

106TH CONGRESS
1ST SESSION

S. 1989

To ensure that employees of traveling sales crews are protected under the Fair Labor Standards Act of 1938 and under other provisions of law.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 1999

Mr. KOHL introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To ensure that employees of traveling sales crews are protected under the Fair Labor Standards Act of 1938 and under other provisions of law.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Traveling Sales Crew
5 Protection Act”.

**TITLE I—FAIR LABOR
STANDARDS ACT OF 1938**

**SEC. 101. APPLICATION OF PROVISIONS TO CERTAIN OUT-
SIDE SALESMAN.**

(a) IN GENERAL.—Section 13 of the Fair Labor Standards Act of 1938 (29 U.S.C. 213) is amended by adding at the end the following:

“(k) For purposes of subsection (a)(1), and notwithstanding any other provision of law, the term ‘outside salesman’ shall not include any individual employed in the position of a salesman where the individual travels with a group of salespeople, including a supervisor, team leader or crew leader, and the employees in the group do not return to their permanent residences at the end of the work day.”.

(b) LIMITATION ON CHILD LABOR.—Section 12 of the Fair Labor Standards Act of 1938 (29 U.S.C. 212) is amended by adding at the end the following:

“(e) No individual under 18 years of age may be employed in a position requiring the individual to engage in door to door sales or in related support work in a manner that requires the individual to remain away from his or her permanent residence for more than 24 hours.”.

(c) RULES AND REGULATIONS.—The Secretary of Labor may issue such rules and regulations as are nec-

1 essary to carry out the amendments made by this section,
 2 consistent with the requirements of chapter 5 of title 5,
 3 United States Code.

4 **TITLE II—PROTECTION OF** 5 **TRAVELING SALES CREWS**

6 **SEC. 201. PURPOSE.**

7 It is the purpose of this title—

8 (1) to remove the restraints on interstate com-
 9 merce caused by activities detrimental to traveling
 10 sales crew workers;

11 (2) to require the employers of such workers to
 12 register under this Act; and

13 (3) to assure necessary protections for such em-
 14 ployees.

15 **SEC. 202. DEFINITIONS.**

16 In this title:

17 (1) **CERTIFICATE OF REGISTRATION.**—The
 18 term “Certificate of Registration” means a Certifi-
 19 cate issued by the Secretary under section 203(c)(1).

20 (2) **EMPLOY.**—The term “employ” has the
 21 meaning given such term by section 3(g) of the Fair
 22 Labor Standards Act of 1938 (29 U.S.C. 201(g)).

23 (3) **GOODS.**—The term “goods” means wares,
 24 products, commodities, merchandise, or articles or

1 subjects of interstate commerce of any character, or
2 any part or ingredient thereof.

3 (4) PERSON.—The term “person” means any
4 individual, partnership, association, joint stock com-
5 pany, trust, cooperative, or corporation.

6 (5) SALE, SELL.—The terms “sale” or “sell”
7 include any sale, exchange, contract to sell, consign-
8 ment for sale, shipment for sale, or other disposition
9 of goods.

10 (6) SECRETARY.—The term “Secretary” means
11 the Secretary of Labor.

12 (7) TRAVELING SALES CREW WORKER.—

13 (A) IN GENERAL.—Except as provided in
14 subparagraph (B), the term “traveling sales
15 crew worker” means an individual who—

16 (i) is employed as a salesperson or in
17 related support work;

18 (ii) travels with a group of sales-
19 persons, including a supervisor; and

20 (iii) is required to be absent overnight
21 from his or her permanent place of resi-
22 dence.

23 (B) LIMITATION.—The term “traveling
24 sales crew worker” does not include—

(i) any individual who meets the requirements of subparagraph (A) if such individual is traveling to a trade show or convention; or

(ii) any immediate family member of a traveling sales crew employer.

SEC. 203. REGISTRATION OF EMPLOYERS AND SUPERVISORS OF TRAVELING SALES CREW WORKERS.

(a) REGISTRATION REQUIREMENT.—

(1) IN GENERAL.—No person shall engage in any form of employment of traveling sales crew workers, unless such person has a certificate of registration from the Secretary.

(2) SUPERVISORS.—A traveling sales crew employer shall not hire, employ, or use any individual as a supervisor of a traveling sales crew, unless such individual has a certificate of registration from the Secretary.

