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HOUSE OF REPRESENTATIVES
REPORT
104–278

AUTHORITY FOR 16 AND 17 YEAR OLDS TO LOAD MATERIALS INTO BALERS AND COMPACTORS

OCTOBER 17, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLING, from the Committee on Economic and Educational Opportunities, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1114]

[Including cost estimate of the Congressional Budget Office]

The Committee on Economic and Educational Opportunities, to whom was referred the bill (H.R. 1114) to authorize minors who are under the child labor provisions of the Fair Labor Standards Act of 1938 and who are under 18 years of age to load materials into balers and compacters that meet appropriate American National Standards Institute design safety standards, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. AUTHORITY FOR 16 AND 17 YEAR OLDS TO LOAD MATERIALS INTO BALERS AND COMPACTORS.

In the administration of the child labor provisions of the Fair Labor Standards Act of 1938, individuals who are 16 and 17 years of age shall be permitted to load materials into cardboard balers and compactors that are safe for the 16 and 17 year olds loading the equipment and which cannot operate while being loaded. For purposes of this section, such balers and compactors shall be considered safe for 16 and 17 year olds loading such equipment if they are in compliance with the most current safety standard established by the American National Standards Institute.

29–006

EXPLANATION OF AMENDMENTS

The provisions of the substitute text are explained in this report.

PURPOSE

The purpose of H.R. 1114, as amended, is to permit 16 and 17 year olds to load materials into cardboard balers and compactors that are (1) safe and (2) cannot operate while being loaded. Such balers and compactors shall be considered safe if they are in compliance with the most current safety standards for such equipment established by the American National Standards Institute.

COMMITTEE ACTION

H.R. 1114 was introduced by Representative Thomas Ewing on March 2, 1995. The Subcommittee on Workforce Protections held a hearing on H.R. 1114 on July 11, 1995. Testimony was received from the Honorable Thomas W. Ewing, Member of Congress; the Honorable Larry Combest, Member of Congress; Ms. Virginia L. Lutz, Safety Supervisor, Lowes Food Stores, Inc.; and Ms. Judy Golodner, President, National Consumers League.

On July 20, 1995, the Committee on Economic and Educational Opportunities approved H.R. 1114, as amended, on a voice vote, and by a vote of 21–13, ordered the bill favorably reported.

COMMITTEE STATEMENT AND VIEWS

Background

Hazardous Occupation Order Number 12

Section 12 of the Fair Labor Standards Act prohibits the use of "oppressive" child labor. In implementing that provision, the Secretary of Labor has determined that certain occupations are "particularly hazardous for the employment of minors between 16 and 18 years of age or detrimental to their health or well-being," (29 CFR Part 570, Subpart E) and therefore prohibited or limited minors of ages 16 and 17 from employment in those occupations. The occupations so limited or prohibited are described in a series of Hazardous Occupation Orders.

Hazardous Occupation Order Number 12 (HO 12) was adopted in 1954. HO 12 prohibits persons under 18 years of age from "operating or assisting to operate" certain "power driven paper product machines." Among the several paper product machines listed in HO 12 (most of which pertain to the production of paper) are "scrap paper balers".

When HO 12 was written in 1954, the term "scrap paper baler" referred to a machine with a large horizontal ram and an unprotected opening that was fed scrap paper for baling. The open charge box of the baler presented an obvious hazard. The 1954 Department of Labor report entitled Occupational Hazards to Young Workers, Report No. 12, The Operation of Paper Products Machines states: "it would be possible for a person's arm to be caught by the descending plunger should someone else operate the control mechanism while paper was being manually placed in the baler."

In December, 1991, the Department of Labor issued two changes to HO 12. First, the Department ruled that HO 12 applied to all

power-driven machinery used to convert paper into waste paper, and thereby "clarified" that modern paper balers and compactors are covered by HO 12, just as were the earlier "scrap paper balers." Second, the Department extended the prohibition on minors "operating or assisting to operate" such machinery to include "placing or removing materials into or from the machine". Thus, under the new rules, it is illegal for minors to throw cardboard boxes into nonoperating machines, even those with modern safety designs which prevent the machine from operating while being loaded.

The Department of Labor made these changes to HO 12 despite the fact that the Department admits that it did not have information on whether the paper balers involved in accidental injuries met modern safety standards.[1] The Department of Labor now makes no distinction between safe or unsafe equipment. It simply prohibits all minors from loading any paper into any compactor or baler.

Safety standards for modern paper balers and compactors.

As described above, the HO 12 was written when scrap paper balers included little in the way of safety precautions. Since 1954, however, a number of design changes and additional safety devices have been added to most newly manufactured paper balers and compactors to avoid accidental operation and injury. The most rigorous and comprehensive set of safety requirements used by industry are those which have been developed by the American National Standard Institute.

