

FORTY-SEVENTH LEGISLATURE
SECOND SESSION

February 13, 2006

SENATE FLOOR AMENDMENT number 1 to SENATE BILL 449, as amended
Amendment sponsored by Senator

1. Strike Senate Finance Committee Amendment 4.

2. On page 1, between lines 16 and 17, insert the following
new section:

"Section 1. Section 50-4-21 NMSA 1978 (being Laws 1955,
Chapter 200, Section 2, as amended) is amended to read:

"50-4-21. DEFINITIONS.--As used in the Minimum Wage Act:

A. "employ" includes suffer or permit to work;

B. "employer" includes any individual, partnership,
association, corporation, business trust, legal representative or
any organized group of persons employing one or more employees at
any one time, acting directly or indirectly in the interest of an
employer in relation to any employee, but shall not include the
United States [~~the state or any political subdivision thereof~~]; and

C. "employee" includes any individual employed by any
employer, but shall not include:

(1) any individual employed in domestic service in or
about a private home;

(2) any individual employed in a bona fide executive,
administrative or professional capacity and foremen, superintendents
and supervisors;

(3) any individual employed by the United States [~~or~~

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~~by the state or any political subdivision thereof];~~

(4) any individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis. The employer-employee relationship shall not be deemed to exist with respect to any individual being served for purposes of rehabilitation by a charitable or nonprofit organization, notwithstanding the payment to the individual of a stipend based upon the value of the work performed by the individual;

(5) salesmen or employees compensated upon piecework, flat rate schedules or commission basis;

(6) students regularly enrolled in primary or secondary schools working after school hours or on vacation;

(7) registered apprentices and learners otherwise provided by law;

(8) persons eighteen years of age or under who are not students in a primary, secondary, vocational or training school;

(9) persons eighteen years of age or under who are not graduates of a secondary school;

(10) persons employed by ambulance services;

(11) G.I. bill trainees while under training;

(12) seasonal employees of any employer obtaining and holding a valid certificate issued annually by the ~~[state labor commissioner]~~ director of the labor and industrial division of the labor department. The certificate shall state the job designations and total number of employees to be exempted. In approving or

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disapproving an application for a certificate of exemption, the [commissioner] director shall consider the following:

(a) whether such employment shall be at an educational, charitable or religious youth camp or retreat;

(b) that such employment will be of a temporary nature;

(c) that the individual will be furnished [his] room and board in connection with such employment, or if the camp or retreat is a day camp or retreat, the individual will be furnished board in connection with such employment;

(d) the purposes for which the camp or retreat is operated;

(e) the job classifications for the positions to be exempted; and

(f) any other factors that the [commissioner] director deems necessary to consider;

(13) any employee employed in agriculture:

~~[(a) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor;~~

~~(b)]~~ (a) if such employee is the parent, spouse, child or other member of [his] the employer's immediate family; for the purpose of this subsection, employer shall include the principal stockholder of a family corporation;

~~(c)]~~ (b) if such employee: 1) is employed as a

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hand-harvest laborer and is paid on a piece-rate basis in an operation [~~which~~] that has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment; 2) commutes daily from [~~his~~] the employee's permanent residence to the farm on which [~~he~~] the employee is so employed; and 3) has been employed in agriculture less than thirteen weeks during the preceding calendar year;

[~~(d)~~] (c) if such employee, other than an employee described in Subparagraph [~~(e)~~] (b) of this paragraph: 1) is sixteen years of age or under and is employed as a hand-harvest laborer, is paid on a piece-rate basis in an operation [~~which~~] that has been, and is generally recognized as having been, paid on a piece-rate basis in the region of employment; 2) is employed on the same farm as [~~his~~] the employee's parent or person standing in the place of [~~his~~] the parent; and 3) is paid at the same piece-rate as employees over age sixteen are paid on the same farm; or

[~~(e)~~] (d) if such employee is principally engaged in the range production of livestock or in milk production; [~~or~~]

(14) an employee engaged in the handling, drying, packing, packaging, processing, freezing or canning of any agricultural or horticultural commodity in its unmanufactured state; or

[~~(14)~~] (15) employees of charitable, religious or nonprofit organizations who reside on the premises of group homes operated by such charitable, religious or nonprofit organizations for mentally retarded or emotionally or developmentally disabled persons."".

3. Renumber the succeeding sections accordingly.

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Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____