

Under the FLSA, the treatment of sales people for overtime purposes varies significantly based on circumstance. As it now exists, a wholesaler's inside salesperson must be paid time-and-one-half for his or her additional hours, while the employee performing precisely the identical job at a retail establishment does not. During an economic downturn, these costs are considerable and have contributed to layoffs and comparable overhead reduction.

In 1938, Congress had no way of foreseeing the effect that distinctions in the overtime law could have a century later. Differences based on an ability to supervise or a retail-wholesale dichotomy no longer serve a useful purpose. As old practices of doing business change, the differences between a wholesaler's sales staff and a retailer's sales staff are no longer significant.

This legislation would make the application of this particular overtime exemption under the FLSA consistent for retail, wholesale, and service establishments. I would like to note that the provisions defining who is covered under section 13(a)(1) of the FLSA and the 541 regulations are very confusing. Apparently, the language in the Act is the result of various amendments over the years. As we consider this legislation, I hope that we can also work to simplify and streamline the language.

COMMON SENSE LEGAL  
STANDARDS REFORM ACT OF 1995

SPEECH OF

**HON. STEPHEN E. BUYER**

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, March 8, 1995*

The House in Committee of the Whole House on the State of the Union had under consideration the bill H.R. 956, to establish legal standards and procedures for product liability litigation, and for other purposes:

Mr. BUYER. Mr. Chairman, in the past 50 years, the cost of torts—personal injury, product liability, and medical malpractice cases—have grown at 4 times the rate of the overall economy. Currently, the cost of this system is in the neighborhood of \$132 billion.

Other than diversity jurisdiction in Federal court, predominately, tort actions have been tried in State courts. Historically, consumers bought goods and services locally—intra-state—where many companies primarily conducted commercial trade locally. State rules for tort actions were probably quite appropriate. In the last half century, however, interstate commerce has dominated the market. Consumers buy products that are manufactured in other States, with company headquarters in still another State. Companies no longer serve local markets, but sell products nationally, even internationally. The mechanism by which civil disputes are settled has not kept pace with a changing world and its economy.

From 1973 to 1988, product liability suits in Federal courts increased 100 percent; in State courts the increase was between 300 and 500 percent.

This increase in litigation has not come without a price. Because 70 percent of products manufactured in any one State cross State borders before the point of final sale, American manufacturers must contend with the un-

certainty of 50 different civil justice systems. The awards for damages in one State affect the prices to consumers, insurance rates, and job market in other States. According to surveys reported by Pace University Professor of Law M. Stuart Madden, because of liability costs, 36 percent of American manufacturers have withdrawn products from the world market, 47 percent have withdrawn products from the domestic market, 30 percent have decided not to introduce new products, and 25 percent have discontinued new product research.

It can be argued that our tort system is already federalized, except that no consistent standards apply. Even criminals in our criminal justice system face a clear definition of what constitutes crime and there is a limit on what punishment is deemed to be just.

For the average American, the current tort system denies the right of free choice in the marketplace and inflates the prices for available products. It also discourages innovation, retards capital formation and creates a distinct competitive disadvantage in the world market, affecting ability of the economy to create and maintain jobs.

The chief flaws of the existing system is that it is unpredictable and there is little individual responsibility where all are considered victims.

Article I, section 8 of the Constitution gives Congress the power to regulate interstate and foreign commerce. The intent of H.R. 956, the Common Sense Product Liability and Legal Reform Act, is to return a sense of reasonableness and predictability to this system.

H.R. 956 would: First, limit the liability of product sellers; second, limit the liability of manufacturers for injuries due to drug or alcohol abuse, or to the misuse or alteration of their product; third, institute a 15-year statute of repose on product liability; fourth, impose sanctions for bringing frivolous product liability suits; fifth, eliminate joint liability for non-economic damages in product liability suits; sixth, require a higher standard of proof for punitive damages in all civil suits; seventh, cap punitive damage awards in all civil suits at \$250,000 or 3 times economic damages, whichever is greater, and eighth, require strict standards of proof for claims against biomaterial suppliers.

In no way does H.R. 956 limit the ability of a plaintiff to recover actual economic loss—medical bills, lost wages, and the like.

This legislation will help benefit many of the small businesses in the 5th District of Indiana. Let me site just two examples.

Whallon Machinery of Royal Center, IN, manufacturers industrial material handling machines. The machines incorporate hydraulic and pneumatic components as well as sophisticated electronics. This equipment can be found in nearly every State and many foreign countries. In nearly 30 years of business, over 83 percent of all machines built are still in use. In 1993, Whallon received notice of an incident involving their equipment. Previous to this, Whallon had no product liability claims. A customer modified a Whallon machine to the extent that an operator could place himself into the working mechanism of the equipment while the machine was still in automatic operation. An operator, without first hitting the emergency stop button, as instructed by the owner of the machine, entered the machine while it was running and sustained injuries. Whallon ultimately settled out of court.

Whallon was quickly affected by this. First, its insurance carrier decided to not renew Whallon's policy. New insurance was found but at nearly 4 times its 1993 premium. The company had to alter plans for plant improvements and expansion, which meant neither additional hiring nor improvement in employee benefits.

