

SB

122

HOUSE CS FOR CS FOR SENATE BILL NO. 122(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

**1 "An Act excluding certain direct sellers of consumer products from coverage
2 under the state unemployment compensation laws."**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 23.20.526(a) is amended by adding a new paragraph to read:

**5 (21) service of an individual who is a direct seller as defined by 26
6 U.S.C. 3508 (Internal Revenue Code), as amended.**

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 7, 1995

FURTHER REFERRALS: Labor & Commerce

Date of Committee Action: April 18

The STATE AFFAIRS Committee considered:

CSSB 122(JUD)

CS FOR SENATE BILL NO. 122(JUD)

NO UNEMPLOYMENT COMP FOR DIRECT SELLERS

"An Act excluding certain direct sellers of consumer products from coverage under the state unemployment compensation laws."

recommends it be replaced with the following committee substitute House CS E-SB 122(STA) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) labor

| SIGNING WITH RECOMMENDATIONS | DP | DNP | NR | AM |
|------------------------------|----|-----|----|----|
| <i>Joannette James</i> | | | ✓ | |
| <i>Chris Stokes</i> | ✓ | | | |
| <i>Joseph [unclear]</i> | ✓ | | | |
| <i>[unclear]</i> | | | ✓ | |
| <i>Caren Robinson</i> | | | | ✓ |
| <i>Ed Willis</i> | | ✓ | | |
| <i>Scott [unclear]</i> | ✓ | | | |
| | | | | |
| | | | | |
| | | | | |

AS Amended

CHAIR'S SIGNATURE *Joannette James*

Distributed by
Representative Pete Kott

RE. SR 122

Subtitle E—Employment Taxes

PART I—IN GENERAL

SEC. 269. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS

(a) **GENERAL RULE.**—Chapter 25 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new section:

"SEC. 7516. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS.

"(a) **GENERAL RULE.**—For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

"(1) the individual performing such services shall not be treated as an employee, and

"(2) the person for whom such services are performed shall not be treated as an employer.

"(b) **DEFINITIONS.**—For purposes of this section—

"(1) **QUALIFIED REAL ESTATE AGENT.**—The term 'qualified real estate agent' means any individual who is a sales person if—

"(A) such individual is a licensed real estate agent,

"(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

"(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

"(2) **DIRECT SELLER.**—The term 'direct seller' means any person if—

"(A) such person—

"(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in

A

the home or otherwise than in a permanent retail establishment, or

"(A) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment.

"(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

"(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

"(3) COORDINATION WITH RETIREMENT PLANS FOR SELF-EMPLOYED.—This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals).

(b) AMENDMENT OF SOCIAL SECURITY ACT.—Section 210 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Treatment of Real Estate Agents and Direct Sellers

"(2) Notwithstanding any other provision of this title, the rules of section 508 of the Internal Revenue Code of 1954 shall apply for purposes of this title."

(c) INDEFINITE EXTENSION OF PROVISIONS RELATING TO EMPLOYMENT STATUS FOR EMPLOYMENT TAXES.—

(1) TERMINATION OF CERTAIN EMPLOYMENT TAX LIABILITY.—

(A) Subparagraph (A) of section 530(a)(1) of the Revenue Act of 1978 (relating to termination of certain employment tax liability for periods before July 1, 1982) is amended by striking out "ending before July 1, 1982".

(B) Paragraph (3) of section 530(a) of such Act is amended by striking out "and before July 1, 1982".

(C) The subsection heading of subsection (a) of section 530 of such Act is amended by striking out "FOR PERIODS BEFORE JULY 1, 1982".

(2) PROHIBITION AGAINST REGULATIONS AND RULINGS ON EMPLOYMENT STATUS.—Subsection (b) of section 530 of such Act is amended—

(A) by striking out "July 1, 1982 (or, if earlier,," and

(B) by striking out "taxes)" and inserting in lieu thereof "taxes".

(3) CERTAIN REGULATIONS, ETC., PERMITTED.—Nothing in section 530 of the Revenue Act of 1978 shall be construed to prohibit the implementation of the amendments made by this section.

(d) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end thereof the following new item:



Sec. 3008. Treatment of total estate assets and direct heirs

1) EXECUTIVE STATES —

a) IN GENERAL. — Except as provided in subsection (2), the amendments made by this section shall apply to services performed after December 31, 1982.

b) SUBSECTION (1). — The amendments made by subsection (1) shall take effect on July 1, 1989.

- (1) the individual performing such services shall not be treated as an employee, and
 - (2) the person for whom such services are performed shall not be treated as an employer.
- (b) Definitions. For purposes of this section
- (1) Qualified real estate agent. The term 'qualified real estate agent' means any individual who is a sales person if—
 - (A) such individual is a licensed real estate agent,
 - (B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and
 - (C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.
 - (2) Direct seller. The term 'direct seller' means any person if—
 - (A) such person
 - (i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment, or
 - (ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment,
 - (B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and
 - (C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.
 - (3) Coordination with retirement plans for self-employed. This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals).

provided by sep, same

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

In 1982, P.L. 97-248, Sec. 269(a), added Code Sec. 3508, effective for services performed after 12/31/82.

CODE OF FEDERAL REGULATIONS

General provisions relating to employment taxes, 26 CFR §§ 31.3501(a)-1T et seq.

RESEARCH GUIDE

Am Jur:

- 33 Am Jur 2d, Federal Taxation (1993) ¶ 3402.
- 33 Am Jur 2d, Federal Taxation (1988) ¶ 3608.
- 33 Am Jur 2d, Federal Taxation (1991) ¶ 3317.
- 33 Am Jur 2d, Federal Taxation (1992) ¶ 3422.
- 33A Am Jur 2d, Federal Taxation (1994) ¶ ¶ 9211, 9552, 9563, 9805, 9808.

Social Security Law and Practice:

Soc Sec LP § 5:23.

RIA Coordinators:

Federal Tax Coordinator 2d, P H-4923.

INTERPRETIVE NOTES AND DECISIONS

"Consumer products" for purposes of § 3508 include both tangible consumer goods and intangible consumer services; consumer products include home study educational courses for instruction-by-mail educational institute; accordingly, direct sellers of home study educational courses who meet other § 3508 requirements can be considered independent contractors. Cleveland Inst. of Electronics, Inc. v United States (1992, ND Ohio) 787 F Supp

741, 92-1 USTC P 50182, CCH Unemployment Ins Rep P 16583A, 69 AFTR 2d 92-1015.

Definition of "consumer product" includes both tangible consumer goods and intangible consumer services, and accordingly persons who sell home study educational courses sell consumer products. Cleveland Inst. of Electronics, Inc. v United States (1992, ND Ohio) 787 F Supp 741, 92-1 USTC ¶ 50182, CCH Unemployment Ins Rep ¶ 16583A, 69 AFTR 2d 92-1015.

"(B) if the employee is not married, or if no earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 32 as if it were a credit—

"(i) of not more than 14 percent of earned income not in excess of the amount of earned income taken into account under section 32(a), which

"(ii) phases out between the amount of earned income at which the phaseout begins under subsection (b) of section 32 and the amount of earned income at which the credit under section 32 is phased out under such subsection, or

"(C) if an earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 32 as if it were a credit—

"(i) of not more than 14 percent of earned income not in excess of 1/2 of the amount of earned income taken into account under section 32(a), which

"(ii) phases out between amounts of earned income which are 1/2 of the amounts of earned income described in subparagraph (B)(i)."

In 1986, P.L. 99-514, Sec. 111(d)(2), amended clauses (c)(2)(B)(i) and (c)(2)(B)(ii) . . . Sec. 111(d)(3), amended clauses (c)(2)(C)(i) and (c)(2)(C)(ii), effective for tax. yrs. begin. after 12/31/86.

Prior to amendment, clauses (c)(2)(B)(i) and (c)(2)(B)(ii) read as follows:

"(i) of not more than 11 percent of the first \$5,000 of earned income, which

"(ii) phases out between \$6,500 and \$11,000 of earned income, or"

Prior to amendment, clauses (c)(2)(C)(i) and (c)(2)(C)(ii) read as follows:

"(i) of not more than 11 percent of the first \$2,500 of earned income, which

"(ii) phases out between \$3,250 and \$5,500 of earned income."

—P.L. 99-514, Sec. 111(e), provides as follows:

"(e) *Employee notification.*—

"The Secretary of the Treasury is directed to require, under regulations, employers to notify any employee who has not had any tax withheld from wages (other than an employee whose wages are exempt from withholding pursuant to section 3402(n) of the Internal Revenue Code of 1986) that such employee may be eligible for a refund because of the earned income credit."

In 1984, P.L. 98-369, Sec. 474(r)(30), substituted 'section 32' for 'section 43' each place it appeared in subsections (b), (c) and (e), effective for tax. yrs. begin. after 12/31/83, and to carrybacks from such years.

—P.L. 98-369, Sec. 1042(d)(3), amended clauses (c)(2)(B)(i) and (ii) . . . Sec. 1042(d)(4), amended clauses (c)(2)(C)(i) and (ii), effective for tax. yrs. begin. after 12/31/84.

Prior to amendment, clauses (c)(2)(B)(i) and (ii) read as follows:

"(i) of not more than 10 percent of the first \$5,000 of earned income, which

"(ii) phases out between \$6,000 and \$10,000 of earned income, or"

Prior to amendment, clauses (c)(2)(C)(i) and (ii) read as follows:

"(i) of not more than 10 percent of the first \$2,500 of earned income, which

"(ii) phases out between \$3,000 and \$5,000 of earned income."

In 1980, P.L. 96-222, Sec. 101(a)(2)(D), changed the effective date for amendments made by Sec. 105(b)(1) of P.L. 95-600, from remuneration paid after 6/30/78, to remuneration paid after 6/30/79, see below.

In 1978, P.L. 95-600, Sec. 105(b)(1), added Code Sec. 3507, effective [as amended by Sec. 101(a)(2)(D) of P.L. 96-222, see above] for remuneration paid after 6/30/79.

CODE OF FEDERAL REGULATIONS

General provisions relating to employment taxes, 26 CFR §§ 31.3501(a)-1T et seq.
Advance payment of earned income credit, 26 CFR §§ 38.3507-1 et seq.

RESEARCH GUIDE

Am Jur:

33 Am Jur 2d, Federal Taxation (1994) ¶¶ 1363, 1364.

33 Am Jur 2d, Federal Taxation (1993) ¶¶ 1251, 1252, 3544.

33 Am Jur 2d, Federal Taxation (1991) ¶¶ 1244, 1245, 3416.

33 Am Jur 2d, Federal Taxation (1992) ¶ 1251, 1252, 3548.

33A Am Jur 2d, Federal Taxation (1994) ¶ 9309.