(3) DISPLAY OF CERTIFICATE OF REGISTRATION.—Each registered traveling sales crew employer and each registered traveling sales crew supervisor shall carry at all times while engaging in traveling sales crew activities a certificate of registration from the Secretary and, upon request, shall

1 exhibit that certificate to all persons with whom they
2 intend to deal.

3 (b) APPLICATION FOR REGISTRATION.—Any person
4 desiring to be issued a certificate of registration from the
5 Secretary, as either a traveling sales crew employer or
6 traveling sales crew supervisor, shall file with the Sec-
7 retary a written application that contains the following:

8 (1) A declaration, subscribed and sworn to by
9 the applicant, stating the applicant's permanent
10 place of residence, the type or types of sales activi-
11 ties to be performed, and such other relevant infor-
12 mation as the Secretary may require.

13 (2) A statement identifying each vehicle to be
14 used to transport any member of any traveling sales
15 crew and, if the vehicle is or will be owned or con-
16 trolled by the applicant, documentation showing that
17 the applicant is in compliance with the requirements
18 of section 204(d) with respect to each such vehicle.

19 (3) A statement identifying, with as much spec-
20 ificity as the Secretary may require, each facility or
21 real property to be used to house any member of any
22 traveling sales crew and, if the facility or real prop-
23 erty is or will be owned or controlled by the appli-
24 cant, documentation showing that the applicant is in

1 compliance with section 204(e) with respect to each
2 such facility or real property.

3 (4) A set of fingerprints of the applicant.

4 (5) A declaration, subscribed and sworn to by
5 the applicant, consenting to the designation by a
6 court of the Secretary as an agent available to ac-
7 cept service of summons in any action against the
8 applicant, if the applicant has left the jurisdiction in
9 which the action is commenced or otherwise has be-
10 come unavailable to accept service.

11 (c) ISSUANCE OF CERTIFICATE OF REGISTRATION.—

12 (1) IN GENERAL.—In accordance with regula-
13 tions, and after any investigation which the Sec-
14 retary may deem appropriate, the Secretary shall
15 issue a Certificate of Registration, as either a trav-
16 eling sales crew employer or traveling sales crew su-
17 pervisor, to any person who meets the standards for
18 such registration.

19 (2) REFUSAL TO ISSUE OR RENEW, SUSPEN-
20 SION AND REVOCATION.—The Secretary may refuse
21 to issue or renew, or may suspend or revoke, a Cer-
22 tificate of Registration if the applicant for or holder
23 or the Certificate—

1 (A) has knowingly made any misrepresen-
2 tation in the application for such Certificate of
3 Registration;

4 (B) is not the real party in interest with
5 respect to the application or Certificate of Reg-
6 istration and the real party in interest is a per-
7 son who—

8 (i) has been refused issuance or re-
9 newal of a Certificate;

10 (ii) has had a Certificate suspended or
11 revoked; or

12 (iii) does not qualify for a Certificate
13 under this section;

14 (3) has failed to comply with this title or any
15 regulation promulgated under this title;

16 (4) has failed—

17 (A) to pay any court judgment obtained by
18 the Secretary or any other person under this
19 title or any regulation promulgated under this
20 title; or

21 (B) to comply with any final order issued
22 by the Secretary as a result of a violation of
23 this title or any regulation promulgated under
24 this title;

1 (5) has been convicted within the 5 years pre-
2 ceding the date on which the application was filed or
3 the Certificate was issued—

4 (A) of any crime under Federal or State
5 law relating to the sale, distribution or posses-
6 sion of alcoholic beverages or narcotics, in con-
7 nection with or incident to any traveling sales
8 crew activities;

9 (B) of any crime under Federal or State
10 law relating to child abuse, neglect, or
11 endangerment; or

12 (C) of any felony under Federal or State
13 law involving robbery, bribery, extortion, embez-
14 zlement, grand larceny, burglary, arson, mur-
15 der, rape, assault with intent to kill, assault
16 which inflicts grievous bodily injury, prostitu-
17 tion, peonage, or smuggling or harboring indi-
18 viduals who have entered the United States ille-
19 gally;

20 (6) has been found to have violated paragraph
21 (1) or (2) of section 274A(a) of the Immigration and
22 Nationality Act (8 U.S.C. 1324a(a) (1) or (2));

23 (7) has failed to comply with any bonding or se-
24 curity requirements as the Secretary may establish;
25 or

1 (8) has failed to satisfy any other requirement
2 which the Secretary may by regulation establish.

