

Approved: February 21, 1996
date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on February 20, 1996 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Burke, Downey, Feleciano, Gooch, Harris, Jordan, Ranson, Steffes and Vidricksen.

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Committee Secretary

Conferees appearing before the committee:

Paul Bicknell, Chief of Contributions, Department of Human Resources
Eric J. Ellman, Associate Attorney, Manager of Government Relations, Direct
Selling Association, Washington, D.C.
Wayne Maichel, AFL-CIO
Philip Harness, Director, Workers Compensation Division
Jerry Slaughter, Executive Director, Kansas Medical Society
Peggy Walker, President, Business & Industry Health Group in Kansas City
Joe Furjanic, Executive Director, Kansas Chiropractic Association
Harold Riehm, Executive Director, Kansas Association of Osteopathic Medicine

Others attending: See attached list

SB 664: Exempting direct sellers from employment security taxes

Paul Bicknell, Chief of Contributions, Kansas Department of Human Resources, appeared before the Committee to report SB 664 excludes from the definition of "employment" services performed as a qualified direct seller. Mr. Bicknell testified many direct sellers are in deed "independent contractors" and under current law are excluded from the definition of employment. The definition of "employment" is found in K.S.A. 44-703(1)(1)(B), referred to as the "common law test". K.S.A. 44-703(1)(3)(D) is referred to as the "AB Test", stating "employment" includes services performed for wages or under contract of hire, has been free from control or direction, and services are either outside the usual course of business or performed outside of all places of business of the enterprise. Mr. Bicknell stated the Department uses both "tests" in making employer/employee relationship determinations, and these tests have served both Kansas employers and employees well in insuring individuals are properly classified as either an employee or an independent contractor.

Mr. Bicknell stated the Direct Seller's Association appeared before the Employment Security Advisory Council and submitted the draft language to exclude direct sellers from the definition of employment as it appears in SB 664. A motion was made and seconded to support the exclusion; however, on a voice vote the Council defeated the motion to support the exclusion. Attachment 1

The Chair drew the Committee's attention to correspondence from a number of individuals involved in direct selling which urge the Committee to consider SB 664 favorably. Attachment 2

Eric Ellman, Direct Selling Association, testified in support of SB 664. Mr. Ellman stated direct sellers are classified as independent contractors under the common law test, which is vague, subjective and arbitrary and provides little guidance to small business people in Kansas. Mr. Ellman advised the language contained in SB 664 applies only to sellers of products and does not apply to services or intangibles which were originally included in the language considered by the Council. Mr. Ellman stated the amendment contained in SB 664 uses language from the Federal Income Tax Code codifies the classification of direct sellers as independent contractors for state taxation and general classification purposes. Attachment 3

Wayne Maichel, AFL-CIO, testified in opposition of SB 664. Mr. Maichel stated if you are truly an independent contractor, you are presently exempt from employment security taxes; and due to the method

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on February 20, 1996.

utilized by the Department of Human Resources it is impossible to know the number of employees affected by this legislation. SB 664 creates a new classification the AFL-CIO does not believe is necessary.

SB 657: Revising workers compensation medical fee schedule

Philip Harness, Director, Workers Compensation and Chairman, Workers Compensation Advisory Council, testified SB 657 would alter the present statute by putting in place an annual revision of the Workers Compensation Fee Schedule, and require the Maximum Medical Fees Advisory Panel to select a consultant to provide research and analysis. These changes would require the expenditure of funds to a medical fee consulting firm. Mr. Harness acknowledged the Fee Schedule is based on medical fee data as old as 1991. In 1995 a new schedule was drafted and two meeting of the Maximum Medical Fees Advisory Panel held, and the administrative regulation process has been completed in anticipation of a public hearing scheduled for March 6, 1996. Mr. Harness stated doctors in Kansas are restricted to charging their usual and customary fees and are paid at the fee schedule level only if a billed charge is at or greater than the maximum fee allowed by the schedule. SB 657 provides maximum fees be based upon indices which measure trends in costs of medical services as reported by the bureau of labor statistics of the U.S. Department of Labor. Attachment 4

Mr. Harness responded to questions from the Committee stating the present system is working, however, there is a need for an adjustment in the fee schedule, and acknowledged there are some complaints regarding the limited number of doctors who accept workers compensation clients as a result of the fee schedule.

Jerry Slaughter, Kansas Medical Society, testified in favor of SB 657. Mr. Slaughter stated the Kansas Medical Society's main interest is establishing an annual revision of the fee schedule. The present fee schedule, adopted in 1993, based on data that was already over two years old, resulted in fee levels that are, in some cases 5 years out of date. Mr. Slaughter testified that the real cost containment issue is utilization review which is not fully developed in the Workers' Compensation system. Attachment 5

Peggy Walker, President, Occupational Medicine Division Employer Health Service, testified in favor of SB 657. Ms. Walker stated the fee schedule took effect November 1993. Since 1993 the Consumer Price Index, Medicare and Managed Care programs have continued to increase. Providers of occupational medicine, however, have continued to fall behind the health care industry and general economy in terms of reimbursement. Ms. Walker stated Employer Health Service feels that to assure proper reimbursement under the Kansas Fee Schedule it must be mandated by law that a revision be made annually and implementation be mandated at a specific time. The Fee Schedule for workers compensation continues to lag behind the actual charging practices of physicians. Attachment 6

Joe Furjanic, Kansas Chiropractic Association, testified in support of SB 657. The Chiropractic Association supports an annual revision of the fee schedule. Attachment 7

Harold Riehm, Kansas Association of Osteopathic Medicine, testified in support of SB 657. Mr. Riehm stated in order to maintain a workable workers compensation program, it is necessary for an annual review and revision of rates. Attachment 8

The Chair stated, as evidenced by the testimony, there is a good deal of concern about the fee schedules utilized by the Workers Compensation Division and the lack of use of the utilization review process. The Chair urged the Director to call a meeting of the Advisory Council prior to the scheduled April 18th meeting and that she would request SB 657 be extended beyond the deadline for action in the Senate.

Upon motion by Senator Feleciano, seconded by Senator Steffes, the Minutes of the February 15, 1996, meeting were unanimously approved.

The next meeting is scheduled for February 21, 1996.

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: February 20, 1996

NAME	REPRESENTING
Dirk Bloemendaal	Amway Corp. Support 664
Mike Bennett	Longaberger Comp. Support 664
Michael Linceford	Mury Kay Holding Comp. ^{Support} 664
Saul Kass	House of Lloyd Support 664
Dan Spellman	House of Lloyd
Kevin Raulston	House of Lloyd
Men Hanson	vs Medical Society
Rich Guthrie	Health Midwest
Derry Walker	Health Midwest - EHS
Janet Moller	Health Midwest - EHS
ARON RYAN	Ks. ASSN. OSTEOPATHIC MED.
Joe Zyjanic	KCA
Bill Hayes	KDHR
PAUL BICKWELL	KDHR
Linda Tierce	KDHR
Wayne Marches	K. AFL-CIO
Chuck Engel	Vector Marketing
Debbi Smith	KAIA
Bro Grant	KCC

SENATE COMMERCE COMMITTEE GUEST LIST

DATE: 2/20

NAME	REPRESENTING
Roger Hauke	FFC
Gene Grubel	KTLA
Brad Smoot	AIA
Don Miles	KPC
Gary Palmer	KSOA

Testimony

S.B. 664 - Exempting Direct Sellers

February 20, 1996

Good morning Madam Chairman and members of the Committee. My name is Paul Bicknell, Chief of Contributions with the Kansas Department of Human Resources. I appear before you this morning to report on S.B. 664, a bill which amends K.S.A. 44-703(i)(4) by adding a new subparagraph (V) on page 12, lines 2 through 19, which excludes from the definition of "employment" services performed as a qualified direct seller. The term direct seller includes such persons engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis for resale in the home rather than in a permanent retail establishment.

The department appears neither as a proponent or an opponent of the bill, but rather to provide you with information on the affect of the passage of this amendment as it relates to the current coverage that would be excluded. Many direct sellers are in deed "independent contractors" and under current law are excluded from the definition of employment. K.S.A. 44-703(i)(1)(B) reads....*"Employment" means: any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee....*" This section of the law is what is referred to as the "common law test."

