

Support Section 18- Protect American Businesses Against Trial Lawyers

From: The Honorable Michael G. Grimm

Sent By: kerry.donnelly@mail.house.gov

Bill: H.R. 1249

Date: 6/22/2011

Dear Colleague:

There's a lot of misinformation out there about Section 18 of the America Invents Act. One of the most egregious is this: Opponents falsely charge that the provision is a special carve out for the banking industry. They assert – wrongly – that the measure would help only banks.

That isn't true.

Yes, the banking industry would be impacted by the provision, but so would many other industries and companies. Here are just a few (and all of them are in retail sales): Wal-Mart, Costco, McDonalds, Best Buy, Home Depot, Lowes. All of them have faced lawsuits over the use of patents dealt with in Section 18. Do any of these companies sound like banks to you? They don't to me, either.

That's precisely why the National Retail Federation supports Section 18. In a letter to House Judiciary Chairman Lamar Smith and Ranking Member John Conyers, NRF Senior Vice President David French makes clear that the nation's retailers are fully behind Section 18, believing is necessary for job creation and innovation – a win for the economy and consumers: <http://judiciary.house.gov/issues/Patent%20Reform%20PDFS/National%20Retail%20Foundation.pdf>

Section 18 was designed by the U.S. Patent and Trademark Office to fix a major flaw in the patent system. Business-method patents on financial activities and services are the fastest growing type of patents, and they are the most heavily abused and litigated, too. Section 18 simply allows patent experts to re-examine – through a temporary, pilot program – legally questionable business-method patents.

Patents would only be subject to that review if the petitioner can provide evidence that it is “more likely than not” that the patent should be invalidated. Also the patents in question need to involve financial activities, but do NOT need to be confined to financial institutions.

Business-method patents cover “methods and processes,” not gadgets as traditional patents do. Since the Supreme Court ok'ed their existence in 1998, they have exploded in numbers,

inundating the patent office (11,000 a year) and clogging the federal courts with disputes. In other words, the problem being addressed in the patent bill goes well beyond banks.

Section 18 is not a bank bailout. It is a provision designed to add one extra layer of scrutiny to a process that lacks enough scrutiny. It must stay in the patent reform bill to protect American businesses from abuse.

Sincerely,

Michael G. Grimm
Member of Congress