

105TH CONGRESS  
2D SESSION

# H. R. 4100

To amend title 18, United States Code, with respect to the employment of Federal prisoners, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 1998

Mr. McCOLLUM introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, with respect to the employment of Federal prisoners, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Free Market Prison  
5 Industries Reform Act of 1998”.

6 **SEC. 2. GENERAL PROVISIONS RELATING TO STRUCTURE**  
7 **AND FUNCTION OF FEDERAL PRISON INDUS-**  
8 **TRIES.**

9 Title 18, United States Code, is amended by striking  
10 sections 4121 through 4122 and inserting the following:

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1 **“§ 4121. Definitions**

2 “In this section—

3 “(1) the term ‘industry’ means an endeavor  
4 that utilizes incarcerated persons to produce one or  
5 more goods or provide one or more services, or both;

6 “(2) the term ‘product’ includes services;

7 “(3) the term ‘prisoner contributions’ means an  
8 amount which shall be used for—

9 “(A) payment of fines and restitution owed by  
10 the prisoner pursuant to court order;

11 “(B) reasonable charges for room and board, as  
12 determined under rules made by the Attorney Gen-  
13 eral;

14 “(C) allocations for support of the inmate’s  
15 family pursuant to statute, court order, or agree-  
16 ment by the inmate; and

17 “(D) contributions, of not less than 5 percent  
18 but not more than 20 percent of the fee paid on ac-  
19 count of the inmate, to any fund established by law  
20 to compensate the victims of crime;

21 “(4) the term ‘assembled good’ means a good  
22 which is the result of the assembly of fabricated  
23 goods, as such terms are defined in 19 CFR 10.11  
24 et seq.; and

25 “(5) the term ‘foreign-made good’ means a  
26 good that the Director of Bureau of Labor Statistics

1 determines is a product of which 95% or more of the  
2 amount sold in the United States is fabricated in a  
3 foreign place.

4 **“§ 4122. Administration of Federal Prison Industries**

5 “(a)(1) Federal Prison Industries is established as a  
6 Government corporation of the District of Columbia.

7 “(2) Federal Prison Industries shall be administered  
8 by a board of 7 directors appointed by the President to  
9 serve at the will of the President without compensation.  
10 The President, in appointing such directors, shall consider  
11 for appointment a person recommended by each of the fol-  
12 lowing:

13 “(A) The Speaker of the House of Representa-  
14 tives.

15 “(B) The minority leader of the House of Rep-  
16 resentatives.

17 “(C) The majority leader of the Senate.

18 “(D) The minority leader of the Senate.

19 “(b) Federal Prison Industries shall provide indus-  
20 tries operated as a Limited Sales Project, Private Sector  
21 Project, or a Prison Industry Enhancement Project. The  
22 goal of such industries shall be to generate the greatest  
23 amount of prisoner contributions as is reasonably possible  
24 and provide employment for the greatest number as is rea-

1 sonably possible of those inmates who are eligible to work  
2 who are—

3 “(1) in the custody of the Bureau of Prisons;

4 “(2) convicted by general courts martial and  
5 confined in any institution within the jurisdiction of  
6 any department or agency comprising the Depart-  
7 ment of Defense, to the extent and under terms and  
8 conditions agreed upon by the Secretary of Defense,  
9 the Attorney General, and Federal Prison Indus-  
10 tries; or

11 “(3) confined in any penal or correctional insti-  
12 tution of the District of Columbia to the extent and  
13 under terms and conditions agreed upon by the Dis-  
14 trict of Columbia Department of Corrections, the At-  
15 torney General, and Federal Prison Industries.

16 “(c) Federal Prison Industries shall so conduct its  
17 operations so that it realizes annual positive net revenues.

18 “(d) Federal Prison Industries shall avoid capturing  
19 more than a reasonable share of the market among Fed-  
20 eral departments, agencies, and institutions for any spe-  
21 cific product of a Limited Sales Project.