K.S.A. 44-703(i)(3)(D) reads....*"The term "employment" shall also include: Services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the secretary that: (i) Such individual has been and will continue to be free from control or direction over the performance of such services, both under the individual's contract of hire and in fact; and (ii) such services is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed...."*

*Senate Commerce Committee
February 20, 1996
Attachment 1 thru 1-3*

This section of the law is referred to as the "AB Test." There are about 14 states that combine a third test with the above two and are referred to as the "ABC Test." The first test (i) or (A) is very similar to the common law test of K.S.A. 44-703(i)(1)(B) where the individual must be free from control or direction over the performance of services. The second test (ii) or (B) requires the service to be outside the usual course of the business for which services is performed or that is performed outside of all places of business of the enterprise for which such service is performed. The individual must meet both of these tests to be determined an independent contractor.

The department does use both K.S.A. 44-703(i)(1)(B) and 44-703(i)(3)(D) in making employer/employee relationship determinations; however, most determinations of employment are based upon the employer's right to direct and control the performance of the individual's services. These sections have served both Kansas employers and the employees well in insuring that individuals are properly classified as either an employee or an independent contractor.

Obviously, the employment security law does exclude specific employment from coverage and certainly direct sellers could be excluded; however, there will be certain individuals that are now covered for unemployment insurance that will no longer be covered. Unfortunately, the department's report methodology does not provide the means to identify employees involved in direct selling apart from all other employees, so I am unable to place a number of how many would lose coverage.

In closing, I might add that the Direct Seller's Association appeared before the Employment

Security Advisory Council at two of their meetings in the last year and submitted the draft language to exclude direct sellers from the definition of employment as it appears in S.B. 664. A motion was made and seconded to support the exclusion of direct sellers; however, on a voice vote, the Council defeated the motion to support the exclusion.

Madam Chairperson, this concludes my testimony. I will be pleased to answer any questions you may have.



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

February 19, 1996

The Honorable Alicia L. Salisbury, Chairman
Senate Committee on Commerce
State House #123-5
Topeka, Kansas 66612

Subject: Senate Bill 664 / TEFRA Conformity Proposal

Dear Chairman Salisbury:

I understand Senate Bill 664, a bill sponsored by Senator Burke, may soon come before the Commerce Committee. On behalf of the many independent Kansas Amway distributors, Amway would like to express its **support** for this important legislation.

Senate Bill 664 would help both the state and the direct selling industry by codifying the status of direct sellers as independent contractors under the Employment Security Law. These direct sellers, who include persons such as independent Amway distributors, Avon ladies and Mary Kay beauty consultants, are already treated as non-employees under Kansas common law.

Amway proposes to amend the Employment Security Law by adopting the language enacted by Congress in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). This bill was enacted after intensive study and analysis by Congress and the Internal Revenue Service and statutorily declares direct sellers to be non-employees for federal tax purposes.

To date, over 25 states have already enacted the TEFRA conformity language. The federal language upon which all these statutes is based is tightly drawn to prevent any persons other than legitimate direct sellers from falling beneath its coverage.

The proposed amendment would simply codify the status of direct sellers as independent contractors, as currently found at common law. Direct sellers such as Amway distributors, Avon ladies and Mary Kay beauty consultants - as well as others representing companies such as Tupperware, Fuller Brush, Encyclopedias Britannica and World Book - are not employees of the companies whose products they sell but are instead independent business people. 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, 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.

*Senate Commerce Committee
February 20, 1996*

Attachment 2 thru 2-25

Hon. Alicia L. Salisbury
February 19, 1996
Page Two

The status of direct sellers as non-employees is therefore not disputed. Nonetheless, Amway Corporation and the direct selling industry wish to have the Kansas Employment Security Law amended to statutorily clarify that non-employee status. Direct sellers such as Amway distributors are not like Amway employees, and would not participate in the unemployment compensation process because of this accepted status. However, the mere task of administering occasional meritless UC claims can be expensive for the state as well as the direct selling companies involved.

Usually an evidentiary hearing is required to resolve such claims, involving the expense of attorneys and administrative personnel. While the common law may occasionally be arbitrary and inconsistent in its treatment of direct sellers as being ineligible for unemployment compensation benefits, the standards set out in the proposed direct seller exemption are concise, precise and easy to prove. The proposal is revenue neutral and may even result in a savings to the state. Future savings can be predicted attributable to an anticipated reduction in the number of meritless UC claims, which benefits those waiting to appropriately qualify.

SB 664's proposed test recognizes the Department of Human Resource's historical role in distinguishing this class of independent contractors from true employees. This test would make for an easier administrative determination of the facts and circumstances surrounding misfiled claims. Therefore, Amway urges your **support** of Senate Bill 664.

If I may be of further assistance in this matter, please call me at (616) 676-7010 or Terry Leatherman of the Kansas Chamber of Commerce and Industry., of which Amway is a member. Thank you for your kind attention.

Sincerely,



Dirk C. Bloemendaal, Counsel
Corporate Government Affairs

DCB/als

cc Members of Commerce Committee
Senator Bud Burke
Eric Ellman, Direct Selling Association
Michael Lunceford, Mary Kay Cosmetics
Mike Bennett, The Longaberger Company



DUANE R. EVANS
VICE PRESIDENT
ADMINISTRATION

February 16, 1996

Alicia Salisbury
Kansas State Senate State House
300 S.W. 10th Avenue
Topeka, KS 66612-1504

RE: Kansas S.B. 664 Independent Contractor Status

Dear Ms. Salisbury:

Watkins Incorporated is a 128 year old direct selling company with over 900 independent Representatives in the state of Kansas.

Our Representatives are classified as independent contractors under the common law test, however, Kansas is one of a minority of states still using the common law test to classify direct sellers as independent contractors.

We request your support for passage of S.B. 664 to clarify the status of our Representatives as independent contractors.

This action would be consistent with the federal Tax Equity and Fiscal Responsibility Act (TEFRA) amending section 3508 of the Internal Revenue Code clarifying that direct sellers were "non-employee" independent contractors for federal employment tax purposes.

Your assistance in support of this change is appreciated.

Sincerely,

Duane R. Evans
Vice President Administration

DE/rh



19501 E. Walnut Dr., Box 1950, City of Industry, CA 91749
(909) 598-8598 FAX (909) 594-8961

February 15, 1996

Senator Alicia Salisbury, Chairwoman
Senate Commerce Committee
Kansas State Senate
State House
300 SW 10th Avenue
Topeka, KS 66612-1504

Room 120-5

Re: Support of Kansas S.B. 664

Dear Senator Salisbury:

Current Kansas law classifies direct sellers as independent contractors by the antiquated and arbitrary common law test. **S.B. 664** would clarify the status of direct sellers by confirming state law to federal law treating direct sellers as independent contractors for unemployment compensation purposes.

There are over 40,000 direct sellers in Kansas. Kansas is in the clear minority of states that use the common law test to classify direct sellers as independent contractors. As the common law test is vague, subjective and arbitrary, it provides little guidance to the tens of thousands of small businesspeople in Kansas. Similarly, Kansas regulators are also provided little guidance as to who is or who is not an independent contractor.

S.B. 664 is a technical and non-substantive change in state law. The vast majority of direct sellers are currently independent contractors under the common law test. However, **S.B. 664** would provide the clarity and consistency to the business community and the state regulators.

Speaking as a member company of the Direct Selling Association for over thirty five years, I urge you to support **S.B. 664** at the Senate Commerce Committee hearing on Tuesday, February 20.

Thank you for your affirmative consideration of **S.B. 664**.

Sincerely yours,

Mulford J. Nobbs
Chairman of the Board and CEO

AVON

Avon Products, Inc.

Nine West Fifty Seventh Street

New York, NY 10019-2683

Tel. 212 546 6015

February 15, 1996

The Honorable Alicia Salisbury, Chairwoman
Senate Commerce Committee
Kansas State Senate
300 SW 10th Avenue, Rm. 120-S
Topeka, KS 66612-1504

Re: Senate Bill 664
Direct Seller Exemption

Dear Chairwoman Salisbury:

On behalf of the independent Avon sales Representatives in Kansas I am writing to seek your help to clarify the independent contractor status of direct sellers by passing S.B. 664.

For 110 years the Avon Representative has been a part of the American mosaic, providing an income earning opportunity, mostly to women, who wish to supplement the family income without the constraints of the typical employer/employee relationship.

The Avon Representative is an independent salesperson who is a resident of the community in which she sells. She is well-screened by the Company before her appointment and is usually a housewife working part-time to supplement the family income or for some immediate purpose; e.g. hospital bills, Christmas expenses, school tuition, etc. She sells in her "spare time" to her friends and neighbors and is invited back by her customers to show new products and specials as well as replenish standard items.



