



May 22, 2007

The Honorable Harry Reid
Majority Leader
United States Senate
528 Hart Senate Office Building
Washington, D.C. 20510

Dear Majority Leader Reid:

On behalf of the National Retail Federation, I am writing to commend the Senate for the hard work that has been done to iron out a tentative compromise on comprehensive immigration reform. Clearly, this has not been an easy process, with competing demands from many diverse interest groups. Unfortunately, NRF has serious concerns with Title III of the "Secure Borders, Economic Opportunity and Immigration Reform Act of 2007," which, if not addressed, would impose unfair burdens on the *entire* employer community. Accordingly, some of our biggest concerns are outlined below.

While NRF supports the underlying goal of creating an Electronic Employment Verification System (EEVS), we have serious concerns that the complex system envisioned by the bill's drafters will not be up and running to meet the short deadlines contained in the proposed bill. Title III requires that all employers participate in EEVS within eighteen months for new hires and further mandates that employers retroactively verify employment eligibility for *all* employees within three years. Our experience with other federal databases, including the Basic Pilot Program that is currently housed at DHS, leaves us uncertain about the prospects of getting the tasked agencies to come together to build a reliable system within these timeframes.

NRF also strongly opposes re-verification. Our members have diligently complied with their current I-9 work verification responsibilities, and to require them to go back and re-verify over 23 million retail employees, most of whose employment documentation is still maintained in paper form, would be a significant and undue burden for law-abiding employers. This is especially troubling given the fact that the employer community is expected to rely upon an undeveloped and untested EEVS system to complete this Herculean task in a very short space of time.

We are additionally concerned that the current enforcement standard for employer liability in hiring an illegal worker is being set aside in favor of a far more burdensome standard that could lead to stiff fines for unintentional violations. While we understand that Congress is concerned about the current hiring practices in some sectors of the

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employment community, we believe that more *enforcement*, not more liability, is the answer. Changing the liability standard from “knowing” to “knowing or with reckless disregard” is unfair to conscientious employers because it relies upon a subjective finding that the employer “should have known” that the employee in question was illegal. The current “knowing” standard is fair and objective and gives employers an adequate degree of certainty regarding their responsibilities under the law. Further, when the new EEVS system is finally up and running, DHS will have far more tools at their disposal to detect unscrupulous employers and should not have to rely upon a lower burden of proof to bring enforcement actions.

NRF believes that all employers should be held responsible for the legal status of their own employees. However, we are greatly concerned about provisions in Title III that would create additional liability for businesses based on the hiring practices of third parties with whom they contract. While we understand the desire to prevent unscrupulous subcontractors from hiring illegal workers to provide essential services such as building maintenance and repair, we believe that the EEVS system will do much to discourage such bad behavior. As you know, these workers will have to go through the same EEVS background checks as the rest of the workforce. To add a new layer of liability on businesses who are relying upon the contractual obligations of a third party to provide a qualified and legal workforce would simply be an unfair departure from current law.

Finally, the bill does not currently contain strong preemption language that is needed to ensure that employers are not burdened by state and local laws or ordinances such as those that require retailers, as a condition of receiving business permits, to build day labor centers on their property. Such mandates not only represent unwarranted interference with private property rights, but they are also inherently unreasonable because they go beyond protecting “public safety” and serve as a mechanism to force businesses to use their own property to create *de facto* hiring halls.

NRF represents an industry with more than 1.4 million U.S. retail establishments that employ more than 23 million employees -- about one in five American workers. With twenty percent of the workforce to account for, the retail industry takes its obligations under federal law to employ legal, documented workers very seriously. We hope that Congress will continue to work with employers who are on the front-lines of employment eligibility verification to come up with a more workable and practical Title III.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Pfister". The signature is fluid and cursive, with the first name "Steve" and last name "Pfister" clearly distinguishable.

Steve Pfister
Senior Vice President
Government Relations