The American National Standards Institute (ANSI) is a national organization which coordinates the development of voluntary, consensus standards in a wide range of areas, including product and worker safety. ANSI standards have been used by Congress as expressions of the best available technology in the safety area. For example, the Occupational Safety and Health Act of 1970 directed the Department of Labor to adopt the then-existing ANSI standards, rather than delay any activity until the agency promulgated occupational safety and health standards. (Section 6 (a) of the Occupational Safety and Health Act, 29 U.S.C. Sec.655 (a)).

The first ANSI safety standard for paper balers was issued in 1982. The baler standard was revised in 1990 (ANSI Z245.5) and is currently undergoing a thorough review by the committee charged with this standard. A revised standard is expected to be issued later this year. Similarly, the ANSI standard for stationary compactors (ANSI Z245.2) was most recently revised in 1992.

Unlike the 1954-era "scrap paper balers" which were the subject of HO 12 and which lacked any significant safety design, equipment meeting the current ANSI standards must conform to all of the following specifications:

The ram shall not move unless the bale chamber door is fully closed and latched; the ram shall stop or return to the rest position if the closure chamber is opened more than one-half inch during the compression stroke;

[1] Department of Labor response to the request for research on the topic of paper balers from the House Committee on Appropriations. June 21, 1994.

The loading chamber closure shall completely cover the chamber before the ram can be activated;

A mechanical or electrical interlock to prevent operator access to the top of the baler ram during its upward motion;

Access covers, doors and protective shields which are secured by a lockable device;

Protective shields that cover parts of the drive mechanism which could cause injury to the operator;

Controls which are conspicuously labeled and start buttons that are recessed to prevent inadvertent activation;

Stop buttons that are red and easily distinguishable from all other controls and are not recessed;

A power disconnecting means that can be locked in the off position;

An emergency means of stopping and controlling the movement of the ram;

An emergency stop button at the tying device; and

Platforms with guardrails and slip resistant floors;

Of particular importance is that current ANSI standards require that the design of paper balers and compactors include a safety gate over the loading chamber opening, which prevents the operation of the baling machine when the gate is open. Sections 5.2.2 and 5.2.2.1 of the 1990 ANSI standard for Paper Balers states "A loading chamber shall be provided. The loading chamber closure shall completely cover the loading chamber before the ram can be activated into its compression stroke and must remain in place until the completion of the compression stroke." In addition, Section 7.2 of the 1992 ANSI standard for paper compactors states "All charging hopper access doors on automatic cycling compactor installations shall have an interlock system that prevents cycling motion while the access door(s) is open."

In short, paper balers and compactors meeting current ANSI standards cannot operate while being loaded. Analogy has been made to the microwave ovens that most people today have in their homes: when the door (or gate) is open, the machine will not operate.

Effect of HO 12

The effect of HO 12, when applied to modern paper balers and compactors, has been penalties and increased costs for employers and reduced job opportunities for teenage workers but with no demonstrated increase in safety. In testimony before the committee, Ms. Virginia Lutz, Safety Supervisor for Lowes Foods, described the effects of HO 12 this way:

> HO 12 has created real disruptions in the supermarket industry. The enforcement steps by the Labor Department and the many citations and fines have made supermarket operators shy away from hiring teenagers. It's just not worth the risk of exposure.
>
> Why would allowing teens only to load cardboard balers and compactors make a difference to us? Because it is the younger associates in stores who generally have the jobs of cleaning up and stocking shelves, and it is duplicative and inefficient to have the empty boxes carried to the baler by

these employees, only to be put on the floor to await another employee who is permitted to toss them into the baler without fear of government fine. And very often, because the backrooms where the baler is usually located are small, the clutter of boxes can itself become a hazard, and in fact is then often an OSHA housekeeping violation.

But on top of this, it just does not make sense to prohibit a 16 or 17 year old from tossing a cardboard box into a machine that is obviously dormant—shut off. It sits there, silent, looking like a glorified trash bin. The point is, to reasonable people, the rule makes no sense at all, and they are prone to their good judgment and common sense letting them toss the box into the baler.

Of course, no matter how firm a policy a store has against this, no matter how many times a teenager is told not to toss boxes into the baler or compactor, the owner of the store will still be cited by the Wage and Hour Division.

Despite the fact that there is no evidence of injuries caused in the loading of modern paper balers and compactors, and despite the fact that modern paper balers and compactors have been designed so as to prevent their operation during the loading process, the Department of Labor has failed to take action to change HO 12. In 1994, the Committee on Appropriations requested that the Department of Labor "reexamine hazardous occupation order number 12 as it applies to the use of cardboard baler machines" (House Report 103–533, page 17).

