

Presently so-called inside sales employees, that is, those who sell from inside an employer's premises using telephones, faxes and computers, are subject to the overtime requirements of the Fair Labor Standards Act while outside sales employees are exempt. As nonexempt, inside sales employees often suffer from reduced earning opportunities because they are limited to a 40-hour workweek. Outside employees, on the other hand, can choose for themselves whether to work additional hours and thus receive incentive pay for additional sales made. This distinction, written into law in 1938, no longer makes sense in 1998. While inside sales employees are often as skilled and productive as outside sales employees, they are discriminated against under this act.

Mr. Speaker, in order to minimize the potential for abuse, the exemption authorized under H.R. 2888 is narrowly drawn to cover only inside sales employees who meet a number of specific criteria. For example, such individuals must receive specialized training and develop technical knowledge. They must sell predominantly to regular customers and must receive incentive compensation based on their own selling efforts.

Finally, Mr. Speaker, I am pleased that CBO reports the bill would have no significant impact on the budget and contains no unfunded mandates on local governments or private employers. I commend the gentleman from Illinois (Mr. FAWELL) and the gentleman from New Jersey (Mr. ANDREWS) for their efforts to correct this clear inequity in the law and urge my colleagues to support H.R. 2888.

Recognizing that certain Members have expressed reservations about this legislation, the Committee on Rules has reported an open rule in order to provide Members wishing to perfect this bill the freedom to offer their amendments on the floor. Accordingly, I urge my colleagues to support not only the rule but H.R. 2888, the Sales Incentive Compensation Act.

Mr. Speaker, I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I thank the gentleman from Washington (Mr. HASTINGS) for yielding me the customary half-hour, and I yield myself such time as I may consume.

Mr. Speaker, I am not opposed to this open rule, but I am very concerned about the bill that it makes in order. This bill says that employers can require people to work overtime but they no longer have to pay them time and a half. In other words, sales employees who are forced to work long hours could end up with no additional pay at all.

Mr. Speaker, this means that enormous numbers of already low-paid workers would be denied the protections of the Fair Labor Standards Act. My Republican colleagues may argue that the low salary guarantees in this bill takes care of the workers, but, Mr. Speaker, it does not.

According to the Bureau of Labor Statistics, this bill will deny 1.5 million sales employees overtime pay. I for one think that 1.5 million American workers should be paid for the time that they spend at work.

Like many other bills my Republican colleagues have drafted, this bill helps employers at the expense of workers. It is a win-win situation, Mr. Speaker, for the employers and it is a gamble for the workers. If the worker makes big sales, the employer does well. If the worker does not make big sales, the employer still does well because he does not have to pay his worker overtime. Employees who must work long hours but do not make significant sales will be working virtually for nothing.

Anyone with any complaints, anyone who is confused about exactly who is covered under this very complicated, multi-test exemption, please do not look to this bill for clarification.

These confusing standards will create a lot of misunderstandings, a lot of fights, a lot of litigation. Just what we need, Mr. Speaker, more litigation.

My Republican colleagues may argue that the people are begging for overtime in order to make bigger commissions. Mr. Speaker, if that is the case, if so many workers want to work overtime for commission instead of time and a half, then they should be allowed to do so. But as I understand it, the amendment to make this provision voluntary was rejected. So whether you want to work overtime for little pay or you want to go home and see your family, you are really stuck working at the whim of an employer who has little to lose by chaining you in the office. This bill will force people to work longer hours, it will cut employees' incomes, it will promote lawsuits, and it will mean workers are hurt, not helped, by advances in technology.

What we really need, Mr. Speaker, if you really want to help the American worker, is to raise the minimum wage. Let us allow American workers to earn a living wage. Let us enable hard-working full-time employees the chance to take care of their families. I have no opposition to the rule, but I do oppose the bill.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

LIMITATION ON FURTHER AMENDMENTS AND DEBATE ON H.R. 2888, SALES INCENTIVE COMPENSATION ACT

Mr. GOODLING. Mr. Speaker, I ask unanimous consent that during further consideration of H.R. 2888 in the Committee of the Whole pursuant to House

Resolution 461 after the legislative day of today, no further debate or amendments to the committee amendment in the nature of a substitute shall be in order.

The SPEAKER pro tempore (Mr. BARRETT of Nebraska). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

SALES INCENTIVE COMPENSATION ACT

The SPEAKER pro tempore. Pursuant to House Resolution 461 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2888.

□ 2251

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2888) to amend the Fair Labor Standards Act of 1938 to exempt from the minimum wage recordkeeping and overtime compensation requirements certain specialized employees, with Mr. Watts of Oklahoma in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Pennsylvania (Mr. GOODLING) and the gentleman from New York (Mr. OWENS) each will control 30 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. GOODLING).

Mr. GOODLING. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to express my strong support for H.R. 2888 and urge my colleagues to support the legislation. I also want to urge my colleagues to reject any amendments that may be offered to weaken or to undercut the bill.

It is not often that we can come to the floor with a bipartisan labor bill. We did it a couple of weeks ago. We are back again with another. I know that the gentleman from Illinois (Mr. FAWELL) has worked very long and hard with the gentleman from New Jersey (Mr. ANDREWS) and others on the Democrat side to put this bill together. That is why particularly I hope that the House will reject any amendments that would undercut the bill that has been so painstakingly negotiated and crafted on a bipartisan basis in our committee.

Mr. Chairman, the reason for this bill was better stated by former Secretary of Labor Robert Reich a few weeks ago than I could when he was describing the changed nature of, quote, sales persons in modern business. Certainly no one can deny the fact that Robert Reich is a strong, strong supporter of the employee. Let me quote just a couple of lines from Mr. Reich's speech to

the American Compensation Association:

A lot of people who are called sales reps are no longer really sales reps. In the best companies they are helping customers define what the customers need, and it's true of business customers as well as individuals. They are not just selling a mass production product or service. They are not just persuading someone to take something. They are actually advising somebody about a package of goods and services that meets the needs of that individual and those sales people are therefore more like management consultants.

I continue quoting from Robert Reich:

Those sales people are the key glue, the human capital, that advises the company about new and evolving needs among customers, and also advises the people who are developing the goods, and developing the services, and developing the technologies about what the market needs. Those sales people are at the center of this new competitive strategy which relies on customization and value.

The problem that we are addressing with H.R. 2888 is the problem of fitting these 21st century sales persons into a 60-year-old law. The Fair Labor Standards Act already addresses the situations of sales employees who travel from customer to customer, the outside sales person. And it already addresses the situation of sales persons who work in retail stores. But it does not address the situation of these modern inside sales persons who often sell very sophisticated and complex products and services and who do so by using the tools of modern commerce, telephone, fax, computer, and the Internet.

As a result, a law meant to protect workers ends up denying these professional sales employees the flexibility and opportunity to maximize their sales and income. As Mr. Anthony Williams, one of the employees who testified in support of H.R. 2888 before our committee said,

I consider myself a professional salesman and would like to be treated as such. The inside sales force is certainly every bit as professional, knowledgeable and well trained as the outside sales force. We deserve to be seen as such by the wage and hour laws.

Another employee who testified in support of H.R. 2888, Ms. Leronda Lucky, put it this way:

I am in this business because I am a sales person. My motivation to sell is the earning potential that I have. I would like to be able to earn as much money as possible. My clients do not necessarily have 9-to-5 work hours. Many start their day early in the morning and work until late in the evening. I need the flexibility to determine when I need to meet with the customers on their hours. Being an exempt employee would provide for that flexibility.