Social Security Law and Practice:

2 Soc Sec LP, Benefit Programs § 19-31.

3 Soc Sec LP, Applications and Payments §§ 35:101, 103.

RIA Coordinators:

Federal Tax Coordinator 2d, PP H-4970-4977.

§ 3508. Treatment of real estate agents and direct sellers.

(a) General rule. For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller

Handwritten:
Amended
by Rep. Jones

Vertical stamp:
Legislative Reference Library
P.O. Box Y

9-LS0871NC
Cramer
3/27/95

CS FOR HOUSE BILL NO. 238()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act excluding certain direct sellers of consumer products from coverage**
2 **under the state unemployment compensation laws."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1. AS 23.20.526(a) is amended by adding a new paragraph to read:**
5 **(21) service of an individual who is a direct seller as defined by 26**
6 **U.S.C. 3508 (Internal Revenue Code), as amended.**

FISCAL NOTI No. 1

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Bill Version: SB 122

(S) Publish Date: 3-23-95

Revision Date: _____
 Title: No unemployment comp for
direct sellers
 Sponsor: Senate Labor & Commerce By Request
 Requestor: Senate Judiciary

Department Affected: Labor
 BRU: Employment Security
 Component: Employment/Unemployment Services
 COMPONENT SERIAL NO. 1807

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|----------------|--|--|--|--|--|--|

| | | | | | | |
|--------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUE | | | | | | |
| FUND SOURCE # | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|-------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipt | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |


Estimate of current year (FY95) Impact: \$ None

ANALYSIS: (Attach a separate page if necessary)
 This bill excludes certain direct sellers from unemployment insurance coverage. The bill would have no significant impact on the Unemployment Insurance Trust Fund as the services exempted by this bill represent less than 500 Alaskans. Of this number, a very small percentage have filed for UI benefits with a negligible impact on administrative or trust fund dollars.

Prepared by: Rebecca Nance, Director *Rebecca Nance* Phone: 465-2712
 Division: Employment Security Date: 3/21/95

Approved by Commissioner: Tom Cashen, Commissioner
 Agency: Department of Labor *Tom Cashen* Date: 3/21/95

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AVON

Avon Products, Inc.
Nine West Fifty Seventh Street
New York, NY 10019-2683

March 28, 1995

The Honorable Jeanette James
Chairman
House State Affairs Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Re: Alaska H.B. 238 and S.B. 122 - Unemployment Compensation

Dear Chairman James:

We are writing to express our concerns with and the impact of legislation on independent Avon Representatives in Alaska regarding H.B. 238 and S.B. 122.

Both bills seek to clarify an exemption for direct sellers under labor law but fall short of existing federal regulations and 28 state laws.

For many Avon Representatives, the sale of consumer products takes place in the customer's home, but for others it may well be the work place. Given the climate and landscape of portions of Alaska, the Avon Representative may well be bringing a customer's products to a church or a school to accommodate not only her customer but travel and weather concerns as well.

To restrict "direct sellers" to a very limited definition as contained in this measure will be very unsettling to companies such as Avon that seek uniformity in treatment of its salesforce.

We applaud the intent of this legislation to exempt direct sellers from the unemployment compensation law. We urge, however, that Alaska follow the

exemption for direct sellers contained in Section 3508 of the Internal Revenue Code and over 20 state laws. Without the change to H.B. 238 and S.B. 122, we must remain in opposition to it as written and urge you to vote against it as well.

Thank you for your consideration of our concerns to protect the livelihood of Avon Representatives in Alaska.

Sincerely,

A handwritten signature in cursive script that reads "Mary Ann Dirzis".

Mary Ann Dirzis
Director
Government Affairs

MAD/js

RECEIVED BY
APR 11 1995
Rep. Jeannette James

Date: April 10, 1995
To: Members, Alaska House State Affairs Committee
From: Anne Crews, Manager
Corporate Affairs
Mary Kay Corporation
Re: SB 122

On behalf of Mary Kay Cosmetics, Inc. and its sales force in Alaska, let me urge a needed amendment to SB 122 which has passed the Senate and now comes before the House State Affairs Committee. SB 122 intends to clarify the status of direct sellers, such as Mary Kay Beauty Consultants, as non-employees in Alaska unemployment compensation law. While we agree with the intent of SB 122, we are concerned that the bill would clarify direct seller status in a manner inconsistent with federal and other state laws. The needed amendment to SB 122 will make Alaska's law consistent with the other narrow, clear, concise state laws which define direct sellers. Consistency is vital for direct sellers and the law.

Without amendment, SB 122 does not accurately define all direct sellers and presents the possibility that some acknowledged, recognized direct sellers would not be able to fall under its provisions.

This flaw can be remedied by referral to the existing definition of direct seller used in the federal Internal Revenue Code. Committee Substitute HB 238 now contains this clear, concise definition. It is to be heard by the House Labor & Commerce Committee. Amendment adoption in SB 122 would make the Senate and current House versions of the bill identical.

The Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 classified direct sellers as non-employees or independent contractors for federal tax purposes. They are, therefore, exempt from unemployment compensation coverage.

Through the years, Mary Kay Cosmetics, Inc., in conjunction with the Direct Selling Association and other member companies, has sought to statutorily clarify this non-employee status. To date, some 25 states have changed current law or adopted new legislation which specifically exempts direct sellers from unemployment compensation coverage.

Page 2

The proposal is revenue neutral because no contributions are currently made to the unemployment compensation fund on behalf of direct sellers.

Conformity with federal law concerning unemployment compensation is desirable for all states, as the direct selling industry provides income earning opportunities for millions of Americans annually.

Direct sellers are independent small business people and value their independence as much as the income they earn. In fact, they were an integral part of the grassroots effort included in the passage of TEFRA in 1982. They treasure their status as independent consultants, operating their own businesses, maintaining their own records, inventories and expenses, and bearing risk of loss.

The legislative intent of SB 122 would also benefit Alaska's system by clarifying direct sellers' non-coverage and eliminate the need for costly administrative proceedings which might otherwise be necessary to determine employment status. It thus could save the system money and time by further defining who can file, benefiting those waiting to appropriately qualify for unemployment compensation. It does not change the substance of the law.

Most Mary Kay Beauty Consultants enter the career to supplement family income, many times as a second job, in these challenging economic times. Addition of this language will give Alaska direct sellers additional security regarding their statutory classification as independent contractors.

Thank you for your time. It is vital that SB 122 be amended to contain the precise and acknowledged definition of direct seller.

DIRECT SELLING ASSOCIATION

1666 K Street, NW, Suite 1010, Washington, DC 20006-2808
202/293-5760 • Fax 202/463-4569

RECEIVED
APR 11 1995
Rep. Jeannette James

April 10, 1995

The Honorable Jeannette James
Alaska House of Representatives
Juneau, AK 99801-1182

Dear Representative James:

I write on behalf of the Direct Selling Association (DSA) regarding Senate Bill 122, a bill dealing with direct sellers and unemployment compensation which has been referred to the House State Affairs Committee. Senate Bill 122 is substantially similar to the original version of H.B. 238, which you remember was heard by your committee approximately two weeks ago. DSA is the national trade association that represents the companies which market their products through personal demonstration, primarily though not exclusively, in the home. Companies like Amway, Avon, The Kirby Company, Mary Kay, Shaklee and Tupperware are among our 150 corporate members. The almost 6 million people nationally (more than 10,000 in Alaska) who sell for them are independent contractors.

We wanted to take this opportunity, for the record, to restate our concern with the original version of S.B. 122, as we did with H.B. 238's original form, and suggest the same amendment which the committee adopted for H.B. 238.

While we agree in principal with the intent of S.B. 122 to clarify that direct sellers are not currently covered by Alaska's unemployment compensation law, we are concerned that the legislation would do so in a manner inconsistent with federal and other state laws. For example, S.B. 122 would apply only to sellers who make the sale in the customer's home. Many direct sellers sell in their customers' offices, or the home of a third party hostess; they would not qualify as direct sellers under the terms of S.B. 122. Senate Bill 122 was offered in an effort to address a current dispute which a specific group of direct sellers (Kirby vacuum cleaner salespeople) in Alaska has had with the Department of Labor about their status under existing law. Most direct sellers have not had a problem under existing law; there is unanimous agreement within our industry, however, that it is very important to pass legislation this year to deal with the problem experienced by Kirby distributors. Our suggested amendment will make Alaska's law consistent with the other narrow state laws

The Honorable Jeannette James
April 10, 1995
Page 2

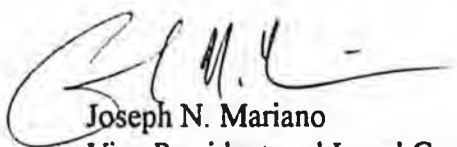
which define direct sellers, as we believe such consistency is vital for direct sellers and the law.

Without amendment, the bill fails to accurately define all direct sellers and presents the undesirable possibility that some well known direct sellers would not be able to qualify under its provisions. We trust this flaw can be simply remedied by referral to the existing definition of "direct seller" used in the federal Internal Revenue Code. Such an amendment would address the current problem without endangering the positions of any direct sellers.

The federal language has been in place since 1982 and has proven to be an effective, limited definition for federal tax purposes. Only true direct sellers (Avon Representatives, Amway Distributors, Kirby salespeople, Mary Kay Beauty Consultants, etc...) have qualified under this federal definition. As you know, the Department of Labor has indicated that it is rarely, if ever, supportive of this type of legislation and earlier noted its opposition to the committee substitute which your committee adopted. The Department did, however, work with Sen. Kelly to draft the original version of S.B. 122 and acknowledged the need and its desire for legislation to assist the local Kirby distributors who are engaged in the dispute. We feel supremely confident that reference to or incorporation of this language into Alaska's law will be the simplest, most limited and effective manner of clarifying direct sellers' status under the law. We are eager to answer any specific questions or concerns the Department has with our suggested amendment. Obviously, your committee agreed and adopted a committee substitute for H.B. 238. We urge you to do the same for S.B. 122.

On behalf of the thousands of Alaskan direct sellers, I thank you for your patience and consideration of this reiteration of our concerns.

Sincerely,



Joseph N. Mariano
Vice President and Legal Counsel

JNM:mlr

cc- Members of the House State Affairs Committee

j:\legal\aksb122.doc



March 27, 1995

Jeanette James, Chair
Alaska State Legislature
House State Affairs Committee
State Capitol
Juneau, AK 99801-1182

RE: ALASKA H.B. 236 and S.B. 122 Unemployment Compensation

POSITION: OPPOSE AS DRAFTED, SUPPORT AMENDMENT TO ADOPT FEDERAL
EXEMPTION LANGUAGE ONLY

Dear Chairwoman James:

It is my understanding that the above referenced bills were supposed to exempt direct sellers from unemployment compensation, but would only protect sellers who are physically present in a consumer's home at the time of sale, and only for transactions that occur in the customer's home.