3 (d) ADMINISTRATIVE PROCEEDINGS AND JUDICIAL
4 REVIEW.—

5 (1) IN GENERAL.—A person who is refused the
6 issuance or renewal of a Certificate or Registration,
7 or whose Certificate of Registration is suspended or
8 revoked, shall be afforded an opportunity for an
9 agency hearing, upon a request made within 30 days
10 after the date of issuance of the notice of refusal,
11 suspension, or revocation. If no hearing is requested
12 as provided for in this subsection, the refusal, sus-
13 pension, or revocation shall constitute a final and
14 unappealable order.

15 (2) HEARING.—If a hearing is requested under
16 paragraph (1), the initial agency decision shall be
17 made by an administrative law judge, with all issues
18 to be determined on the record pursuant to section
19 554 of title 5, United States Code, and such decision
20 shall become the final order unless the Secretary
21 modifies or vacates the decision. Notice of intent to
22 modify or vacate the decision of the administrative
23 law judge shall be issued to the parties within 90
24 days after the decision of the administrative law
25 judge. A final order which takes effect under this

1 paragraph shall be subject to review only as provided
2 under paragraph (3).

3 (3) REVIEW BY COURT.—Any person against
4 whom an order has been entered after an agency
5 hearing under this subsection may obtain review by
6 the United States district court for any district in
7 which the person is located, or the United States
8 District Court for the District of Columbia, by filing
9 a notice of appeal in such court within 30 days from
10 the date of such agency order, and simultaneously
11 sending a copy of such notice by registered mail to
12 the Secretary. The Secretary shall promptly certify
13 and file in such court the record upon which the
14 agency order was based. The findings of the Sec-
15 retary shall be set aside only if found to be unsup-
16 ported by substantial evidence as provided by section
17 706(2)(E) of title 5, United States code. Any final
18 decision, order, or judgment of such District Court
19 concerning such review shall be subject to appeal as
20 provided for in chapter 83 of title 28, United States
21 Code.

22 (e) TRANSFER OR ASSIGNMENT OF CERTIFICATE;
23 EXPIRATION; RENEWAL.—

24 (1) LIMITATION.—A Certificate of Registration
25 may not be transferred or assigned.

1 (2) EXPIRATION AND EXTENSION.—

2 (A) EXPIRATION.—Unless earlier sus-
3 pended or revoked, a Certificate of Registration
4 shall expire 12 months from the date of
5 issuance.

6 (B) EXTENSION.—A Certificate of Reg-
7 istration may be temporarily extended, at the
8 Secretary's discretion, by the filing of an appli-
9 cation with the Secretary at least 30 days prior
10 to the Certificate's expiration date.

11 (3) RENEWAL.—A Certificate of Registration
12 may be renewed through the application process pro-
13 vided for in subsections (b) and (c).

14 (f) NOTICE OF ADDRESS CHANGE; AMENDMENT OF
15 CERTIFICATE OF REGISTRATION.—During the period for
16 which a Certificate of Registration is in effect, the trav-
17 eling sales crew employer or supervisor named on the Cer-
18 tificate shall—

19 (1) provide to the Secretary within 30 days a
20 notice of each change of permanent place of resi-
21 dence; and

22 (2) apply to the Secretary to amend the Certifi-
23 cate of Registration whenever the person intends
24 to—

1 (A) engage in any form of traveling sales
2 crew activity not identified on the Certificate;

3 (B) use or cause to be used any vehicle not
4 covered by the Certificate to transport any trav-
5 eling sales crew worker; or

6 (C) use or cause to be used any facility or
7 real property not covered by the Certificate to
8 house any traveling sales crew worker.

9 (g) FILING FEE.—The Secretary shall require the
10 payment of a fee by an employer filing an application for
11 the issuance or renewal of a Certificate of Registration.
12 The amount of the fee shall be \$500 for a Certificate for
13 an employer and \$50 for a Certificate for a supervisor.
14 Sums collected pursuant to this section shall be applied
15 by the Secretary toward reimbursement of the costs of ad-
16 ministering this title.