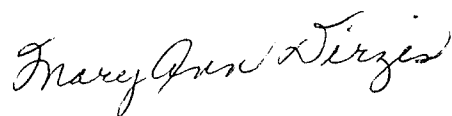
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As a direct seller the independent Avon Representative is free to set her own hours, selling as much or as little as she pleases, at times convenient to herself and her customers, either at the customer's home or in the workplace where she may hold a traditional job. Avon Representatives have the freedom to pursue their Avon activities whenever they want and to the degree of involvement that fulfills their desired short or long term financial goals.

The long-standing recognition of direct sellers as independent contractors was codified by the Congress in 1982 with changes to the Internal Revenue Code under Section 3508. This section statutorily defines direct sellers as non-employees for federal employment tax purposes. Some 30 states have made similar statutory classifications for direct sellers as non-employees.

Your support of this legislation, already in federal law and 30 other states, is critical to Avon and all direct selling companies, but more importantly to the continued economic freedom direct sellers in Kansas now enjoy. On behalf of the Avon Representatives in Kansas, I thank you for your consideration of this request to preserve direct selling in Kansas.

Sincerely,



Mary Ann Dirzis
Director
Government Affairs

MAD/js



DIRECT SELLING ASSOCIATION

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

February 14, 1996

The Honorable Alicia Salisbury
Kansas State Senate
300 SW 10th Avenue
Topeka, KS 66612-1504

Dear Senator Salisbury:

I write on behalf of the Direct Selling Association (DSA) in strong support of S.B. 664, a bill to statutorily classify direct sellers as independent contractors. Such classification exists at the federal level and in a majority of states. The change we seek will enable our industry (with 40,000 direct sellers in Kansas) to become more efficient and productive without placing additional financial burdens on the state.

The Direct Selling Association (DSA) is the national trade association representing 150 companies which sell their products and services by personal presentation and demonstration, primarily in the home. Our membership, with 6.3 million direct sellers, includes some of the nation's most well-known commercial names which constitute 95% of all direct selling in the United States. The home party and person-to-person sales methods used by our companies and their independent contractor salesforces have become part and parcel of the American landscape.

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. The direct seller is the quintessential small business person; direct selling, the embodiment of a small business opportunity.

Direct sellers are considered independent contractors in every state. The tests used to determine the classification of independent contractors differ in every state and in Kansas, the common law test controls. Because the common law is subjective and open to interpretation, we ask that the law be amended to clarify the status of direct sellers. Very few states still apply the common law test, and the trend has been in the direction of clarifying direct sellers' status as independent contractors.

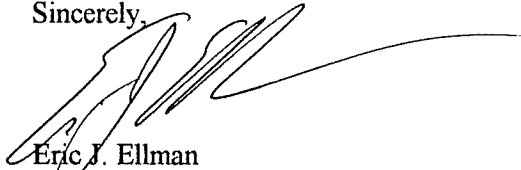
In 1982, the federal Tax Equity and Fiscal Responsibility Act (TEFRA) created section 3508 of the Internal Revenue Code to make clear that for federal employment tax purposes, direct sellers and real estate agents were "non-employee" independent contractors. Since 1982, over half of the states have adopted the TEFRA definition for state taxation and general classification purposes (see attached map). In Kansas, real estate agents enjoy a TEFRA-type independent contractor

The Honorable Alicia Salisbury
February 14, 1996
Page 2

classification in the state code. Direct sellers lack any such recognition in the Kansas code. To avoid the continuing subjective application of the common law, I hope that a TEFRA-type definition can be added to the code for direct sellers. Such a definition would codify long-standing practices and bring uniformity and constancy to the classification of direct sellers.

We urge your support for S.B. 664. If you have any questions, please do not hesitate to contact me.

Sincerely,



Eric J. Ellman
Associate Attorney/Manager, Government Relations

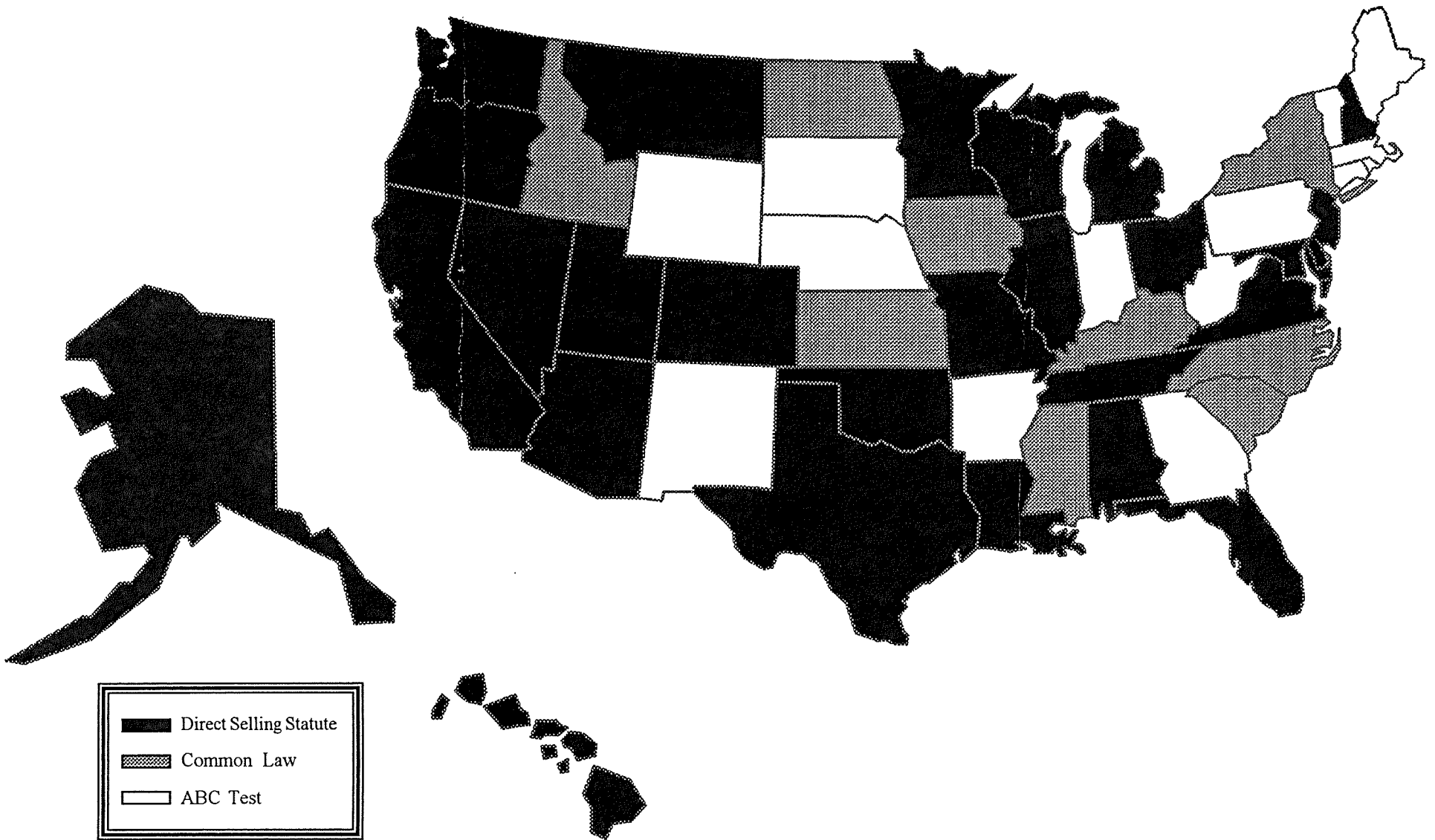
enclosure

cc: Dirk Bloemendaal, Amway Corporation
Bud Grant, Kansas Retail Council
Terry Leatherman, Kansas Chamber of Commerce
Michael Lunceford, Mary Kay Cosmetics

j:\legal\kansas2

Unemployment Compensation Laws - Classification of Direct Sellers

5-9
2-9





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1. S

February 16, 1996

Kansas State Senate
Chairwoman Alicia Salisbury (R-20)
Room 120-S
State House
300 SW 10th Avenue
Topeka, KS 66612-1504

Dear Chairwoman Alicia Salisbury:

I am writing to urge you and your senate colleagues to support and pass S.B. #664 (Independent Contractor Status) sought by more than 40,000 direct sellers in Kansas.

My reason for calling on your support is rather simple and obvious: As more and more people enter into small business opportunities such as direct selling, there is a prevalent need for clearly stating their professional status as independent contractors.

