoners' Personal Property Fund, the Director must credit the prisoner's individual account with the difference between these two amounts. If the amount of interest and income earned by a prisoner is equal to or less than the prisoner's share of the cost of administering the Prisoners' Personal Property Fund, the Director must credit the interest and income to the Offenders' Store Fund.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 209.132 is hereby amended to read as follows:
209.132 1. The Director may delegate to ~~[an assistant]~~ **a deputy** director, manager, warden or employee of the Department the exercise or discharge in the name of the Director of any power, duty or function vested in or imposed upon the Director.
2. The official act of any such person acting in the name of the Director and by his authority shall be deemed an official act of the Director.



Sec. 2. NRS 209.151 is hereby amended to read as follows:

209.151 1. The Director shall appoint ~~{an—Assistant}~~ *a Deputy* Director for Industrial Programs who:

(a) Is responsible to the Director for the administration of all industrial, vocational and agricultural programs for the employment of offenders, except conservation camps and centers for the purpose of making restitution; and

(b) Shall enforce all policies and regulations of the Department relating to industrial, vocational and agricultural programs.

2. In addition to the ~~{Assistant}~~ *Deputy* Director appointed pursuant to subsection 1, the Director shall appoint such other ~~{assistant}~~ *deputy* directors as are necessary.

3. ~~{The assistant directors are in the classified service of the State except for purposes of retention.~~

~~—4.—~~ During any absence of the Director, he shall designate ~~{an assistant}~~ *a deputy* director or a warden to act as Director of the Department without increase in salary.

~~{5.—The assistant}~~

4. The deputy directors shall carry out such administrative duties as may be assigned to them by the Director and shall not engage in any other gainful employment or occupation.

Sec. 3. NRS 209.153 is hereby amended to read as follows:

209.153 The ~~{Assistant}~~ *Deputy* Director for Industrial Programs appointed pursuant to subsection 1 of NRS 209.151 is entitled to receive the same retirement benefits as police officers and firefighters employed by public employers. For this purpose, the provisions of chapter 286 of NRS governing the retirement benefits of police officers and firefighters apply to the ~~{Assistant}~~ *Deputy* Director for Industrial Programs.

Sec. 4. NRS 209.241 is hereby amended to read as follows:

209.241 1. The Director may accept money, including the net amount of any wages earned during the incarceration of an offender after any deductions made by the Director and valuables belonging to an offender at the time of his incarceration or afterward received by gift, inheritance or the like or earned during the incarceration of an offender, and shall deposit the money in the Prisoners' Personal Property Fund, which is hereby created as a trust fund.

2. An offender shall deposit all money that he receives into his individual account in the Prisoners' Personal Property Fund.

3. The Director:

(a) Shall keep, or cause to be kept, a full and accurate account of the money and valuables, and shall submit reports to the Board



relating to the money and valuables as may be required from time to time.

(b) May permit withdrawals for immediate expenditure by an offender for personal needs.

(c) Shall pay over to each offender upon his release any remaining balance in his individual account.

4. The interest and income earned on the money in the *Prisoners' Personal Property Fund*, after deducting any applicable bank charges, must be credited ~~to the Offenders' Store Fund.~~

~~—5. The provisions of this chapter do not create a right on behalf of any offender to any interest or income that accrues on the money in the Prisoners' Personal Property Fund. The provisions of this chapter do not establish a basis for any cause of action against the State or against officers or employees of the State to claim ownership of any interest or income that accrues on the money in the Prisoners' Personal Property Fund.~~

~~—6.} each calendar quarter as follows:~~

(a) If an offender's share of the cost of administering the Prisoners' Personal Property Fund for the quarter is less than the amount of interest and income earned by the offender, the Director shall credit the individual account of the offender with an amount equal to the difference between the amount of interest and income earned by the offender and the offender's share of the cost of administering the Prisoners' Personal Property Fund.

(b) If an offender's share of the cost of administering the Prisoners' Personal Property Fund for the quarter is equal to or greater than the amount of interest and income earned by the offender, the Director shall credit the interest and income to the Offenders' Store Fund.

5. An offender who does not deposit all money he receives into his individual account in the Prisoners' Personal Property Fund as required in this section is guilty of a gross misdemeanor.

~~[7.]~~ 6. A person who aids or encourages an offender not to deposit all money the offender receives into the individual account of the offender in the Prisoners' Personal Property Fund as required in this section is guilty of a gross misdemeanor.

Sec. 5. NRS 209.461 is hereby amended to read as follows:

209.461 1. The Director shall:

(a) To the greatest extent possible, approximate the normal conditions of training and employment in the community.

