S T A T E O F N E W Y O R K

2399--B

Cal. No. 396

2011-2012 Regular Sessions

I N S E N A T E

January 19, 2011

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the labor law, in relation to excluding certain seasonal fair workers from the definition of employee for purposes of the minimum wage act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 5 of section 651 of the labor law, as amended by chapter 481 of the laws of 2010, is amended to read as follows:

5. "Employee" includes any individual employed or permitted to work by an employer in any occupation, but shall not include any individual who is employed or permitted to work: (a) on a casual basis in service as a part time baby sitter in the home of the employer; (b) in labor on a farm; (c) in a bona fide executive, administrative, or professional capacity; (d) as an outside salesman; (e) as a driver engaged in operating a taxicab; (f) as a volunteer, learner or apprentice by a corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual; (g) as a member of a religious order, or as a duly ordained, commissioned or licensed minister, priest or rabbi, or as a sexton, or as a christian science reader; (h) in or for such a religious or charitable institution, which work is incidental to or in return for charitable aid conferred upon such individual and not under any express contract of hire; (i) in or for such a religious, educational or charitable institution if such individual is a student; (j) in or for such a religious, educational or charitable

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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institution if the earning capacity of such individual is impaired by age or by physical or mental deficiency or injury; (k) in or for a summer camp or conference of such a religious, educational or charitable institution for not more than three months annually; (l) as a staff counselor in a children's camp; (m) in or for a college or university fraternity, sorority, student association or faculty association, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which is recognized by such college or university, if such individual is a student; (n) by a federal, state or municipal government or political subdivision thereof. The exclusions from the term "employee" contained in this subdivision shall be as defined by regulations of the commissioner; [or] (o) as a volunteer at a recreational or amusement event run by a business that operates such events, provided that no single such event lasts longer than eight consecutive days and no more than one such event concerning substantially the same subject matter occurs in any calendar year. Any such volunteer shall be at least eighteen years of age. A business seeking coverage under this paragraph shall notify every volunteer in writing, in language acceptable to the commissioner, that by volunteering his or her services, such volunteer is waiving his or her right to receive the minimum wage pursuant to this article. Such notice shall be signed and dated by a representative of the business and the volunteer and kept on file by the business for thirty-six months[.]; OR (P) AN EMPLOYEE OF AN AMUSEMENT OR RECREATIONAL ESTABLISHMENT PROVIDED THAT (1) SUCH ESTABLISHMENT ADHERES TO CURRENT STATE MINIMUM WAGE RATES FOR ALL EMPLOYEES, (2) MEETS THE BUSINESS OPERATIONS CRITERIA ESTABLISHED UNDER PARAGRAPH THREE OF SUBDIVISION A OF SECTION THIRTEEN OF THE FEDERAL FAIR LABOR STANDARDS ACT, AND (3) IS EMPLOYED IN HIS OR HER CAPACITY AS AN EMPLOYEE ON THE PREMISES OF A COUNTY OR AGRICULTURAL FAIRGROUND; PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS SECTION SHALL NOT SUPERSEDE THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT OR APPLY TO A POLICY THAT IS THE RESULT OF A COLLECTIVE BARGAINING AGREEMENT BETWEEN AN EMPLOYER AND A RECOGNIZED OR CERTIFIED EMPLOYEE ORGANIZATION.

"Employee" also includes any individual employed or permitted to work in any non-teaching capacity by a school district or board of cooperative educational services except that the provisions of sections six hundred fifty-three through six hundred fifty-nine of this article shall not be applicable in any such case.

S 2. This act shall take effect on the thirtieth day after it shall have become a law.