

Approved April 23, 1986

Date

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS

The meeting was called to order by Senator Dan Thiessen at  
Chairperson

1:30 ~~x.m.~~/p.m. on Monday, March 31, 1986 in room 572-S of the Capitol.

All members were present except:

Committee staff present:

Jerry Ann Donaldson, Research Department  
Gordon Self, Revisor  
Marion Anzek, Committee Secretary

Conferees appearing before the committee:

Carolyn Cox-Mary Kay Cosmetics, Topeka, KS.  
Ann Cruz-Mary Kay Cosmetics, Dallas, TX.  
Kathy Peckham-Tupperware Representative, Lawrence, KS.  
Chester Jensen-Kirby of Topeka, Topeka, KS.  
Saul Kass-House of Lloyd, Grandview, MO.  
David Snipe-Avon Cosmetics, New York, N.Y.  
Rita Hathway-Avon Products, Topeka, KS.  
Mario Brossi-Direct Selling Association, Washington, D.C.  
Wayne Maichel, Exec. Vice President-Kansas State Federation of Labor  
Larry Wolgast, Secretary-Kansas Department of Human Resources  
A.J. Kotich-Kansas Department of Human Resources  
Senator Gerald Karr

The meeting was called to order by the Chairman at 1:30 p.m.

A hearing was held on SB723 concerning employment security relating to the definition of employment.

The following conferees were proponents of SB723.

Carolyn Cox said she liked working for Mary Kay Cosmetics as an independent contractor, as she has a family and can work her own hours, and can earn as much as she wants to, and asked the committee to pass the bill favorably out of committee.

Ann Cruz SB723 streamlines the procedure in which an individual is determined eligible to collect unemployment compensation. Mary Kay consultants in Kansas see their status as independent contractors, which would be clarified in SB723. I ask the committee to pass the bill favorably out of committee.

Kathy Peckham I have been an Independent Contractor with Tupperware for 16 years, and I choose this profession because of the Independent status. I like the hours, and setting my own rules, and I work when I want to work, and I would like very much for the favorable passage of SB723.

Chester Jensen We have had problems in the past, like paying \$40,000 in sales tax last year and the problems have been with the Kansas Unemployment Bureau and SB723 will define Independent Contractors status for us, as the problems we have had, have been with direct sales people in the field.

Saul Kass All of our people are Independent Contractors and work mostly in the fall of the year. Our demonstrators will earn in a period of the fall \$200 to \$300 per season, they work when they want to work and if they want to work only 1 day a week, that is up to them. Most of them do this type of work for the Christmas season and to earn extra money. We have no control over them. The problems that we have had is when they sign as an independent contractor, then are through working, they file for unemployment compensation, and we then hear from the division through letter of inquiry. To date we have been successful in winning these cases.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS

room 527-S Statehouse, at 1:30 ~~xxx~~ p.m. on Monday, March 31, 19 86

David Snipe I am here today in favor of SB723 as our people are Independent Contractors and this bill would clarify their status as Independent Contractors. I ask this committee to pass this bill favorably out of committee. (Attachment A)

Rita Hathway I have been with Avon for 7 years and I work as an Independent Contractor, and this is very important to me because I can set my own hours and I have time with my children and husband and work as I feel I can, which is important to me.

Mario Bossi I represent a lot of fine Companies throughout the Nation and you are all familiar with some of the materials that I have sent each of you in the past. The reason we support SB723 is that the Kansas Supreme Court decision last year held unfavorable in the Kirby Vacuum Cleaner case, in which the dealers with the Kirby operation was held to be employees, under the Kansas Unemployment Compensation Statute in the existing law. Anytime the State's highest court finds negatively, with any of our companies we naturally want to correct the situation as quickly as possible, and this bill would propose to do that. We feel SB723 is straight forward and ask this committee to pass SB723 favorable for passage.

Wayne Maichel I am not really opposed to this bill, as in the State of Kansas if you are truly an independent contractor you are already exempt, so the question is, is there a need for the legislation. We have been through this many times but there may be some gray areas that need to be refined, if you are an independent contractor or not. Mr. Chairman I think we would need to refer this to an advisory council, to look at it this summer and see if it needs to have changes made, so I recommend this be done.