(b) Except as otherwise provided in this section, to the extent practicable, require each offender, except those whose behavior is found by the Director to preclude participation, to spend 40 hours



each week in vocational training or employment, unless excused for a medical reason or to attend educational classes in accordance with NRS 209.396. The Director shall require as a condition of employment that an offender sign an authorization for the deductions from his wages made pursuant to NRS 209.463. Authorization to make the deductions pursuant to NRS 209.463 is implied from the employment of an offender and a signed authorization from the offender is not required for the Director to make the deductions pursuant to NRS 209.463.

(c) Use the earnings from services and manufacturing conducted by the institutions and the money paid by private employers who employ the offenders to offset the costs of operating the prison system and to provide wages for the offenders being trained or employed.

(d) Provide equipment, space and management for services and manufacturing by offenders.

(e) Employ craftsmen and other personnel to supervise and instruct offenders.

(f) Contract with governmental agencies and private employers for the employment of offenders, including their employment on public works projects under contracts with the State and with local governments.

(g) Contract for the use of offenders' services and for the sale of goods manufactured by offenders.

2. Every program for the employment of offenders established by the Director must:

(a) Employ the maximum number of offenders possible;

(b) Except as otherwise provided in NRS 209.192, provide for the use of money produced by the program to reduce the cost of maintaining the offenders in the institutions;

(c) Have an insignificant effect on the number of jobs available to the residents of this State; and

(d) Provide occupational training for offenders.

3. An offender may not engage in vocational training, employment or a business that requires or permits the offender to:

(a) Telemarket or conduct opinion polls by telephone; or

(b) Acquire, review, use or have control over or access to personal information concerning any person who is not incarcerated.

4. Each fiscal year, the cumulative profits and losses, if any, of the Programs for the Employment of Offenders established by the Director must result in a profit for the Department. The following must not be included in determining whether there is a profit for the Department:



(a) Fees credited to the Fund for Prison Industries pursuant to NRS 482.268, any revenue collected by the Department for the leasing of space, facilities or equipment within the institutions or facilities of the Department, and any interest or income earned on the money in the Fund for Prison Industries.

(b) The selling expenses of the Central Administrative Office of the Programs for the Employment of Offenders. As used in this paragraph, "selling expenses" means delivery expenses, salaries of sales personnel and related payroll taxes and costs, the costs of advertising and the costs of display models.

(c) The general and administrative expenses of the Central Administrative Office of the Programs for the Employment of Offenders. As used in this paragraph, "general and administrative expenses" means the salary of the ~~Assistant~~ Deputy Director of Industrial Programs and the salaries of any other personnel of the Central Administrative Office and related payroll taxes and costs, the costs of telephone usage, and the costs of office supplies used and postage used.

5. Except as otherwise provided in subsection 3, the Director may, with the approval of the Board:

(a) Lease spaces and facilities within any institution of the Department to private employers to be used for the vocational training and employment of offenders.

(b) Grant to reliable offenders the privilege of leaving institutions or facilities of the Department at certain times for the purpose of vocational training or employment.

6. The provisions of this chapter do not create a right on behalf of the offender to employment or to receive the federal or state minimum wage for any employment and do not establish a basis for any cause of action against the State or its officers or employees for employment of an offender or for payment of the federal or state minimum wage to an offender.

Sec. 6. NRS 209.4818 is hereby amended to read as follows:

209.4818 1. The Committee on Industrial Programs shall:

(a) Be informed on issues and developments relating to industrial programs for correctional institutions;

(b) Submit a semiannual report to the Interim Finance Committee before July 1 and December 1 of each year on the status of current and proposed industrial programs for correctional institutions;

(c) Report to the Legislature on any other matter relating to industrial programs for correctional institutions that it deems appropriate;



(d) Meet at least quarterly and at the call of the Chairman to review the operation of current and proposed industrial programs;

(e) Recommend three persons to the Director for appointment as the ~~{Assistant}~~ *Deputy* Director for Industrial Programs whenever a vacancy exists;

(f) Before any new industrial program is established by the Director in an institution of the Department, review the proposed program for compliance with the requirements of subsections 2, 3 and 4 of NRS 209.461 and submit to the Director its recommendations concerning the proposed program; and

(g) Review each industry program established pursuant to subsection 2 of NRS 209.461 to determine whether the program is operating profitably within 3 years after its establishment. If the Committee on Industrial Programs determines that a program is not operating profitably within 3 years after its establishment, the Committee ~~{on Industrial Programs}~~ shall report its finding to the Director with a recommendation regarding whether the program should be continued or terminated.

2. Upon the request of the Committee on Industrial Programs, the Director and the ~~{Assistant}~~ *Deputy* Director for Industrial Programs shall provide to the Committee ~~{on Industrial Programs}~~ any information *that* the Committee ~~{on Industrial Programs}~~ determines is relevant to the performance of the duties of the Committee . ~~{on Industrial Programs.}~~