Mr. Chairman, H.R. 2888 is a very carefully negotiated and crafted bill. It does not exempt all sales persons from the Fair Labor Standards Act. It reaches only those who by reason of their specialized and technical knowledge, and their relationship with their customers, meet the conditions laid out in the bill. Those employees must

receive a substantial share of income based on commissions from sales. So H.R. 2888 is a narrow bill, and reflects the specific needs and responsibilities of many sales employees in 1998.

It is time to update the 60-year-old law, when the tools that today's sales people use, like faxes and computers, were not even imagined 60 years ago.

Again I urge my colleagues to support this bipartisan legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. OWENS. Mr. Chairman, I yield myself such time as I may consume. I am strongly opposed to H.R. 2888.

Mr. Chairman, why are we here at 11 o'clock tonight? Why is this bill on the floor as an open rule tonight or any other time? This is a very trivial piece of legislation in one sense. By itself it does not have much meaning. But if you look at it in the context of a whole series of small, seemingly trivial bills which harass American working families, then this is a very important bill. It is probably not important to many people because it has an open rule. Nothing comes to this floor with an open rule that is really important. When bills related to budgets and taxes and really important things come to the floor, they do not have an open rule. So it is really being treated in a very trivial way and by itself it would be, but it is part of a bigger guerilla campaign, a guerilla warfare campaign of the Republican majority against the American working families.

At a time like this in America when the stock market is booming, unprecedented prosperity, why are we chipping away at the wages and income of the people at the very bottom? We are talking about sales people and calling them managing consultants. What managing consultant do you know that makes \$22,000 a year? That is what we are talking about. When you take the wages plus the commissions, the cut-off point for this is \$22,000 a year. At that point, the Fair Labor Standards Act ceases to apply and these people are left out there on their own. If they can sell and make commissions, then good. But since they are inside salesmen and since they are helping customers with the product, giving advice, they are doing a number of things which do not bring a commission. You only get a commission when you sell. If you do not sell, you do not get a commission. But they are doing lots of other work.

□ 2300

So why are we here chipping away at the income of people at that level? As my colleagues know, this is a part of a campaign that I find baffling, the majority party continues. Today we had a series of bills on OSHA where they were chipping away at the safety and health standards for American workers. Now we are going to the heart of the matter, and we are going after their cash. We are taking away the cash.

Now this bill is like a landmine on the way to a bigger objective. As my colleagues know, the bigger objective is to take away overtime cash payment for overtime completely. I think many of us still remember that the 105th Congress opened up with a bill which was a comp time bill, a bill which said that an employer could give comp time instead of cash to employees. I think my colleagues may remember that that bill passed the House of Representatives. It is still out there. The Senate has not acted upon it yet, we have not had a conference, but there is still a danger in this year, and I call this to the attention of all the working families out there. As my colleagues know, I hope they are still awake, I hope they are here. We can take advantage of this maneuver that they are pulling to alert people that the comp time bill is out there still. It passed the House of Representatives, it is waiting, they are waiting to take away overtime, they are going to take away cash for their overtime.

This is part of the whole plot, and if our colleagues pass this, we are one step further along the road to taking cash payment for overtime.

Now at that time when we had that bill on the floor, I proposed a compromise. I proposed that, all right, there is a lot of talk about middle-class families, people who are making \$100,000 or more. They want comp time, and they do not want to be bound by having to take their overtime only in cash payments. They want to be able to take time off. So I had a simple proposal, a simple amendment, put it on the floor. I said that all those people who are making minimum wage, and if they are making minimum wage, it meant their salary, their total earnings for the year, assuming they worked every hour of a 40-hour week for the whole year, was less than \$12,000 a year. Anybody earning minimum wage, less than \$12,000 a year, let them remain under the Fair Labor Standards Act and receive cash payment. They need cash to put food on the table. They need cash for clothing, for shelter. They do not need comp time. That is what they need.

That bill was voted down here. It did get 170-some votes, but it was voted down. As my colleagues know, how can we keep saying with an honest and with a straight face that this prosperous economy cannot afford to have people receive overtime payment when they are making less than \$12,000 a year? And here we have another situation, another standard of \$22,000 a year.

Now unless somebody complains that I am not germane, let me proceed to say that this piece of legislation, the effect of this legislation is to permit employers to either require workers to work longer hours, how to pay workers less for each hour's work. Far from enhancing the earning opportunity of workers, the primary effect of this legislation is to increase the income of the employers at the expense of the

workers. H.R. 2888 exempts an undetermined number of nonretail inside sales personnel from the requirement that employers pay time and a half for hours worked in excess 40 hours a week. Based on data from the Bureau of Labor Statistics, as many as 1.5 million workers may lose overtime protection if this legislation is enacted.

Unlike outside sales people, an inside sales person is directly employed in making and processing sales for their entire time at work, and I want to emphasize again Secretary Reich was right. They are engaged in a large number of activities that do not necessarily end up in sales. They do provide advice, they do explain things. There are a number of ways in which inside sales persons are working all the time and there is no commission attached to their labor.

I agree with the chairman of the committee. As my colleagues know, managing consultants is what we could describe them as in terms of the duties that they perform. They do not get a managing consultant's pay, and that is what we should focus on. We are not talking about people who get paid at the level of managing consultants or any other kind of consultant.

Since the employer is receiving a direct benefit from the employee's labors, from the employee's entire work period, employers should be required to pay overtime when the employee is required to work more than 40 hours in a week as the law currently provides. There is no justification for denying overtime pay to these workers.

There is some confusion. I do not know why there is such confusion. It is a simple matter. They are forcing people to work, and they are not paying them in accordance with the overtime regulations of the Fair Labor Standards Act if they exempt them, force them into an exempt status.

Under this legislation, employees are exempted if they earn wages or salary of \$16,000 a year and if they earn an additional \$6,500 a year in commissions. In other words, the \$16,000 an employee must earn in wages or salary is regardless of the number of hours that he works, that is worked by this employee. An employee, by being required to work more than 40 hours a week may be paid well below the time and a half standards, well below 1.5 times the minimum wage, and still qualify for the exemption so long as the annual wage exceeds \$16,068.40. A minimum wage worker who is required to work 60 hours a week without a sufficient base salary, to be exempted from overtime by this legislation.

This legislation further provides that an employer need not pay anything in wages or salary to covered workers for hours worked beyond 40 hours a week. In other words, an employee who earns \$7.73 an hour and earns the equivalent of another \$3.09 an hour in commissions may be required to work overtime without earning a penny more in wages and salaries.

This bill does not simply repeal the requirement that employees be paid 1.5 times their regular rate of pay for overtime work, it repeals a requirement that an employer provide any wage or salary for hours worked in excess of 40 hours a week. Employers may still require employees to work overtime. If during the overtime period the employee earns no commissions, then the employee would be paid nothing, nothing at all, for the additional hours worked.

Exempting workers who make no more than \$22,600 a year from overtime protection is a horrific policy, and that is what it all boils down to. If at this hour of the night I am certain that anybody listening is confused, and there are a lot of folks who seem permanently confused, it all boils down to taking a person who is in combination salary plus commissions at the level of \$22,600 a year and saying to them, "You are no longer going to get paid cash for your overtime, you are not going to get anything for your overtime, and your employer can work you as many hours as he wants to because there's no reason why they couldn't schedule you to work. It doesn't cost them anything. It costs you your hours, time away from your family, but at 22,600 you're in another zone."

\$22,600 happens to be 12 percent below the average annual income earned for all workers. Let me repeat. \$22,600 is 12 percent below the average annual income for all workers. The median income for nonretail sales representatives is \$40,000. Under the current law, employees in the computer programming industry must make \$57,000 a year before they are exempted from overtime. And I want to repeat that again. The computer programming industry has a unique exemption, and I was a part of the legislation which gave that exemption. Some of us are accused sometimes of not being willing to compromise, of not being willing to change anything that has been in the law for 30 years or being dogmatic, et cetera.

