

AMENDMENTS TO SENATE BILL NO. 79

Sponsor: SENATOR BAKER

Printer's No. 54

1 Amend Bill, page 1, line 8, by striking out the period after
2 "definitions" and inserting
3 ; providing for Federal compliance; and further providing for
4 exemptions.

5 Amend Bill, page 3, line 21, by striking out all of said line
6 and inserting

7 Section 2. The act is amended by adding a section to read:

8 Section 3.1. Federal Compliance.--The minimum wage and
9 overtime requirements under this act shall be applied in
10 accordance with the minimum wage and overtime provisions of the
11 Fair Labor Standards Act of 1938 (29 U.S.C. §§ 201-219) and the
12 regulations promulgated under the Fair Labor Standards Act of
13 1938, except when a higher standard is specified under this act
14 or regulations promulgated under this act.

15 Section 3. Section 5(a)(3), (4), (5) and (11) of the act are
16 amended and the section is amended by adding a subsection to
17 read:

18 Section 5. Exemptions.--(a) Employment in the following
19 classifications shall be exempt from both the minimum wage and
20 overtime provisions of this act:

21 * * *

22 [(3) Delivery of newspapers to the consumer;

23 (4) In connection with the publication of any weekly,
24 semiweekly, or daily newspaper with a circulation of less than
25 four thousand, the major part of which circulation is within the
26 county where published or counties contiguous thereto;]

27 (5) In a bona fide executive, administrative, or
28 professional capacity (including any employee employed in the
29 capacity of academic administrative personnel or teacher in
30 elementary or secondary schools) [or in the capacity of outside
31 salesman (as such terms are defined and delimited from time to
32 time by regulations of the secretary, except that an employee of
33 a retail or service establishment shall not be excluded from the
34 definition of employee employed in a bona fide executive or
35 administrative capacity because of the number of hours in his or
36 her workweek which he or she devotes to activities not directly

1 or closely related to the performance of executive
2 administrative activities, if less than forty percent of his or
3 her hours worked in the workweek are devoted to such
4 activities);] or in the capacity of outside salesman, a highly
5 compensated employe, computer systems analyst, computer
6 programmer, software engineer or other similarly skilled worker;

7 * * *

8 [(11) In employment as a switchboard operator employed by an
9 independently owned public telephone company which has not more
10 than seven hundred and fifty stations;]

11 * * *

12 (d) The following shall apply to subsection (a)(5):

13 (1) When the classifications under subsection (a)(5) are
14 required to be compensated on a salary or fee basis in
15 accordance with the Fair Labor Standards Act of 1938 (29 U.S.C.
16 §§ 201-219) and 29 CFR Pt. 541 (relating to defining and
17 delimiting the exemptions for executive, administrative,
18 professional, computer and outside sales employees), as amended,
19 employers may use the payment of nondiscretionary bonuses,
20 incentives and commissions, paid annually or more frequently, to
21 determine up to ten percent of the salary or fee amount. An
22 employer may designate any fifty-two-week period in determining
23 annual payments. If an employer fails to designate in writing
24 the annual payment time period in advance, a calendar year will
25 apply.

26 (2) Effective January 1, 2023, the salary or fee basis under
27 paragraph (1) may be updated and delimited from time to time by
28 regulations of the secretary.

29 (3) The terms under subsection (a)(5) shall be defined in
30 accordance with the Fair Labor Standards Act of 1938 and 29 CFR
31 Pt. 541, as amended, except as otherwise provided under this act
32 or updated and delimited from time to time by regulations of the
33 secretary after the effective date of this section.

34 Section 4. This act shall take effect in 90 days.