These bills would create a definition of a direct seller which is not consistent with how a direct seller operates. Direct sellers engage in a variety of selling methods. Sales by direct sellers may occur in the direct sellers home, someone else's home, or an office. Many direct sales presentations are made at parties in an individual's home, where the home belongs to a third party, and not the customer or seller.

The federal government and dozens of other states have adopted direct seller exemptions with exemption language which is consistent between the states and the federal government. This language has been the result of thousands of hours of work by many parties to promote a level consistency for direct selling companies operating in several states across the nation. Alaska should adopt a direct seller exemption which conforms to exemptions adopted by other states and the federal government.

As the bills are currently written, most direct sellers in Alaska would not be able to take advantage of the proposed direct seller exemption. If the bills are not changed, they will not benefit the direct sellers or the direct selling industry in Alaska.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. Panus".

Christopher J. Panus
Legal Coordinator

cc: Executive Board

1116 East State Street Oneida, NY 14760-6228
(716) 373-6141 Fax (716) 373-6145

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MEMORANDUM**STATE OF ALASKA**
DEPARTMENT OF LABOR
Office of the Commissioner

TO: Rep. Jeanette James
Chair
House State Affairs

DATE: March 27, 1995

THRU: Pat Pourchot
Legislative Director
Office of the Governor

FILE: dsasux

PHONE: 465-2700

FROM: Ed Flanagan *EF*
Deputy Commissioner

SUBJECT: HB 238 - UI for
Direct Sellers

The Department of Labor is rarely, if ever, supportive of legislation removing employers or classes of employees from coverage under any of its protective statutes, such as minimum wage, overtime, unemployment, or workers compensation. These programs are not voluntary, and in the case of unemployment compensation the health of the UI Trust Fund is always a concern if a class of employee is removed from coverage. The Department's opposition is almost reflexive, since even if a seemingly valid case can be made for removal of one small group of employees from any of our statutes, there are always other employers ready to pile on an existing bill or have one of their own introduced to further expand the classes of employees not covered by our public protection statutes. The increase in cases in recent years where employers attempt to circumvent statutory requirements by declaring employees such as waiters and waitresses "independent contractors" also contributes to the department's opposition to any dilution of existing law.

In the case of HB 238, the Department's initial reaction was to oppose any exemption for direct sellers. During discussions with the proponents of the bill, however, the Commissioner asked how the situation of Kirby vacuum cleaner salespeople differed from other sellers of consumer products such as Amway, Avon, Shaklee, Mary Kay, etc. Our UI tax section responded that those entities were never audited or taxed because the sellers involved were clearly independent contractors, not employees, under existing law. Kirby's situation differed in that the sellers had a relationship with a distributor who operated a retail establishment, was in the same business as the dealers, and provided support to them in the form of training, leads, etc. This relationship has always caught the Kirby sellers in the statutory definition of "employees", subject to UI tax.

The Department could find no case where an audit of a Kirby distributor was the result of a "blocked claim", where a former employee sought to draw UI based on wages earned selling for Kirby.

- 2 -

March 27, 1995

In an effort to rectify what seemed to be an inappropriate (but legally correct and not "waivable" without statute change) application of the law, the Commissioner directed me to work with the staff of the bill sponsor, Senator Kelly, to see if we could come up with language that would address the situation of the Kirby sellers without jeopardizing the trust fund or the rights of other workers properly classified as employees.

The original draft submitted by the Direct Sellers Association was unacceptable, because it allowed sales outside the prospective purchaser's home, allowing the possibility of telephone sales "boiler room" operations claiming exemption, and included the sales of "services" which invites abuse by home improvement contractors, cleaning services, etc. The language in the current senate bill addressed the concerns of the department and satisfied the sponsor, organized labor, the proponents of the bill, and the national office of Kirby.

Then the Direct Sellers Association got into the act. Citing opposition from Amway Corporation, which may be under the misperception that their dealers are affected by this bill and has therefore stirred up its Alaskan sellers to oppose it, DSA's lobbyist is basically telling the department and the legislature that we have to slavishly adopt the federal language covering direct sellers or he will kill the bill. The federal language is not acceptable to the Alaska Department of Labor and if it is incorporated into a committee substitute we will oppose it. (We find it interesting that if the federal language is so wonderful, DSA sought to "improve" it by adding sellers of services - is there a national agenda at work here?).

The department has tried in good faith to address the situation of an Alaskan business, and we believe the senate bill does that. The department has never considered Amway, Mary Kay or other similar sellers "employees"; to do so would be inconsistent with the substantial body of precedential case law on this issue. Our experience in this matter only confirms prior opinion that any revision to the statute is a bad idea.

HOUSE BILL NO. 238

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 3.8.95

Referred: State Affairs, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act excluding certain direct sellers of consumer products from coverage
2 under the state unemployment compensation laws."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * Section 1. AS 23.20.526(a) is amended by adding a new paragraph to read:

5 (21) service of an individual who

6 (A) directly sells or solicits the sale of consumer products when
7 physically present in a prospective consumer's home; a sale or solicitation by
8 telephone, mail, other telecommunications method, or other nonpersonal
9 method does not satisfy the requirement of this subparagraph;

10 (B) is compensated solely by

11 (i) commissions on sales; or

12 (ii) a profit represented by the difference between the
13 wholesale cost of the product to the seller and the final sale price to the
14 consumer; and

March 8, 1995

Representative Jeannette James
State Capitol
Juneau, AK 99801-1182
(907)465-3743

Dear Representative James:

I am seeking your assistance in the passage of the attached legislation. This bill will clarify state law regarding the worker classification of direct sellers. Passage of this language confirming direct seller's status as independent contractors will benefit the direct selling industry, consumers who rely on direct sellers, and the state as a whole.

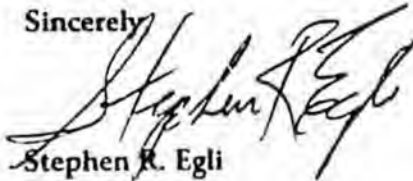
By way of background, I am an Alaska business owner representing Kirby Home Cleaning products and have resided in Alaska, thirteen years. A recent decision by the Unemployment Commission involving my business, demonstrates the ambiguity of [AS 23.20.525(a)(10)(A),(B), (C),] the current law. The commission's decision our sales people were "employees" would necessitate "all" direct sellers are employees. This is not the intent of the current law or the legislator's who enacted the present language. (See the attached letter to Commissioner Cashen from William Jermaine, Attorney and former Deputy Commissioner of Labor.)

By enacting new language we will clarify the law, save monies, and eliminate headaches for both the state and the direct sellers.

Senator Tim Kelly and Representative Pete Kott have introduced this bill in the Senate and House respectively. The Department of Labor has signed off on the bill and they were instrumental in forming the language of this bill. Clearly, it is an excellent house keeping measure.

I appreciate your support and am available to answer any questions and provide any additional information you require in making an informed decision regarding this issue.

Sincerely,



Stephen R. Egli
9310 Glacier Hwy.
Juneau, AK 99801
(907)790-4446
(907)790-4447-FAX

WORK DRAFT

WORK DRAFT

WORK DRAFT

9-LS0857A
Cramer
3/6/95

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act excluding certain direct sellers of consumer products from coverage
2 under the state unemployment compensation laws."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 23.20.526(a) is amended by adding a new paragraph to read:

5 (21) service of an individual who

6 (A) directly sells or solicits the sale of consumer products when
7 physically present in a prospective consumer's home; a sale or solicitation by
8 telephone, mail, other telecommunications method, or other nonpersonal
9 method does not satisfy the requirement of this subparagraph;

10 (B) is compensated solely by

11 (i) commissions on sales; or

12 (ii) a profit represented by the difference between the
13 wholesale cost of the product to the seller and the final sale price to the
14 consumer; and

WORK DRAFT

WORK DRAFT

WORK DRAFT P. 03

- 1
- 2
- 3
- 4

(C) performs under a written contract with the person for whom the service is performed that provides, notwithstanding AS 23.20.395(a), that the individual is not an employee for purposes of this chapter or for federal or state tax purposes.



Jermain Dunnagan & Owens, P.C.

LAW OFFICES

WILLIAM K. JERMINE
CHARLES A. DUNNAGAN
BRADLEY D. OWENS
RANDALL G. SIMPSON
HOWARD S. TRICKEY

GREGORY C. TAYLOR
GARY C. SLEEPER
GEORGE T. FREEMAN
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EUGENIA G. RICHARDSON

3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503-4097

TELEPHONE (907) 543-8444
FAX (907) 543-7322

January 27, 1995

Honorable Tom Cashen
Commissioner of Labor
P.O. Box 21149
Juneau, AK 99802-1149

Re: AS 23.20.526 - Exclusions from the Definition of Employment

Dear Tom:

This will confirm our recent conversation. In that conversation, I stated that a problem had arisen regarding the exclusion of direct sellers from unemployment insurance taxes. This case has arisen between the Department of Labor and Kirby Sales of Juneau. In the early 1970s, the issue had previously come up and had been decided favorably to Kirby of Anchorage by Superior Court decision. However, recent audits at the Kirby of Juneau and Kirby of Anchorage stores raised the issue of whether direct sellers were employees for the above-mentioned purposes.

The issue in Kirby Sales of Juneau dealt with 11 individuals who performed as dealers selling vacuum cleaners through in-home demonstrations and whether they were, in fact, employees under the definition found in AS 23.20.525(a)(10)(A), (B), (C). The tribunal decision in the matter found that these individuals satisfied part, but not all, of the ABC test. As you are aware, the ABC test must be fulfilled in its entirety to create an exclusion from the definition of employment contained in the Employment Security statutes.

The issue was appealed to the Commissioner's office. The Commissioner ruled in favor of the tribunal and actually reversed the tribunal's finding that the salesmen did not qualify under any portion of the ABC test. That issue is being appealed to the Superior Court.

It is apparent under the decision of the tribunal and the Commissioner that the ABC test cannot be satisfied as interpreted by the Department. In other words, the ABC test becomes an impossibility based upon the construction by the Department. This would appear to be a negation by decision of the legislative intent. If the legislators did not want the ABC test exclusion, they would not have created such a test. However, it creates an immediate problem to the Department and to the individuals engaged in direct selling.

The Alaska Department of Labor's position in this issue seems contrary to the nationwide trend wherein there is a specific exclusion of direct sellers from employment security taxes. This is a recognition of the uniqueness of that industry, the independence of the direct sellers, and the confusion and considerable cost both to the direct sellers and to the regulatory agencies in applying exclusionary tests. The controversy between the Department of Labor and direct sellers will not go away. It will be a continuous source of appeal resulting in cost to both the Alaska Department of Labor and to the individuals affected.