No. We have a clear situation with the computer programming industry. It was clear that they needed some relief from the Fair Labor Standards Act, and we gave it to them, but it was reasonable. The threshold number was \$57,000 a year. Employees in the computer programming industry must make \$57,000 a year before they are exempted from overtime.

Now considering all the other reasons why they needed to be exempted, and they gave good reasons, if it had not been at a level of \$57,000 a year, I would have never agreed to it.

□ 2310

Many others would not have agreed to it. That is the crux of the matter tonight. What is your breaking level, where do you start shutting off cash payments on overtime for the people that the law is designed to protect?

Notwithstanding the unprecedented prosperity the economy has enjoyed

over the past 5 years, income disparity between the very wealthy and everyone else is increasing. The drop in overall unemployment rates has not significantly diminished the fact that more and more Americans must work longer hours just to make ends meet. Rather than addressing these matters, H.R. 2888 exacerbates them. The majority party continues to exacerbate the problems faced by working families in America.

Working families in America should know that we are not here to discuss tonight the important issues like a raise in the minimum wage. If we just raise the minimum wage in a very conservative way, 50 cents a year for the next 2 years, by the year 2000 we would have a minimum wage of \$6.15 an hour. We would still be behind in terms of not being able to keep up with inflation, but that is not even being entertained. We cannot even talk about that. It is not put on the floor for discussion.

We have something called the American Competitiveness Act, which goes after people who are computer programming specialists and information technology workers. Instead of training more workers and discussing how we can train more workers and have the workers in this country, people who are now being laid off and downsized from other jobs, trained to take these jobs, we just passed something in the other body which is called the American Competitiveness Act, a real outrageous name for such an act.

The American Competitiveness Act will soon be on the floor of this House, and it was not even sent to our committee. It is handled by another committee. But it deals with taking jobs away from workers.

It is going to raise the quota for the admission of professionals into this country and allow more people with computer programming knowledge to come in. Thirty thousand more will be allowed in per year for the first year, and 20,000 a year for the next 3 or 4 years.

That needs to be discussed. We are taking jobs and total income, total salary, away from large numbers of American workers. They are striking, I understand, now in Flint, Michigan, because workers are concerned about their jobs being taken overseas. We are not discussing that in the Committee of Education and Workforce. We do not protect the work force in this committee. The majority makes certain that the work force is harassed and that we are constantly finding ways to downsize the income and downsize the health and safety standards for working people.

This is a serious flawed piece of legislation, and although it looks small, it is a land mine on the way to another catastrophe. The big catastrophe is waiting. We already passed it out of the House, it is waiting out there, and it is called comp time. They are going to take away the protections of the

Fair Labor Standards Act from everybody and have comp time replace cash time for overtime, cash payment for overtime.

This is an important bill. Keep your eyes on the guerrilla war being waged by the Republican majority. This is a seriously flawed piece of legislation. I urge its defeat.

Mr. Chairman, I reserve the balance of my time.

Mr. GOODLING. Mr. Chairman, I yield 6 minutes to the gentleman from Illinois (Mr. FAWELL), the subcommittee chairman, the engine that is trying to drive labor and management into the 21st Century before it is too late.

Mr. FAWELL. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, it all depends on how we look at legislation like this, whether we see opportunities, as I see, or whether we see a lot of limitations, as I gather the gentleman from New York (Mr. OWENS) does see.

But this legislation, I do not think, is difficult to understand. It amends Section 13.1 of the Fair Labor Standards Act to simply allow a defined group of people called inside sales people to be exempt from the overtime provisions of the Fair Labor Standards Act.

The reason for that is so that a lot of these people, especially young people in the sales business, they are pretty well prepared professionals, they would like to be able to work on a commission basis. They really prefer that. They really prefer the opportunity that would be afforded to them. Right now they do not have that opportunity, because employers are not wild about going into overtime and all that is involved with that.

These rights, by the way, of working on a commission basis have long been enjoyed by sales people who work outside the office under the title of outside salesmen exemption. That has been granted by the Fair Labor Standards Act ever since it was created.

Nobody has, I think, felt there is a white flag we had to fly for the outside salesmen of America, who have done a pretty good job. These are people who customarily and regularly work away from the employer's place of business for the purpose of selling tangible and intangible items of property.

Now, what we did here, though, was something special. We sat down, and we had the gentleman from New Jersey (Mr. ANDREWS) and I and others on both sides of the aisle thinking, well, how can we do this and settle the fears of those in dealing with labor law about maybe that somehow would be taking advantage of workers? What we tried to do, in a bipartisan effort, and I think we accomplished that, was to specially define those who are in inside sales work who could take advantage of this.

We set forth what is called a duties test, and made clear that only those who have specialized and technical knowledge of the product and detailed knowledge of the customer's needs

could take advantage of this, and they are people who are in sales and predominantly serving regular customers, positions that require a detailed understanding of the needs of those to whom the employee is selling.

Then we went a bit further and said that we are going to guarantee, in effect, that, come heck or high water, no matter what happens, if they fail in their commissions earnings, these young people that talked before said nothing about opportunities. They said they really wanted to have these opportunities. But we would require that the employers would guarantee in effect around \$22,500. Maybe that is not a good living wage; nobody is necessarily saying that. It is not a cap, it is a floor.

We are simply saying if some catastrophe were to occur here and you did not make as much, these young people are thinking of making \$50,000, \$60,000, \$70,000, if they just had the opportunity to go at it and do it their way with commissions and not be on an hourly wage.

They explain that, look, you know, we have clients to serve, and we can better serve them on the weekends, we can better serve them on Saturday evening, early in the morning when these customers are going to work. We would like to have the opportunities, the very same opportunities that outside salesmen have had for years.

The times have changed. This is now 1998. It was 1938 when that law was drafted. In those days the traveling salesman would kiss the good wife good-bye and go out into the country in a car and rumble around for a couple of weeks before he came back in order to be able to communicate. They did not even have the telephone in very good shape in those days.

Today we have the fax, we have computers, the Internet, and types and kinds of ways of being able to communicate. You do not have to go into the old car and rumble out into Iowa and the Midwest and so forth to do that.

Then we said also before you can qualify here, you have to be on the commission basis, which is pretty vital.

Now, that does not seem to me to be any furtive effort by those of us, both Republicans and Democrats alike here, of trying to do harm and do something bad for the working people of America. Again, I say these were young people who are asking for these advantages.

□ 2320

I simply want to say this is a bipartisan bill. I want to laud the gentleman from New Jersey (Mr. ANDREWS) who has diligently sat down and tried to painstakingly set up these standards so that we would not have people fearing the ways in which I think the very fine gentleman from New York has expressed his fears about this bill.

I think it is an excellent piece of legislation, and I hope people will receive it in the manner in which it should be received.

Mr. OWENS. Mr. Chairman, I yield such time as she may consume to the gentlewoman from California (Ms. WOOLSEY), an expert management personnel consultant, a real consultant.

(Ms. WOOLSEY asked and was given permission to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Chairman, before coming to Congress, I spent over 20 years as a human resources professional; 10 years as an H.R. manager of a high-tech manufacturing company, and 11 years as a human resources consultant. Did I earn more than \$22,000 a year? Yes, I did. That is because I know something about the Fair Labor Standards Act.

The Fair Labor Standards Act allows employers to exempt employees from overtime if the employee has specialized skills, a high level of education, advanced training, and/or a minimum level, a professional level of compensation.

This bill would allow an employer to exempt certain jobs from overtime regardless of the credentials of the person filling that job. The job title in H.R. 2888 becomes more important than the person.