22 “(e)(1) Any department or agency of the Department  
23 of Defense may, without exchange of funds, transfer to  
24 Federal Prison Industries any property or equipment suit-

1 able for use in performing the functions and duties covered  
2 by agreement entered into under subsection (b)(2).

3 “(2) The Department of Corrections of the District  
4 of Columbia may, without exchange of funds, transfer to  
5 the Federal Prison Industries any property or equipment  
6 suitable for use in performing the functions and duties  
7 covered by an agreement entered into under subsection  
8 (b)(3).

9 “(f) Nothing in this chapter shall prohibit any indus-  
10 try from offering for sale on the open market—

11 “(1) assembled goods; or

12 “(2) foreign-made goods.”.

13 “(g) Federal Prison Industries is not required to  
14 comply with the Competition in Contracting Act of 1984  
15 or with the Federal Acquisition Regulations.

16 “(h) Federal Prison Industries may provide voca-  
17 tional training for qualified inmates without regard to  
18 their Federal Prison Industries work or other assign-  
19 ments.”.

20 **SEC. 3. EXISTING INDUSTRIES.**

21 Chapter 307 of title 18, United States Code, is  
22 amended by adding at the end the following:

1 **“§ 4130. Limited Sales Projects**

2 “(a) Any industry not operated as a Private Sector  
3 Project or a Prison Industry Enhancement Project shall  
4 be operated as a Limited Sales Project.

5 “(b) An industry operated as a Limited Sales Project  
6 shall—

7 “(A) sell its products only to—

8 “(i) the Federal Government;

9 “(ii) State and local governmental en-  
10 tities; or

11 “(iii) outside the United States;

12 “(B) be operated directly by Federal Pris-  
13 on Industries; and

14 “(C) be located in a facility provided by  
15 the Bureau of Prisons.

16 **SEC. 4. NEW INDUSTRIES.**

17 (a) IN GENERAL.—Chapter 307 of title 18, United  
18 States Code, is amended by adding at the end the follow-  
19 ing:

20 **“§ 4131. Private Sector Projects**

21 “(a) Except as provided in subsection (g), each indus-  
22 try located at a facility activated by the Attorney General  
23 on or after the date which is one year after the date of  
24 the enactment of the Prison Industries Reform Act of  
25 1998 shall be operated as a Private Sector Project. Each

1 industry located at a facility that was activated before that  
2 date may be operated as a Private Sector Project.

3 “(b) An industry operated as a Private Sector Project  
4 shall—

5 “(1) sell its products generally on the open  
6 market;

7 “(2) be operated by a private person under a  
8 contract with Federal Prison Industries for the use  
9 of prison labor; and

10 “(3) be located in a facility operated by the Bu-  
11 reau of Prisons or a private person under a contract  
12 with the Attorney General, or elsewhere as may be  
13 determined by the Attorney General.

14 “(c) Except as otherwise provided in this section,  
15 Federal Prison Industries shall enter into a contract with  
16 a private person to operate the Private Sector Project on  
17 terms beneficial to the mission of Federal Prison Indus-  
18 tries. The contract shall include a provision for payment  
19 of a fee for the use of the services of the inmates working  
20 in that Project.

21 “(d) Before entering into a contract with a private  
22 person under subsection (c), Federal Prison Industries  
23 shall prepare and make public a notice soliciting private  
24 persons to submit bids for the contract. Federal Prison  
25 Industries shall submit that notice to the committees on

1 the judiciary of the House of Representatives and the Sen-  
2 ate on or before the date such notice is made public.

3 “(e) When reviewing bids submitted by a private per-  
4 son to operate and manage a Private Sector Project, Fed-  
5 eral Prison Industries shall give preferences to private per-  
6 sons who propose to use the Private Sector Project for  
7 operations that otherwise would be located in a foreign  
8 place, unless Federal Prison Industries determines that  
9 other bids are of greater benefit to the mission of Federal  
10 Prison Industries.

11 “(f) The Attorney General may determine the portion  
12 of any compensation paid by the private person pursuant  
13 to a contract under subsection (c) that will be distributed  
14 as wages to inmates who work in the industry. The re-  
15 mainder of such compensation shall be retained by Federal  
16 Prison Industries and distributed as prisoner contribu-  
17 tions in accordance with section 4133.