There appears to be no great policy reason for the inclusion of the direct sellers in the definition of employment for employment security purposes. I would believe that the number of claims for these individuals would be extremely rare. Qualified and competent sales personnel have little trouble selling any product. Their profession is professional sales. Others engaged in this endeavor are individuals who do it on a part-time or partial basis in conjunction with such activities as homemaking and domestic endeavors.

According to correspondence from the Direct Selling Association, which is an association with some 5.1 million direct sellers, the typical individual direct seller is a woman who operates her own business part-time from her home. Her financial goals are simple - to earn enough extra income for gifts, tuition, or family vacation. With my client, Kirby, most of the direct sellers are professional sales people who sell Kirby or any other product from which they can make a profit. The typical Kirby salesman will sell the product from which he or she can make the most profit. Kirby only furnishes the product.

These direct sellers work independently, they determine their own hours, they generally determine their own territory, and they bear the financial profits and losses of their own businesses.

According to the Direct Selling Association, Alaska is in a distinct minority of applying the employment standards to these direct sellers. Where there is an ABC test, some 16 states have found that direct sellers meet that test. However, the major trend is to exclude direct sellers by statute from the definition of employment. This certainly has been the trend in the Pacific Northwest. The states of Washington, Oregon, Idaho, etc. have done so.

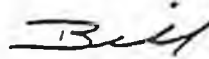
We believe that direct sellers are not employees and direct selling companies are not employers. However, what is now an unsettled state of the law will create substantial problems and costs between the Department of Labor and direct sellers. The Department will have to determine whether direct sellers, such as Amway, Tupperware, and others, are employees within the meaning of your statute. I am enclosing suggested legislation. This legislation is similar to that adopted in the state of Washington. It is my belief that the adoption in the state of Washington clarified this issue and eliminated the continual friction or conflict between the Department and its myriad of direct sellers who,

we believe, should not be considered employees for ESC purposes. It should be noted that in 1982, Congress passed the Tax Equity and Fiscal Responsibility Act and in enacting Section 3508 of the Internal Revenue Code found that for federal employment tax purposes, direct sellers are non-employee independent contractors. I would further note that presently 28 states have similar or identical statutory classifications for direct sellers. If, in fact, our figures are correct, the 28 states have exemptions for direct sellers and 16 states with an ABC test have found that direct sellers are independent contractors, that Alaska would be in the distinct minority and somewhat untenable position of asserting a contrary view.

I would appreciate consideration by the Department regarding this legislation which would clarify this issue. I am taking the liberty of sending a copy of this correspondence to Senator Kelly and several other legislators. If I may comment on the foregoing or be of additional assistance in any regard, please contact me.

Very truly yours,

JERMAIN, DUNNAGAN & OWENS, P.C.



William K. Jermain

/jv
Enclosure

cc: Steve Egli
Stan Borucki
Jim Cross
Eric Ellman

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act excluding certain direct sellers of consumer products from coverage
2 under the state unemployment compensation laws."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * Section 1. AS 23.20.526(a) is amended by adding a new paragraph to read:

5 (21) service of an individual who

6 (A) directly sells or solicits the sale of consumer products in a
7 prospective consumer's home but only if the seller or solicitor is physically
8 present in the home at the time of the sale or solicitation, as applicable; a sale
9 or solicitation by telephone, mail, other telecommunications method, or other
10 nonpersonal method does not satisfy the requirement of this subparagraph;

11 (B) is compensated solely by

12 (i) commissions on sales; or

13 (ii) a profit represented by the difference between the
14 wholesale cost of the product to the seller and the final sale price to the

1
2
3
4
5

consumer, and

(C) performs under a written contract with the person for whom the service is performed that provides, notwithstanding AS 23.20.395(a), that the individual is not an employee for purposes of this chapter or for federal or state tax purposes.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

STATE CAPITOL, JUNEAU, AK 99801-1182

(907) 465-4454



SPONSOR STATEMENT HB 238

The Department of Labor has taken the position that direct sellers are within the coverage of Alaska's unemployment compensation statutes. HB 238, should it become law, provides an exemption for direct sellers from such coverage.

Direct sellers are not employees in the common understanding of the term. They are individuals who sell products, with no supervision, directly to their customers in their customers homes. They are not paid a salary, and they are not paid on an hourly basis. Their compensation is based solely on their success in selling products. This can be in the form of commissions, or alternatively, compensation can be the profit they receive by selling their products for more than they, the direct sellers, pay for them wholesale. Because of these factors, direct sellers are individual contractors and not employees, and therefore they are outside the underlying purpose of unemployment compensation.

The federal government, for purposes of the Internal Revenue Code, does not consider direct sellers to be employees. Thus, passage of HB 238 conforms Alaska law with the treatment accorded to direct sellers by federal law.

Your support is encouraged.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 238

Revision Date: _____

Department Affected: Labor

Title: No unemployment comp for
direct sellers

BRU: Employment Security

Sponsor: House Labor & Commerce

Component: Employment/Unemployment Services

Requestor: House State Affairs

COMPONENT SERIAL NO. 1807

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|----------------|--|--|--|--|--|--|

| | | | | | | |
|--------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUE | | | | | | |
| FUND SOURCE # | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|-------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipt | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of current year (FY95) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

This bill excludes certain direct sellers from unemployment insurance coverage. The bill would have no significant impact on the Unemployment Insurance Trust Fund as the services exempted by this bill represent less than 500 Alaskans. Of this number, a very small percentage have filed for UI benefits with a negligible impact on administrative or trust fund dollars.

Prepared by: Rebecca Nance, Director RN Phone: 465-2712
 Division: Employment Security Date: 3/15/95

Approved by Commissioner: Tom Cashen, Commissioner
 Agency: Department of Labor Tom Cashen Date: 3/15/95

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LEGISLATIVE AFFAIRS AGENCY
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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 9, 1995

SUBJECT: Sectional Summary of HB 238. (Direct sellers' exclusion from unemployment compensation)

TO: Representative Pete Kott
Attn: George Dozier

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 adds a paragraph to the section of law that lists the kinds of work that are not considered "employment" under the unemployment compensation laws. Under the proposed paragraph, door-to-door sellers as set out in the bill would be excluded from unemployment compensation coverage.

TC:klb
95-139.klb

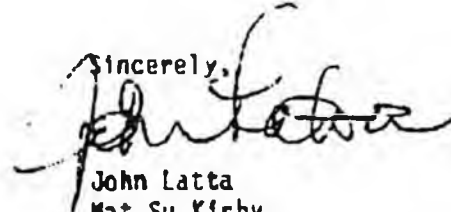
March 16, 1995

Representative Pete Kott
State Capitol Building
Juneau, AK 99801

Dear Representative Kott:

Please support the Bill to exclude Direct Seilers from
State Unemployment Compensation laws. Thank you.

Sincerely,



John Latta
Mat-Su Kirby
P.O. Box 972143
Wasilla, AK 99687-2143

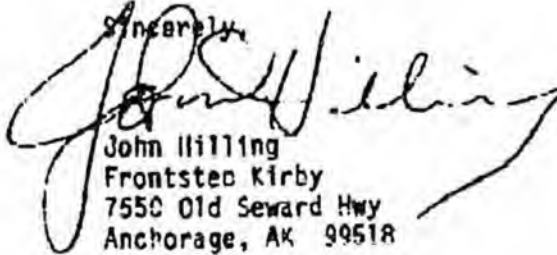
March 16, 1995

Representative Pete Kott
State Capitol Building
Juneau, AK 99801

Dear Rep. Kott:

I urge your support in the passage of the attached
Bill (HB#238). Thank you.

Sincerely,



John Hilling
Frontstep Kirby
7550 Old Seward Hwy
Anchorage, AK 99518

JH
enclosure

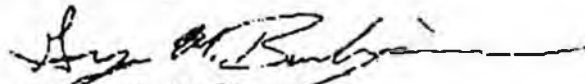
March 16, 1995

Representative Pete Kott
State Capitol Building
Juneau, AK 99801

Dear Rep. Kott:

Please support the Bill to exclude Direct Sellers from
State Unemployment Compensation laws. Thank you

Sincerely,



George M. Burlingame
6631 Zurich St., #4
Anchorage, AK 99507



JUNEAU CHAMBER OF COMMERCE

ALASKA'S CAPITAL CITY

March 12, 1995

Dear Representative Kott:

This letter represents our testimony in support of excluding direct sellers of consumer products from coverage under the state unemployment compensation laws.

The Juneau Chamber of Commerce believes that direct sellers are, in essence, individual small business owners. They work on a commission basis, set their own business routine, and pay their own expenses.

Successful direct sellers may move from product to product but they are only unemployed if they choose not to work. Unsuccessful direct sellers do not last in this type of work because they make no money.

With the Department of Labor having signed off on this legislation, this bill should be viewed as a useful piece of housekeeping.

Sincerely,

Chuck Achberger
Director



Kirby Sales & Service

7550 Old Seward Hwy.
Anchorage, AK 99518

TEL: (907) 344-4543
FAX: (907) 344-7525

March 9, 1995

Representative Pete Kott
State Capitol Building
Juneau, AK 99801

Dear Representative Kott:

We urge your support in the passage of the attached
Bill (HB 4238). Thank you.

Sincerely,

A handwritten signature in cursive script that reads "James R. Cross".

James R. Cross
Factory Distributor
Kirby Sales & Service
Anchorage, AK

JRC/mjl
enclosure

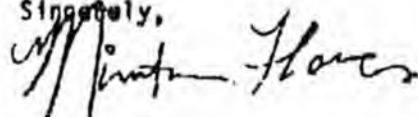
March 16, 1995

Representative Pete Kott
State Capitol Building
Juneau, AK 99801

Dear Rep. Kott:

Please support the Bill to exclude Direct Sellers from
State Unemployment Compensation laws. Thank you.

Sincerely,



Myrta B. Flores
CMBT Kirby
4900 Palmer/Wasilla Hwy #1A
Wasilla, AK 99654



Kirby Sales & Service

840 College Road
Fairbanks, Alaska 99701

Tel: (907) 452-2101
Fax: (907) 456-6767

March 16, 1995

Representative Pete Kott
State Capitol Building
Juneau, AK 99801

Dear Rep. Kott:

I urge your support in the passage of the attached
Bill (HB#238). Thank you.

Sincerely,

A handwritten signature in dark ink that reads "Mel Money". The signature is written in a cursive style with a large, sweeping "M" and "y".