In response, the Department of Labor said it lacked sufficient information that modern paper balers were safe - while at the same time admitting that the Department had no information in showing that modern balers were unsafe or had been involved in any of the reported accidental injuries. The Department also reported that it planned to begin rule making to evaluate changes to HO 12, including issuing a Notice of Proposed Rulemakeing (NPRM) by May, 1995. However, no NPRM has been issued by the Department.

In a letter to the Chairman of the Committee opposing H.R. 1114, the Secretary of Labor relies upon on 1994 report on paper balers by the National Institute on Occupational Safety and Health (NIOSH). The NIOSH study consisted of observing five paper baler machines in the Pittsburgh, Pennsylvania area. According to NIOSH, four of the five machines did not meet ANSI standards. The study concluded that "of the five machines evaluated, we found only one to be safe" "Review of Safeguarding technology used on paper balers," 5/4/95). The one machine found safe by NIOSH was also the only one of the five that met the current ANSI standard. Of course, that one paper baler found safe by NIOSH would also be the only one of the five which minors would be permitted to load under this legislation.

Legislative remedy

The purpose of H.R. 1114, as amended, is to amend the child labor provisions of the Fair Labor Standards Act (FLSA) in order to permit 16 and 17 year olds to load materials into paper balers and compactors which (1) cannot operate while being loaded, and (2) are safe. Such balers and compactors are considered safe if they

are in compliance with the most current safety standards established by the American National Standards Institute (ANSI).

It should be noted that H.R. 1114, as amended, does not permit 16 and 17 year olds to operate or unload paper balers or compactors. These activities are still forbidden under the child labor provisions of the FLSA under HO 12.

After the Department of Labor clarification to HO 12 in December of 1991, the Department began retroactively enforcing HO 12 regarding paper balers and compactors. Rather than focusing on whether the paper balers and compactors were safe for purposes of loading by teenagers, the Department focused on strict enforcement of the rule, resulting in substantial penalties against employers. HO 12's strict prohibition on loading modern paper balers and the Department of Labor's penalties in enforcing that prohibition appear to be unjustified by any benefit to safety.

Much of the stated concern with H.R. 1114 has to do with the alleged difficulty of enforcement. For example, the Department of Labor, in arguing against the legislation, said that it is likely that less than one-half of paper balers in use throughout the United States do not meet current ANSI standards, and that, according to the Department, the legislation will cause "confusion over which balers the minors may legally load."[2]

Determining whether a paper baler or compactor meets ANSI standards, and thus may by legally loaded by a 16 or 17 year old, should not be difficult for either the employer or the Department of Labor. A paper baler or compactor which has been manufactured to the most current safety standards established by ANSI will so indicate on the machine itself and/or in attached operating guides or paperwork. Furthermore, if enforcement personnel suspect for any reason that a machine that has been designed and manufactured to meet ANSI standards has been subsequently tampered with or not properly maintained, the Department of Labor can simply review and examine the machine and maintenance records to make sure that it is functioning properly. Certainly the result of this legislation is a situation no more difficult to enforce and far more common-sensical than the current situation where the Department of Labor has to ask teenagers whether they ever put a box into an inoperable machine, rather than setting it on the floor next to the machine.

Modern cardboard balers are designed to prevent their operation when the loading gate is open, and many newly manufactured balers are now incorporating a key lock system which prevents operation unless the equipment is unlocked by use of the key.

Some persons have expressed concern that minors, who are not authorized to operate paper balers and compactors under this legislation, may have access to the operating key and will operate the machinery. They, therefore, have urged that further restrictive language be added to the bill requiring the key to be kept at all times in the custody of an adult and specifying that the machine should not be operated in the presence of any 16 or 17 year old employee.

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[2] July 19, 1995 Department of Labor letter from Secretary Robert Reich to Representative William F. Goodling, Chairman, Committee on Economic and Educational Opportunities.

In the Committee's opinion, such restrictions are unnecessary. Under H.R. 114, teenagers are not permitted to operate or unload a baler, even modern balers that meet current ANSI standards. Employers who allow a minor to use a key to operate a baler or compactor would be in violation of the law. Furthermore, H.R. 1114 specifies that loading of cardboard boxes by minors is limited to only those balers and compactors meeting current ANSI safety standards. The current ANSI safety standard (ANSI Z245. 1990) does not require a key lock system, though this enhanced safety feature may be required under the next ANSI safety standard that is presently under development.