18 “(g) If Federal Prison Industries is unable to enter  
19 into a contract with a private person with respect to a  
20 Private Sector Project within 18 months after the latter  
21 of the date on which notice is given pursuant to subsection  
22 (d) or on which the Attorney General activates the facility  
23 at which the industry is to be located, Federal Prison In-  
24 dustries may operate that industry as a Prison Industry  
25 Enhancement Project.

1 **“§ 4132. Prison Industry Enhancement Projects**

2       “(a) Each industry that is in operation on the day  
3 which is one year after the date of the enactment of the  
4 Prison Industries Reform Act of 1998 and located at a  
5 facility activated before such day may be operated as a  
6 Prison Industry Enhancement Project. Any industry de-  
7 scribed in section 4131(g) and which Federal Prison In-  
8 dustries determines will not be operated as a Private Sec-  
9 tor Project shall be operated as a Prison Industry En-  
10 hancement Project.

11       “(b) An industry operated as a Prison Industry En-  
12 hancement Project’ shall—

13               “(1) sell its products generally on the open  
14 market;

15               “(2) be operated by Federal Prison Industries;  
16 and

17               “(3) be located in a facility operated by the Bu-  
18 reau of Prisons or a private person under a contract  
19 with the Attorney General.

20       “(c) The Attorney General may determine the portion  
21 of the net revenues of the Prison Enhancement Project  
22 to be distributed as wages to inmates who work in the  
23 industry. The remainder of such revenue shall be retained  
24 by Federal Prison Industries and distributed as prisoner  
25 contributions in accordance with section 4133.

1       “(d) Not later than 2 years after the date of the en-  
2 actment of the Prison Industries Reform Act of 1998,  
3 Federal Prison Industries shall operate not less than 5  
4 industries existing on such date as Private Sector Projects  
5 or Prison Industry Enhancement Projects. Not later than  
6 3 years after such date, Federal Prison Industries shall  
7 operate not less than 20 such industries as Private Sector  
8 Projects or Prison Industry Enhancement Projects.”.

9       (b) **ELIMINATION OF OLD PROVISION RESPECTING**  
10 **NEW INDUSTRIES.**—Title 18, United States Code, is  
11 amended by striking section 4123.

12 **SEC. 5. CONFORMING AMENDMENTS.**

13       (a) **MANDATORY SOURCE REQUIREMENT.**—Section  
14 4124 of title 18, United States Code, is amended—

15               (1) in subsection (a)—

16                       (A) by striking “The” and inserting “Ex-  
17 cept as otherwise provided by law, the”;

18                       (B) by inserting “(in each of the executive,  
19 legislative, and judicial branches)” after  
20 “United States”; and

21                       (C) by striking “the industries” and insert-  
22 ing “Limited Sales Projects”;

23               (2) in subsection (d), by striking “products and  
24 services” and inserting “products of Limited Sales  
25 Projects”; and

1 (3) by adding at the end the following:

2 “(e)(1) Subsection (a) does not require the purchase  
3 by Federal entities of any assembled goods.

4 “(2) Subsection (a) does not require the purchase by  
5 Federal entities of any foreign-made goods. ”.

6 (b) PRISON INDUSTRIES FUND.—Section 4126(c) of  
7 title 18, United States Code, is amended—

8 (1) by inserting “(in an amount not greater  
9 than that provided in chapter 81 of title 5)” after  
10 “operations, and compensation”;

11 (2) by striking the period at the end of para-  
12 graph (4) and inserting a semicolon;

13 (3) by striking the matter in subsection (c) that  
14 follows paragraph (4) and inserting the following:

15 “(5) in paying, under rules and regulations pro-  
16 mulgated by the Attorney General, prisoner con-  
17 tributions.”.

18 **SEC. 6 CLERICAL AMENDMENTS.**

19 The table of sections for chapter 307 of title 18,  
20 United States Code, is amended—

21 (1) so that the item relating to section 4121  
22 reads as follows:

“4121. Definitions.”.