Some time ago, as my colleague, the gentleman from New York (Mr. OWENS) mentioned, Congress passed legislation to exempt certain computer industry jobs. They exempted them from overtime. That was if that job paid \$57,000 or more a year.

I voted for this. I voted for it because a salary in the \$50,000 range does not need overtime nearly as much as the jobs we are talking about tonight. This bill exempts employees who make less than half that amount.

The Bureau of Labor Statistics shows that the median income for nonretail positions is \$40,000 a year. At the very least, the income limitation on this bill should be \$40,000 to ensure that overtime taken from workers would be a much less significant loss, to ensure that these positions are truly considered professional.

This bill would be acceptable, perhaps, if the decision to work overtime was left to the employee, if it were totally voluntary, but this is not how H.R. 2888 works.

This bill takes away overtime, gives the employer the right to insist on overtime work and insist that the employee work at their straight rate of pay, really, within that week's salary. If they are paid for a 40-hour week, they get paid for 40 hours. Whether or not they work 42, 44, 46, 48, they get paid for 40.

No wonder, Mr. Chairman, we have heard from employers all over the country telling us how employees benefit from this bill, while, I want my colleagues to know, I have not heard yet from one worker that this is what they would prefer.

I ask my colleagues, unless we make overtime voluntary, unless we raise the salary floor to at least \$40,000, which is the average for nonretail sales jobs, that we vote against 2888.

Mr. GOODLING. Mr. Chairman, I yield 6 minutes to the gentleman from New Jersey (Mr. ANDREWS), the co-author of the bill.

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Chairman, I thank the gentleman from Pennsylvania for yielding, and I thank the ranking member for his cooperation in this matter.

Mr. Chairman, I rise in support of the bill, and I would like to thank my co-author, the gentleman from Illinois (Mr. FAWELL) for his diligence in preparing this piece of legislation.

I share with my ranking member opposition to a plan that would replace cash with comp time. I share his sympathies for an increase in the minimum wage. I would oppose a bill that would divest 1.5 million American workers from the right to receive overtime. That is not the bill before us tonight.

The bill before us tonight is not a bill that divests people of overtime. I believe it is a bill that appropriately invests a carefully selected number of people with an opportunity to better themselves.

It is not a partisan bill. Five Democratic members of this committee, including myself, are sponsors of this bill. We believe that this is a bill that opens up opportunity for people.

It is important, first, to talk about what the bill is not and whom it does not cover. If you drive a truck and deliver goods along a route, this bill does not cover you because you are not an inside sales person. If you are a phone solicitor, someone that makes cold calls to people you have never spoken to before and tries to sell them a credit card or a magazine subscription or some other good, this does not apply to you because you are not dealing with an established customer base.

If you stand on your feet in an appliance store or a department store or furniture store and wait for the customers to come in, this does not apply to you because you are not dealing with a sophisticated product and existing customer base; and the law, simply by its terms, does not apply. This bill applies to a carefully selected group of people who are engaged in the process of doing better by working more.

Tomorrow morning, one of the beneficiaries of this bill is going to go to work, and she is going to go to work at a food distribution company. Her assigned clientele will be a group of restaurants or food stores. Her job will be to work with that existing customer base to try to make the best deals and the best connections she can with that existing customer base.

She has the opportunity, provided that she is primarily engaged in sales, provided that she needs specialized consultive knowledge, provided that she can exercise discretion in the relationship with the client or customer, and provided that she is dealing with primarily an existing customer base,

she has the opportunity to move ahead and make more and increase her income.

This is not a situation where people who are involved in a cold call selling situation can be compelled to work more hours. This is a situation where people who are engaged in what former Secretary of Labor Reich has described as the new sales force in the economy will be given an opportunity to advance the cause in the income of that particular individual.

It is very important to understand that this is a carefully tailored piece of legislation, designed not to cover people who could be easily exploited by an unscrupulous employer, but rather to open the doors of opportunity for an employee who wishes to improve her situation or his situation by working at hours and times where the customer base and the clientele is more likely to respond.

To understand why this law is needed, my colleagues need to understand how it would be different if my hypothetical individual who is a food sales person were working as an outside sales person. If this same sales person got in her car or her van and drove from customer to customer instead of sitting at her desk and communicating with those customers on the telephone or via the fax machine or via the computer or the Internet, under the present law, if she sits behind the wheel of a car or a van and drives from place to place, she is not subject to the provisions of the 40-hour workweek. But if she sits behind a desk under what I would assume would be more productive and beneficial circumstances and works her customer relations with a phone and a fax machine and a computer, she is covered by the law.

This proposal, with bipartisan support, carefully drawn after due consideration of objections, and made in good faith by both sides of the aisle, this plan is resolved to address that anomaly and treat that person the same if she is sitting in the office making the sales as she would be if she is driving out on the road and making the sales.

In support of H.R. 2888, the "Sales Incentive Compensation Act," I believe the following points should be made.

The bill sets out important criteria for those employees to be exempted. First, employees must be highly skilled. The exemption is directed at professional employees functioning in a similar capacity as "outside sales" employees. In this regard, these employees must have highly specialized and technical knowledge about both the products or services they offer as well as the clients with whom they deal. These "highly specialized" professionals typically receive extensive training to prepare them to sell a variety of products and/or services and they receive frequent follow-up training or related educational instruction.

Second, employees must exercise independent judgment and discretion. It is fundamental that these employees are required, by the nature of their work, to exercise independent judgment and discretion in making

these sales. These are not telemarketers or semi-skilled sales staff. Rather, the bill is designed to identify salespeople who act in a professional capacity utilizing substantial discretion in their work.

Third, employees must have continuing and regular contact with customers. These employees can only gain the extensive knowledge of their clients needs envisioned by the law through regular and repeated contact with these customers. One-time calls, whether made by the sales person or the customer, cannot serve as the basis for the type of specialized knowledge of the customers' needs which would permit the employee to act in the consultative or advisory capacity necessitated by the bill. This means in practical terms that the employee must have a continuing relationship with a vast majority of customers to whom he or she makes sales.

In addition to the duties criteria, there are several requirements related to compensation. First, the employee must receive a guaranteed salary. The bill requires receipt of compensation which is not affected by the actual number of hours the employee may work in a given period. As a result, the employee cannot earn an hourly wage, but must be given a predetermined and guaranteed salary regardless of the number of hours actually worked. This is reflective of the professional status the employee must possess.

The second major component is that the compensation earned as incentive pay must serve as an inducement and reward for individual effort. In this regard, the incentive pay should be in the form of individual commissions based on each sale generated by the employee. Such a requirement does not prohibit incentives based on reaching individual or group sales quotas, etc., but these methods must be constructed in such a way as to make individual sale commissions readily identifiable.

Third, employees must be rewarded with at least as high a level of incentive compensation (formula or rate) in hours above forty per week as they received in hours below forty per week. As a result, if quotas or other incentive plans are used which do not explicitly reward employees for each sale generated, the manner and rate of incentive pays must make it perfectly clear that the employee is earning at least as much for sales generated in overtime hours as he or she would earn for same sales in non-overtime hours.

□ 2330

This is carefully drawn. It is narrowly tailored. I very much appreciate the support of my four Democrat colleagues on the committee for this bill, and I appreciate the diligence and persistence of my coauthor, the gentleman from Illinois (Mr. FAWELL).

Mr. Chairman, I too would urge the adoption of the bill and the defeat of amendments that have been proposed.

Mr. OWENS. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Chairman, I want to say with all due respect to the gentleman from New Jersey (Mr. ANDREWS) my good friend, and the gentleman from Illinois (Mr. FAWELL), that I have to take exception with the import of this bill, no matter how well-

crafted it may seem or well-intentioned it may be.