In that HO 12 does not impose any access restrictions on the control features that make a baler operational, the Committee believes that it would be unreasonable and inappropriate to impose such restrictions on the most modern balers that incorporate a key lock system. Restrictions of this would result in micro-management of the workplace, and would undermine the intent and principle of H.R. 1114, which is to relieve employers of unnecessary and over reaching regulations. Employers are responsible for insuring that employees under the age of 18 do not operate paper balers or compactors of any kind and where those paper balers do include a key lock system, the Committee expects and encourages employers to take the necessary steps to ensure that keys will be inaccessible to teenage employees. Finally, on this issue of key accessibility, the Committee wishes to emphasize that even if the key is in the machine and the equipment is actually engaged, any attempt by an employee to open the gate for loading purposes will result in the equipment immediately shutting down and becoming inoperable due to the ANSI safety design features.

With respect to concerns that minors should not be present when the equipment is being operated, the Committee believes that a legislative restriction is not justified. Under HO 12, there is presently no such prohibition that balers and compactors are not to be operated in the presence of teenage employees. Additionally, no evidence or data has been presented to the Committee showing that minors are being injured because they were near a baler or compactor while the equipment was being operated that would warrant this type of limitation under H.R. 1114.

Conclusion

First and foremost, it is the view of the Committee that the safety of minors should be safeguarded. The intent of H.R. 1114, as amended, is to permit 16 and 17 year olds to engage in an activity that is not dangerous. In particular, H.R. 1114, as amended, will authorize 16 and 17 year olds to load materials into machines which (1) cannot operate while being loaded, and (2) meet the most current safety standards established by the American National Standards Institute (ANSI). Permitting employers to allow teenagers to load paper balers and compactors, if those machines meet current safety standards, will create an additional incentive for more employers to upgrade their paper baling equipment to meet the current safety standards. The employers will have on to replace older equipment with new equipment, in that they will not be penalized if a 16 or 17 year old happens to throw paper or boxes into

the machine. As such, it is the view of the Committee that H.R. 1114, as amended, poses no increased threat of injury to 16 and 17 year olds.

SUMMARY

H.R. 1114, as amended, would amend the child labor provisions of the Fair Labor Standards Act (FLSA) to authorize 16 and 17 year olds to load materials into cardboard balers and compactors that are (1) safe, and (2) cannot operate while being loaded. Such balers and compactors shall be considered safe if they are in compliance with the most current safety standards established by the American National Standards Institute.

SECTION-BY-SECTION ANALYSIS

Section 1

Provides that 16 and 17 year olds are permitted to load materials into cardboard balers and compactors that are safe, and which cannot operate while being loaded. Such balers and compactors shall be considered safe if they are in compliance with the most current safety standards established by the American National Standards Institute.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment into law of H.R. 1114 will have no significant inflationary impact on prices and costs in the operation of the national economy. It is the judgment of the Committee that the inflationary impact of this legislation as a component of the federal budget is negligible.

GOVERNMENT REFORM AND OVERSIGHT

With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations form the Committee on Government Reform and Oversight on the subject of H.R. 1114.

COMMITTEE ESTIMATE

Clause 7 of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 1114. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Con-

gressional Budget Office under section 403 of the Congressional Budget Act of 1974.

APPLICATION OF LAW TO LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. This bill in effect changes requirements under the Fair Labor Standards Act. As Congress is covered under the relevant FLSA requirements, this legislation would apply to Congress.

CHANGES TO EXISTING LAW

There were no changes made to existing law.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget & Impoundment Control Act requires a statement of whether the provisions of the reported bill include unfunded mandates; the bill does not contain any unfunded mandates.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 2(l)(3)(B) of rule XI of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 2(l)(3)(C) of rule XI of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1114 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 25, 1995.

Hon. WILLIAM F. GOODLING,
Chairman, Committee on Economic and Educational Opportunities, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office (CBO) has reviewed H.R. 1114, a bill to provide authority for minors to load materials into balers and compactors, as ordered reported by the Committee on Economic and Educational Opportunities on July 20, 1995. CBO estimates that enactment of H.R. 1114 would have no significant effect on the federal budget and no impact on the budgets of state and local governments. Because enactment of H.R. 1114 would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

H.R. 1114 would allow minors under 18 years of age to load materials into balers and compactors, if these machines meet safety standards of the American National Standards Institute. Currently, the child labor protection provisions of the Fair Labor Standards Act restrict children from engaging in this type of activity. Were this bill to be enacted, the Department of Labor could enforce this new provision without any change in its current enforcement budget.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Christina Hawley.

Sincerely,

JUNE E. O'NEILL.

ROLLCALL VOTES

Rollcall No. 1 (by Mr. Owens)

Amendment to require the Secretary of Labor to certify to each House of the Congress, on or before September 30, 1996, that there is adequate funding for FY96 for the Wage and Hour Administration of the Department of Labor to administer the provisions of H.R. 1114, before the bill will take effect. Defeated by a vote of 14–17.

