

existing regulations or orders of the Administration relating to industrial homework are contained in full force and effect."

Regulations issued pursuant to this authority do permit the granting of "special certificates" to engage in industrial homework, 29 C.F.R. §530.4. However, the conditions for obtaining a certificate are so circumscribed that courts speak of the regulation as a "prohibition" on industrial homework. See e.g., Gemsco v. Walling, 324 U.S. 244, 249 (1945); ILGWU v. Donovan, ___ F.Supp. ___, Civ. No. 81-2606 (D.D.C., opinion filed July 23, 1982).

- 2/ As interpreted in federal decisions, this ban even reached workers who might have been considered independent contractors under the common law. See e.g., Mitchell v. Nutter, 161 F.Supp. 799 (N.D. Maine 1958).
- 3/ The 1981 change in the industrial homework ban was immediately challenged in federal court both on grounds that the repeal of the homework ban in the knitted outerwear industry violated the Administrative Procedure Act and on the basis that the Secretary of Labor lacked the authority to repeal the prohibition. International Ladies' Garment Workers' Union, et al. v. Raymond J. Donovan, Secretary of Labor, et al., ___ F.Supp. ___, Civ. Act. No. 81-2606 (D.D.C., opinion filed July 23, 1982). However, the District Court ruled in favor of the government. Id. That case is now on appeal to the U.S. Court of Appeals for the District of Columbia. ILGWU v. Donovan, appeal docketed as No. 82-2133. It is our understanding that only the APA issues are being pressed on appeal.
- 4/ We stop short of declaring these provisions in irreconcilable conflict with federal law because the exemptions in Senate Bill 199, despite their obvious purpose, might be read only as a limitation on the State's enforcement authority in this area. Moreover, certain provisions of Senate Bill 199 clearly do not violate federal law, such as the prohibitory features of the legislation and the bill's application to the knitted outerwear industry -- an area where the industrial homework ban has been lifted by the federal government.
- 5/ They could also be authorized to assist in the administration of the federal scheme pursuant to 29 U.S.C. § 211(b).

Senate Bill No. 199

AN ACT concerning

Garment Manufacturing - Industrial Homework