Mel Money
Money & Associates
840 College Rd.
Fairbanks, AK 99701

mm
enclosure

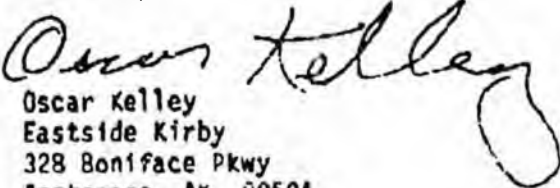
March 16, 1995

Representative Pate Kott
State Capitol Building
Juneau, AK 99801

Dear Rep. Kott:

Please support the Bill to exclude Direct Sellers from
State Unemployment Compensation laws. Thank you.

Sincerely,


Oscar Kelley
Eastside Kirby
328 Boniface Pkwy
Anchorage, AK 99504



DIRECT SELLING ASSOCIATION

1600 K Street, N.W., Suite 1010, Washington, D.C. 20005-2018
202/293-5500 • Fax 202/463-4949

March 16, 1995

The Honorable Pete Kott
Alaska House of Representatives
Juneau, AK 99801-1182

VIA FACSIMILE

Dear Rep. Kott:

As you know, we have been working with Steve Egli and others to promote an exemption for direct sellers from Alaska's unemployment compensation law. Although DSA agrees in principle with H.B. 238's goal to exempt direct sellers, we have several concerns with the bill draft.

DSA feels very strongly that the exemption should conform to the exemption language adopted by the federal government and dozens of other states. This language has been the result of thousands of hours of work by many parties to promote a level of consistency for our 150 multistate direct selling companies whose lives would otherwise be complicated by a myriad of state exemptions. To truly exempt all direct sellers, DSA requests amendments to your legislation to conform to the language used by other states and the U.S. Internal Revenue Code (enclosed).

Specifically, Section 23.20.526(a)(21)(A) would be of value only to direct sellers who are physically present in a consumer's home. As you know, many direct selling operations are multilevel in nature, meaning that a person can earn income not only from commissions as a result of their own sales, but also from override bonuses from the sales of others. As a result, Sec (a)(21)(A) would not exempt direct sellers who are as independent as all other direct sellers, simply because they do not always sell directly to a consumer in his or her home.

Further, not all direct sales occur at the consumer's home, but could take place at the direct seller's home, someone else's home, or an office. Direct sales presentations are often made at parties, and these parties occur at a home, but not necessarily the buyer's home.

With regard to Section (a)(21)(B), direct sellers earn compensation by many means, including override bonuses from the sales of others, and other incentive bonuses, like pink Cadillacs. Section (a)(21)(B) does not recognize other methods of compensation that are vital to the direct selling industry.

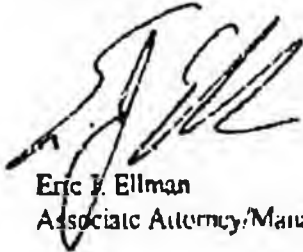
Finally, Sec. (a)(21)(C) would require direct sales contracts to state that the seller would not be treated as an employee "for purposes of this section", thereby mandating that contracts with Alaskan direct sellers specifically cite Alaskan law. Direct sales contracts are printed for use in all 50 states. If each state were to require different printing requirements, tremendous costs would be imposed on national direct selling companies.

The Honorable Pete Kott
March 16, 1995
Page 2

For all of the above reasons, I suggest that the bill draft be amended to conform to federal and other states' laws. For your review, I have enclosed two alternative suggested amendments, as well as the section of the U.S. Internal Revenue Code that defines direct sellers.

I would be happy to discuss this further with you. Please feel free to call me with any questions.

Sincerely,



Eric J. Ellman
Associate Attorney/Manager, Government Relations

Enclosure



DIRECT SELLING ASSOCIATION

1606 K Street, N.W., Suite 1010, Washington, DC 20006-2909
202, 462-5700 • Fax 202-462-4569

**DSA SUGGESTED AMENDMENT
TO ALASKA'S LABOR AND WORKERS' COMPENSATION LAW
ALTERNATIVE #1**

Sec 23.20.526(a) is amended by adding a new paragraph to read:

(21) service by a direct sellers if

(A) such person is

(i) engaged in the trade or business of selling (or soliciting the sale of) consumer products, services or other intangibles to any buyer on a buy-sell basis or a deposit-commission basis for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment, or (ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products, services or other intangibles in the home or otherwise than in a permanent retail establishment,

(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (21)(A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee for federal and state tax purposes.

**DSA SUGGESTED AMENDMENT
TO ALASKA'S LABOR AND WORKERS' COMPENSATION LAW
ALTERNATIVE #2**

Sec 23.20.526(a) is amended by adding a new paragraph to read:

(21) services by a direct sellers as defined by 26 U.S.C. Section 3508.



Amway Corporation, 7575 Fulton Street East, Ada, Michigan 49355-0001
Legal Division

FAX COVER SHEET

DATE: 3/27/85

TO: Clerk of House State Affairs Committee

FAX NUMBER: (907) 465-2381

FROM: Dirk Bloemendaal
Amway Corporation
Legal Division
(616) 676-7010

FAX NUMBER: (616) 676-9027

PAGES, INCLUDING COVER: 3

COMMENTS: Please distribute a copy of the following letter addressed to Jeanette James to every member of the House State Affairs Committee including: Rep. Scott Ogan, Rep. Lyde Green, Rep. Ivan Ivan, Rep. Brian Porter, Rep. Caren Robinson, Rep. Ed Willis. Thank you very much for your attention to this matter!

CONFIDENTIALITY NOTE: The documents accompanying this facsimile message contain information belonging to Amway Corporation which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original document to us.

NOTE: If you are having trouble receiving this fax, please call (616) 676-5130.



Amway Corporation, 7575 Fulton Street East, Ada, Michigan 49355-0001
Legal Division

March 27, 1995

VIA FACSIMILE: (907) 465-2381

The Honorable Jeannette James, Chair
House State Senate Affairs Committee
State Capitol Bldg
Juneau, AK 99801-1182

Subject: House Bill 238 / Direct Sellers

Dear Chairman James:

I understand House Bill 238, a bill proposing to exempt direct sellers from coverage under the state unemployment compensation law, may soon be heard in the House State Affairs Committee. While Amway understands the intent of the legislation, (on behalf of our many independent Alaska distributors) we must express our opposition to the bill in its current form

By way of brief background, Amway Corporation is a manufacturer and distributor of a wide variety of home care and personal care products sold by thousands of independent distributors throughout the country. Alaska Amway distributors sell products to family, friends and neighbors, while interesting others to do the same, in an effort to supplement their family incomes. Amway distributorships are not only in the large cities of Anchorage and Fairbanks, but also in small towns and villages throughout the entire state. Certainly, Amway is concerned about legislation which could inadvertently impact these very small businesses.

Amway distributors are not employees of Amway Corporation but are instead independent contractors. They decide for themselves the hours during which they wish to pursue their opportunity and the amount of effort they wish to expend. They determine the prices at which they sell their products, are responsible for the business expenses they incur, they keep their own records and accounts, bear the risk of loss, and keep for themselves the fruits of their enterprise. They are truly independent business persons and their status as independent contractors is not disputed.

While HB 238 proposes to specifically exempt direct sellers from the state unemployment compensation law, unfortunately the bill's language is flawed. The language should track existing law in some 25 states which directly follow the language enacted in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). This language is time-tested and ensures that legitimate direct sellers are indeed exempted from coverage under the state employment laws.

HB 238's language, on the other hand, is limited to sales made at a prospective customer's home and does not cover sales made at either the direct seller's home or at any other location.

FAX (907) 676-9027

AM1363/OLJNTJMS.DOC

House State Affairs Committee
March 27, 1995
Page 2

However, Amway distributors, and many other direct sellers, may demonstrate, explain and sell their products at their own homes and other locations, including businesses, public halls, schools, churches and the like. It is unwise to limit the language to the customer's home; a direct seller's status should not depend upon where he or she makes a sale, it should instead key on the activity itself.

Second, HB 238's definition of "compensation" is unnecessarily specific. Amway distributors may earn money not only on their basic discount when products are bought and sold, but may also earn money through earning performance bonuses (which performance bonuses are based not only on one's own sales, but also on those of the distributor's downlines). However, HB 238's language deviates from the accepted language and could be narrowly interpreted to be limited to a distributor's own sales. Consequently, while the status of direct sellers such as Amway distributors is certainly not in dispute, we are concerned that a distributor's normal activity which falls outside the language of HB 238 could inadvertently subject them to state unemployment compensation law.

Therefore, Amway respectfully urges you to hold oppose HB 238 in its current form. If you wish to contact me directly, please call me at (616) 676-7010 or by fax at (616) 676-5624. Thank you for your attention.

Sincerely,

Dirk C. Bloemendaal, Counsel
Corporate Government Affairs

Attachment (TEFRA language)

cc: Members of the House State Affairs Committee
Joe Mariano, DSA

HB 238

Ms. Evelyn Jarvis-Ferris, SHAKLEE CORPORATION, SAN FRANCISCO, CA
415-954-2016

MR. MICHAEL LUNCEFORD, MARY KAY COSMETICS, DALLAS, TX
214-905-5734

MR. DIRK BLOEMENDAAL, AMWAY CORP., ADA, MICHIGAN
(AT OKLAHOMA HOTEL - 405-842-6633)

MR. ROB SHUMAN, SCOTT-FETZER / KIRBY COMPANY - OHIO
216-892-3003

1-800-478-7612



THE
LONGABERGER®
COMPANY

March 26, 1995

The Honorable Jeanette James
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Representative James:

It is my understanding that the Alaska legislature is considering two bills dealing with unemployment compensation which creates ambiguous language for thousands of direct sellers in your state.

Specifically, the legislation currently pending in both houses are Senate Bill 122 and House Bill 238. I respectfully request your consideration of an amendment which would conform Alaskan law with the federal direct seller exemption used in several other states throughout the nation.

It is my view that by adopting the federal TEFRA language, Alaska would simplify the treatment of direct sellers in the area of unemployment compensation. As I read the legislation as currently drafted, direct sales which occur outside the consumer's home would not be exempt from these provisions. While the overwhelming majority of direct sales does occur in a home setting, they do not necessarily occur in the home of the consumer. This is an important distinction because many occur in an office setting or the home of a person hosting a party or demonstration. This confusion would hurt current direct sellers and other individuals considering the direct selling opportunity. By adopting the federal TEFRA exemption, these problems would be solved and Alaska would join several other states in the nation to statutorily define direct sellers as independent contractors.

The Longaberger Company is a national direct selling company with nearly 100 independent sales associates in Alaska marketing hand-crafted baskets, pottery and decorative accessories through in-home demonstrations or "shows." Typically, Longaberger sales associates view their Longaberger business as an ideal part-time opportunity to supplement an increasingly tight family budget or earn extra income for a specific goal like a child's education.