Member	Aye	No
Chairman Goodling		X
Mr. Petri		
Mrs. Roukema		
Mr. Gunderson		
Mr. Fawell		X
Mr. Ballenger		X
Mr. Barrett		X
Mr. Cunningham		X
Mr. Hoekstra		X
Mr. McKeon		
Mr. Castle		X
Mrs. Meyers		X
Mr. Johnson		
Mr. Talent		X
Mr. Greenwood		
Mr. Hutchinson		X
Mr. Knollenberg		X
Mr. Riggs		X
Mr. Graham		
Mr. Weldon		X
Mr. Funderburk		X
Mr. Souder		X
Mr. McIntosh		X
Mr. Norwood		X
Mr. Clay	X	
Mr. Miller		
Mr. Kildee	X	
Mr. Williams		
Mr. Martinez	X	
Mr. Owens	X	
Mr. Sawyer	X	
Mr. Payne		
Mrs. Mink	X	
Mr. Andrews	X	
Mr. Reed	X	
Mr. Roemer	X	
Mr. Engel		
Mr. Becerra	X	
Mr. Scott	X	
Mr. Green	X	
Ms. Woolsey	X	
Mr. Romero-Barcelo	X	
Mr. Reynolds		
Totals	14	17

Rollcall No. 2 (by Mr. Petri)

Motion to favorably report the bill with an amendment in the nature of a substitute to the House with the recommendation that the bill as amended do pass. Passed by a vote of 21–13.

Member	Aye	No
Chairman Goodling	X	
Mr. Petri		
Mrs. Roukema		
Mr. Gunderson		
Mr. Fawell	X	
Mr. Ballenger	X	
Mr. Barrett	X	
Mr. Cunningham	X	
Mr. Hoekstra	X	
Mr. McKeon	X	
Mr. Castle	X	
Mrs. Meyers	X	
Mr. Johnson		
Mr. Talent	X	
Mr. Greenwood		
Mr. Hutchinson	X	
Mr. Knollenberg	X	
Mr. Riggs	X	
Mr. Graham	X	
Mr. Weldon	X	
Mr. Funderburk	X	
Mr. Souder	X	
Mr. McIntosh	X	
Mr. Norwood	X	
Mr. Clay		X
Mr. Miller		
Mr. Kildee		X
Mr. Williams		
Mr. Martinez	X	
Mr. Owens		X
Mr. Sawyer		X
Mr. Payne		X
Mrs. Mink		X
Mr. Andrews	X	
Mr. Reed		X
Mr. Roemer		X
Mr. Engel		
Mr. Becerra		X
Mr. Scott		X
Mr. Green		X
Ms. Woolsey		X
Mr. Romero-Barcelo		X
Mr. Reynolds		
Totals	21	13

MINORITY VIEWS

Introduction

Proponents of H.R. 1114 contend, "what we need less of is a government that enforces regulations which don't enhance worker safety but cost small business money and kill jobs. What we need is a more common-sense approach to enforcing rules by the federal bureaucracy."[1] Oddly then, H.R. 1114 needlessly jeopardizes the safety of working minors while imposing greater regulatory burdens on business and government alike.

H.R. 1114 provides that 16 and 17-year-old workers may load materials into cardboard balers and compactors so long as the equipment is safe for 16 and 17-year-olds to load and cannot be operated while being loaded. The legislation presumes that a baler or compactor which is maintained and operated in compliance with the latest American National Standards Institute (ANSI) standards applicable to such machines is otherwise safe for 16 and 17 year olds to load. H.R. 1114 is intended to overrule Hazardous Occupations Order Number 12 (HO 12) which, in part, precludes minors, including any worker below age 18, from operating or assisting to operate cardboard balers and compactors. As defined by the Department of Labor, assisting to operate a baler or compactor includes placing materials into or removing them from the machine.

Despite the significance of this proposal, including its increased regulatory burden on the Department of Labor, we are disappointed that the Republican majority chose not to afford the Department an opportunity to testify at the single hearing held on H.R. 1114.

H.R. 1114 Needlessly places minors at risk

Balers and compactors are large and potentially dangerous machines. In both types of machines, material is fed into a baling or compacting chamber and a ram or plunger—a large steel plate—is then mechanically forced through the chamber, compressing or compacting the material. A compactor typically deposits the compressed material into a large bin. The bin is then removed, emptied and returned for reuse. A baler, usually a smaller machine than a compactor, ties or wraps the compressed material with a steel band or wire. The bale is then removed and disposed.

Proponents of H.R. 1114 contend that there is nothing inherently dangerous in loading a bale or compactor so long as the machine is otherwise inoperable at the time that the loading occurs. We concur. The danger inherent in loading balers or compactors is not in loading the machine, per se, but in being in the vicinity of the ma-

[1] Statement of Hon. Thomas W. Ewing, "Hearing on House Resolutions 1114, 1225, and 1783," before the Subcommittee on Workforce Protections of the Committee on Economic and Educational Opportunities, 104th Congress, 1st Sess., (July 11, 1995).

chine when it is operating. HO 12, by precluding minors from being involved in the loading, operation, or unloading of balers or compactors, eliminates any occupational justification for the presence of minors while the machine is being operated.