I ask that you not only support this bill, but that you use your considerable influence to convince other legislators of its value.

Your support is greatly appreciated.

Sincerely,

Jim and Adi Song
CEO/President

15 Cactus Garden Drive • Henderson, NV 89014 • Main (702) 454-7000 • Fax (702) 435-4786 • Order/Enroll (800) 242-1000
Fax-on-demand (800) 955-7000 • Information Hotline (801) 325-4777 • Training Hotline (801) 325-5100 • Marketing Hotline (800) LONGNET

2-10

THE SOUTHWESTERN COMPANY 

PUBLISHERS AND BOOK SELLERS SINCE 1868

February 16, 1996

Via Facsimile No. 913-296-6718

Kansas State Senate
State House
300 SW 10th Avenue
Topeka, KS 66612-1540
Attn: Chairwoman Alicia Salisbury
Room 120-S

Re: Support of Kansas S.B. 664, Independent Contractor Status

Dear Senator Salisbury:

It has been brought to my attention by the Direct Selling Association that a hearing on Kansas S.B. 664 will be held before the Senate Commerce Committee on Tuesday, February 20, 1996. I am writing **IN SUPPORT OF** this legislation, which would clarify the status of direct sellers by conforming state law to federal law treating direct sellers as independent contractors for unemployment compensation purposes. This clarification is **extremely important** to the Direct Selling industry for several reasons:

1. There are over 40,000 direct sellers in Kansas who are classified as independent contractors under the current common law test. Kansas is in the minority of states that use the common law test to classify direct sellers as independent contractors.
2. Because the common law test is vague, subjective and arbitrary, it provides little guidance to the tens of thousands of small businesspeople in Kansas. Similarly, Kansas regulators are also provided little guidance as to who is and who is not an independent contractor.
3. S.B. 664 is a technical and non-substantive change in state law. The vast majority of direct sellers are currently independent contractors under the common law test. However, S.B. 664 would provide the clarity and consistency to the business community and the state regulators.
4. The language of S.B. 664 is neither new nor unique. With the assistance of Senator Dole in 1982, the federal Tax Equity and Fiscal Responsibility Act (TEFRA) amended section 3508 of the Internal Revenue Code to make clear that for federal employment tax purposes, direct sellers and real estate agents were "non-employee" independent contractors. Since 1982, a majority of states have adopted the TEFRA definition for state

MAILING ADDRESS: P.O. BOX 305140, NASHVILLE, TN 37230
OFFICES: 2451 ATRIUM WAY, NASHVILLE, TN 37214
(615) 391-2500

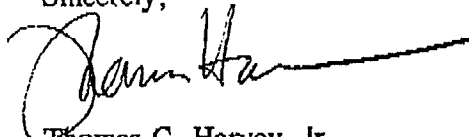
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Ms. Alicia Salisbury
February 16, 1996
Page Two

taxation and general classification purposes. In Kansas, real estate agents enjoy a TEFRA-type independent contractor classification in the state code. Direct Sellers lack any such recognition in the Kansas code.

To avoid the continuing subjective application of the common law, S.B. 664 should be enacted to codify long-standing practices and bring uniformity and constancy to the classification of direct sellers. Please vote to pass this important legislation.

Sincerely,



Thomas C. Harvey, Jr.
Corporate Legal Counsel



15 February 1996

The Honorable Chairwoman Alicia Salisbury
 Commerce Committee
 Kansas State Senate
 State House, Room 120-S
 300 S.W. 10th Avenue
 Topeka, Kansas 66612-1504
 Fax: 913.296.6718

Dear Senator Salisbury:

AmeriVox/World Telecom Group, Inc. is proud to be registered to do business in the great state of Kansas. My own precious grandmother, Harriet Eastis was born in Wichita and her father was on the Wichita School Board and in the State Legislature. AmeriVox is the largest provider of prepaid calling cards in the USA and we have hundreds of independent salespeople in Kansas.

I am writing to urge your support of Kansas Senate Bill #664 in favor of independent contractor status. As you are aware, there are over 40,000 direct sellers in Kansas. As the current law is vague, these thousands of small businesspeople in Kansas have little guidance.

S.B.664 provides consistency and vital clarification to the business community and state lawmakers. Senator Robert Dole supported the Federal Tax Equity and Fiscal Responsibility Act (TEFRA), which makes it clear that direct sellers were "non-employee" independent contractors. We at AmeriVox urge you to pass S.B.664 to bring uniformity and constancy to the classification of direct sellers. Thank you for your consideration of our request. I wish you continued success in your public service career.

Best regards,

David Michael Eastis
 Executive Vice President


DME/dl

cc: Eric Ellman, Direct Selling Association

World Telecom Group, Inc. • Corporate Headquarters

1091 North Shoreline Boulevard • Mountain View, CA USA 94043-1825 • 415.694.4977 • FAX: 415.694.7886

Home Interiors & Gifts, inc.



February 16, 1996

VIA FAX 913-296-6718
Chairwoman Alicia Salisbury
Kansas State Senate
State House
300 SW 10th Avenue
Topeka, KS 66612-1504

Re: S. B. 664

Dear Chairwoman Salisbury:

Home Interiors & Gifts, Inc. sells home decorative accessories to independent contractor retailers in Kansas. We support the enactment of S. B. 664 as it will eliminate the arbitrary and unpredictable results that have been inflicted upon direct selling companies and their customers through the application of the common law test. The common law test derives from notions of master and servant that simply do not apply to independent sales people who work out of and in homes if, as, and when they choose. S. B. 664 will give Kansas regulators and our Kansas customers clear guidance on their status. The federal government and most states have long recognized the independence of direct sellers, and we urge Kansas to do the same.

Very truly yours,



Leonard A. Robertson
Chief Financial Officer

ksl.ltr

4550 Spring Valley Road · Dallas, Texas 75244-3705 · (214) 386-1000 · Fax (214) 490-7573

120-S

Home Interiors & Gifts, inc.



VIA FAX 913-296-6718

February 16, 1996

Senator Alicia Salisbury
Kansas State Senate
State House
300 SW 10th Avenue
Topeka, KS 66612-1504

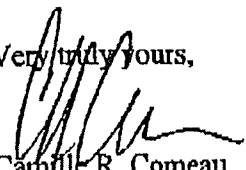
Re: S.B. 664

Dear Senator Salisbury:

Home Interiors & Gifts, Inc. is a manufacturer and wholesaler of home decorative accessories that makes wholesale sales to many independent contractor direct sellers located in Kansas, who in turn sell the product to consumers on the party plan method. Direct sales provides an unmatched opportunity for people with initiative to creatively and independently earn money in a flexible work environment that they control. Sometimes, state statutes fail to leave room for these enterprising independent contractors, and pigeonhole them in roles, rules, and regulations that they neither need nor want, and in many cases fled the ordinary workplace to avoid.

We urge you to enact S.B. 664, which would bring Kansas in line with the federal government and the majority of states that provide a clear bright line test for establishing that direct sellers are independent contractors for unemployment compensation purposes.

Very truly yours,



Camille R. Comeau
General Counsel

4550 Spring Valley Road · Dallas, Texas 75244-3705 · (214) 386-1000 · Fax (214) 490-7573

2-15

REXAIR, INC.

3221 W. Big Beaver Road, Suite 200
Troy, Michigan 48084
Phone (810) 643-7222
FAX (810) 643-7676

February 19, 1996

VIA: FACSIMILE (913) 266-7374

Chairwoman Alicia Salisbury

Kansas State Senate

State House

300 SW 10th Ave.

Topeka, KS 6612-1504

Re: S.B. 664

Direct Seller Exemption from Unemployment Compensation

Dear Senator Salisbury:

Today I write to you on behalf of Rexair, Inc., manufacturer and distributor of the Rainbow® vacuum cleaner. Rexair, Inc. has manufactured and distributed the Rainbow vacuum cleaner through direct sales channels since 1936. Since the 1960's, Rainbow vacuums have been sold almost exclusively through direct sales to consumers in the home.

Independent distributors of Rainbow vacuums offer opportunities to tens of thousands of housewives, farmers, students, teachers, and hourly employees to supplement their income with part time direct sales. Those distributors also have many full time sales persons ("dealers") who support their families through Rainbow sales. Many of these individuals reside and work in rural or depressed areas in Kansas which provide few other options for self-directed part and full time jobs. In Kansas there are over 40,000 direct sellers. Nationwide, over six million people work in some type of direct sales.

