



July 21, 2010

The Honorable George Miller
Chairman
House Education and Labor Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Kline
Ranking Member
House Education and Labor Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Miller, Ranking Member Kline and Members of the Committee:

On behalf of the National Retail Federation (NRF), I am writing in opposition to H.R. 5663, the “Miner Safety and Health Act of 2010”, which includes changes to the Occupational Safety and Health Act’s (OSH Act) enforcement, penalties, abatement and whistleblower provisions. The proposed changes, contained in a bill intended to address safety in the mining industry, would be extremely costly to implement, difficult to administer, create more conflict in the workplace, and encourage lawsuits. Unfortunately, the OSH Act provisions would not help prevent workplace accidents and injuries, and smaller retailers in particular would be the most adversely impacted by the onerous provisions in the legislation.

Members of our organization are committed to providing safe workplaces for their employees, which are their most important resource, and NRF members share a dedication to proactive and workable efforts to improve workplace safety. We do not believe, however, that the provisions of H.R. 5663 will assist retailers in the shared goal of improving workplace safety.

For example, H.R. 5663 imposes new and vague standards for criminal liability—including felony criminal sanctions against “any company officer or director” for “knowing” violations of the OSH Act. The bill, however, provides no definition of “knowing,” nor does it provide any limitation or guidance on which “officers or directors” could face criminal charges. H.R. 5663, while imposing draconian penalties against employers, also creates complicated and costly procedures for adjudicating whistleblower cases that include unlimited liability for companies.

Moreover, under the bill, the Occupational Safety and Health Administration (OSHA) inspectors could require employers to make immediate and costly changes to the workplace without OSHA showing an imminent safety threat or providing employers with a hearing or judicial review of the inspector’s allegations. This is particularly troubling given that inspectors are not industry experts and lack knowledge or background regarding industry specific safety practices and operations.

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Unfortunately, these proposed changes will increase litigation, discourage settlements, and create disincentives for cooperation between employers, associations and OSHA. H.R. 5663 will additionally stretch and misdirect the resources of OSHA and other federal agencies and impose substantial costs on businesses of all sizes at a time they can afford it least, all while doing nothing to prevent workplace accidents and injuries.

Finally, what is missing from H.R. 5663 is equally concerning. The legislation does not include provisions that would actually help a business improve workplace safety. It contains no support or assistance for employers to help them implement better safety programs or better understand safe work practices and related legal obligations. Such compliance assistance is particularly necessary to help small businesses, which often cannot afford to maintain safety personnel or hire consultants to guide them through complicated OSHA regulations.

The experience of NRF member companies has demonstrated that employer and employee collaboration is the most important of all the elements that create an effective workplace safety program. Management must constantly train employees in safety hazards and accident prevention techniques, and seek to engage them in implementing that training and playing an active role in workplace safety. A constant focus on employer and employee collaboration and the high quality of their safety know-how means a safer workplace.

Through such efforts, the number of workplace safety incidents in private industry establishments is on a downward trend. In retail establishments, injury and illness figures compiled by the Bureau of Labor Statistics (BLS) continue to show a similar trend as well. Injury and illness rates continue to decline year to year in all categories, including: recordable cases, cases involving days away from work, and job restriction or transfer.

In order to work towards our shared goals of healthy and safe workplaces, OSHA must be a resource for employers as well as an enforcement agency. Unfortunately, this legislation will create a more adversarial relationship between business owners and OSHA.

For these reasons, NRF urges you to vote against H.R. 5663 when it is considered by the House Education and Labor Committee.

Sincerely

A handwritten signature in black ink, appearing to read "Steve P. Friedman". The signature is written in a cursive, flowing style.

Senior Vice President
Government Relations

cc: Members of the House Education and Labor Committee