H.R. 1114, by permitting minors to load certain balers and compactors, provides a legal and occupational justification for minors to otherwise be present while a baler or compactor is being operated. The Department of Labor estimates that more than half of the balers and compactors in use today are not in compliance with the ANSI standards. Further, even newer machines that are manufactured in compliance with the ANSI may not be maintained or operated in a manner that ensures the machine remains in compliance with the ANSI standards each and every time it is operated. Accidents will continue to occur.

The majority is apparently prepared to risk the life and limbs of young workers that the interlock devices required by the ANSI regulations will work in every case to prevent injury or death. Interlock devices are designed to ensure that machines cannot be operated when baler or compactor loading doors are open. Interlock devices are not fail-safe, however. On October 5, 1994 the Occupational Safety and Health Administration (OSHA) issued a serious violation citation to a supermarket in Ridgewood, New Jersey. The citation was issued in part because the store's "baler ram continued to cooperate when protective interlock gate remained open on or about 9/14/94." On November 11, 1994, a grocery market in Haledon, New Jersey was cited by OSHA, in part, because the "interlock on door of garbage compactor was not functioning".

The inevitable consequence of increasing the instances of proximity of minors to these machines while they are in operation will be an increase of instances of serious injury and death to minors. If such accidents occur while the minor is loading the machine, the employer will have engaged in a prima facie violation of the child labor laws, as provided in H.R. 1114. That, however, is likely to be a small consolation to the victim, and to his or her family.

According to the Department of Labor, there were 6 fatalities involving paper baling machines between 1993 and 1995, including 2 cases where the victims fell into the compacting area of the machine while attempting to clear jams that occurred during the loading process. While we firmly believe that HO 12 has served to minimize instances of injury or death to minors, youths have been involved in accidents involving compactors and balers despite the regulation. As Representative Owens related at the sole hearing held on H.R. 1114:

> A 16-year old lost the tip of his index finger while operating a box compactor on June 2, 1994, in Chippewa Falls, Wisconsin. Doctors were able, fortunately, to reattach the finger at the hospital. May 29, 1989, a 15-year-old clerk was loading boxes into a paper baler at the Hilltop Market in Seattle, Washington. When he turned around to see if there were anymore boxes to load, the safety gate came down and his arm became stuck in the machine. He tried to reach the switch with the other arm, but it also became caught in the machine. The minor suffered a broken arm and wrist and permanent disability in one arm. Finally, an

> 11-year-old was loading boxes in a paper baler at the Seatown Food Corporation, Bronx, New York, when his arm got caught in the baler and pulled his body up against the machine and crushed him. He died as a result of internal injuries.

The accidents cited above occurred despite a regulation that removes any occupational incentive for minors to be present while a baler or compactor is being operated. Our primary concern regarding H.R. 1114 is that, by lawfully permitting 16- and 17-year-olds to be employed loading certain balers and compactors, the legislation encourages the presence of minors while such machines are being operated and, therefore, inevitably places them in harmsway. No convincing justification has been presented to the Committee for exposing minors to such risks.

There is certainly no evidence that groceries are dependent upon the services of minors in order to load balers or compactors. According to the testimony of Ms. Lutz, two-thirds of all employees of food store employees are part-timers, of whom one quarter are under age 18. Stated more plainly, according to Ms. Lutz, only approximately one-sixth of all food store employees are under 18; approximately 83 percent are 18 or older. There would seem to be no dearth of adult workers capable of loading, operating, and unloading balers and compactors.

Witnesses testifying in support of H.R. 1114, including Representative Thomas W. Ewing, Representative Larry Combest, and Ms. Lutz (representing the Food Marketing Institute) stated that HO 12 has the effect of deterring grocery stores from hiring teenagers and that H.R. 1114 is necessary to promote employment opportunities for minors. Representative Ewing stated, "* * * I have been trying to get the Labor Department to fix one small regulation, Hazardous Occupation Order Number 12, which is causing grocery stores to avoid hiring teenagers because they can receive fines up to $10,000 for a single violation. Teenagers who are looking for summer jobs today are being turned away from grocery stores, which have traditionally hired a lot of teens to bag groceries and stock shelves." Representative Combest characterized HO 12 as "a regulatory disincentive for hiring 16- and 17-year-old workers." Ms. Lutz was more specific:

> Our survey shows that HO 12 has had a significant impact on teenage employment. HO 12 has led grocers to curtail hiring opportunities for teenagers or to modify the scope of their work. Among all companies, 64.7 percent said HO 12 has caused them to take such actions.
>
> It is alarming that two-thirds of the grocers responding to FMI's survey said that HO 12 has a dampening effect on their hiring teenagers. Indeed, there are some operators who have a firm policy against hiring anyone under 18 because of the regulatory and bureaucratic nightmare they face. This deals a direct blow to the job opportunities for teenagers and is especially ironic in light of the current concerns about teen employment and in view of hundreds of millions of dollars spent to 'create' summer jobs for teens.