17 **SEC. 204. OBLIGATIONS OF EMPLOYERS OF TRAVELING**
18 **SALES CREW WORKERS.**

19 (a) DISCLOSURE OF TERMS AND CONDITIONS OF
20 EMPLOYMENT.—

21 (1) WRITTEN DISCLOSURE.—At the time of re-
22 cruitment, each traveling sales crew worker shall be
23 provided with a written disclosure of the following
24 information, which shall be accurate and complete to
25 the best of the employer's knowledge:

1 (A) The place or places of employment,
2 stated with as much specificity as possible.

3 (B) The wage rate or rates to be paid.

4 (C) The type or types of work on which
5 the worker may be employed.

6 (D) The period of employment.

7 (E) The transportation, housing, and any
8 other employee benefit to be provided, and any
9 costs to be charged to the worker for each such
10 benefit.

11 (F) The existence of any strike or other
12 concerted work stoppage, slowdown, or inter-
13 ruption of operations by employees at the place
14 of employment.

15 (G) Whether State workers' compensation
16 insurance is provided and, if so, the name of
17 the State workers' compensation insurance car-
18 rier, the name of the policyholder of such insur-
19 ance, the name and the telephone number of
20 each person who must be notified of an injury
21 or death, and the time period within which such
22 notice must be given.

23 (2) RECORDS AND STATEMENTS.—Each em-
24 ployer of traveling sales crew workers shall—

1 (A) with respect to each such worker,
2 make, keep, and preserve records for 3 years of
3 the—

- 4 (i) basis on which wages are paid;
5 (ii) number of piecework units earned,
6 if paid on a piecework basis;
7 (iii) number of hours worked;
8 (iv) total pay period earnings;
9 (v) specific sums withheld and the
10 purpose of each sum withheld; and
11 (vi) net pay; and

12 (B) provide to each worker for each pay
13 period, an itemized written statement of the in-
14 formation required under subparagraph (A).

15 (b) PAYMENT OF WAGES WHEN DUE.—Each trav-
16 eling sales crew worker shall be paid the wages owed that
17 worker when due. The payment of wages shall be in
18 United States currency or in a negotiable instrument such
19 as a bank check. The payment of wages shall be accom-
20 panied by the written disclosure required by subsection
21 (a)(2)(B).

22 (c) COSTS OF GOODS, SERVICES, AND BUSINESS EX-
23 PENSES.—

24 (1) PROHIBITION.—No employer of traveling
25 sales crew workers shall—

1 (A) require any worker to purchase any
2 goods or services solely from such employer; or

3 (B) impose on any worker any of the em-
4 ployer's business expenses, such as the cost of
5 maintaining and operating a vehicle used to
6 transport the traveling sales crew.

7 (2) INCLUSION AS PART OF WAGES.—An em-
8 ployer may include as part of the wages paid to a
9 traveling sales crew worker the reasonable cost to
10 the employer of furnishing board, lodging, or other
11 facilities to such worker, so long as—

12 (A) such facilities are customarily fur-
13 nished by such employer to the employees of the
14 employer; and

15 (B) such cost does not exceed the fair mar-
16 ket value of such facility and does not include
17 any profit to the employer.

18 (d) SAFETY AND HEALTH IN TRANSPORTATION.—

19 (1) STANDARDS.—An employer of traveling
20 sales crew workers shall provide transportation for
21 such workers in a manner that is consistent with the
22 following standards:

23 (A) The employer shall ensure that each
24 vehicle which the employer uses or causes to be
25 used for such transportation conforms to the

1 standards prescribed by the Secretary under
2 paragraph (2) and conforms to other applicable
3 Federal and State safety standards.

4 (B) The employer shall ensure that each
5 driver of each such vehicle has a valid and ap-
6 propriate license, as provided by State law, to
7 operate the vehicle.

8 (C) The employer shall have an insurance
9 policy or fidelity bond in accordance with sub-
10 section (c).

