

OTHERWISE MAKING THE ENTIRE GARMENT, OTHER THAN THE MATERIALS, FOR SALE OR RESALE AT WHOLESALE OR RETAIL."

It is apparent that the purpose of this change was to sanction industrial homework in Maryland in these exempted areas. However, the federal regulations banning industrial homework in the covered industries contain no exemption for employers of four or fewer employees and apply to employees regardless of whether they might technically be considered "subcontractors". See n. 2, supra. Moreover, the regulations do not exempt "cottage industries," viz. employers who sell over 35 percent of the wearing apparel they make, nor do they contain any sort of blanket exemption for non-profit organizations. Thus, despite their apparent intention to do so, these provisions of Senate Bill 199 cannot be read to permit or sanction what federal law expressly prohibits in the garment industries still subject to the industrial homework ban. 4/

Aside from what the amendments to Senate Bill 199 were intended to accomplish, and whether or not the bill can be read consistently with federal law, we think the existence of such provisions in Maryland law could result in confusion among persons subject to its requirements and could invite persons to violate the federal industrial homework ban. One reason for the existence of the federal ban is the inability to enforce federal minimum wage requirements in the area. See Gemsco v. Walling, supra, 324 U.S. at 245. In our view, Senate Bill 199 would aggravate that enforcement problem. Those benefiting from the amendments to the bill would be encouraged by the legislation to continue to ignore federal requirements. In addition, it is noteworthy that State enforcement officers in administering the more limited provisions of Senate Bill 199, could not ignore a violation of the federal scheme even if it occurred in an area exempt under Senate Bill 199. They would be obliged to report such violations to the Department of Labor. 5/ Thus, the intended purpose of the amendments to Senate Bill 199 to sanction certain forms of industrial homework would clearly be frustrated.

For these reasons, and because of Senate Bill 199's adverse impact on the federal scheme, we do not approve the bill.

Very truly yours,  
Stephen H. Sachs  
Attorney General

1/ Section 211(d) states that:

"The Administrator [of the Wage and Hour Division] is authorized to make such regulations and orders regulating, restricting, or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this chapter, and all