Larry Wolgast We are neither a proponent or opponent, but merely want to state as far as the law stands today, we feel that the law has functioned reasonably well and as the proponents have stated the majority by far agree that the sellers should not be held in a contract situation and be an employee of the organization. We do not have a copy of the Kirby case by the Supreme court, so I hope this committee would not make a decision on what was said by the proponents of this bill. There are some questions that we have of the law, as it is written, and some definitions which we have copies of (See Attachment B)

Discussion was held by the committee members, a committee member asked, would harm be done by dropping the bill, and A. J. Kotich responded.

A. J. Kotich The concern is that there would be, perhaps opening up where there are some employee, employer relationships, where the employer agrees there is some employee relationship, by the definition of this law.

If you were to pass the bill into law before you now, there are some proposed Federal rules and regulations in the Federal law, that have been cited here today and if this were to pass, we would not be in a position to determine whether or not we could make a determination. In other words, a direct seller would be exempted from our personal review. If you read the statute, it is something other than an employee, employer relationship, and another problem that I see in this particular relationship is what about the people that are going to become direct sellers as a result of this. For instance, the chief of contributions told us, that a case presently pending, where a person went out to someone's home, where the homeowner was trying to look for new financing money for a new mortgage and his job was to find this individual money, but something happened to that employee, employer relationship and the employer came back and said, well he is a direct seller. If you look closely at the information that we handed out, in Attachment A we have a lot of problems with this, right now because a lot of people are not direct sellers, who are going to say that they are. A lot of the proponents in this committee today, have said that they have had no problems, and they are direct sellers.

A hearing was held on SCR1636 directing the Kansas Department of Economic Development to implement a Kansas Product Promotion Program.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS,  
room 527-S, Statehouse, at 1:30 ~~am~~ p.m. on Monday, March 31, 1986

Hearing were concluded on SB723.

A hearing was held on SCRL636 concerning Kansas Department of Economic Development to implement a Kansas Product Promotion Program.

Senator Gerald Karr- a proponent of the bill. What we have in the resolution, is to encourage sales of Kansas Products. This is designed to be a self supporting program, through advertising material of Kansas merchants, and they would be able to utilize an indentification system of related materials to further promote Kansas products, which would be done through the Kansas Department of Economic Development. The resolution calls for the Department to implement and coordinate a Kansas Product Promotion Program designed to elevate the status of Kansas made products in the marketplace and to educate Kansans about the diversity of products produced and manufactured in Kansas. There would be no fiscal note, it would be self sufficient.

Chairman Thiessen asked the committee members for possible action on HB2891 and HB3016.

HB2891 concerning workers' compensation, relating to coverage of person performing public or community service under certain circumstances.

Senator Yost moved to favorably pass HB2891, seconded by Senator Steineger. Motion carried.

Senator Werts questioned the motion, as he stated he had some problems with the bill, on line 318-shall be \$37.50

Motion was made by Senator Steineger to reconsider the motion on HB2891, seconded by Senator Kerr. Motion carried.

Motion was made by Senator Yost to amend HB2891, line 318 after the word be, deemed to be, seconded by Senator Steineger. Motion carried as amended.

HB3016 concerning employment security law, expenditures from special employment security fund.

Senator Morris moved to amend HB3016 by adding the word penalties after the word all on line 26, seconded by Senator Norvell. Motion to amend carried.

Senator Norvell moved to pass HB3016 as amended, seconded by Senator Steineger. Motion carried.

The meeting adjourned at 2:30 p.m.

GUEST LIST

COMMITTEE: SENATE LABOR, INDUSTRY & SMALL BUSINESS

DATE: 3-31-86

NAME (PLEASE PRINT)                      ADDRESS                      COMPANY/ORGANIZATION

Rob Hodges	Topeka	KCCI
David Snipe	New York, N.Y.	AVON
Lorne Patton	Box 171 Esbridge Ks	Avon
Candace Boling	2418 Luard	Avon
Melinda G. Wareham	RR#1 Whiting, Ks	Avon
Joyce Sanders	1010 OSBORNE TOPEKA Ks	Avon
Ann Johnson	8930 SW K-4 Topeka, Ks	Avon
Rita Hathaway	Topeka, Ks. 3701 N.W. LAKEVIEW	AVON
Marlene Janzen	5611 <sup>Topeka</sup> Lincolnshire	KIRBY
Chester W. Janzen	5611 <sup>Topeka</sup> Lincolnshire	KIRBY
Saul P. Kass	5732 WINDSOR FAIRWAY, Ks	HOUSE OF LLOYD
© Edward Platt	Orlando FL	Tupperware
Coakley Beckton	Lawrence, Ks.	Tupperware
Thomas L Buckley	Topeka Ks	Tupperware
BILL CLAWSON	" "	DHR
A. J. Kuntz	" "	DHR
Paul Bicknell	" "	DHR
Anne Crews	Dallas, TX.	May Kay Cosmetics
Frances Kastig	Topeka	Ks Food Dealer
Jenny Rann	Emporia	Senate
Carolyn Cox	Topeka	May Kay Cosmetics
Shirley Brist	Topeka	Avon
Brenda M Boles	Topeka	May Kay Cosm.