In 1982, with the assistance of U.S. Senator Bob Dole, Congress passed the Tax Equity and Fiscal Responsibility Act (TEFRA), which among other things created Section 3508 of the U.S. Internal Revenue Code. Section 3508 establishes that for federal employment tax purposes, real estate agents and direct sellers are "non-employee" independent contractors. Kansas has already extended TEFRA-type independent contractor classification in the state code for real estate agents. Senate Bill 664 would extend very similar TEFRA-type classification to direct sellers. At least 26 other states specifically exclude direct sellers from application of their unemployment compensation laws, and more than half have done so by adopting TEFRA language.

As direct sellers, Rainbow dealers are considered to be independent contractors in all 50 states, including Kansas. In Kansas, however, this conclusion is reached by application of a vague and arbitrary common law test on a case-by-case basis. On occasion, Kansas

Re: Senate Bill 644, Direct Seller Exemption
February 19, 1996
Page 2

regulators have taken the position that some direct sellers are employees rather than independent contractors, giving rise to administrative proceedings involving needless expense for both the state and the independent distributor. Passage of S.B. 664 will avoid such expensive, arbitrary and errant decisions in the future.

Passage of S.B. 664 will not change the treatment of the Rainbow dealers in Kansas, who qualify as independent contractors under the common law test when properly applied. Rather, S.B. 664 will simply clarify their status as independent contractors exempt from the unemployment compensation laws, and help to avoid the public and private costs associated with misclassification by state regulators.

This bill will not impose any additional financial burdens on the State of Kansas. Passage of S.B. 664 should actually lower the costs of making appropriate determinations regarding direct sellers' status as independent contractors. In addition, conformity of direct sellers' status will add certainty to the lives of honest, hardworking small business people in your district and across the state. Please extend these constituents the same consideration already extended to real estate agents under Kansas law.

Thank you for your attention at the hearing in the Senate Commerce Committee tomorrow, Tuesday, February 20, and for your support for S.B. 664 when the bill comes up for final consideration.

Sincerely,



Kenneth A. Hook

Vice President & General Counsel

KAH/dls

Shaklee Corporation

Shaklee Terraces
444 Market Street
San Francisco, CA 94111-5325

Telephone 415/954-22016
Fax 415/954-2100

Evelyn Jarvis-Ferris
Vice President
Government Relations

February 16, 1996

The Honorable Alicia Salisbury
Chairwoman, Senate Commerce Committee
Kansas State Senate
State House
300 S.W. 10th Avenue
Topeka, Kansas 66612-1504

RE: Support for Senate Bill 664 relating to unemployment compensation

Dear Chairwoman Salisbury:

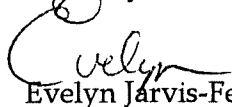
Thank you for scheduling a hearing on S.B. 664 on February 20, 1996. As you know, this bill would codify the direct sellers' independent contractor status for unemployment compensation purposes in Kansas. As I discussed with you in Monterey, Shaklee is supporting this legislation which will ensure the independent contractor status of our Distributors in Kansas.

Direct Sellers are specifically defined as independent contractors in federal law under the Tax Equity and Fiscal Responsibility Act (TEFRA) passed by Congress in 1982. Thirty states have adopted identical or similar statutes for unemployment insurance purposes to clearly establish the independent status of direct sellers in state law. Presently, Kansas classifies direct sellers as independent contractors using a common law test. Unfortunately, the common law test is subjective, lacks clarity and is an imprecise tool in making determinations on independent contractor status. S.B. 664 will help to remedy this situation.

Shaklee Distributors, like other direct sellers, truly do function independently running their own businesses. They make their own business decisions such as deciding the price of the products they sell, how many hours they work and how large of a business they want. In fact, many people decide to start a Shaklee business because it affords them the opportunity to work independently and be their own boss.

Thank you for your assistance on this issue, and we are looking forward to working with you.

Sincerely,



Evelyn Jarvis-Ferris
Vice President, Government Relations

WEST BEND
THE WEST BEND COMPANY
A PREMARK INTERNATIONAL COMPANY

February 16, 1996

Kansas State Senate
State House
300 SW 10th Ave.
Topeka, KS 66612-1504

RE: Kansas S.B. 664
Independent Contractor Status

Dear Senate Commerce Committee Member:

I am sending this fax to show my support for passages of Kansas S.B. 664.

There are over 40,000 direct sellers in Kansas. Under current Kansas law, these direct sellers are classified as independent contractors by using the antiquated and arbitrary common law test. Kansas is in the clear minority of states that use the common law test to classify direct sellers as independent contractors.

In 1982, with the assistance of Senator Bob Dole, the federal Tax Equity and Fiscal Responsibility Act (TEFRA) amended section 3508 of the Internal Revenue Code to clarify direct sellers and real estate agents as "non employee" independent contractors for federal employment tax purposes. Since 1982, a majority of states have adopted the TEFRA definition for state taxation of independent contractors. Real Estate agents in Kansas are classified in the state code as TEFRA type independent contractors. Direct sellers lack any such status in the Kansas code.

The language of S.B. 664 would clarify the status of direct sellers by conforming state law to federal law treating direct sellers as independent contractors. Therefore S.B. 664 should be enacted to avoid a continuing subjective application of the common law. S.B. 664 would provide the clarity and consistency needed to give Kansas regulators the guidance as to who is and who is not an independent contractor. S.B. 664 will bring uniformity to the classification of direct sellers.

Sincerely



Randy H. McColley
Regional Manager

cc: Richard L. Fannin
Direct Selling Association ✓



February 19, 1996

The Honorable Alicia Salisbury
Kansas State Senate
State House
300 SW 10th Avenue, Room 120-S
Topeka, KS 66612-1504

RE: KANSAS S.B. 664

Dear Chairwoman Salisbury:


Vector Marketing Corporation fully supports Kansas S.B. 664 which would clarify the status of direct sellers as independent contractors for unemployment compensation purposes.

We are one of many direct sales companies with direct sellers in Kansas. In Kansas, direct sellers are classified as independent contractors using the common law test. This test is vague, subjective and often applied arbitrarily. Because of this, it provides little guidance to direct sellers conducting their own small businesses. Additionally, it provides little guidance to state regulators who must then rely on individual discretion to determine who is and who is not an independent contractor.

The majority of states already classify direct sellers as statutory "non-employee" independent contractors for a variety of tax purposes. In 1982, with the aid of Senator Bob Dole, the federal Tax Equity and Fiscal Responsibility Act (TEFRA) amended Internal Revenue Code Section 3508 which clarified the "non-employee" independent contractor status of direct sellers and real estate agents for federal employment tax purposes. Since 1982, most states have followed the direction of the federal government. In fact, real estate agents already enjoy a TEFRA-type independent contractor classification in Kansas.

S.B. 664 is a technical and non-substantive change in state law. Vector Marketing Corporation respectfully requests that S.B. 664 be enacted to prevent the subjective application of the common law test and provide the direction, clarity, and consistency which is needed by direct sellers and state regulators in Kansas.

Sincerely,


Christopher J. Panus
Legal Affairs Manager

cc: Robert J. Haig, John W. Whelpley, Direct Selling Association

Scott Fetzer

February 19, 1996

Via Facsimile: (913) 296-6718

Chairwoman Alicia Salisbury
Senate Commerce Committee
Kansas State Senate
State House
300 SW 10th Avenue, Room 120-S
Topeka, KS 66612-1509

Re: Kansas Senate Bill 664

Dear Chairwoman Salisbury:

By way of introduction, I am in-house counsel for the Kirby Company, a Division of The Scott Fetzer Company. As you may know, Kirby manufactures premium home cleaning systems which it sells to independent distributors. Our distributors in turn market the machines directly to consumers. Kirby distributors are only part of the 40,000 direct sellers in Kansas. The distributors work at their own pace and for their own profit. Their success is based entirely upon their own efforts.

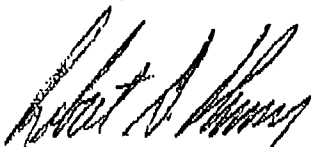
Both Federal law and the law in an overwhelming majority of states recognize direct sellers as independent contractors. Kansas, on the other hand, is in the clear minority of states that still use the common law test to classify direct sellers as independent contractors. The common law test is vague, subjective and arbitrary. As a result, it provides little guidance to the tens of thousands of direct sellers in Kansas as well as Kansas regulators.

We urge you to support Senate Bill 664. It is a technical, non-substantive change in state law. Senate Bill 664 will provide clarity and consistency to the business community and state regulators.

