

107TH CONGRESS  
1ST SESSION

# H. R. 3070

To amend the Fair Labor Standards Act of 1938 to ensure the protection of employees in travelling sales crews, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 2001

Mr. PETRI (for himself and Mr. LANTOS) introduced the following bill; which was referred to the Committee on Education and the Workforce

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## A BILL

To amend the Fair Labor Standards Act of 1938 to ensure the protection of employees in travelling sales crews, and for other purposes.

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 “Travelling Sales Crew  
5       Protection Act”.

6       **SEC. 2. APPLICATION OF FAIR LABOR STANDARDS ACT OF**  
7       **1938 TO CERTAIN OUTSIDE SALESMEN.**

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

1       “(k) For purposes of subsection (a)(1), and notwith-  
 2 standing any other provision of law, the term ‘outside  
 3 salesman’ does not include any individual employed in the  
 4 position of a salesman, if the individual travels with a  
 5 group of salespeople, including a supervisor, team leader  
 6 or crew leader, and the employees in the group do not re-  
 7 turn to their permanent residences at the end of the work  
 8 day.”.

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

12       “(e) No individual under 18 years of age may be em-  
 13 ployed in a position requiring the individual to engage in  
 14 door-to-door sales or in related support work in a manner  
 15 that requires the individual to remain away from the indi-  
 16 vidual’s permanent residence for more than 24 hours.”.

17 **SEC. 3. PROTECTION OF TRAVELLING SALES CREWS.**

18       (a) TRAVELLING SALES CREW WORKER DEFINED.—

19       (1) Except as provided in paragraph (2), the term “travel-  
 20 ling sales crew worker” means an individual who—

21               (A) is employed as a salesperson or in re-  
 22               lated support work;

23               (B) travels with a group of salespersons,  
 24               including a supervisor; and

1 (C) is required to be absent overnight from  
2 his or her permanent place of residence.—

3 (2) Such term does not include—

4 (D) any individual who meets the requirements  
5 of subparagraph (A) if such individual is travelling  
6 to a trade show or convention; or

7 (E) any immediate family member of a travel-  
8 ling sales crew employer.

9 (b) SECRETARY TO PRESCRIBE RULES.—Not later  
10 than 180 days after the date of enactment of this Act,  
11 the Secretary of Labor (hereinafter in this Act, the “Sec-  
12 retary”) shall prescribe rules governing the protection of  
13 travelling sales crews. Such rules shall contain the fol-  
14 lowing requirements:

15 (1) REGISTRATION.—Each employer or super-  
16 visor of a travelling sales crew worker must obtain  
17 a certificate of registration from the Secretary. The  
18 Secretary shall prescribe the manner of application  
19 and the standards for issuance for such a certificate,  
20 including a reasonable fee for such application.

21 (2) EMPLOYER REQUIREMENTS.—An employer  
22 of travelling sales crew workers must carry out the  
23 following duties, in accordance with the rules pre-  
24 scribed by the Secretary:

1 (A) DISCLOSURE OF CONDITIONS OF EM-  
2 PLOYMENT.—The employer must disclose to  
3 each travelling sales crew worker employed by  
4 such employer, in writing, information related  
5 to such worker's conditions of employment, in-  
6 cluding the rate of pay, applicable pay period,  
7 duration of employment, and whether the em-  
8 ployer provides workers' compensation insur-  
9 ance coverage for the worker.

10 (B) PAYMENT OF WAGES, RECORD-  
11 KEEPING.—For each pay period, the employer  
12 must—

13 (i) pay to each travelling sales crew  
14 worker employed by such employer wages  
15 owed such worker when due;

16 (ii) make such payment in United  
17 States currency or by negotiable instru-  
18 ment; and

19 (iii) provide a written statement to  
20 each travelling sales crew worker employed  
21 by such employer, and maintain records  
22 (which must be kept for at least 3 years),  
23 relating to the earnings of (and any  
24 withholdings of earnings from) each such  
25 worker.

1 (C) EMPLOYER PAYMENT OF EMPLOYEE  
2 BUSINESS EXPENSES.—Other than a deduction  
3 from wages for the actual cost to the employer  
4 of any board, lodging, or other facilities pro-  
5 vided by the employer to a travelling sales crew  
6 worker employed by such employer, the em-  
7 ployer may not require the worker—

8 (i) to purchase any goods or services  
9 solely from the employer; or

10 (ii) to pay for any of the employer's  
11 business expenses.