In another example, medical device manufacturers, such as BIOMET, Zimmer, DePuy, and Danek in Warsaw, IN, provide critically needed products to patients across the country and in the world. Medical device manufacturers have improved the quality of life for countless individuals, through pacemakers, heart valves, artificial blood vessels, hip and knee joints.

Three major suppliers—DuPont, Dow Chemical, and Dow Corning—recently announced that they would limit, or cease altogether, their shipments to medical implant manufacturers. Under current law, suppliers of the raw materials used in implantable devices may be brought into the litigation process. Huge damage awards are often sought from these biomaterial suppliers, even though suppliers have no role in the design, manufacturer, or sale of the implantable device. The courts are not finding the suppliers liable—one supplier has a record of 258 to 1. Nevertheless, it can cost millions to defend and win these lawsuits. The risks and costs of responding to product liability suits far exceeds the limited revenues generated from the sale of these materials and it is driving suppliers away from the medical device industry.

Alternate suppliers have been identified for certain of the materials, but they have expressed similar liability fears. In many cases, no other supplier exists. Alternate suppliers will likely sell materials only to those medical implant companies with the financial ability to back stringent indemnification agreements. According to Dane Miller, president of BIOMET, he is having to look at offshore biomaterial suppliers and the substitute materials made available may be substantially different and require quality assurance and new testing. Small implant manufacturers and start-up companies, however, are not in a financial position to guarantee adequate indemnification to suppliers. Small medical technology manufacturers are a primary source of innovation in the medical technology industry.

By limiting liability to instances of genuine fault, H.R. 956 will enable life-saving and life-improving medical devices to remain on the market.

We must return a sense of reasonableness to ensure that injured parties are compensated in a manner that protects all consumers and America's competitiveness. H.R. 956 is a good start in that direction.

STOP TERRORISM

**HON. CHARLES E. SCHUMER**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, March 14, 1995*

Mr. SCHUMER. Mr. Speaker, I rise today to bring your attention to an ad that recently ran in the New York Times, the Wall Street Journal, the International Herald Tribune, and the New Republic sponsored by the American Jewish Committee [AJC]. This ad is part of

AJC's recent campaign to educate people on international terrorism and the proposed U.S. international countermeasures. As the sponsor of H.R. 896, the President's Omnibus Counterterrorism Act of 1995, I would like to commend AJC for their efforts.

AJC is a national membership organization which protects the rights of Jews the world over; combats anti-Semitism and bigotry; works for the security of Israel, human rights, and democratic pluralism; and promotes the creative vitality of the Jewish people.

The AJC has recently begun work on raising public consciousness of the threat posed to all of us by terrorism, and developing appropriate responses to this threat.

I ask that the text of the AJC's ad on terrorism be included in the CONGRESSIONAL RECORD.

A TALL ORDER: STOP TERRORISM  
NO ISSUE IS MORE URGENT, NO SECURITY  
THREAT MORE OMINOUS

Since the World Trade Center bombing two years ago, terrorists espousing a radical, vengeful interpretation of Islam have struck in Buenos Aires (for the second time), Panama, London, Cairo, Algiers and throughout Israel.

Terrorists claim divine guidance, but their brutal acts are condemned by the 50-country Islamic Conference Organization as "a clear deviation from the teachings of the righteous Islamic religion and blatant violation of our values, norms and heritage."

Terrorists are funded, housed, equipped, trained and provided logistical support, according to the U.S. government, by such U.N. member states as Iran, Iraq, Libya, Sudan and Syria.

Terrorists have taken the lives of hundreds of men, women and children of many nationalities and religions. Their targets can be anywhere. The next bus. The next plane. The next skyscraper.

A global peril, terrorism must be confronted globally—and immediately.

First, the U.S. and like-minded nations must intensify their cooperation in the fight against terrorism, making it an urgent international priority. Intelligence-gathering and investigative resources must be increased, border control procedures reassessed, and the flow of financial support to terrorist "charities" blocked, consistent with constitutional safeguards.

Second, the international community's tolerance of states that support terrorism must end. In Europe and the Far East, nations that extend preferential loans and other concessions to such states must be pressed to reconsider their shortsighted policies.

Third, moderate Arab states must be supported in their efforts to contain the forces of extremism. They are on the front line in this struggle.

Fourth, we must work to further the process of reconciliation between Israel and the Arab world which benefits the entire region, and undercuts the appeal of extremism.

These steps will enhance safety across the globe, in every land menaced by terrorism, including our own. It's a tall order . . . and a vital one.

#### UNWISE CUTS IN EDUCATION

### HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 14, 1995

Mr. FRANK of Massachusetts. Mr. Speaker, from time to time I will share with my col-

leagues evidence from people who are at work in Massachusetts of the damage that is being done to our social fabric by the proposed cuts that the Republican Party is putting forward. By increasing military spending, keeping other spending such as the manned space station sacrosanct, and advocating large tax cuts, many of which will go to wealthy people, the Republicans are forcing unduly deep cuts in many important programs that help our society attain the degree of civility that is essential. Recently, the commissioner of education in Massachusetts wrote to me and my Massachusetts congressional colleagues to talk about how seriously damaged programs in Massachusetts will be by cuts in the education area. I ask that Commissioner Antonucci's letter in which he stresses "the important connection between education and the nation's economic competitiveness and the vital role of federal investment in education" be printed here as one more argument against the cuts the Republican Party is now launched upon.