The language of Senate Bill 664 is neither new nor unique. In fact, in 1982, with the assistance of Senator Bob Dole, Congress adopted the Federal Tax Equity and Fiscal Responsibility Act ("TEFRA") which in part amended Section 3508 of the Internal Revenue Code. Senate Bill 664 mirrors the TEFRA language adopted by Congress. Since 1982 a majority of states have adopted the TEFRA definition for state taxation and general classification purposes. Kansas, on the other hand, has only adopted TEFRA type independent contractor classification for real estate agents.

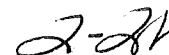
Should you have any questions or need additional information regarding direct sellers or Senate Bill 664, please do not hesitate to call or write.

Sincerely,



Robert G. Shumay
Attorney

RGS/clb 3088R-20





P.F. Collier
919 Third Avenue
New York, NY 10022
Tel: (212) 508-6000
Fax: (212) 508-6160

via fax

February 19, 1996

Kansas State Senate
State House
300 SW 10th Avenue
Topeka, KS 66612-1504

Attn: Chairwoman Alicia Salisbury (R-20)
Room 120-S

Please support S.B. 664, which will clarify current Kansas law as it applies to direct sellers by conforming state law to federal law. As you know, federal law treats direct sellers as independent contractors for unemployment compensation purposes.

There are over 40,000 direct sellers in Kansas. These direct sellers are classified as independent contractors under the common law test. Kansas is in the clear minority of states that use the common law test to classify direct sellers as independent contractors.

Thank you for supporting S.B. 664.

Sincerely,

Robert J. Yardis
Vice President
Human Resources

cc: DSA

DOUBLE D ADVERTISING
4926 JOHNSON DRIVE
ROELAND PARK, KANSAS 66205
(913) 831-9686

February 19, 1996

Members of the Senate Commerce Committee
Kansas State Senate
State House
300 SW 10th Ave.
Topeka KS 66612-1504

FAX 913-296-6718

Dear Senator:

RE: S.B. 664
Independent Contractor Status

By way of introduction, our company is located in Kansas. We supply merchandise to independent contractors, who carry on their own business as direct sellers within the State. Our goal is to provide as many individuals as possible with the opportunity to start a business of their own, and in doing so, become honest, independent business people, and very much a part of a vital and growing industry. The degree of success of their business is totally dependent upon their enthusiasm, initiative and the manner in which they choose to conduct their business.

We understand that Bill S.B. 664, Independent Contractor Status, is presently before the Senate Commerce Committee for consideration. The purpose of our letter today, is to make you aware of the fact that we strongly support the passage of this Bill, for several reasons, and hope that with your support, this Bill will be given the priority status which it deserves.

The bill recognizes and preserves the independent contractor status of direct sellers in Kansas, and is consistent with the position taken by Congress in 1982 when it passed the Tax Equity and Fiscal Responsibility Act which amended Section 3508 of the U.S. Internal Revenue Code. Direct sellers were recognized as independent business people, carrying on their own business, and therefore, entitled to the "Non-Employee" status. It is our understanding that in many States, direct sellers are excluded from unemployment compensation laws, to ensure consistency and clarity in the treatment of direct sellers.

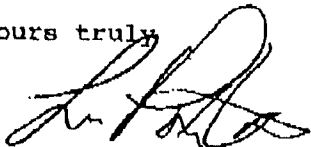
2-23

We do not believe that the passage of the bill will, in any way, be detrimental to, or change the business relationship or treatment of direct sellers within Kansas. We feel it will, in fact, solidify that relationship.

We also believe that passage of this Bill will avoid any confusion in the future, particularly as far as regulators are concerned, who have, in the past, taken the position that some direct sellers are employees, rather than independent contractors. Adoption of the amendment, and thereby avoiding any potential confusion, should not cause any additional financial burdens on the State, but should, in fact, reduce the overall costs in attempting to determine the direct sellers' status.

Thank you for your time, and we sincerely hope that you will join us in supporting the passage of Bill S.B. 664.

Yours truly,



Lisa Paxton, President

ATTN : Betty Bomar
State Commerce Committee

RE : S.B. 664

FROM : Lisa Paxton
Double D Advertising
4926 Johnson Drive
Roeland Park, Kansas 66205
(913) 831-9696

225



DIRECT SELLING ASSOCIATION

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

Why S.B. 664 Is Important for Direct Sellers and for Kansas

What is a direct seller? Direct sellers are independent businesspeople who sell their products and services by personal presentation and demonstration, primarily in the home. Many direct sellers sell the products of some of the nation's most well-known commercial names. Three of the nation's 150 direct selling companies are located in Kansas, including Fuller Brush. These three companies employ over 500 people in Kansas and provide income earning opportunities for tens of thousands of people nationwide.

There are over 40,000 direct sellers in Kansas. These direct sellers are classified as independent contractors under the common law test. Kansas is in the clear minority of states that use the common law to classify direct sellers as independent contractors

- Common Law.....9 States (*including Kansas*)
- ABC Test.....14 States
- Direct Seller Exemption.....27 States and Federal Law

Because the *common law test is vague, subjective and arbitrary*, it provides little guidance to tens of thousands of small businesspeople in Kansas. Similarly, Kansas regulators are also provided little guidance as to who is and who is not an independent contractor.

S.B. 664 is a *technical and non-substantive change* in state law. The vast majority of direct sellers are currently independent contractors under the common law test. However, S.B. 664 would provide clarity and consistency to the business community and the state regulators.

The *language* of S.B. 664 is *neither new nor unique*. With the assistance of Senator Bob Dole, in 1982, the federal Tax Equity and Fiscal Responsibility Act (TEFRA) amended section 3508 of the Internal Revenue Code to make clear that for federal employment tax purposes, direct sellers and real estate agents were "non-employee" independent contractors. Since 1982, a majority of states have adopted the TEFRA definition for state taxation and general classification purposes. In Kansas, real estate agents enjoy a TEFRA-type independent contractor classification in the state code. Direct sellers lack any such recognition in the Kansas code.

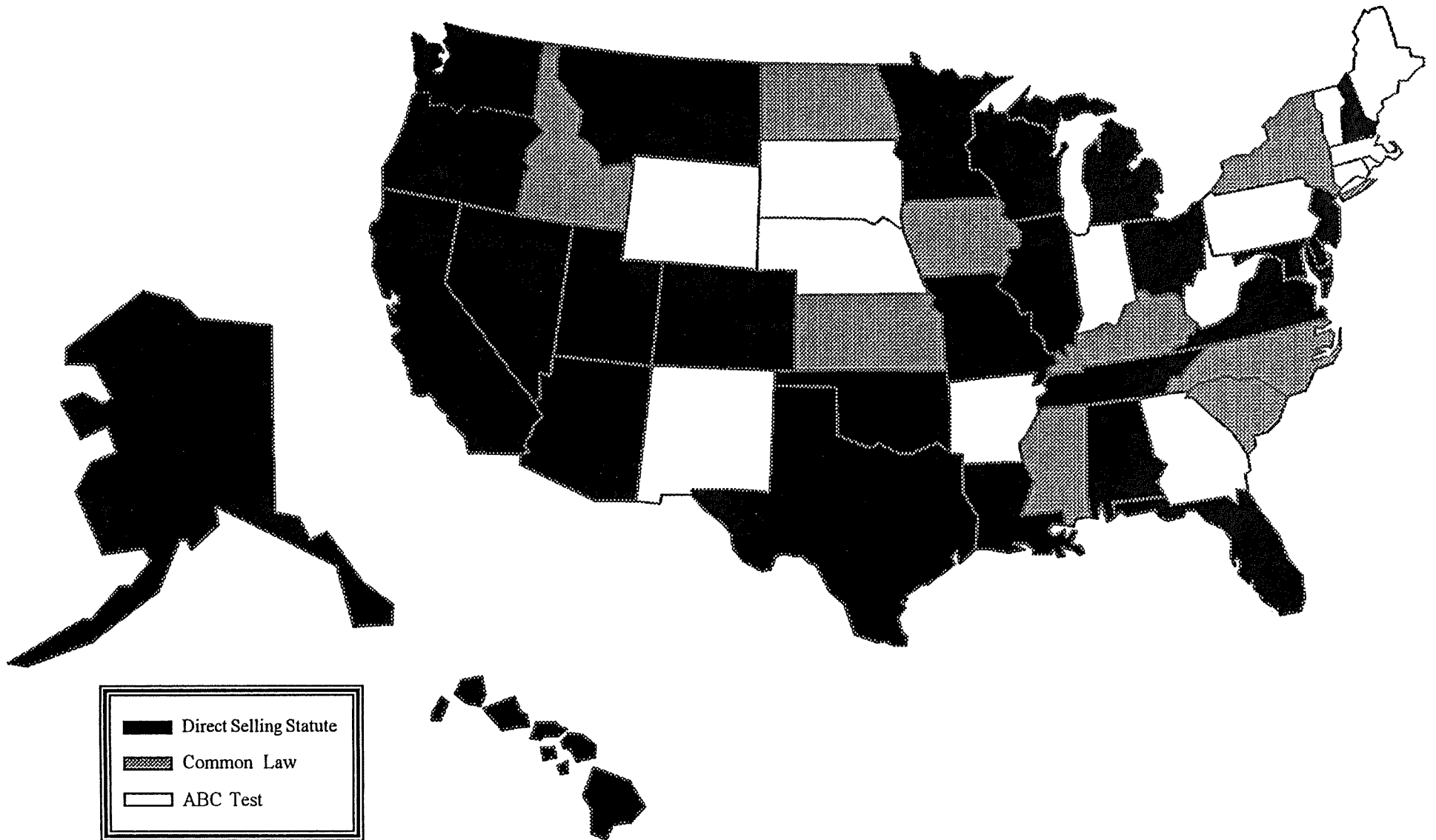
To avoid the continuing subjective application of the common law, S.B. 664 should be enacted to codify long-standing practices and bring uniformity and constancy to the classification of direct sellers.