11 (2) PROMULGATION BY SECRETARY.—The Sec-
12 retary shall prescribe, by regulation, such safety and
13 health standards as may be appropriate for vehicles
14 used to transport traveling sales crew workers. In
15 establishing such standards, the Secretary shall
16 consider—

17 (A) the type of vehicle used;

18 (B) the passenger capacity of the vehicle;

19 (C) the distance which such workers will be
20 carried in the vehicle;

21 (D) the type of roads and highways on
22 which such workers will be carried in the vehi-
23 cle;

1 (E) the extent to which a proposed stand-
2 ard would cause an undue burden on an em-
3 ployer of traveling sales crew workers; and

4 (F) any standard prescribed by the Sec-
5 retary of Transportation under part II of the
6 Interstate Commerce Act (49 U.S.C. 301 et
7 seq.) or any successor provision of subtitle IV
8 of title 49, United States Code.

9 (e) SAFETY AND HEALTH IN HOUSING.—An em-
10 ployer of traveling sales crew workers shall provide hous-
11 ing for such workers in a manner that is consistent with
12 the following standards:

13 (1) If the employer owns or controls the facility
14 or real property which is used for housing traveling
15 sales crew workers, the employer shall be responsible
16 for ensuring that the facility or real property com-
17 plies with substantive Federal and State safety and
18 health standards applicable to that housing. Prior to
19 occupancy by such workers, the facility or real prop-
20 erty shall be certified by a State or local health au-
21 thority or other appropriate agency as meeting ap-
22 plicable safety and health standards. Written notice
23 shall be posted in the facility or real property, prior
24 to and throughout the occupancy by such workers,

1 informing such workers that the applicable safety
2 and health standards are met.

3 (2) If the employer does not own or control the
4 facility or real property which is used for housing
5 traveling sales crew workers, the employer shall be
6 responsible for ensuring that the owner or operator
7 of such facility or real property complies with sub-
8 stantive Federal and State safety and health stand-
9 ards applicable to that housing. Such assurance by
10 the employer shall include the verification that the
11 owner or operator of such facility or real property is
12 licensed and insured in accordance with all applica-
13 ble State and local laws. The employer shall obtain
14 such assurance prior to housing any workers in the
15 facility or real property.

16 (f) INSURANCE OF VEHICLES; WORKERS' COM-
17 PENSATION INSURANCE.—

18 (1) INSURANCE.—An employer of traveling
19 sales crew workers shall ensure that there is in ef-
20 fect, for each vehicle used to transport such workers,
21 an insurance policy or a liability bond which insures
22 the employer against liability for damage to persons
23 and property arising from the ownership, operation,
24 or the causing to be operated of such vehicle for
25 such purpose. The level of insurance or liability bond

1 required shall be determined by the Secretary con-
2 sidering at least the factors set forth in subsection
3 (d)(2) and any relevant State law.

4 (2) WORKERS' COMPENSATION.—If an employer
5 of traveling sales crew workers is the employer of
6 such workers for purposes of a State workers' com-
7 pensation law and such employer provides workers'
8 compensation coverage for such workers as provided
9 for by such State law, the following modifications to
10 the requirements of paragraph (1) shall apply:

11 (A) No insurance policy or liability bond
12 shall be required of the employer if such work-
13 ers are transported only under circumstances
14 for which there is workers' compensation cov-
15 erage under such State law.

16 (B) An insurance policy or liability bond
17 shall be required of the employer for all cir-
18 cumstances under which workers' compensation
19 coverage for the transportation of such workers
20 is not provided under such State law.

21 **SEC. 205. ENFORCEMENT PROVISIONS.**

22 (a) CRIMINAL SANCTIONS.—An employer who will-
23 fully and knowingly violates this title, or any regulation
24 promulgated under this title, shall be fined not more than
25 \$10,000 or imprisoned for not to exceed 1 year, or both.

1 Upon conviction for any subsequent violation of this title,
2 or any such regulation, an employer shall be fined not
3 more than \$50,000 or imprisoned for not to exceed 3
4 years, or both.

5 (b) JUDICIAL ENFORCEMENT.—

6 (1) INJUNCTIVE RELIEF.—The Secretary may
7 petition any appropriate district court of the United
8 States for temporary or permanent injunctive relief
9 if the Secretary determines that this title, or any
10 regulation promulgated under this title, has been
11 violated.

12 (2) SOLICITOR OF LABOR.—Except as provided
13 in section 518(a) of title 28, United States Code, re-
14 lating to litigation before the Supreme Court, the
15 Solicitor of Labor may appear for and represent the
16 Secretary in any civil litigation brought under this
17 title, but all such litigation shall be subject to the di-
18 rection and control of the Attorney General.