Mr. Chairman, for 60 years the Fair Labor Standards Act has operated to protect workers from excessive hours on the job by requiring employers to pay time-and-a-half for overtime. Most Americans except this and expect it. Work overtime, expect to be paid for it.

This measure before us, the Sales Incentive Compensation Act, would undermine the Fair Labor Standards Act and open up an enormous loophole. It would allow employers to avoid paying overtime to certain categories of employees.

This bill would enable companies to declare that certain workers are in sales positions and then deny them a salary or an hourly wage for the time they work over 40 hours per week. For these specialized employees, companies would only have the obligation to pay them commissions as a substitute for the time-and-a-half pay.

About 1.5 million workers would be affected by this loophole. This bill would provide a powerful incentive for employers to push their employees to work as many hours as possible. It would lead to endless litigation as the courts battle over who does and does not qualify under the vague and broad provisions in this bill. In addition, the Department of Labor has concluded that this bill would impose new paperwork and recordkeeping requirements on businesses. So there are unintended consequences.

Mr. Chairman, I would agree with my colleague that many of the same arguments put forth here parallel the discussion we had on comp time. The reason people work overtime is to get paid for overtime. They do not work overtime to give the money to their employer. They work overtime to give the money to their family. I believe that the argument that people who work overtime ought to get time off in the case of comp time, or a commission or not at the election of their employers, is a misplaced argument.

Now, there are some proponents of this bill who would say that they just want people to make more money, not less, and to do that they are going to cut out time-and-a-half for overtime and replace it with a sales commission. I think that assertion challenges common sense notions of why people work overtime. The harder people work, the more they should get paid from their employer.

This legislation affects employees. So if employees work more than their full-time allotment, they should be paid for it. And if their diligence, their labor produces a higher benefit, then let the employer take the benefit. But let the employee be able to get at least time-and-a-half. In a sense, we are asking the employees to take the risk when it is the employer who gets the benefit.

I say let the employee get the benefit and the employer take the risk. Let the employee get paid time-and-a-half for overtime.

This bill benefits employers at the expense of employees. It is going to result in workers being required to work more hours. The simple fact is, and every American worker knows this, it is the employer who controls the hours that people work, not the employee. The employer controls how long the employee is going to work.

This bill unfortunately discourages employees and it encourages employers to require workers to work overtime. It exempts employers from the requirement that they pay an employee any wage at all for overtime hours. How many people out there would want to work overtime and not get paid anything? Who would take that deal in this country?

Years ago there was an American humorist who said, "Never give a sucker an even break." Working people in this country deserve to be paid time-and-a-half for overtime and employers ought to be challenged to do that.

Mr. GOODLING. Mr. Chairman, I yield 2½ minutes to the gentleman from Nebraska (Mr. BARRETT), an important member of our committee.

Mr. BARRETT of Nebraska. Mr. Chairman, I thank the gentleman from Pennsylvania (Chairman GOODLING) for yielding me this time.

Mr. Chairman, if we mentioned comp time or flex time or telecommuting or inside sales personnel to people back 20 or 30 years ago, we probably would have gotten a very, very strange look. But these terms today, they are a reality. This is today's workplace. And they have gone largely unrecognized in today's antiquated labor laws.

Today we take a small step forward to recognize what is already occurring in the labor force, but the Federal Government has been very, very slow to respond.

H.R. 2888 allows professional sales people working regularly with established clients to be exempt from minimum wage and overtime requirements. The bill permits some inside sales workers to earn a salary and be treated like a professional along with their outside sales counterparts.

In this era of family-friendly workplaces, Congress should embrace a bill giving the people the flexibility to use technological advances and changes in our economy to work near their home in jobs that they enjoy or need and be closer to their families.

This bill enjoys bipartisan support. It lets a fresh breeze into the stale and outdated Federal laws that have restricted the economic liberty of an entire class of professional working people. When the House does pass H.R. 2888, we should be proud of our actions to allow people to again capture the American dream of being rewarded for their hard work.

I also want to take a moment to thank the gentleman from Illinois (Mr. FAWELL) my friend and colleague, for authoring this legislation and for all of his years of hard work to improve the working conditions and benefits of mil-

lions and millions of Americans. I am sure that he will take to his retirement the same zeal and determination that has marked his career as a very distinguished public servant and lawyer.

With that, Mr. Chairman, I encourage my colleagues to support H.R. 2888.

Mr. OWENS. Mr. Chairman, may I inquire as to how much time is remaining on both sides?

The CHAIRMAN. The gentleman from New York (Mr. OWENS) has 6 minutes remaining, and the gentleman from Pennsylvania (Mr. GOODLING) has 10½ minutes remaining.

□ 2340

Mr. GOODLING. Mr. Chairman, I yield 2½ minutes to the gentleman from Michigan (Mr. HOEKSTRA), another member of our committee.

Mr. HOEKSTRA. Mr. Chairman, I thank the gentleman for yielding time to me.

I also congratulate my colleagues for putting this bill together. I hope that in the coming months and the coming years we can build on this bipartisanship and seriously take a look at America's labor laws, labor laws that were developed in the 1930s and the 1940s.

And now, as we take a look at entering a new millennium, we recognize that the workplace has changed. We have moved into a global economy. The types of products and services that we are excelling in and producing in this country have evolved and changed.

In the last 8, 9 months, we have gone around the country, we have had roundtables. We have had hearings. We are learning that for us to be globally competitive, we need to restructure and reevaluate the legal framework within which we compete. And as we change this framework and as we evolve it, it is going to create more opportunities for American workers. It is going to enable American workers to be more competitive, to be more productive.

And when they are more productive, they can earn a higher standard of living. We want to eliminate bureaucracy. We want to eliminate rules and regulations, rules and regulations that do not fit the 1990s.

One of the facilities that we had the opportunity to visit was an IBM facility in Atlanta. What we saw in Atlanta was a telemarketing center, actually a sales consultant center where people over the phone were selling multi-million dollar computer systems. Ten years ago these would have had to have been sold face to face. Now they can be sold over the telephone.

The nature of the product has changed; the nature of the customer has changed. And the nature of the way that you service these clients has changed.

This bill recognizes the changes that are taking place. It says that we can service these customers in a new and in a better way and in a more productive way.

Again, I applaud my colleagues on this effort and urge my colleagues to support this bill tomorrow.

Mr. OWENS. Mr. Chairman, I yield myself such time as I may consume.

We could have total bipartisan cooperation if we really recognized what is at the heart of this controversy at this point. It is money. It is only money; \$22,600 a year is not a proper cutoff point.

I recognize that the Fair Labor Standards Act is 60 years old. We have made some adjustments in situations where adjustments made sense, but here we are proposing to make an adjustment on the backs of the working families. We are proposing an adjustment which has no logical rationale. Common sense has been thrown out the window. We have a cutoff point of \$22,600 a year.

We did this same thing for the computer programming industry. They had certain circumstances which made it evident that large amounts of hours were required, and they could not keep paying more and more overtime, but they had a staff of specialized people. They could not go out and get more people because they did not have the skills. We took that into consideration and we amended the 60-year-old Fair Labor Standards Act. And certainly we could work out an amendment now, a bipartisan amendment, if we would just admit the fact that \$22,600 a year is not a proper cutoff point.

My colleague from California, an expert in human resources, said that the average is \$40,000 a year for retail salespeople, it is \$40,000 a year, not \$57,000 like the computer programming people.

Well, this particular industry has a set of facts which we should all look at, and maybe she is right, \$40,000 is the figure, not \$57,000. We cannot just be arbitrary and say \$57,000, that is a pretty good living even now. We did that a few years ago. But even now \$57,000 looks pretty good compared to \$22,600.

