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—intrastate—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 uncertainty 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 noneconomic 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