*Senate Commerce Committee
February 20, 1996*

h:\ksinfo

Attachment 3 thru 3-2

Unemployment Compensation Laws - Classification of Direct Sellers



3-2

REPORT TO SENATE COMMERCE COMMITTEE

ON SENATE BILL NO. 657

FEBRUARY 20, 1996

By Philip S. Harness, Director of Workers Compensation and
Chairman of Workers Compensation Advisory Council

The Workers Compensation Advisory Council has not had an opportunity to review Senate Bill No. 657 in order to provide a recommendation to the Legislature.

As Director of the Division of Workers Compensation, I would hastily point out that the 1993 Workers Compensation Fee Schedule was based upon medical fee data as old as 1991. It is my understanding that it was reviewed, pursuant to statutory mandate, and that no revisions were found to be necessary in 1994. In 1995, after some policy discussions with my staff, a new schedule was drafted, two (2) meetings of the Maximum Medical Fees Advisory Panel were held, and the administrative regulation process has been completed in anticipation of a March 6, 1996, public hearing.

SB 657, as drafted, would alter the present statute in the following two (2) ways:

1. In place of annual review, there is proposed to be annual review and revision.
2. The Maximum Medical Fees Advisory Panel would select a consultant to provide research and analysis to the Advisory Panel.

Both of these changes would require the expenditure of funds to a medical fee consulting firm. While the Division is not necessarily afraid of a consulting firm overseeing our work, it may require us to use the relative values and conversion factor approach to the medical fee schedule, rather than reviewing each medical procedure, line by line, as we do now.

As an explanation, the schedule of maximum medical fees is currently set up by CPT codes, in which a particular number is assigned to each medical cost. For example, there is a particular number assigned to an office visit. Currently, Division employees examine each of those fees against statistical data showing the lowest cost for that office visit in Kansas, the highest cost, and the cost at the 50, 60, 70, 80 and 90 percentile of billed charges. Between the Advisory Panel and the staff, a fair number is suggested. Doctors in Kansas are restricted to charging their

1

*Senate Commerce Committee
February 20, 1996*

Attachment 4 thru 4-2

usual and customary fees. They are paid at the fee schedule level only if a billed charge is at or greater than the maximum fee allowed by the schedule.

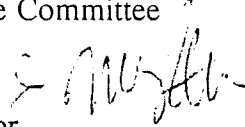
The Medical Fee Advisory Panel opted for this line by line approach over the other commonly used approach incorporating relative values and conversion factors. For example, in the surgical area, an appendectomy would be assigned a relative value of \$X, and all other surgical procedures would be a multiple of X, depending on complexity, etc. If X was assigned a value of \$500, then updating the medical fee schedule would arguably be a much simpler event, as the multipliers in the example would foreseeably remain the same, with cost drivers such as increased overhead, etc., being aimed at "X." Any increases would be a debate over the appropriate value of "X." It would be these types of cost drivers that the bill is focusing upon in the proposed change to K.S.A. 44-510(a)(4)(C) wherein the Director shall consider U.S. Department of Labor medical cost trends.



KANSAS MEDICAL SOCIETY

623 SW 10th Ave. • Topeka, Kansas 66612 • (913) 235-2383
WATS 800-332-0156 FAX 913-235-5114

February 20, 1996

TO: Senate Commerce Committee
FROM: Jerry Slaughter 
Executive Director
SUBJECT: SB 657; concerning the medical fee schedule

The Kansas Medical Society appreciates the opportunity to appear today in support of SB 657, which was introduced at our request. The bill requires the director of workers compensation to *revise* the medical fee schedule annually. Current law just requires that the schedule be reviewed annually. In addition, the bill provides that an outside consulting firm be utilized to help establish appropriate levels of fees. We requested the bill for the following reasons:

- (1) the fee schedule currently in effect was adopted in 1993, based on data that was already over two years old, resulting fee levels today that are in some cases 5 years out of date;
- (2) repeated attempts by the provider community to get previous directors to even review, let alone revise, the fee schedule were unsuccessful;
- (3) if fees for treating injured workers fall well below the rest of the commercial marketplace, health care providers will restrict the numbers of workers compensation patients they see, not unlike the unfortunate situation that exists in the Medicaid program, which has very severe access problems;
- (4) it is basically unfair for the business community, and their insurers, to expect health care providers to subsidize their insurance costs through unreasonable reimbursement policies. We pointed out several years ago that cost containment was better achieved through effective utilization review, since it deals with the volume and intensity of services provided, which has a much greater impact on overall costs than the price of an individual service. The goals of the business community and insurance industry are much more reachable, and equitable, by paying providers a fair fee for the services rendered, combined with good utilization review.

The change at the bottom of page 2 and top of page 3 provides that an outside consulting firm (of which there are several) be hired to assist in the collection and analysis of the data necessary to do the revision.

We are aware of the efforts of the current director and his staff to implement revisions this year, and we are appreciative. However, directors change over the years, and future directors may not feel inclined revise the fee schedule, no matter how out of date it gets. For the reasons we outlined, we respectfully request that SB 657 be recommended for passage. Thank you.

Senate Commerce Committee
2-20-96.

Attachment 5

**The Business & Industry Health Group
Employer Health Services**



HEALTH MIDWEST

TESTIMONY ON SENATE BILL #657

Presented by: Peggy Walker, President
Occupational Medicine Division
Employer Health Services
dba: The Business and Industry Health Group
Occupational Medicine Associates

Before Senate Commerce Committee
Senator Alicia Salisbury, Chair

February 20, 1996

I represent a company that owns and operates eight (8) occupational medicine clinics in the Kansas City area. We are pleased to serve over 3,000 companies and treat over 600 patients per day in our facilities. As providers in the worker's compensation arena, we are proponents of Bill #657.

The fee schedule was placed into effect in November of 1993. At its inception, the fee schedule was not in keeping with the economy as it was utilizing CPT codes from 1991 and fees that were provided in 1992.

After many letters and phone calls from insurance companies and providers, the fee schedule came under review in 1994. After a public meeting we were encouraged to hear revisions were anticipated by November of 1994. Unfortunately, that timeframe was not met.

We are currently looking at our next public meeting in March of this year and anticipate revisions soon thereafter.

Throughout this process, the Consumer Price Index, Medicare and Managed Care programs have continued to increase. Providers of occupational medicine, however, have continued to fall behind the health care industry and general economy in terms of reimbursement.

"Keeping Your Business Healthy"

Senate Commerce
2-20-96

8511 Hillcrest, Suite 320 ■ Kansas City, MO 64138 ■ 816/361-7755 ■ FAX 816/361-8660

6400 Prospect, Suite 333
Kansas City, MO 64132
816/523-7770
FAX 816/523-5302

720 Oak Street
Kansas City, MO 64106
816/842-1146
FAX 816/283-3603

6300 Enterprise Road, #110
Kansas City, MO 64120
816/231-3611
FAX 816/483-1150

15325 W. 95th Street
Lenexa, KS 66219
913/894-6600
FAX 913/894-0015

Attachment thru 6-6

We feel in order to assure proper reimbursement under the Kansas Fee Schedule it must be mandated by law that a revision be made annually and implementation be mandated at a specific time.