Thank you very much for considering our views regarding this legislation. Again, I respectfully request your favorable consideration of an amendment to adopt the federal TEFRA exemption for direct sellers in the Alaskan unemployment compensation law. Please do not hesitate to contact me should you have any questions or if I can be of assistance in any way.

Sincerely,

Michael L. Bennett
Vice President of Corporate Affairs



March 27, 1995

DUANE R. EVANS
VICE PRESIDENT
FINANCE AND CHIEF
ADMINISTRATIVE OFFICER
FAX: 907/465-2381

Jeanette James, Chair
House State Affairs Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

RE: Alaska H.B. 258 and S.B. 122- Unemployment Compensation

Dear Ms. James:

Watkins Incorporated is a direct selling company based in Winona, Minnesota. We have been in business for 127 years. Watkins products are sold by many thousands of independent representatives throughout the U.S. and Canada directly to consumers. Representatives purchase from us at wholesale and sell at retail. They are not paid any wages or commissions. They are independent contractors and not employees or agents:

The majority of Watkins representatives are women who sell on a part-time basis to supplement family income. There is a high representative turnover in the direct selling industry. Very large numbers enter and exit the representative organizations on a daily basis.

We are concerned about the limiting effects of the language exempting direct sellers from unemployment compensation requirements which apply only for direct selling representatives who are in the consumer's home and for only those transactions that occur in the customer's home.

We urge that the language of the exemption be clarified to conform to the federal direct seller exemption (26 U.S.C., Sec. 3508). This would not in any way preempt state law but simply make the exemption language uniform with federal law and the law of many states.

Direct sellers use a number of plans in selling directly to the consumer. Sale to the consumer in his/her home is only one of such plans. The limiting affect of the exemption as worded would make the administration of this proposed law very difficult for the state and direct selling companies. We urge that the exemption language in these bills be changed to conform to the federal direct seller exemption.

WATKINS INCORPORATED

by Duane R. Evans

Duane R. Evans
Vice President, Finance &
Chief Administrative Officer



Amway Corporation, 7575 Fulton Street East, Ada, Michigan 49355-0001
Legal Division

FAX COVER SHEET

DATE: 3/27/95

TO: Clerk of House State Affairs Committee

FAX NUMBER: (907) 465-2381

FROM: Dirk Bloemendaal
Amway Corporation
Legal Division
(616) 676-7010

FAX NUMBER: (616) 676-9027

PAGES, INCLUDING COVER: 3

COMMENTS: Dear Clerk: Help! Please ignore and toss my first fax which contained our letter to Chairman James without a signature and an incorrect heading. Included with this fax is the same letter with a signature and correction! Thank you for all your help. Leslie Dodgson, Assistant to Dirk Bloemendaal

CONFIDENTIALITY NOTE: The documents accompanying this facsimile message contain information belonging to Amway Corporation which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for return of the original document to us.

NOTE: If you are having trouble receiving this fax, please call (616) 676-5130.



Amway Corporation, 7575 Fulton Street East, Ada, Michigan 49355-0001
Legal Division

March 27, 1995

VIA FACSIMILE: (907) 465-2381

The Honorable Jeanette James, Chair
House State Affairs Committee
State Capitol Bldg
Juneau, AK 99801-1182

Subject: House Bill 238 / Direct Sellers

Dear Chairman James:

I understand House Bill 238, a bill proposing to exempt direct sellers from coverage under the state unemployment compensation law, may soon be heard in the House State Affairs Committee. While Amway understands the intent of the legislation, (on behalf of our many independent Alaska distributors) we must express our **opposition to the bill in its current form**

By way of brief background, Amway Corporation is a manufacturer and distributor of a wide variety of home care and personal care products sold by thousands of independent distributors throughout the country. Alaska Amway distributors sell products to family, friends and neighbors, while interesting others to do the same, in an effort to supplement their family incomes. Amway distributorships are not only in the large cities of Anchorage and Fairbanks, but also in small towns and villages throughout the entire state. Certainly, Amway is concerned about legislation which could inadvertently impact these very small businesses.

Amway distributors are not employees of Amway Corporation but are instead independent contractors. They decide for themselves the hours during which they wish to pursue their opportunity and the amount of effort they wish to expend. They determine the prices at which they sell their products, are responsible for the business expenses they incur, they keep their own records and accounts, bear the risk of loss, and keep for themselves the fruits of their enterprise. They are truly independent business persons and their status as independent contractors is not disputed.

While HB 238 proposes to specifically exempt direct sellers from the state unemployment compensation law, unfortunately the bill's language is flawed. The language **should track existing law in some 25 states** which directly follow the language enacted in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). This language is time-tested and ensures that legitimate direct sellers are indeed exempted from coverage under the state employment laws.

HB 238's language, on the other hand, is limited to sales made at a prospective customer's home and does not cover sales made at either the direct seller's home or at any other location.

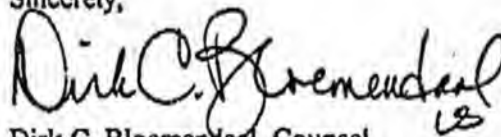
House State Affairs Committee
March 27, 1995
Page 2

However, Amway distributors, and many other direct sellers, may demonstrate, explain and sell their products at their own homes and other locations, including businesses, public halls, schools, churches and the like. It is unwise to limit the language to the customer's home; a direct seller's status should not depend upon where he or she makes a sale, it should instead key on the activity itself.

Second, HB 238's definition of "compensation" is unnecessarily specific. Amway distributors may earn money not only on their basic discount when products are bought and sold, but may also earn money through earning performance bonuses (which performance bonuses are based not only on one's own sales, but also on those of the distributor's downlines). However, HB 238's language deviates from the accepted language and could be narrowly interpreted to be limited to a distributor's own sales. Consequently, while the status of direct sellers such as Amway distributors is certainly not in dispute, we are concerned that a distributor's normal activity which falls outside the language of HB 238 could inadvertently subject them to state unemployment compensation law.

Therefore, Amway respectfully urges you to hold oppose HB 238 in its current form. If you wish to contact me directly, please call me at (616) 676-7010 or by fax at (616) 676-5624. Thank you for your attention.

Sincerely,



Dirk C. Bloemendaal, Counsel
Corporate Government Affairs

Attachment (TEFRA language)

cc: Members of the House State Affairs Committee
Joe Mariano, DSA

AdvoCare

In Harmony With You and Nature

11431 B. Ferrell
Dallas, TX 75234
(214) 831-1033
Fax (214) 831-8830

27 March 1995

Honorable Jeanette James
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Via Fax No.: 907/465-2381

Re: Alaska H.B. 238 and S.B. 122 (Exemption language)

Dear Chairman James:

AdvoCare is a direct selling company based in Dallas, Texas, with thousands of independent contractors nationwide. Consequently, we are very interested in working to ensure the rights of our contractors are not unduly jeopardized by proposed legislation in which the verblage can be misinterpreted or which contain unnecessary restrictions. Such is the case in the above noted bill, which will be heard on March 28 in Juneau.

To be specific, phrasing as is currently written in this bill would limit sales transactions such that they could take place only with the direct seller in the customer's home, and only to that customer. In actuality, direct selling occurs in many settings and between many people. Often, there are "home parties" to which a customer invites friends, and a direct seller presents the products (such as Tupperware or Mary Kay) to all in attendance. Or, sales might happen between co-workers in the workplace when one of them is an independent contractor. Perhaps someone visiting the direct seller in the seller's home would make an inquiry and subsequent purchase.

We understand that the federal government has in place an exemption so worded as to benefit both the public and the direct seller, *without* detracting from the primary purpose of your proposed bill. We would ask that you consider including this standard exemption language in the bill.

Respectfully,

Ruth Ann Box

Ruth Ann Box
General Counsel

/bls

THE PAMPERED CHEF®

Doris K. Christopher • President

350 South Route 53 • Addison, IL 60101-3079 • 708/261-8900 • Fax 708/261-8585

March 27, 1995

House State Affairs Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Representative:

I write to you on behalf of The Pampered Chef, a direct selling company, regarding Alaska HB 238, dealing with Unemployment Compensation. We belong to the Direct Selling Association (DSA) which is the national trade association which represents companies that sell their products through personal explanation and demonstration in the home by independent contractors. The Pampered Chef is an Illinois based company which sells kitchen tools through home parties in all 50 states. Other members of DSA typified by companies such as Avon Products, Amway Corp. and Mary Kay Cosmetics sell through tens of thousands of independent contractors.

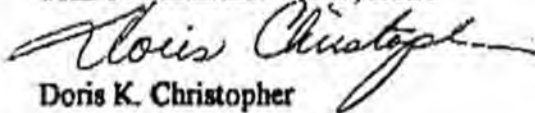
We are fearful that the present draft of this bill would fall harshly on direct selling companies. It is our position that an Alaskan direct seller exemption should conform to the exemption language adopted by the federal government and dozens of other states.

In addition, the language of the current bill could be harmful by creating a definition of direct selling under Alaska law that is different from that which exists under any other jurisdiction. The language which currently exists is not helpful to Alaskan direct sellers who engage in a variety of selling methods. Not all direct sales occur at the consumer's home; they could take place at the direct seller's home, someone else's home, or an office. For example, The Pampered Chef's independent contractors put on selling presentations at home parties held by one hostess with his/her invited guests. Most Alaskan direct sellers would not be able to take advantage of the proposed direct seller exemption currently present in the bill.

We are opposed to the current bill and request that it be redrafted to adopt federal exemption language only so as not to be harmful to the direct selling industry in Alaska. We urge you to support our concerns.

Sincerely,

THE PAMPERED CHEF, LTD.



Doris K. Christopher
President

DKC/db

The Kitchen Store That Comes to Your Door®

Tupperware Worldwide
14901 S. Orange Blossom Trail
Orlando, FL 32837

407/291-1182
407/847-3111

Mailing Address:
Post Office Box 2353
Orlando, FL 32802-2353

March 27, 1995



The Honorable Ivan Ivan
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

VIA FACSIMILE

RE: Alaska SB 122

Dear Representative Ivan:

I write on behalf of Tupperware regarding Senate Bill 122, a bill dealing with direct sellers and unemployment compensation. It is unfortunate that the bill was passed and the hearing ended before any witnesses (other than the sponsor's staff) were called as Joe Mariano of the Direct Selling Association (DSA) was present and signed up to testify. The DSA is the national trade association that represents Tupperware and other companies which market their products through personal demonstration, primarily though not exclusively, in the home. The 150 corporate members represent almost 8 million people nationally who sell for them as independent contractors.

