**South Carolina General Assembly**

125th Session, 2023-2024

**H. 5361**

**STATUS INFORMATION**

Concurrent Resolution

Sponsors: Rep. Trantham

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Introduced in the House on April 9, 2024

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: OSHA Worker Walkaround

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 4/9/2024 House Introduced (House Journal‑page 12)

 4/9/2024 House Referred to Committee on **Labor, Commerce and Industry** (House Journal‑page 12)

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=5361&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[04/09/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/5361_20240409.docx)

A concurrent RESOLUTION

TO RECOGNIZE THE NEED TO PROTECT WORKPLACE SAFETY AND PRIVATE PROPERTY RIGHTS FROM INFRINGEMENT BY PROPOSED CHANGES TO THE OSHA WORKER WALKAROUND REPRESENTATIVE DESIGNATION PROCESS.

Whereas, the Occupational Safety and Health Act of 1970, 29 U.S.C. Sections 651 to 678, encourages “the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws … [and] to develop plans in accordance with the provisions of this Act”; and

Whereas, “the Secretary [of Labor] shall approve” a state plan that is “at least as effective in providing safe and healthful employment and places of employment as the standards” in the Occupational Safety and Health Act and that “provides for a right of entry and inspection of all workplaces subject to the Act which is at least as effective as that provided” by the Act; and

Whereas, the Occupational Safety and Health Act provides for certain safety inspections on a covered employer’s premises during which employees of the employer may designate an employee representative to accompany the Occupational Safety and Health Administration (OSHA) Compliance Safety and Health Officer (CSHO); and

Whereas, for more than fifty years, the Occupational Safety and Health Act has been interpreted by OSHA in its implementing regulations, specifically 29 C.F.R. Part 1903.8(c), to categorically require that employee representatives be actual employees of an employer, except where specific expertise makes the participation of a nonemployee “reasonably necessary”; and

Whereas, the current rule states that “the representative(s) authorized by employees shall be an employee(s) of the employer,” but the U.S. Department of Labor proposes at 88 Fed. Reg. No. 167 at 59825 to 59834, August 30, 2023, to amend the regulation to say: “The representative(s) authorized by employees may be an employee of the employer or a third party”; and

Whereas, OSHA is claiming the purpose of this amendment is to “clarify” that the nonemployee, third‑party representative “may aid in the inspection based upon a range of knowledge, skills, or experience beyond that obtained through formal or technical education”; and

Whereas, the existing regulation provides examples of the sort of expertise the nonemployee representative must possess, stating that the types of nonemployee experts contemplated are “such as an industrial hygienist or safety engineer”; and

Whereas, the U.S. Department of Labor is proposing to remove these examples from the regulation text that has stood for more than fifty years, which will have the effect of giving the OSHA CSHO unfettered discretion to allow unqualified persons who are not employees of the employer to enter the premises of the employer; and

Whereas, the proposed rule and accompanying rulemaking process is contrary to the congressional intent and statutory structure of the Act, circumvents the federalism requirements of Executive Order 13132, neglects relevant court precedent, and fails to consider alternatives that can only be revealed through the state consultation process; and

Whereas, the U.S. Department of Labor failed to adequately consider costs imposed by this rule change on employers and state and local governments; and

Whereas, the Fifth Amendment of the U.S. Constitution provides that “no person shall be … deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation”; and

Whereas, the U.S. Supreme Court in *Marshall v. Barlow’s, Inc.*, 436 U.S. 307 (1978), held that business owners subject to OSHA inspections retain certain rights under the Fourth Amendment, which provides protection “against unreasonable searches and seizures”; and

Whereas, Article 1 of the South Carolina Constitution guarantees that no person shall “be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws”; and

Whereas, it is the intent of the General Assembly to protect the health and safety of South Carolina workplaces in a manner consistent with the constitutional and legal rights that the State as an independent sovereign in our federal system is bound to protect. Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

That the members of the South Carolina General Assembly, by this resolution, condemn and oppose the proposed changes to the OSHA Worker Walkaround Representative Designation Process at 29 C.F.R. Part 1903.8(c).

Be it further resolved that the copy of this resolution be furnished to each state‑elected official of South Carolina; each member of the United States House of Representatives and Senate elected to represent the State of South Carolina; the President of the United States; the United States Secretary of Labor; the United States Assistant Secretary of Labor for Occupational Safety and Health; and the South Carolina Occupational Safety and Health Administration.

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