We note, however, that beyond the assertion there is absolutely no evidence that HO 12 is having any impact on the employment of minors by grocery stores. No evidence was provided to the Committee to indicate that there has been any diminution in the percentage of food store employees who are under 18. Further, the contention that HO 12 is discouraging the employment of minors is based on a seemingly ludicrous presumption: That it is impossible to prevent 16- and 17-year-old stock clerks from loading balers or compactors.

In fact, the standard practice in the industry is to have stock clerks, including those under age 18, take empty cartons to a designated stacking area. Another employee, an adult, is then responsible for loading and operating the baler or compactor. Thousands of stores across the country are able to operate on such a basis without running afoul of HO 12. There is no intrinsic reason why a 16- or 17-year-old should feel compelled to load a baler or compactor, especially if it is explained to the employee that not only are such duties beyond his or her responsibilities, but that it is also unlawful for the employee to engage in such activities.

To the extent that anyone is having difficulty complying with HO 12 today, it would appear to be due to either a failure to adequately explain employment restrictions and the reasons for them to employees under age 18 or an indifference to the requirements of HO 12. That such employers will do better under the more onerous requirements of H.R. 1114, where 16- and 17-year-olds are permitted to load balers and compactors only if the machine is manufactured, maintained, and operated in full compliance with ANSI standards, is unlikely.

H.R. 1114 Increases regulatory burdens

The second reason proffered by proponents of H.R. 1114 for its enactment is to immunize industry from the unreasonable and costly enforcement of HO 12 by the Department of Labor. Ironically, H.R. 1114 will not provide the relief that the Food Marketing Institute seeks. Whereas HO 12 imposes a straightforward and easily understood requirement upon employers, the requirements imposed by H.R. 1114 are, at best, complex and easily breached. At worst, they are so imprecise and uncertain as to make compliance impossible to determine. As described by the bill's sponsor, Mr. Ewing, "Teenagers would *only* be allowed to load machines which meet current safety standards set by the American National Standards Institute, which means that teenagers would still be prohibited from loading the outdated machines." (emphasis added.) Ms. Lutz, in responding to a question from Representative Woolsey, described the requirements of H.R. 1114 as follows, "* * * and the balers that do not meet the current ANSI standards would fall under the same guidelines as currently exist for HO 12 * * *".

Though H.R. 1114 is generally understood as permitting 16- and 17-year-olds to load balers and compactors, in most instances the legislation unquestionably prohibits their use. As the majority notes, according to the best information available to the Committee, fewer than half of the balers and compactors in operation are in compliance with the standards. As described by the sponsors and principal proponents of the legislation, H.R. 1114 requires that a

baler or compactor be in complete compliance with ANSI standards before a 16- or 17-year-old may be employed to load the machine. If the machine is not operated and maintained in compliance with current ANSI standards, the use of minors to load the machine "would fall under the same guidelines as currently exist for HO 12." In other words, the employer would be subject to a fine of up to $10,000 for any occasion in which a minor loaded a baler or compactor that was not in compliance with ANSI standards.

H.R. 1114 effectively places employers in a more serious catch-22 than current law. Under the legislation, an employer may employ 16- and 17-year-olds to load balers and compactors without fear of being fined by the Department of Labor only if the employer is certain that its balers and compactors are in compliance with current ANSI standards and is certain that the Department of Labor and the courts will so concur. No employer, including employers who own new machines that were manufactured in compliance with ANSI standards, can safely make those assumptions.

As the majority states, ANSI coordinates the development of voluntary standards. Because the ANSI standards are voluntary, they are, in some respects, broader and more proscriptive than standards that are likely to be issued by a Government agency. On the other hand, because legal liabilities are not directly dependent upon the degree of compliance with a voluntary standards, the ANSI standards are, in other respects, more vague and less precise than those typically issued by agencies.