19 (c) ADMINISTRATIVE SANCTIONS; PROCEEDINGS.—

20 (1) CIVIL MONEY PENALTY.—Subject to para-
21 graph (2), an employer that violates this title, or any
22 regulation promulgated under this title, may be as-
23 sessed a civil money penalty of not more than
24 \$10,000 for each such violation.

1 (2) DETERMINATION OF PENALTY.—In deter-
2 mining the amount of any penalty to be assessed
3 under paragraph (1), the Secretary shall take into
4 account—

5 (A) the previous record of the employer in
6 terms of compliance with this title and the reg-
7 ulations promulgated under this title; and

8 (B) the gravity of the violation.

9 (3) PROCEEDINGS.—

10 (A) IN GENERAL.—An employer that is as-
11 sessed a civil money penalty under this sub-
12 section shall be afforded an opportunity for an
13 agency hearing, upon request made within 30
14 days after the date of issuance of the notice of
15 assessment. In such hearing, all issues shall be
16 determined on the record pursuant to section
17 554 of title 5, United States Code. If no hear-
18 ing is requested as provided for in this para-
19 graph, the assessment shall constitute a final
20 and unappealable order.

21 (B) ADMINISTRATIVE LAW JUDGE.—If a
22 hearing is requested under subparagraph (A),
23 the initial agency decision shall be made by an
24 administrative law judge, and such decision
25 shall become the final order unless the Sec-

1 retary modifies or vacates this decision. Notice
2 of intent to modify or vacate the decision of the
3 administrative law judge shall be issued to the
4 parties within 90 days after the decision of the
5 administrative law judge. A final order which
6 takes effect under this paragraph shall be sub-
7 ject to review only as provided for under sub-
8 paragraph (C).

9 (C) REVIEW.—An employer against whom
10 an order imposing a civil money penalty has
11 been entered after an agency hearing under this
12 section may obtain review by the United States
13 district court for any district in which the em-
14 ployer is located, or the United States District
15 Court for the District of Columbia, by filing a
16 notice of appeal in such court within 30 days
17 from the date of such order and simultaneously
18 sending a copy of such notice by registered mail
19 to the Secretary. The Secretary shall promptly
20 certify and file in such court the record upon
21 which the penalty was imposed. The findings of
22 the Secretary shall be set aside only if found to
23 be unsupported by substantial evidence as pro-
24 vided by section 706(2)(E) of title 5, United
25 States Code. Any final decision, order, or judg-

1 ment of such District Court concerning such re-
2 view shall be subject to appeal as provided in
3 chapter 83 of title 28, United States Code.

4 (D) FAILURE TO PAY.—If any person fails
5 to pay an assessment after it has become a
6 final and unappealable order under this para-
7 graph, or after the court has entered final judg-
8 ment in favor of the agency, the Secretary shall
9 refer the matter to the Attorney General, who
10 shall recover the amount assessed by action in
11 the appropriate United States district court. In
12 such action, the validity and appropriateness of
13 the final order imposing the penalty shall not be
14 subject to review.

15 (E) PAYMENT OF PENALTIES.—All pen-
16 alties collected under authority of this section
17 shall be paid into the Treasury of the United
18 States.

19 (d) PRIVATE RIGHT OF ACTION.—

20 (1) IN GENERAL.—Any traveling sales crew
21 worker aggrieved by a violation of this title, or any
22 regulation promulgated under this title, by an em-
23 ployer may file suit in any district court of the
24 United States having jurisdiction over the parties,
25 without respect to the amount in controversy and

1 without regard to exhaustion of any alternative ad-
2 ministrative remedies provided for in this title.

3 (2) DAMAGES.—

4 (A) IN GENERAL.—If the court in an ac-
5 tion under paragraph (1) finds that the defend-
6 ant intentionally violated a provision of this
7 Act, or a regulation promulgated under this
8 Act, the court may award—

9 (i) damages up to and including an
10 amount equal to the amount of actual
11 damages;

12 (ii) statutory damages of not more
13 than \$1,000 per plaintiff per violation or,
14 if such complaint is certified as a class ac-
15 tion, not more than \$1,000,000 for all
16 plaintiffs in the class; or

17 (iii) other equitable relief.