While we agree in principal with the intent of SB 122 to clarify that direct sellers are not currently covered by Alaska's unemployment compensation law, we are concerned that the legislation would do so in a manner inconsistent with Federal and other state laws. We hope to offer amendments which will make Alaska's law consistent with the other narrow laws which define direct sellers, as we believe such consistency is vital for direct sellers and the administrators of the law. Without amendment, the current draft of the bill does not accurately define all direct sellers and presents the undesirable possibility that some well known direct sellers would not be able to qualify under its provisions. We trust this serious flaw can be simply remedied by referral to the existing definition of "direct seller" used in the federal Internal Revenue Code. We hope to do so with the agreement of all interested parties. Federal language has been in place since 1982 and has proven to be an effective, limited definition for federal tax purposes. Only true direct sellers (Avon Representatives, Amway Distributors, Kirby salespeople, Mary Kay Beauty Consultants, etc. . .) have qualified under this Federal definition. We believe the reference to or incorporation of this language into Alaska's law will be the

Alaska SB 122
March 24, 1995
Page two

simplest, most limited and effective manner of clarifying direct sellers' status under the law. In the absence of such an amendment, we oppose ultimate passage of SB 122. On behalf of the thousands of Alaskan direct sellers. I thank you for your consideration of our concerns.

Sincerely,

A handwritten signature in black ink that reads "Lawrie Platt Hall". The signature is written in a cursive style with some loops and flourishes.

Lawrie Platt Hall
Director, External Affairs

cc: Joe Mariano (Direct Selling Association)



Amway Corporation, 7575 Fulton Street East, Ada, Michigan 49355-0001
Legal Division

March 21, 1995

The Honorable Jeannette A. James, Chair
House State Affairs Committee
Capitol Building Rm 102
Juneau, AK 99801-1182

Subject: House Bill 238 / Direct Sellers

Dear Representative James:

I understand House Bill 238, a bill proposing to exempt direct sellers from coverage under the state unemployment compensation law, may soon be heard in the House State Affairs Committee. While Amway certainly understands the intent of the legislation, we must express our opposition to the bill in its current form on behalf of our many independent Alaska distributors.

By way of brief background, Amway Corporation is a manufacturer and distributor of a wide variety of home care and personal care products sold by thousands of independent distributors throughout the country. Alaska Amway distributors sell products to family, friends and neighbors, while interesting others to do the same, in an effort to supplement their family incomes. Amway distributors currently operate in all 50 states as well as over 60 countries and territories. Certainly, Amway is concerned about legislation which could inadvertently impact these very small businesses.

Direct sellers such as Amway distributors are not employees of Amway Corporation but are instead independent contractors. They decide for themselves the hours during which they wish to pursue their opportunity and the amount of effort they wish to expend. They determine the prices at which they sell their products, are responsible for the business expenses they incur, they keep their own records and accounts, bear the risk of loss, and keep for themselves the fruits of their enterprise. They are truly independent business persons and their status as independent contractors is not disputed.

While HB 238 proposes to specifically exempt direct sellers from the state unemployment compensation law, unfortunately the bill's language is flawed. The language should track existing law in some 25 states which directly follow the federal language enacted in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). This language is time-tested and ensures that legitimate direct sellers are indeed exempted from coverage under the state employment laws.

March 21, 1995

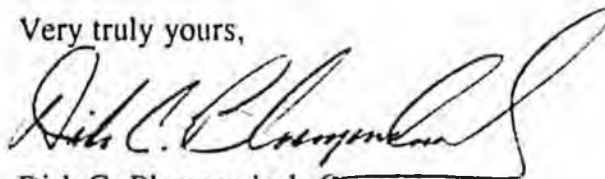
Page 2

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Second, HB 238's definition of "compensation" is unnecessarily specific. Amway distributors may earn money not only on their basic discount when products are bought and sold, but may also earn money through earning performance bonuses. These performance bonuses are based not only on one's own sales, but also on those of the distributor's downlines. However, HB 238's language deviates from the accepted language and could be narrowly interpreted to be limited to a distributor's own sales. Consequently, while the status of direct sellers such as Amway distributors is certainly not in dispute, we are concerned that a distributor's normal activity which falls outside the language of HB 238 could inadvertently subject them to state unemployment compensation law.

Therefore, Amway respectfully urges you to hold HB 238 so that these differences can be resolved. I understand Joe Mariano of the Direct Selling Association will be in Juneau for the committee hearings and can answer any questions you may have. In the meantime, if you wish to contact me directly, please call me at (616) 676-7010 or by fax at (616) 676-5624. Thank you for your attention to our concerns.

Very truly yours,



Dirk C. Bloemendaal, Counsel
Corporate Government Affairs

Attachment (TEFRA language)

cc: Members of the House State Affairs Committee
Joe Mariano, DSA

TEFRA LANGUAGE

§ 3508. Treatment of real estate agents and direct sellers

(a) **General rule.**—For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

(1) the individual performing such services shall not be treated as an employee, and

(2) the person for whom such services are performed shall not be treated as an employer.

(b) **Definitions.**—For purposes of this section—

(1) **Qualified real estate agent.**—The term “qualified real estate agent” means any individual who is a sales person if—

(A) such individual is a licensed real estate agent,

(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be

26 § 3508

EMPLOYMENT TAXES Subtitle C

treated as an employee with respect to such services for Federal tax purposes.

(2) **Direct seller.**—The term “direct seller” means any person if—

(A) such person—

(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment, or

(ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment,

(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

(3) **Coordination with retirement plans for self-employed.**—

This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals).

(Added Pub. L. 97-248, Title II, § 269(a), Sept. 3, 1982, 96 Stat. 551.)



Jermain Dunnagan & Owens, P.C.

LAW OFFICES

WILLIAM K. JERMAIN
CHARLES A. DUNNAGAN
BRADLEY D. OWENS
RANDALL G. SIMPSON
HOWARD S. TRICKEY

GREGORY C. TAYLOR
GARY C. SLEEPER
GEORGE T. FREEMAN
JAMES A. GASPER

W. MICHAEL STEPHENSON
PENNY J. DUFEK
MARK P. MELCHERT
DIANE F. VALLENTINE

3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503

TELEPHONE (907) 563-4444
FAX (907) 563-7322

March 17, 1995

via fax 465-2278

Rep. Jeanette James
Room 501 State Capitol
Juneau, AK 99801-1182

Re: Amendment to AS 23.20.525(a)(10)(A), (B), and (C)
House Bill 238

Dear Representative James:

I am writing to request your support of the passage of House Bill 238. A problem has arisen regarding the exclusion of direct sellers from unemployment insurance taxes. The case has arisen between the Department of Labor and Kirby Sales of Juneau. In the early 1970s, the issue had previously come up and had been decided favorably to Kirby of Anchorage by a Superior Court decision. However, recent audits at Kirby of Juneau and Kirby of Anchorage stores raised the issue of whether direct sellers were employees for employment security tax purposes.

It became apparent that it was difficult for the Department of Labor to find anyone not covered as employees. The legislature passed an ABC test. The Department's interest was not in excluding any category of employee. This is not the fault of the Department whose job is to collect taxes. It was apparent that any interpretation would be construed against excluding these individuals from coverage.

There is no great policy reason for exclusion of direct sellers from the definition of employment for employment security purposes. These individuals are independent contractors and not subject to any control by the owner of the goods which they sell. Qualified and competent sales personnel usually have little to no trouble finding employment and rarely, if ever, would make a claim for unemployment compensation. Their profession is one of professional sales and they are generally responsible for how those sales are effected.

These direct sellers work independently, they determine their own hours, they generally determine their own territory, and they bear the financial profit and losses of their own business. This is the way they like to do business. Nationwide, the trend is to definitely exclude these individuals from coverage. Where there is an ABC test, some 16 states have found that direct sellers meet that test. However, the major trend is to exclude

direct sellers by statute from the definition of employment. This certainly has been the trend in the Pacific Northwest. Most of the states in the Pacific Northwest have passed legislation similar to that pending before your committee granting those exclusions.

I believe direct sellers are not employees and direct selling companies are not employers. However, the unsettled status of the law will cause continued litigation. Although I, as a lawyer, may prosper from such uncertainty, it is not a productive use of either state or private resources. Certainty in business practices is always the more desirable goal. I would urge the committee to adopt House Bill 238 so that this issue can be clarified and so these direct selling companies, the direct sellers, and the Department of Labor can utilize their resources in a more productive manner. This would resolve the potential of an ongoing dispute which need not exist.

I thank you and the members of the committee for any consideration you will pay this request. If I can clarify the foregoing or be of assistance in any manner regarding this legislation, I would be most pleased.

Very truly yours,

JERMAIN, DUNNAGAN & OWENS, P.C.



William K. Jermain

/jv



Jermain Dunnagan & Owens, P.C.

LAW OFFICES

WILLIAM K. JERMAIN
CHARLES A. DUNNAGAN
BRADLEY D. OWENS
RANDALL G. SIMPSON
HOWARD S. TRICKEY

GREGORY C. TAYLOR
GARY C. SLEEPER
GEORGE T. FREEMAN
JAMES A. GASPER

W. MICHAEL STEPHENSON
MARK P. MELCHERT
DIANE F. VALLENTINE
ANDRENA L. STONE
EUGENIA G. RICHARDSON

3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503-4097

TELEPHONE (907) 563-8844
FAX (907) 563-7322

January 27, 1995

Honorable Tom Cashen
Commissioner of Labor
P.O. Box 21149
Juneau, AK 99802-1149

Re: AS 23.20.526 - Exclusions from the Definition of Employment

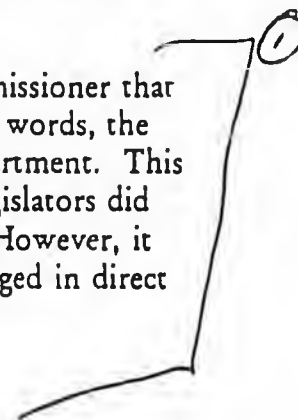
Dear Tom:

This will confirm our recent conversation. In that conversation, I stated that a problem had arisen regarding the exclusion of direct sellers from unemployment insurance taxes. This case has arisen between the Department of Labor and Kirby Sales of Juneau. In the early 1970s, the issue had previously come up and had been decided favorably to Kirby of Anchorage by Superior Court decision. However, recent audits at the Kirby of Juneau and Kirby of Anchorage stores raised the issue of whether direct sellers were employees for the above-mentioned purposes.

The issue in Kirby Sales of Juneau dealt with 11 individuals who performed as dealers selling vacuum cleaners through in-home demonstrations and whether they were, in fact, employees under the definition found in AS 23.20.525(a)(10)(A), (B), (C). The tribunal decision in the matter found that these individuals satisfied part, but not all, of the ABC test. As you are aware, the ABC test must be fulfilled in its entirety to create an exclusion from the definition of employment contained in the Employment Security statutes.