So if we are not interested in robbing the working families to make the rich richer, which is what most of the amendments that are brought to the committee by the Republican majority do, if we are not interested in exploiting working families, if we really care about working people, if we are a committee that is concerned with work force protections and not work force harassment, then we could work out a compromise.

We should withdraw this bill now, work out a compromise, and let us arrive at a figure between \$40,000 and \$57,000, and we can accept a lot of other rather vague things that are here that may make for difficulties in the future.

The whole definition of what a specialist is and who is selling a specialized product. I know people who are in the grocery business, and they insist that they are specialists, they are professionals. Not everybody can come in and sell groceries.

It used to be there was a sitcom at one time where the guy was a hardware store owner and used to get all riled up about what it took to sell hardware.

And he would always end his statements by saying, this is not just some little common thing in the street; hardware is something special.

So everybody can make the argument that they are a specialist. Certainly employers who want to make people work more hours without overtime could always say, you are really a specialist. You are selling eggs and milk, but you are a specialist and you do not get any overtime.

There are a lot of pitfalls here. We can settle it all and reach agreement, if we would just talk about a reasonable, common sense figure that does not exploit working families. Do not put people in a bind where they cannot get any more cash for overtime at the level of \$22,600 a year. Let us go on and take a hard look at all the factors and come back and offer the working families something which comes off the table.

The table is full now of goodies. It is a very prosperous time. Wall Street is making more money than they ever made before. The Dow Jones average hovers between 8000 and 9000 on a daily basis. It is just amazing that the energy of the Republican majority is all concentrated at taking things away from working families at a time like this.

We have a window of opportunity. Let us share the prosperity. If we have to set some figures for exemption in the Fair Labor Standards Act, let us raise them high enough to be meaningful for working families.

Mr. Chairman, I yield back the balance of my time.

Mr. GOODLING. Mr. Chairman, I yield 2½ minutes to the gentleman from Pennsylvania (Mr. PETERSON).

Mr. PETERSON of Pennsylvania. Mr. Chairman, I rise to support H.R. 2888.

It is obvious to me that those that oppose this bill do not understand the dynamics of sales in this country.

I would ask everybody here tonight, would you like to go back to the rotary telephone, get rid of the systems in your offices that have the rotary phone that you dial by hand that are not connected to each other? No, you would not. It would not make any sense to you. Would you like to go back to the mechanical typewriter and do away with the computer systems that are all networked and go back?

The law that is in place is holding us back in this country from allowing salespeople to do what they do best.

Salespeople are undervalued in your view. The salespeople are the oil and gas of the American economic engine. They are what drives it. As salespeople are successful and they earn a commission, they make more money. And they put their friends and neighbors to work because they sell more goods that make a company go.

Technology today allows companies to do more sales inside instead of wasting travel time. And this bill is narrowly drafted, probably a little more narrowly drafted than I would have agreed to, it is narrowly drafted. You

do not have to worry about a \$20,000 person. You give them a sales commission, and they are going to make 30, 40, the sky is the limit.

Flexibility of time in the sales force is a benefit to the customer and a benefit to the employee. He or she may want to go home and fix dinner and then make some calls after dinner. They may want to pick up their children at day care and go home and then make some sales calls. It is not a one-way street.

Commission is a huge incentive and do not ever undervalue it. If you are selling by the hour and you are selling by commission and you both have equal sales ability, the commission person will always sell more goods and put more people to work in the overall company.

It is time to unleash the salespersons and stop limiting their ability to incentive sale. They will earn more and you will increase employment in manufacturing, and you will increase employment in the service industry. You will increase employment in wholesale. I want to tell my colleagues, it will increase the economic drive in this country.

Mr. OWENS. Mr. Chairman, will the gentleman yield?

Mr. PETERSON of Pennsylvania. I yield to the gentleman from New York.

Mr. OWENS. Mr. Chairman, does the gentleman realize this is about inside sales, which means people cannot go home and make phone calls from home. They have to be on the job. That is the whole thing. They are bound to the job. They are bound at the spot.

□ 2350

They are bound at the spot. They are inside.

Mr. PETERSON of Pennsylvania. It should not be that narrow. Because sales can be made on the telephone at home just as easily as they can be made in the office.

Mr. GOODLING. Mr. Chairman, I yield such time as he may consume to the gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. Mr. Chairman, I thank the gentleman for yielding me this time. I want to engage my colleague in a colloquy.

The Sales Incentive Compensation Act does not change the law of impasse in any way. The bill does not create a new right or authority for an employer to implement unilaterally the exemption provided by the legislation in a circumstance where an employer is engaged in collective bargaining negotiations with a labor organization and the negotiating parties have reached an impasse.

As a coauthor of H.R. 2888, I want to make it clear that the bill may not be used as an instrument, if an impasse occurs, to secure an outcome that would never result from the normal ebb and flow of the free collective bargaining process.

Am I correct that it is the understanding of my coauthor of the bill

that it does not create a new right to impose unilaterally a settlement during an impasse?

Mr. FAWELL. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS. I yield to the gentleman from Illinois.

Mr. FAWELL. It is my understanding that the legislation does not change the laws regarding an employer's rights to unilaterally impose conditions in the face of an impasse in collective bargaining.

Mr. ANDREWS. Under current law, when collective bargaining reaches an impasse, employers have a perverse incentive to bargain to impasse and then compel a union to acquiesce in conditions mandated by the employer.

From a related point of view, it is not the intent of the Sales Incentive Compensation Act to create a new defense for an unfair labor practice perpetrated by an employer or to create an exemption excusing what would otherwise be an unfair labor practice.

The Sales Incentive Compensation Act does not create a right or authority for an employer to implement unilaterally the exemption provided by the legislation in a circumstance where an employer is engaged in collective bargaining negotiations with a labor organization and the negotiating parties have reached an impasse.

As an author of H.R. 2888, I want to make clear that the bill should not be used as an instrument, if an impasse occurs, to secure an outcome that would never result from the normal ebb and flow of the free collective bargaining process. Under current law, when collective bargaining reaches an impasse, employers have a perverse incentive to bargain to impasse and then compel a union to acquiesce in conditions mandated by the employer.

From a related standpoint, it is not the intent of the Sales Incentive Compensation Act to create a new defense for an unfair labor practice perpetrated by an employer.

Mr. GOODLING. Mr. Chairman, I yield the balance of my time to the gentleman from Illinois (Mr. FAWELL).

Mr. FAWELL. Mr. Chairman, it seems to me that in the comments, the gentleman from New Jersey (Mr. ANDREWS) made the statement that this bill does not divest people from overtime, rather it gives opportunities. I think that is the key distinction perhaps between the two sides here.

We on this side and a number of my colleagues on the other side of the aisle see that there are all kinds of opportunities, especially young people who are only making \$20,000 or less than that. When Leronda Lucky testified before the subcommittee of the gentleman from North Carolina (Mr. BALLENGER), she made this statement:

There is also a very important customer service component to my job. My clients do not necessarily have to have 9-to-5 work hours. Many start their days early in the morning and work until late in the evening. I need the flexibility to determine when I need to meet with customers on their hours. Being an exempt employee would provide that flexibility.

The gentleman from Pennsylvania (Mr. GOODLING) previously referred to Robert Reich's statement, and I quote:

A lot of people who are called sales reps are no longer really sales reps. They are actually advising somebody about a package of goods and services that meets the needs of that individual, and those sales people are therefore more like management consultants.

So it is different. Times have changed. We have to recognize that that is so. That is what I think this legislation does. I believe it is going to be very beneficial for a lot of people who see a great deal of opportunity.

Mrs. MCCARTHY of New York. Mr. Chairman, I rise in strong support of H.R. 2888, the Sales Incentive Compensation Act. I want to commend my colleagues, Mr. ANDREWS and Mr. FAWELL, for their hard work in developing this bipartisan bill.