18 (B) DETERMINATION OF AMOUNT.—In de-
19 termining the amount of damages to be award-
20 ed under subparagraph (A), the court may con-
21 sider whether an attempt was made to resolve
22 the issues in dispute before the resort to litiga-
23 tion.

24 (C) WORKERS' COMPENSATION.—

1 (i) IN GENERAL.—Notwithstanding
2 any other provision of this title, where a
3 State workers' compensation law is appli-
4 cable and coverage is provided for a trav-
5 eling sales crew worker, the workers' com-
6 pensation benefits shall be the exclusive
7 remedy for loss of such worker under this
8 title in the case of bodily injury or death
9 in accordance with such State's workers'
10 compensation law.

11 (ii) LIMITATION.—The exclusive rem-
12 edy provided for under clause (i) precludes
13 the recovery under subparagraph (A) of
14 actual damages for loss from an injury or
15 death but does not preclude recovery under
16 such subparagraph for statutory damages
17 (as provided for in clause (iii)) or equitable
18 relief, except that such relief shall not in-
19 clude back or front pay or in any manner,
20 directly or indirectly, expand or otherwise
21 alter or affect—

22 (I) a recovery under a State
23 workers' compensation law; or

24 (II) rights conferred under a
25 State workers' compensation law.

1 (iii) STATUTORY DAMAGES.—In an ac-
2 tion in which a claim for actual damages
3 is precluded as provided for in clause (ii),
4 the court shall award statutory damages of
5 not more than \$20,000 per plaintiff per
6 violation or, in the case of a class action,
7 not more than \$1,000,000 for all plaintiffs
8 in the class, if the court finds any of the
9 following:

10 (I) The defendant violated sec-
11 tion 204(d) by knowingly requiring or
12 permitting a driver to drive a vehicle
13 for the transportation of the plaintiff
14 or plaintiffs while under the influence
15 of alcohol or a controlled substance
16 (as defined in section 102 of the Con-
17 trolled Substances Act (21 U.S.C.
18 802)), the defendant had actual
19 knowledge of the driver's condition,
20 such violation resulted in the injury or
21 death of the plaintiff or plaintiffs, and
22 such injury or death arose out of and
23 in the course of employment as de-
24 fined under the State worker's com-
25 pensation law.

1 (II) The defendant was found by
2 the court or was determined in a pre-
3 vious administrative or judicial pro-
4 ceeding to have violated a safety
5 standard prescribed by the Secretary
6 under section 204 and such violation
7 resulted in the injury or death of the
8 plaintiff or plaintiffs.

9 (III) The defendant willfully dis-
10 abled or removed a safety device pre-
11 scribed by the Secretary under section
12 204, or the defendant in conscious
13 disregard of the requirements of such
14 section failed to provide a safety de-
15 vice required by the Secretary, and
16 such disablement, removal, or failure
17 to provide a safety device resulted in
18 the injury or death of the plaintiff or
19 plaintiffs.

20 (IV) At the time of the violation
21 of section 204, which resulted in the
22 injury or death of the plaintiff or
23 plaintiffs, the employer or the super-
24 visor of the traveling sales crew did

1 not have a Certificate of Registration
 2 in accordance with section 203.

3 (iv) DETERMINATION OF AMOUNT.—

4 For purposes of determining the amount of
 5 statutory damages due to a plaintiff under
 6 this subparagraph, multiple infractions of
 7 a single provision of this title, or of regula-
 8 tions promulgated under this title, shall
 9 constitute a single violation.

10 (D) ATTORNEY'S FEE.—The court shall, in
 11 addition to any judgment awarded to the plain-
 12 tiff or plaintiffs under this paragraph, allow a
 13 reasonable attorney's fee to be paid by the de-
 14 fendant or defendants, and costs of the action.

15 (E) APPEALS.—Any civil action brought
 16 under this subsection shall be subject to appeal
 17 as provided for in chapter 83 of title 28, United
 18 States Code.

