

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,  
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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 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