I am cosponsor of H.R. 2888 because I believe that it will open up opportunities for inside salespeople to earn more and succeed in the workforce. This bill recognizes that the workforce has changed in the sixty years since the Fair Labor Standards Act was passed. Today, salespeople can be more productive than ever by using computers, faxes and E-mail to reach their clients, instead of travelling door-to-door.

But while outside salespeople are exempt from the FLSA, inside salespeople are not. Many inside salespeople are told to go home after 40 hours because their employers do not want to pay them overtime. This limits their chance to earn big commissions.

H.R. 2888 is sensible, balanced legislation. It will give professional, expert salespeople the chance to maximize their sales, while protecting millions of workers who depend upon the FLSA to guarantee their hard-earned benefits.

During Committee mark-up, I offered an amendment to H.R. 2888 to clarify even further that route sales drivers, a class of workers that deserves FLSA protection, would not be affected by this bill. My amendment was accepted.

I am pleased to support this bill not only on its merits, but because of the process that has led to its consideration. This bill is the product of good-faith discussions between members on both sides of the aisle.

It has been developed in an atmosphere of trust and mutual respect, and I would hope that this bill can be a model for other legislation that this body debates. It shows that when we put partisanship aside, everyone wins.

I urge my colleagues to support this bill.

Mr. CLAY. Mr. Chairman, I oppose this bill because it shortchanges some 1.5 million sales employees by denying them overtime pay. Although the bill guarantees that workers will receive the low salary of \$22,000 annually, this hardly compensates for the loss of the overtime pay.

The overtime laws, like the minimum wage, were designed to protect working families from exploitation. Employers should not be permitted to make employees work excessive hours away from their families without fair and decent compensation.

It is shameful that we should act to diminish the prosperity of working families at the same time that corporate profits and stock market prices are off the charts.

This assault on working families also makes a mockery of those hollow assertions Republicans made on this floor months ago in support of flex time. Make no mistake, this bill means working families who work in the sales

occupation will be required to work more hours for less pay. This bill does not permit employees to refuse overtime work.

This Congress should not support any legislation that benefits special interests at the expense of working families.

I urge all Members to preserve the historic protections of the Fair Labor Standards Act, and reject this mean-spirited attack on workers.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment under the 5-minute rule and is considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 2888

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sales Incentive Compensation Act".

SEC. 2. EXEMPTION.

Section 13(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)) is amended by striking the period at the end of paragraph (17) and inserting a semicolon and by adding at the end the following:

"(18) any employee employed in a sales position if—

"(A) the employee has specialized or technical knowledge related to products or services being sold;

"(B) the employee's—

"(i) sales are predominantly to persons who are entities to whom the employee's position has made previous sales; or

"(ii) position does not involve making sales contacts;

"(C) the employee's position requires a detailed understanding of the needs of those to whom the employee is selling;

"(D) the employee's position requires the employee to exercise discretion in offering a variety of products and services;

"(E) the employee receives—

"(i) base compensation, determined without regard to the number of hours worked by the employee, of not less than an amount equal to one and one-half times the minimum wage in effect under section 6(a)(1) multiplied by 2,080; and

"(ii) in addition to the employee's base compensation, compensation based upon each sale attributable to the employee;

"(F) the employee's aggregate compensation based upon sales attributable to the employee is not less than 40 percent of one and one-half times the minimum wage multiplied by 2,080;

"(G) the employee receives a rate of compensation based upon each sale attributable to the employee which is beyond sales required to reach the compensation required by subparagraph (F) which rate is not less than the rate on which the compensation required by subparagraph (F) is determined; and

"(H) the rate of annual compensation or base compensation for any employee who did not work for an employer for an entire calendar year is prorated to reflect annual compensation which would have been earned if the employee had been compensated at the same rate for the entire calendar year.".

SEC. 3. CONSTRUCTION.

The amendment made by section 2 may not be construed to apply to individuals who are employed as route sales drivers.

The CHAIRMAN. During consideration of the bill for amendment, the

Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

Are there any amendments to the bill?

AMENDMENT NO. 1 OFFERED BY MR. FAWELL.

Mr. FAWELL. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. FAWELL:

Page 4, strike lines 8 through 13 and insert the following:

“(B) the employee’s—

“(i) sales are predominantly to persons or entities to whom the employee’s position has made previous sales; or

“(ii) the position does not involve initiating sales contacts;

Mr. FAWELL. Mr. Chairman, this amendment is noncontroversial. It would make two technical changes in the bill for the purpose of correcting a provision adopted during the committee markup which inadvertently substituted the words “who are” for the word “are”; and the word “making” for the word “initiating.”

It is my understanding that the amendment will not be opposed by the gentleman from New York (Mr. OWENS). I would urge my colleagues to support this technical change.

Mr. OWENS. Mr. Chairman, we accept the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. FAWELL).

The amendment was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. OWENS

Mr. OWENS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. OWENS:

Page 6, line 9, strike the period, quotation marks, and the period following and insert a semicolon and insert after line 9 the following:

except that an employer may not require an employee who is exempt from overtime payment under this paragraph to work any hours in excess of 40 in any workweek or 8 in any day unless the employee gives the employee’s consent, voluntarily and not as a condition of employment, to perform such work.”

Mr. OWENS. Mr. Chairman, this amendment provides that employees who lose their overtime protection as a result of this legislation will have a right to choose whether or not they will work overtime. They will have the

right and not the employer. Employers would be prohibited from requiring those sales people to work in excess of 40 hours a week, or 8 hours a day.

The proponents of H.R. 2888 as we have heard tonight contend that workers want to work overtime without overtime pay. For 60 years Americans have had this protection in place for inside sales people and sales have gone very well. The economy has boomed. Why fix it if it is not broken already? We have a working situation here. But they say that workers want to work overtime without overtime pay. They have overtime pay now. Workers are dying to give it up. They have stated repeatedly that this legislation is intended to help workers. I have said that is not the case. I submit that claims that this legislation will help workers are wholly false. This legislation will help employers, but it will harm workers.

Under current law, the only legal restriction on the number of hours an employee may be required to work is a requirement that employers pay time and a half for hours worked in excess of 40 hours a week. This puts a brake on exploitation. This puts a brake on employers who want to drive their workers in order to make greater profits without also compensating the workers.

Under H.R. 2888, an employer would no longer be required to pay a worker anything for overtime work except for such commissions as the employee may earn during that period. Indeed if an employee earns no commission during the overtime period, the employer is not required to pay the employee anything at all for that work. This legislation shifts business risks from the employer to the employee.

H.R. 2888 also creates a powerful incentive for employers to require employees to work overtime by permitting employers to pay a worker less for overtime work than for regular work. In my view, this consequence is obvious and intentional. However, if this legislation is truly intended to benefit employees, then clearly the worker and not the employer should exercise control over how much overtime will be worked. That is all that my amendment would accomplish. Employers may continue to require employees to work 8 hours a day and 40 hours a week. Employers may continue to specify when those hours will be worked. However, if the employee is going to undertake the risk of working additional hours beyond 40 hours, with no guarantee of being paid for those hours, it would be at the employee’s own choosing and not the employer.

Even if my amendment is adopted, many workers will not have a true choice. \$22,600 is not a living wage for most families. Many workers would be financially compelled to work overtime. However, my amendment ensures that all employees who would otherwise lose overtime protection would at least have some voice as to how much

overtime they will work and when they will work it.

□ 2400

If those who support H.R. 2888 are serious about their desire to help workers, they will support my amendment.

Mr. Chairman, I urge the adoption of this amendment.

Mr. FAWELL. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from New York (Mr. OWENS).