If this is not accomplished the Worker's Compensation System will experience the loss of quality providers in the treatment of work related injuries. As a result the State of Kansas will lose those providers who have traditionally worked with the employers and insurance companies in the state to hold down costs in workers compensation.

One year ago, we presented data showing that with the rate of increase in the CPI-Physician Services, the Kansas Fee Schedule for worker's compensation was already 10-11% behind the actual charging practices of physicians and 6% behind the CPI - all items.

We are now into another year experiencing reimbursement from the Kansas Fee Schedule that is not reflective of General Price Increases let alone the price increases in physician services. This bill must be passed in order to keep the schedule in step with the standards set by other financiers of health care and meet what we feel was the original intent of the Kansas Legislation in the implementation of a fee schedule.

We are asking your assistance in maintaining quality Workers Compensation Services to Kansas Employers and their employees.



Peggy P. Walker
President

Why the Kansas Workers Compensation Fee Schedule Should Be Updated

Throughout our history, particularly during the twentieth century, our economy has suffered from inflation. The price of goods and services has continued to escalate year after year. Fortunately, in recent years the rates of inflation have been moderate. Nonetheless, the price of goods and services has risen virtually ever year.

The price of goods and services within certain industries has risen at a much more dramatic rate than the overall rate as expressed by the Consumer Price Index-All Items. Healthcare has been one of those inflationary industries. Various hypotheses have failed to explain the reasons for these higher than normal inflationary trends. However, it remains a fact that the Consumer Price Index-Physician Services has risen at a greater rate than the Consumer Price Index-All Items. Below is a comparison.

Year	Consumer Price Index All Items	Consumer Price Index Physician Services
1991	4.2%	6.0%
1992	3.0%	6.3%
1993	3.0%	5.2%

Statistics based on a twelve month rolling average of the Consumer Price Indexes published by the U.S. Department of Labor, Bureau of Labor Statistics.

The financiers of healthcare such as insurance companies, managed care organizations, HMO's and various state and federal government agencies, have seen the price of healthcare services rise at a steeper rate than overall inflation. However, given that our healthcare system operates in a free market economy, they have historically recognized that healthcare fees must be adjusted upward in order to maintain a supply of high quality healthcare professionals. Attachment A reflects examples of physician fee schedule increases for the last two years in the Greater Metropolitan Kansas City area.

In November of 1993, the Division of Workers Compensation implemented a fee schedule for physicians in the State of Kansas. This fee schedule was based primarily on the charging practices of physicians during 1992. The Kansas statute mandated that the Director of the Division of Workers Compensation review the fee schedule. As the close of the first year of the Kansas Fee Schedule, the Director has decided that there will be no overall increase to the fee schedule.

For professional providers of healthcare services what does this mean? Assuming the rate of increase in the Consumer Price Index-Physician Services is the same as in 1993, this means the Kansas Fee Schedule for worker's compensation services mandated by the State of Kansas will be 10%-11% behind the actual charging practices of physicians. The reimbursement for professional physician services will be 6% lower than the general price of goods and services as expressed by the Consumer Price Index-All Items. More importantly, the State of Kansas is artificially holding down reimbursement for worker's compensation services far below prices established by the Federal government, insurance companies, managed care organizations and HMOs.

The current Kansas Fee Schedule does not provide full reimbursement of most physician's fees. This was a conscious decision designed to provide reimbursement for "reasonable fees". Assuming the Kansas Legislature intended the Kansas Fee Schedule to reflect "reasonable fees" in 1993 and 1994, it is difficult to believe that it did not intend for the Kansas Fee Schedule to provide "reasonable fees" in 1995.

There is no question that healthcare costs are too high. Innovative systems are being developed to slow the dramatic price increases for healthcare services. The Consumer Price Index-Physician Services has gone up approximately 10%-11% since 1992. General inflation has gone up 6%, as expressed by the Consumer Price Index-All Items.

Managed Care Programs

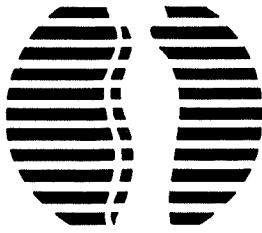
Fee Schedule Updates

	1993		1994	
	<u>Primary Care</u>	<u>Other</u>	<u>Primary Care</u>	<u>Other</u>
Largest Health Carrier	9.0% *	6.3% *	* 6.0%	* 1.0%
Medicare	.8%	.8%	7.9%	5.3%
Preferred Health Professionals	* 0%	* 0%	10.0%	10.0%
Medicare Proposed 1995	7.9%	5.2%		
Consumer Price Index-Phy Svses		7.9%		5.1%
Producers Price Index				2.5%
CPI - all items		3.0%-3.5%		

*RVRBS implemented

- * If fees are not adjusted annually for inflation we cannot continue to operate our business.

Maintaining competitive salaries to keep qualified medical staff - our suppliers have increases each year.
- * If providers specializing in occupational medicine are not available - employers and insurance companies will have to return to the practice of sending their employees to emergency rooms for injury treatment. This is not only more costly (emergency room charges are higher than our charges) but the employee is lost in the healthcare system for future referral and return to work (case management).
- * Management of the case (attention to restricted duty - return to work in a timely manner) is the strongest benefit to our companies. It is not the individual medical fees charged that are the problem to employers but "lost time" from work. When the employee is treated in an emergency room and then referred out to other physician specialists for continued care the case gets lost.
- * Waiting time in emergency room facilities are considerably longer (costly for the employer as the employee is "on the clock")
- * Employee is unhappy due to prolonged wait and is more likely to be angry at employer and workers compensation system leading to litigation of the claim. Many employees obtain services of an attorney early on with an injury.
- * Employers have more of a personal communication line with our physicians and staff to control the case.
- * Due to mandated forms (paperwork) and litigation issues many physicians have already opted not to accept workers compensation cases.



Kansas Chiropractic Association

Before the Senate Commerce Committee
February 20, 1996

Testimony of Joe Furjanic
Executive Director, Kansas Chiropractic Association
In Support of SB 657

Madam Chairman and members of the Committee, thank you for this opportunity to speak in support of SB 657.

The key concept of this bill is that it calls for an annual revision of the Workers' Compensation Medical Fee Schedule. An annual revision of the fee schedule builds equity and fairness into the Workers' Compensation system. Letting health care providers know that the fee schedule will be revised annually will go a long way to assuring that an adequate pool of providers exist to treat injured workers. Health care providers, just as anyone else, want to know that they will be fairly compensated for their services.

The present system potentially permits several years to elapse before revision occurs. This is not fair to the health care providers who are willing to accept what the fee schedule pays.

Thank you for your time. I will be happy to answer any questions you may have.



Senate Commerce
2-20-96

Kansas Association of Osteopathic Medicine

Harold E. Riehm, Executive Director

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February 19, 1996

To:  Chairperson Salisbury and Members, Senate Commerce Committee
From:  Harold Riehm, Executive Director, Kansas Association of Osteopathic Medicine
Subject: Testimony in Support of S.B. 657

Thank you for this opportunity to appear in support of S.B. 657. KAOM was involved in the negotiations among medical providers that led to the requested introduction of this Bill. We think it a reasoned and reasonable approach to making sure medical fee reimbursement levels remain current.

Previous deliberations and enactments of the Kansas Legislature suggest your interest in keeping medical fee reimbursement levels fair and current. Unfortunately, that has not been the case, as it has been several years since adjustments (comprehensive) have been made.

We think it is important to medical providers that the fee schedule be kept current as it is to all other participants in the program that frequent adjustments be made to keep rates, etc. in step with the marketplace--insurance companies, businesses, labor, recipients of benefits and the State.

We think what is proposed in S.B. 657 is a workable program for annual review and revision of rates. The proposal for an outside consulting firm to assist the advisory panel and the Division, is made to facilitate the process.

We want to express our appreciation for the new leadership of the Division. They have been more attentive to revision of medical fee schedules--by far--than the previous leadership. Shortly after the change in leadership, steps were made to revise the fee schedule. Changes now await public hearing and implementation.

S.B. 657 is simply an effort to guarantee that such revision occur on an annual basis with professional and provider input to that decision making process.

Thank you for this opportunity to present our views.

Senate Commerce
2-20-96
Attachment 8