THE COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF EDUCATION,

Malden, MA, February 28, 1995.

The MASSACHUSETTS CONGRESSIONAL

DELEGATION,  
Washington, DC.

DEAR MEMBERS OF THE MASSACHUSETTS DELEGATION: As the Appropriations Committee proceeds to vote on March 2 on the re-scission package that would cut \$1.7 billion from Education programs, I have implored them to please consider the important connection between education and the nation's economic competitiveness and the vital role of federal investment in education.

For Massachusetts, a leader in education innovation and reform, the proposed cuts would shatter our best investment. For example, the Goals 2000 initiative so closely tied to each state's reform efforts is scheduled to be cut by \$142 million. Programs such as School To Work and Tech Prep have been lauded as providing high-skilled preparation to 7000 students each year in the work place and the community colleges—the only entry for these particular students for higher wage jobs.

The Safe and Drug-Free program has served each one of our cities and towns since 1986. Through these drug and alcohol abuse programs, we have seen a significant drop in alcohol abuse as reported by students since 1990.

The loss of \$2,000,000 in Adult Education funding has very serious consequences to our most vulnerable population. These monies provide workplace literacy to 1200 adult students, and literacy training to 1500 homeless adult students. Our business community has been so impressed with our success, that they match the federal grant with \$1,800,000 each year.

We have written each member of the Appropriations Committee. We need their vote to reflect a level of funding that ensures every student's educational success.

Sincerely,

ROBERT V. ANTONUCCI,  
Commissioner of Education.

TRIBUTE TO THE DISTINGUISHED  
WOMEN OF CALIFORNIA'S 14TH  
CONGRESSIONAL DISTRICT

### HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 14, 1995

Ms. ESHOO. Mr. Speaker, I rise today during National Women's History Month to salute the remarkable women of California's 14th Congressional District who serve their communities as leaders of organizations that assist women.

This year, as we celebrate the 75th anniversary of women's suffrage, it is fitting that we honor those who devote their time and talents to organizations that promote women and meet their needs. The extraordinary efforts and public service of these outstanding women provide our district with great leadership. While we take time during this month to commemorate historic women and their achievements, we also take this opportunity to honor the contributions women in service organizations are currently making to our communities.

Our region is blessed with superbly capable women leaders. Among these distinguished women are: members of the San Mateo County Council on the Status of Women: Linda Crowe, Janet Frakes, Gale Frances, Barbara Gee, Laura Guluzzy, Barbara Hammerman, Zenaida Ivey, Teresa Jollymour, Mary McGlynn, Pat Paik, Ellen Petterson, Jo Anna Reichel, Mary Anne Rooke, Victoria Von Schell, Carol Tanzi, Edwina Wasson, Yvonne Webb, Eva Wright, and Brenda Yost; members of the Santa Clara County Commission on the Status of Women: Bonita Lynn Banducci, Annie Dandavati, Jean Graf, Norma Mencacci, Jyoti Pendse, Gwen Quail, Noreen Raza, Wiggys Sivertsen, Rosemary Stasek, Linda Tauhid and Wilma Wool; Madolyn Agrimonti of the Latina Mentor Program; Elizabeth Alonzo, president of OPEIU Local 29; Dorothy M. Ames, president of AAUW Cupertino/Sunnyvale; Nancy Berg, executive director, San Francisco Bay Girl Scout Council; Vera Berg, vice president, Mills-Peninsula Hospital; Nancy Biagini, president, Communication Workers of America, Local 9423; Crownie Billick, copresident, League of Women Voters, Los Altos-Mountain View; Cynthia Carey-Grant, CARAL; Felisa Castillo, secretary-treasurer, Bakers' Local 24; Kalamu Chache, executive director, the Consortium for Young Women; Marcie Cisneros, Sor Juana Ines; Lisa Conrad, president, League of Women Voters of South San Mateo County; Amy Dean, business manager, South Bay AFL-CIO Labor Council; Carmen Delgado-Contreras, Latina Mentorship Program; Rosalind Fisher, executive vice president, Visa USA Inc.; Nancy Fox, executive director, Girl Scouts of Santa Clara County; Wanda W. Ginner, Petersen/Ginner, Inc.; Dian J. Harrison, executive director, Planned Parenthood of San Mateo County; Ila Homsher, Pacific Gas and Electric; Karen Keane, the Women's Center; Rita Keefe, president, AAUW Los Altos/Mountain View; Jane King, president, AAUW Menlo/Atherton; Muriel Knudsen, copresident, League of Women Voters of Los Altos/Mountain View; Sue Mirch-Kretschmann, president, League of Women Voters of Cupertino/Sunnyvale; Ruth Nagler, the Women's Center; Eve