Mr. Chairman, we still have the same dichotomy here in operation. The gentleman from New York again has his eye upon what he sees as a tremendous loss; that is, of the overtime provisions.

The employees who came into our committee and asked for the right to be able to assume commissions as a base of being able to work more and make more look at the opportunities coming from the fact that they now are going to have a commission’s basis of earning. Not only are they going to have that commission basis of earning, but they are going to have a foundation of a guarantee of \$22,500 a year that the employer is going to have to pay.

Now there are various classifications of employees who are exempt from the Fair Labor Standards Act provisions. We have made reference to some of them: professional, executive, administrative, outdoor salesman, for instance. I do not think that of all of the many examples of exemptions that are in the statute right now, and this is the 18th one that we have put here, that there ever has been a provision that would give to the employee the right to issue some kind of a consent. What is always set forth is not always because with the outside salesmen they did not even get any kind of a guarantee of any kind of a salary. It is zilcho, nothing. They are just out there and working on commissions, but take administrative positions where an exemption from overtime is granted.

The only other, the only other thing that is granted to an administrative employee is, believe it or not, a guarantee of \$250 a week. That is all. There is nothing in any those instances where exemptions are granted, and exemptions from overtime have always been a part of the Fair Labor Standards Act.

And there is good reason for that, very good reason for that. Once we start doing that, then, well, what should it be? Oral consent or written consent? When must they set forth this consent? How often can it be? Must it be renewed? We can go on and on with a lot of other provisions, and if the employer should suggest that one ought to be able to go on commissions and give consent here.

Mr. ANDREWS. Mr. Chairman, would the gentleman yield?

Mr. FAWELL. I yield to the gentleman from New Jersey.

Mr. ANDREWS. Mr. Chairman, I want to join the gentleman in respectful opposition to this amendment. I

think the point he is making is very important, that the amendment opens an awful lot of questions about how the consent would be expressed, to whom, whether it could be altered, whether someone could be exempt for a week and then go back to nonexempt the next week, whether or not the requests would have to be oral or in writing. And I believe what it would do would be to unduly complicate matters, and for that reason I would join the gentleman in his opposition to the amendment.

Mr. FAWELL. This is precisely why in all of those instances where exemptions are granted, nothing like this has ever been put into the Fair Labor Standards Act.

I want to add also that the gentleman from New York (Mr. OWENS) actually is extending the overtime provisions to now include the 8-hour day as well as the 40-hour work week. The Fair Labor Standards Act has always applied only to a 40-hour work week, not to an 8-hour day, too. So he is bringing in something completely new to the Federal law, the Fair Labor Standards Act.

Mr. OWENS. Mr. Chairman, will the gentleman yield?

Mr. FAWELL. I yield to the gentleman from New York.

Mr. OWENS. In the list of extensions, are there other situations which involve part of the income being derived from commissions?

Part of this 22,000 is commissions. It is only 16,000 that is really salary, and part is commission. Is there any other situation where an exemption is given to some position which makes up commissions, is made up partially with commissions?

Mr. FAWELL. There is, insofar as retail service positions are concerned.

Mr. OWENS. Mr. Chairman, I thank the gentleman.

Mr. FAWELL. Mr. Chairman, that is all that I have to say.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. OWENS).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. OWENS. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Pursuant to House Resolution 461, further proceedings on the amendment offered by the gentleman from New York (Mr. OWENS) will be postponed.

The point of no quorum is considered withdrawn.

AMENDMENT OFFERED BY MR. ANDREWS

Mr. ANDREWS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ANDREWS:

Page 5, line 1, strike "the employee's position requires" and insert "the employee has".

Page 5, beginning in line 4, strike "the employee's position requires the employee to

exercise" and insert "the employee exercises".

Mr. ANDREWS (during the reading). Mr. Chairman, I ask unanimous consent the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. ANDREWS. Mr. Chairman, I offer this amendment to conform the bill to a provision that was proposed by the gentleman from New York (Mr. OWENS) in committee so that the rest of the bill can conform to that so that the reference would be to the employee's position and the employee. This makes it very clear that the position and the employer are both covered. This conforms the bill that we adopted in committee to the suggestion of Mr. OWENS that was adopted in committee. I would urge its adoption.

Mr. FAWELL. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS. I yield to the gentleman from Illinois, my coauthor.

Mr. FAWELL. Mr. Chairman, we have no objection to this amendment.

Mr. OWENS. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS. I yield to the gentleman from New York.

Mr. OWENS. Mr. Chairman, no objection to the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New Jersey (Mr. ANDREWS).

The amendment was agreed to.

The CHAIRMAN. Are there further amendments?

Mr. GOODLING. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. PETERSON of Pennsylvania) having assumed the Chair, Mr. WATTS of Oklahoma, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2888) to amend the Fair Labor Standards Act of 1938 to exempt from the minimum wage recordkeeping and overtime compensation requirements certain specialized employees, had come to no resolution thereon.

UNFAIRNESS IN TAX CODE: MARRIAGE TAX PENALTY

(Mr. WELLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WELLER. Mr. Speaker, last week was a big week because this House of Representatives made a commitment to address the marriage tax penalty. Let me explain why this is so important.

Do Americans feel that it is fair that our Tax Code imposes a higher tax penalty on marriage? Do Americans feel that it is fair that 21 million married

working couples pay on the average \$1,400 more in higher taxes just because they are married?

\$1,400 in the south side of Chicago in the south suburbs is real money for real people. \$1,400 is one year's tuition at Joliet Junior College and 3 months' day care at a local child care center.

This past week the House of Representatives went on record making a commitment to work towards elimination of the marriage tax penalty with the passage of the Kasich budget, a budget that spends less and taxes less. Let us make elimination of the marriage tax penalty our number one priority this year. Let us eliminate the marriage tax penalty. Let us eliminate it now.

Mr. Speaker, I rise today to highlight what is arguably the most unfair provision in the U.S. Tax code: the marriage tax penalty. I want to thank you for your long term interest in bringing parity to the tax burden imposed on working married couples compared to a couple living together outside of marriage.

In January, President Clinton gave his State of the Union Address outlining many of the things he wants to do with the budget surplus.

A surplus provided by the bipartisan budget agreement which: cut waste, put America's fiscal house in order, and held Washington's feet to the fire to balance the budget.

While President Clinton paraded a long list of new spending totaling at least \$46-\$48 billion in new programs—we believe that a top priority should be returning the budget surplus to America's families as additional middle-class tax relief.

This Congress has given more tax relief to the middle class and working poor than any Congress of the last half century.

I think the issue of the marriage penalty can best be framed by asking these questions: Do Americans feel its fair that our tax code imposes a higher tax penalty on marriage? Do Americans feel its fair that the average married working couple pays almost \$1,400 more in taxes than a couple with almost identical income living together outside of marriage? Is it right that our tax code provides an incentive to get divorced?

In fact, today the only form one can file to avoid the marriage tax penalty is paperwork for divorce. And that is just wrong!

Since 1969, our tax laws have punished married couples when both spouses work. For no other reason than the decision to be joined in holy matrimony, more than 21 million couples a year are penalized. They pay more in taxes than they would if they were single. Not only is the marriage penalty unfair, it's wrong that our tax code punishes society's most basic institution. The marriage tax penalty exacts a disproportionate toll on working women and lower income couples with children. In many cases it is a working women's issue.

Let me give you an example of how the marriage tax penalty unfairly affects middle class married working couples.

For example, a machinist, at a Caterpillar manufacturing plant in my home district of Joliet, makes \$30,500 a year in salary. His wife is a tenured elementary school teacher, also bringing home \$30,500 a year in salary. If they would both file their taxes as singles, as individuals, they would pay 15%.