TESTIMONY  
by  
DAVID H. SNIPE, JR.  
SENIOR COUNSEL, GOVERNMENT AFFAIRS  
AVON PRODUCTS, INC.  
S.B. 723 - SENATOR WERTS  
AMENDMENT OF KANSAS UNEMPLOYMENT COMPENSATION STATUTE

On behalf of Avon Products, Inc., I welcome the opportunity to submit Avon's written testimony in support of S.B. 723.

Avon has developed a reputation for its in-person direct sales approach to selling its products. To carry its marketing plan forward it contracts with independent sales representatives. The Avon Representatives avail themselves of the earning opportunity provided by companies such as Avon wherein they can choose the hours they spend on the development of their respective business and thereby reap the rewards of their own individual efforts.

Our direct sellers were recognized as independent business people and statutory non-employees pursuant to the federal Tax Equity and Fiscal Responsibility Act of 1982. So long as direct sellers come within the definition provided by the TEFRA language, their status will not be jeopardized. Avon Products, Inc. is deeply concerned that its Representatives could inadvertently be covered by the rules and regulations of the Kansas Department of Human Resources, absent conforming state legislation.

The language embodied in this bill now before you closely parallels the federal statute. The passage of this measure would conform the non-employee status of direct sellers under Kansas law with that of the federal government's and, in addition, would relieve the Kansas Department of Human Resources from becoming burdened by cases mistakenly brought before it by self-employed persons.

An official clarification of the status of direct sellers would provide a savings in time, effort and public funds on the part of the Kansas Department of Human Resources. Companies such as Avon, which provide the opportunity for those who wish to pursue an independent business effort, would likewise expend less effort before the Kansas Department of Human Resources in proving the independent status of its Representatives under Kansas common law.

I urge your support of Kansas S.B. 723.

## Department of Human Resources

## Notes

1. The first portion (i) exempts anyone who sells or solicits the sale of consumer products to any buyer on a buy-sell, deposit-commission or any similar basis prescribed by the Secretary by regulations (if certain compensation and contractual restrictions are met).

- A. Any clerk in any establishment of any kind or nature could be placed in this position.
- B. There are no restrictions or guidelines on those selling outside of an establishment.
- C. There is no definition of "consumer products".
- D. There is no definition of "buy-sell" or deposit.
- E. There is no definition of "any buyer" "commission" or "any similar basis".
- F. There appears to be a questionable delegation of authority set forth in "any similar basis prescribed by the Secretary".
- G. No salesman is covered who sells to a jobber, wholesaler or retailer.
- H. No salesman selling for any type of business would be covered whether it was manufacturer, jobber, wholesaler, or retailer.
- I. No solicitors of any nature would be covered.

2. The second section exempts all resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment (if certain compensation and contractual restrictions are met).

- A. There is no definition of "a permanent retail establishment".
- B. Any item resold by anyone selling consumer goods any place except in the home or a retail establishment is exempt.

3. The third exception is for anyone engaged in selling or soliticing the sale of consumer products in the home or not in a retail establishment (if certain compensation and contractual restrictions are-met).

- A. The lack of definition follows through.
- B. This appears to be redundant if read in light of my interpretation of section #1.
- C. Only persons engaged in selling in a "retail establishment" would be covered.
- D. There is no definition of "retail establishment".
- E. The objections voiced in section one are also applicable.

4. Section (ii) provides substantially all remuneration whether or not paid in cash is directly related to sales or other output including the performance of services rather than hours worked, and such person is not an active officer of a corporation for which services are provided.

- A. There is no definition of "or other output".
- B. "Including the performance of services rather than hours worked" is vague.
- C. There is no definition of "active officer of a corporation".
- D. It appears a corporation could have one active Officer who is a figurehead and all other officers deemed to be "inactive" and therefore exempt.
- E. The whole section seems to be vague, subject to practically any interpretation desired and subject to unknown expansion under the phrase "or other output".

iii. This seems to be clearer than the other two sections.