23 (2) by striking the item relating to section  
24 4123; and

1           (3) by inserting after the item relating to sec-  
2           tion 4129 the following new items:

“4130. Limited Sales Projects.

“4131. Private Sector Projects.

“4132. Prison Industry Enhancement Projects.”.

3 **SEC. 7. MODIFICATION OF PROHIBITION ON SALES OF**  
4 **PRISONER-MADE PRODUCTS.**

5           Section 1761 of title 18, United States Code, is  
6 amended by striking subsections (b) through (d) and in-  
7 serting the following:

8           “(b)(1) This section does not apply to good, wares,  
9 or merchandise manufactured or produced, or services  
10 provided, by inmates at an industry—

11           “(A) provided by Federal Prison Industries; or

12           “(B) provided by a State, unless—

13           “(i) the industry is operated by a person  
14 other than the State; and

15           “(ii) after September 30, 2008, the State  
16 does not have in effect any requirement that  
17 the departments and agencies of the State pur-  
18 chase a portion of their requirements for prod-  
19 ucts produced by any industry provided by that  
20 State.

21           “(2) As used in this subsection, the term ‘State’  
22 means a State of the United States and any common-  
23 wealth, territory, or possession of the United States.”.

1 **SEC. 8. STUDY OF FOREIGN-MADE GOODS.**

2       The Director of the Bureau of Labor Statistics shall  
3 make a initial determination of those goods (described by  
4 Standard Industrial Product Code published by the Office  
5 of Management and Budget) of which 95 percent or more  
6 of the amount sold in the United States are fabricated  
7 in a foreign place. The Director shall report that deter-  
8 mination to Congress, not later than 180 days after the  
9 date of the enactment of the Prison Industries Reform Act  
10 of 1998.

11 **SEC. 9. RESTRUCTURING.**

12       (a) PLAN.—The Attorney General shall, not later  
13 than one year after the date of the enactment of this Act,  
14 develop and submit to Congress a plan, together with any  
15 recommendations for any necessary implementing legisla-  
16 tion, for restructuring Federal Prison Industries. The plan  
17 shall provide—

18           (1) for the reduction in the use of Limited  
19 Sales Projects measured as a percentage of the total  
20 sales of Federal Prison Industries (or any successor)  
21 by 40 percent before the end of the 5-year period be-  
22 ginning on the date of the enactment of this Act;

23           (2) except as provided in subsection (b)—

24                   (A) for the phase out of the use of Limited  
25 Sales Projects by September 30, 2008; and

1 (B) for the phase out of the use of Prison  
2 Industry Enhancement Projects by September  
3 30, 2013;

4 (3) the creation of a non-governmental entity to  
5 succeed to the rights and obligations of Federal  
6 Prison Industries;

7 (b) ALTERNATE PROVISIONS OF PLAN.—

8 (1) GENERALLY.—The plan may provide that if  
9 the number of inmates employed in industries pro-  
10 vided by Federal Prison Industries 3 years after the  
11 submission date is less than the number of inmates  
12 so employed on the submission date, then—

13 (A) the 40 percent reduction described in  
14 subsection (a)(1) is not required and Limited  
15 Sales Projects may also be used to provide in-  
16 dustries after September 30, 2008, but to no  
17 greater extent (measured as a percentage of the  
18 total sales of Federal Prison Industries (or any  
19 successor)) than used on the submission date;  
20 and

21 (B) Prison Industry Enhancement Projects  
22 may also be used to provide industries after  
23 September 30, 2013.

1           (2) DEFINITION.—as used in this subsection,  
2           the term “submission date” is the date the plan is  
3           submitted to Congress under subsection (a).

4           (c) IMPLEMENTATION OF PLAN.—To the extent the  
5           plan may be implemented without the enactment of legis-  
6           lation, the plan shall go into effect 180 days after the date  
7           of its submission to Congress, unless Congress shall by  
8           law otherwise provide.

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