The issue was appealed to the Commissioner's office. The Commissioner ruled in favor of the tribunal and actually reversed the tribunal's finding that the salesmen did not qualify under any portion of the ABC test. That issue is being appealed to the Superior Court.

It is apparent under the decision of the tribunal and the Commissioner that the ABC test cannot be satisfied as interpreted by the Department. In other words, the ABC test becomes an impossibility based upon the construction by the Department. This would appear to be a negation by decision of the legislative intent. If the legislators did not want the ABC test exclusion, they would not have created such a test. However, it creates an immediate problem to the Department and to the individuals engaged in direct selling.



~~The Alaska Department of Labor's position in this area seems contrary to~~ the nationwide trend ~~wherein there~~ is a specific exclusion of direct sellers from employment security taxes. This is a recognition of the uniqueness of that industry, the independence of the direct sellers, and the confusion and considerable cost both to the direct sellers and to the regulatory agencies in applying exclusionary tests. The controversy between the Department of Labor and direct sellers will not go away. It will be a continuous source of appeal resulting in cost to both the Alaska Department of Labor and to the individuals affected. (1)

There appears to be no great policy reason for the inclusion of the direct sellers in the definition of employment for employment security purposes. I would believe that the number of claims for these individuals would be extremely rare. Qualified and competent sales personnel have little trouble selling any product. Their profession is professional sales. Others engaged in this endeavor are individuals who do it on a part-time or partial basis in conjunction with such activities as homemaking and domestic endeavors.

According to correspondence from the Direct Selling Association, which is an association with some 5.1 million direct sellers, the typical individual direct seller is a woman who operates her own business part-time from her home. Her financial goals are simple - to earn enough extra income for gifts, tuition, or family vacation. With my client, Kirby, most of the direct sellers are professional sales people who sell Kirby or any other product from which they can make a profit. The typical Kirby salesman will sell the product from which he or she can make the most profit. Kirby only furnishes the product. (2)

These direct sellers work independently, they determine their own hours, they generally determine their own territory, and they bear the financial profits and losses of their own businesses. (3)

~~According to the Direct Selling Association,~~ Alaska is in a distinct minority of applying the employment standards to these direct sellers. ~~Where there is an ABC test, some 16 states have found that direct sellers meet that test. However,~~ the major trend is to exclude direct sellers by statute from the definition of employment. This certainly has been the trend in the Pacific Northwest. The states of Washington, Oregon, Idaho, etc. have done so. (4)


~~We believe~~ that direct sellers are not employees and direct selling companies are not employers. ~~Therefore,~~ what is now an unsettled state of the law will create substantial problems and costs between the Department of Labor and direct sellers. The Department will have to determine whether direct sellers, such as Amway, Tupperware, and others, are employees within the meaning of your statute. I am enclosing suggested legislation. This legislation is similar to that adopted in the state of Washington. It is my belief that the adoption in the state of Washington clarified this issue and eliminated the continual friction or conflict between the Department and its myriad of direct sellers who, (5)

we believe, should not be considered employees for ESC purposes. It should be noted that in 1982, Congress passed the Tax Equity and Fiscal Responsibility Act and in enacting Section 3508 of the Internal Revenue Code found that for federal employment tax purposes, direct sellers are non-employee independent contractors. I would further note that presently 28 states have similar or identical statutory classifications for direct sellers. If, in fact, our figures are correct, the 28 states have exemptions for direct sellers and 16 states with an ABC test have found that direct sellers are independent contractors, that Alaska would be in the distinct minority and somewhat untenable position of asserting a contrary view.

I would appreciate consideration by the Department regarding this legislation which would clarify this issue. I am taking the liberty of sending a copy of this correspondence to Senator Kelly and several other legislators. If I may comment on the foregoing or be of additional assistance in any regard, please contact me.

Very truly yours,

JERMAIN, DUNNAGAN & OWENS, P.C.



William K. Jermain

/jv

Enclosure

cc: Steve Egli
Stan Borucki
Jim Cross
Eric Ellman

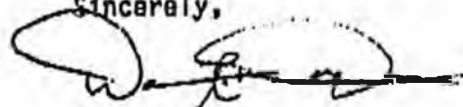
March 16, 1995

Representative Jeannette James
State Capitol Building
Juneau, AK 99801

Dear Rep. James:

Please support the Bill to exclude Direct Sellers from
State Unemployment Compensation laws. Thank you.

Sincerely,



Dan Morgan
Three Sisters
2400 Tasia Dr.
Anchorage, AK 99502

To: Senator Tim Kelly

From: Randy Hurtt
Owner of Stellar Financial Services

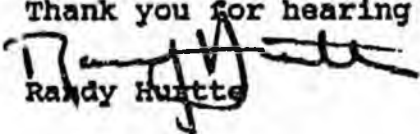
Re: Senate Bill

I ask your support of Senate Bill 122 regarding direct sellers. I feel that the unemployment should not be paid on this class of employee.

The direct selling field is a area one understands when one enters this field. Are they unemployed if they haven't made a sale in a week or month and receive no paycheck.

Unemployment compensation being paid by the person supplying the goods would stop many from getting the opportunity of a direct sales position.

Thank you for hearing my view.


Randy Hurtt

Shaklee Corporation

Shaklee Terraces 444 Market Street
San Francisco, CA 94111
Telephone 415/954-2018
FAX 415/954-2155

Evelyn Jarvis-Ferris

Vice-President
Government Relations

March 24, 1995

The Honorable Jeanette James
Chair, House State Affairs Committee
Alaska Legislative Building
State Capitol
Juneau, Alaska 99801

RE: House Bill 238

Dear Representative James:

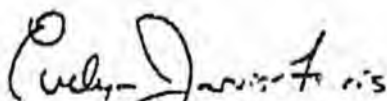
I am writing to express our concern with House Bill 238 dealing with direct sellers and unemployment compensation which has been referred to the Committees on Labor and Commerce and State Affairs. Shaklee, as you may know, is a direct selling company and a major manufacturer of nutritional personal care and household products that are sold through small business people working primarily out of their homes. As members of the Direct Selling Association (DSA), we support the attached amendment that they have offered which is consistent with federal and other state laws in clearly defining who direct sellers are.

Unfortunately, the language in H.B. 238 does not accurately define all direct sellers and therefore is incomplete and problematic. The amendment that we are suggesting was carefully crafted and incorporated into the Internal Revenue Code (26 U.S.C. Section 3508) in 1982 and has worked well in narrowly and clearly defining direct sellers. Since then, many other states, including California, have incorporated this same definition into state law.

Although we are pleased that the Legislature is considering clarifying the status of direct sellers as it relates to unemployment compensation, it is imperative that the definition be consistent with the attached language in order to cover our Shaklee Distributors and other direct sellers who live and work in your state.

I urge your support for this important amendment and thank you for your consideration.

Sincerely,



Evelyn Jarvis-Ferris
Vice President, Government Relations

DSA Suggested Amendment to Alaska's Labor and Workers' Compensation Law**Alternative #1**

Section 23.20.526(a) is amended by adding a new paragraph to read:

(21) service by a direct sellers if

(A) Such person is:

(i) engaged in the trade or business of selling (or soliciting the sale of) consumer products, services or other intangibles to any buyer on a buy-sell basis or a deposit-commission basis for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment, or (ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products, services or other intangibles in the home or otherwise than in a permanent retail establishment,

(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (21)(A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee for federal and state tax purposes.

DSA Suggested Amendment to Alaska's Labor and Workers' Compensation Law**Alternative #2**

Section 23.20.526(a) is amended by adding a new paragraph to read:

(21) services by a direct sellers as defined by 26 U.S.C. Section 3508.

H/87 Stemmons Freeway, Dallas, Texas 75247-3713, (214) 616 H/87
March 24, 1995

Michael L. Lunceford, VICE PRESIDENT, PUBLIC AFFAIRS

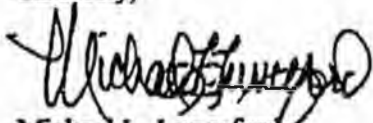
The Honorable Jeanette James
Senate Judiciary Committee
Alaska State Legislature
Juneau, AK 99801-1182

Dear Senator James:

On behalf of Mary Kay Cosmetics, I wish to express our opinion about Senate Bill 122, a bill dealing with direct sellers such as Mary Kay Independent Beauty Consultants, and unemployment compensation. Joe Mariano of our trade association, Direct Selling Association, attended the hearing on the bill March 22 and had signed up to testify; unfortunately, the bill was passed and the hearing ended before any witnesses (other than the sponsor's staff) were called. Needless to say, we are disappointed he was unable to share observations with you and the rest of the committee. I believe the observations are relevant and hope you will embrace them prior to your deliberations on the Senate floor.

Mary Kay agrees in principal with the intent of SB 122 to clarify that direct sellers are not currently covered by Alaska's unemployment compensation law, we are concerned that the legislation would do so in a manner inconsistent with federal and other state laws. We hope to offer amendments which will make Alaska's law consistent with the other narrowly crafted laws which define direct sellers; we believe such consistency is vital for direct sellers and the administrators of the law. Without amendment, the bill does not accurately define all direct sellers and presents the undesirable possibility that Mary Kay Independent Beauty Consultants would not be able to qualify under its provisions. We trust this serious flaw can be simply remedied by referral to the existing definition of direct seller used in the federal Internal Revenue Code. We hope to do so with the agreement of all interested parties. Federal language has been in place since 1982 and has proven to be an effective, limited definition for federal tax purposes. Only true direct sellers such as Avon Representatives, Amway Distributors, Kirby salespeople, Mary Kay Beauty Consultants, etc. have qualified under this federal definition. We feel supremely confident that reference to or incorporation of this language into Alaska's law will be the simplest, most limited and effective manner of clarifying direct sellers' status under the law. Absent such an amendment, we and other direct selling companies ultimately must oppose SB 122. On behalf of the thousands of Mary Kay Beauty Consultants in Alaska, I thank you for your consideration of our concerns.

Sincerely,



Michael L. Lunceford
Vice President
MARY KAY CORPORATION

Rep Jeanette James

My name is Chuck Duncan & I support a bill excluding Direct sellers from unemployment compensation.

However as an independent direct seller the bill as offered needs to be more specific in section (C) adding that the contract specifically states the wholesale cost of goods to the seller and no restrictions on the seller except as provided by law including - selling price to the consumer - hours to be worked - sales quotas to be met ~~at~~ areas the seller may work - and all meetings to be compulsory.

These specifications added to the bill as offered would assure that an Employee - Employer relationship does not develop.

Respectfully

Chuck Duncan

Mr. Duncan
would like to
to send him
comments
to send him
to send him