The ANSI standards as they relate to the modification of machines provide an example of the complexity faced by both those who will seek to enforce this legislation and those who will seek to comply with it. Current ANSI standards require that balers that have been modified since June, 1991, must have been modified in accordance with the standard, that the manufacturer must have been notified prior to the modification, and that the owner of the machine must have obtained written permission from the manufacturer to make the modification. Assuming an investigator from the Wage and Hour Division of the Department of Labor can recognize a machine that has been modified in the first instance, the employer must then be able to provide documentation demonstrating when the modification occurred and, if appropriate, proving that prior approval for the modification was obtained from the manufacturer. Though the intent of the requirement is to ensure that the modification does not adversely affect the safe operation of the machine, compliance with the ANSI standards is dependent upon the production of the appropriate paper documents rather than the effect on safety of the modification, per se. Regardless of the safety ramifications of the modification, if the appropriate paper documents cannot be provided, the employer is in violation of the ANSI standards and may be liable for a potential fine of up to $10,000 for each time a minor was used to load the machine.

The ANSI standards also require that employers provide training to employees concerning the operation and maintenance of balers and compactors and that employers maintain inspection and maintenance records. The standards are silent, however, as to what constitutes appropriate training or how long inspection and maintenance records must be maintained. Again, the ramification for mis-

interpreting the requirements of the ANSI standards may be a $10,000 fine for each time a minor was employed to load the machine.

H.R. 1114 also greatly increases the burdens on the Department of Labor at a time when the ability of the Department to meet that burden is being undermined. Rather than making the relatively simple determination of whether a minor has been employed to operate or assist in operating a baler or compactor, H.R. 1114 requires that the Department also determine whether the machine is in compliance with the complex and confusing requirements of the ANSI standards. The fact that this significantly more burdensome requirement is being placed on the Department at the same time that the Department is facing crippling cuts in its budget can only have unfortunate consequences for the minors that H.R. 1114 purportedly is designed to protect. Mr. Owens offered an amendment in Committee to address this problem. The amendment provided that before the provisions of H.R. 1114 may take effect, the Secretary of Labor would be required to certify to each House of Congress that there is adequate funding for the Wage and Hour Administration of the Department of Labor to administer H.R. 1114. The amendment was rejected 14–17 on a party-line vote.

Finally, as the majority notes, when the Occupational Safety and Health Act was enacted in 1970, the legislation "directed the Department of Labor to adopt then-existing ANSI standards, *rather than delay any activity until the agency promulgated occupational safety and health standards*" (emphasis added). The intent was to ensure that workers were immediately afforded protection rather than delay the imposition of health and safety standards until the Department of Labor could implement its own standards. Many of the standards that were incorporated imposed requirements on employers that were later found to be unreasonable.

More importantly, in 1970, the Congress acted to require the adoption of standards developed by private associations to ensure immediate protection for workers while the Occupational Safety and Health Administration (OSHA) was getting off the ground. Ultimate regulatory authority is vested in OSHA. H.R. 1114 differs significantly in that it vests, in perpetuity, in the ANSI authority to determine what constitutes a baler or compactor that is safe for minors to load. In effect, the legislation extends regulatory authority to a private organization and repeals the extensive safeguards the Congress has instituted to ensure that regulations are developed with full public input and without undue or improper influence. We note that this transfer of authority was done without affording representatives of ANSI the opportunity to testify on the legislation.

Conclusion

On May 5, 1995, the National Institute for Occupational Safety and Health (NIOSH) issued a paper entitled "Review of Safeguarding Technology Used on Paper Balers." At the request of the Administrator of the Department of Labor's Wage and Hour Administration, NOISH reviewed "whether minors under 18 years of age can safely operate paper balers." NIOSH issued the following recommendation:

Based on our review of surveillance data and this study of paper baler safeguarding technology, NIOSH believes that minors under the age of 18 cannot safely operate paper balers for the following reasons:

First, there are paper balers in the field (both newer and older models) that we did not consider safe because of either the type and location of the interlock or because of a gap allowing manual entry into the baling compartment. NIOSH believes that additional criteria related to interlock location (which go beyond the ANSI Z245.5 standard) need to be considered for assessing adequate safeguarding related to paper baler operation. In addition, it is unclear how compliance with the existing voluntary ANSI standard for guarding could be assessed and enforced by the Wage and Hour Division.

Second, there are other important factors needed to ensure worker safety—namely, periodic equipment inspection and maintenance to ensure that the safeguarding continues to function as intended and adequate worker training and supervision. Of particular concern are older machines. It is not known how many old paper balers are currently in use and how they could be retrofitted with appropriate safeguard equipment.

Based on this NIOSH review, which demonstrates the potential for serious injury and death, NIOSH recommends that those parts of the current Hazardous Occupations Order (HO–12) from the Fair Labor Standards Act that relate to minors working at paper balers be maintained.

One of the principal purposes of our child labor laws is to ensure that young people are not exposed to employment conditions that pose the risk of serious injury or death. In addition to increasing the regulatory burdens faced by employers, H.R. 1114 needlessly subjects our Nation's young to undue risk.

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