19 (e) DISCRIMINATION PROHIBITED.—

20 (1) IN GENERAL.—No person shall intimidate,
 21 threaten, restrain, coerce, blacklist, discharge, or in
 22 any manner discriminate against any traveling sales
 23 crew worker because such worker has, with just
 24 cause, filed any complaint or instituted, or caused to
 25 be instituted, any proceeding under or related to this

1 title, or has testified or is about to testify in any
2 such proceedings, or because of the exercise, with
3 just cause, by such worker on behalf of the worker
4 or others of any right or protection afforded by this
5 title.

6 (2) COMPLAINT.—

7 (A) IN GENERAL.—A traveling sales crew
8 worker who believes, with just cause, that such
9 worker has been discriminated against in viola-
10 tion of this subsection may, within 12 months
11 of the date of such violation, file a complaint
12 with the Secretary alleging such discrimination.

13 (B) INVESTIGATION.—Upon receipt of a
14 complaint under subparagraph (A), the Sec-
15 retary shall cause such investigation to be made
16 as the Secretary determines to be appropriate.

17 (C) ACTIONS.—If upon an investigation
18 under subparagraph (B), the Secretary deter-
19 mines that the provisions of this subsection
20 have been violated, the Secretary shall bring an
21 action in any appropriate United States district
22 court against the person involved.

23 (D) RELIEF.—In any action under sub-
24 paragraph (C), the United States district court
25 shall have jurisdiction, for cause shown, to re-

1 strain violations of this subsection and order all
2 appropriate relief, including rehiring or rein-
3 statement of the worker, with back pay, or
4 damages.

5 (f) WAIVER OF RIGHTS.—Agreements by workers
6 purporting to waive or to modify their rights under this
7 title shall be void as contrary to public policy, except that
8 a waiver or modification of rights in favor of the Secretary
9 shall be valid for purposes of enforcement of this title.

10 (g) AUTHORITY TO OBTAIN INFORMATION.—

11 (1) IN GENERAL.—To carry out this title, the
12 Secretary, either pursuant to a complaint or other-
13 wise, shall, as may be appropriate, investigate and,
14 in connection with such investigation, enter and in-
15 spect such places (including housing and vehicles)
16 and such records (and make transcriptions thereof),
17 question such persons and gather such information
18 to determine compliance with this title, or regula-
19 tions promulgated under this title.

20 (2) PRODUCTION AND RECEIPT OF EVI-
21 DENCE.—The Secretary may issue subpoenas requir-
22 ing the attendance and testimony of witnesses or the
23 production of any evidence in connection with inves-
24 tigations under paragraph (1). The Secretary may
25 administer oaths, examine witnesses, and receive evi-

1 dence. For the purpose of any hearing or investiga-
 2 tion provided for in this title, the authority con-
 3 tained in sections 9 and 10 of the Federal Trade
 4 Commission Act (15 U.S.C. 49 and 50), relating to
 5 the attendance of witnesses and the production of
 6 books, papers, and documents, shall be available to
 7 the Secretary.

8 (3) CONFIDENTIALITY.—The Secretary shall
 9 conduct investigations under paragraph (1) in a
 10 manner which protects the confidentiality of any
 11 complainant or other party who provides information
 12 to the Secretary in good faith.

13 (4) VIOLATION.—It shall be violation of this
 14 title for any person to unlawfully resist, oppose, im-
 15 pede, intimidate, or interfere with any official of the
 16 Department of Labor assigned to perform any inves-
 17 tigation, inspection, or law enforcement function
 18 pursuant to this title during the performance of such
 19 duties.

20 (h) STATE LAWS AND REGULATIONS; GOVERNMENT
 21 AGENCIES.—

22 (1) RELATION TO STATE LAWS.—This title is
 23 intended to supplement State law, and compliance
 24 with this title shall not be construed to excuse any

1 person from compliance with appropriate State laws
2 and regulations.

3 (2) AGREEMENTS.—The Secretary may enter
4 into agreements with Federal and State agencies—

5 (A) to use their facilities and services;

6 (B) to delegate to Federal and State agen-
7 cies such authority, other than rulemaking, as
8 may be useful in carrying out this title; and

9 (C) to allocate or transfer funds to, or oth-
10 erwise pay or reimburse, such agencies for ex-
11 penses incurred pursuant to agreements under
12 this paragraph.

13 (i) RULES AND REGULATIONS.—The Secretary may
14 issue such rules and regulations as may be necessary to
15 carry out this title, consistent with the requirements of
16 chapter 5 of title 5, United States Code.

○