12 (D) VEHICLE INSURANCE.—The employer  
13 must maintain liability insurance coverage in  
14 compliance with any applicable State law and  
15 sufficient (as determined by the Secretary) to  
16 protect any travelling sales crew workers trans-  
17 ported in such a vehicle and to ensure against  
18 liability to other persons and property arising  
19 from the use of such vehicle for such purpose,  
20 except that if the Secretary determines that  
21 such workers are covered under an applicable  
22 workers' compensation insurance policy pro-  
23 vided by the employer, additional vehicle insur-  
24 ance covering such workers may be waived by  
25 the Secretary.

1           (E) TRANSPORTATION SAFETY.—The em-  
2           ployer must maintain any motor vehicle used to  
3           transport a travelling sales crew worker em-  
4           ployed by such employer in compliance with any  
5           applicable Federal, State, or local vehicle safety  
6           standards and with any additional safety rules  
7           prescribed by the Secretary.

8           (F) HOUSING SAFETY.—The employer  
9           must maintain any lodging owned or controlled  
10          by the employer in compliance with any applica-  
11          ble Federal, State, or local housing, sanitation,  
12          health, building, or other safety standards and  
13          with any additional safety rules prescribed by  
14          the Secretary.

15          (G) PROHIBITION ON DISCRIMINATION.—  
16          An employer, or an agent of the employer, may  
17          not intimidate, threaten, restrain, coerce, black-  
18          list, discharge, or in any manner discriminate  
19          against any travelling sales crew worker be-  
20          cause such worker has, with just cause, filed  
21          any complaint or instituted, or caused to be in-  
22          stituted, any proceeding under or related to this  
23          Act, or has testified or is about to testify in any  
24          such proceeding, or because of the exercise,  
25          with just cause, by such worker on behalf of the

1 worker or others of any right or protection af-  
2 forced by this Act.

3 **SEC. 4. ENFORCEMENT.**

4 (a) CRIMINAL SANCTIONS.—An employer that will-  
5 fully and knowingly violates a rule prescribed under this  
6 Act shall be imprisoned for not more than one year or  
7 fined not more than \$10,000, or both. Upon conviction  
8 for a subsequent violation of a rule prescribed under this  
9 Act, an employer shall be imprisoned for not more than  
10 3 years or fined not more than \$50,000, or both.

11 (b) CIVIL PENALTY.—An employer that violates a  
12 rule prescribed under this Act shall be liable to the United  
13 States for a civil penalty of not more than \$10,000 for  
14 each such violation. The Secretary may assess and collect  
15 such civil penalty after a determination, made on the  
16 record after opportunity for an agency hearing, of—

17 (1) liability for such violation; and

18 (2) the appropriate amount of the penalty,  
19 based on the previous compliance record of the em-  
20 ployer and the gravity of the violation.

21 (c) ADMINISTRATIVE ACTIONS.—The Secretary shall  
22 prescribe rules providing a procedure for an aggrieved  
23 travelling sales crew worker to file an administrative com-  
24 plaint with the Secretary, which the Secretary shall inves-  
25 tigate and follow up with any appropriate enforcement ac-

1 tion against the employer of such worker, including refer-  
2 ral to the Attorney General of such employer for criminal  
3 sanctions under subsection (a), the imposition by the Sec-  
4 retary of a civil penalty under subsection (b), or the filing  
5 of a civil action on behalf of such worker to enjoin such  
6 employer under subsection (d).

7 (d) CIVIL ACTION.—Any person aggrieved by a viola-  
8 tion of a rule prescribed under this Act (or the Secretary,  
9 on behalf of any such person) may bring, in an appro-  
10 priate United States district court (without regard to the  
11 amount in controversy, the citizenship of the parties, or  
12 the exhaustion of administrative remedies), a civil  
13 action—

- 14 (1) to enjoin such violation;  
15 (2) to recover the greater of—  
16 (A) actual damages; or  
17 (B) not more than \$1,000 for each such  
18 violation for each plaintiff (which may not ex-  
19 ceed \$1,000,000 for all plaintiffs in a class);  
20 and  
21 (3) for other equitable relief; and  
22 (4) to recover the costs of the litigation and a  
23 reasonable attorney fee.

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