

Approved: March 20, 1997  
date

## MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 19, 1997 in Room 123-S of the Capitol.

Members present: Senators Salisbury, Barone, Brownlee, Donovan, Feleciano, Jordan, Ranson, Steffes, Steineger and Umbarger.

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:  
Jerry Lammers, Managing Telecommunications Auditor/Analyst, Kansas  
Corporation Commission  
Whitney B. Damron, Kirby Company of Winfield  
Representative Al Lane  
Saul Kass, House of Lloyds, Overland Park  
Paul Bicknell, Chief of Contributions, Department of Human Resources

Others attending: See attached list

Upon motion by Senator Jordan, seconded by Senator Feleciano, the Minutes of the March 18, 1997 Meeting were unanimously approved.

### **HB 2314 - Use of Kansas Universal Service Fund**

The Chair distributed to the Committee an additional statement provided by Kendall Mikesell. Mr. Mikesell, in his statement, presented information on monthly costs of telephone service in rural areas of the state. Mr. Mikesell related that Southwestern Bell Telephone Company compared their average monthly billings and the average monthly billings of six independent telephone companies. The comparison illustrated the similarity of customers whether urban or rural and whether the customer is served by Southwestern Bell or by an independent company. Mr. Mikesell provided information obtained from independent local exchange companies providing an estimated amount of intrastate monthly billings for their customers. The information was based on the number of access lines and the range of average monthly billings. Attachment 1

Jerry Lammers, Managing Telecommunications Auditor/Analyst, Kansas Corporation Commission, stated the Commission did not dispute the numbers. Mr. Lammers informed the Committee the 1996 Act was to even competition through rate rebalancing and to lower intrastate toll rates for rural areas. Southwestern Bell customers have experienced a 19% reduction in intrastate toll rates. Mr. Lammers stated the Corporation Commission when regulating universal service, mirrored the federal regulation which includes only single line residential customers and does not include multi-line business customers.

The Committee discussed whether the legislature intended to include multi-line business service in the "universal service" definition, whether the Kansas Universal Service Fund (KUSF) should be used for economic development, whether true competition can be achieved when a subsidy is in place. The Chair distributed a copy of the definition of "Universal service" as defined in the Telecommunications Act of 1996. Attachment 2

### **HB 2022 - Simplified employment security test for independent contractors**

Whitney Damron, representing Kirby Company of Winfield, testified in support of **HB 2022** exempting direct sellers from paying unemployment taxes. Mr. Damron stated independent dealers sign a contract assuming sole responsibility for payment of self-employment taxes, payment of federal, state or local income taxes, payment of any federal state or local quarterly taxes, and payment of self-employment social security taxes. Direct sellers are not on a payroll and therefore, should be exempted from unemployment

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 19, 1997.

taxes. Attachment 3

Representative Al Lane, testified in support of **HB 2022**. Representative Lane stated the Senate passed a similar bill last year; due to the "intense" lobbying, the House Business, Commerce and Labor Committee killed the bill. Attachment 4

Saul Kass, House of Lloyd, testified in support of **HB 2022**. Mr. Kass stated there are presently thirty-one states which exempt independent contractors from payment of unemployment taxes.

Paul Bicknell, Chief of Contributions, Department of Human Resources, stated the Department has no objection to **HB 2022**, and did not know the fiscal impact of **HB 2022**, inasmuch as the Department does not classify employers by "direct seller".

The hearing was concluded.

Senator Barone moved, seconded by Senator Steffes, that **HB 2022 be amended** on Page 12, line 26, by striking the word "~~section~~" and insert in lieu thereof the word "subsection" and **HB 2022** be recommended favorable for passage as amended. The recorded vote was unanimous in favor of the motion.

The meeting adjourned at 8:50 a.m.

The next meeting is scheduled for March 20, 1997.

# SENATE COMMERCE COMMITTEE GUEST LIST

DATE: March 19, 1997

NAME	REPRESENTING
Rob Hodges	Ks Telecom Assn
KENDALL S. MIKEBELL	SOUTHERN KANSAS TELEPHONE
Whitney Damron	Kirby Co. of Winfield
DVD GRANN	Kcci
Teresa Jennings	Direct Selling Assn.
JEFF RUSSELL	SPRINT
Tom Gleason	Independent Telecom Group
Al Kane	Ks State Rep.
John D. Linegar	SITA
Chuck Engel	Vector Marketing
Bill Sneed	SW Bell
DENNY KOCH	SW BELL
Meggan Griggs	Keeney Law Office
Julie Hein	Hein & Wair
PAUL BICKWELL	KDHR
Roger Franke	KGC

**ADDITIONAL INFORMATION ON MONTHLY  
COSTS OF TELEPHONE SERVICE**

*Provided by Kendall Mikesell on behalf of thirty-five small  
independent telephone companies of Kansas  
March 19, 1997*

We do not feel that the numbers presented yesterday by the KCC staff fairly reflect the customers' cost of monthly telephone service in rural Kansas.

During March 1996, Southwestern Bell Telephone Company developed some comparisons between their own average monthly billings and the average monthly billings of six independent telephone companies. The comparisons were developed during the legislature's consideration of HB 2728.

The comparisons illustrate how similar customers average monthly billings are, regardless of whether that customer is "urban" or "rural" and whether that customer is served by Southwestern Bell or served by an independent telephone company.

The six independent telephone companies compared are: Blue Valley, Pioneer, Rural, Wheat State, Cunningham, and Craw-Kan. The group represents a cross-section of Kansas independent telephone companies, both cooperative and privately held companies, in all geographic areas of the state.

For the independent companies, combining local service and intrastate toll, customers spent an average of \$36.06 per month. Southwestern Bell customers spent an average of \$36.28 per month.

Southwestern Bell also compared local rates and intrastate and interstate toll. Those numbers are also quite informative. Southwestern Bell customers paid a monthly average between \$53.00 and \$56.00 per month. The average for the customers of the six independent companies was \$52.00 to \$60.00 per month.

Rather than simply comparing the basic local rates of independent companies with the basic local rates of the large local exchange companies, the numbers outlined above compare what the customers of the respective companies actually pay for their monthly service. The amounts are remarkably similar.

Figures gathered following yesterday's Senate Commerce Committee meeting provide some additional information.

*Senate Commerce Committee  
March 19, 1997*

*Attachment 1-1 thru 1-2*

Independent local exchange companies were asked to provide an estimated amount of intrastate monthly billings for their customers. The companies were not readily able to separate business from residential customers, so the amounts below include both classifications of customers. This would explain why these amounts are slightly above those on the preceding page.

The amounts combine the following segments of the customers' monthly billings: local rates, additional local rate amounts (tone dialing, vertical services), intrastate toll, and the federal end-user common line (EUCL) charge.

To protect the information from potential competitors, the amounts provided are being combined into groups according to the size of the independent company. Those numbers are:

<u>Number of Access Lines</u>	<u>Range of Average Monthly Billings</u>
under 500	\$45.14 - \$59.28
501-3,000	\$41.00 - \$53.37
3,001-7,000	\$41.25 - \$62.64
over 7,000	\$40.41 - \$41.11

If individual Senators wish to have more specific information about the individual companies included in the amounts listed above, that information can be provided. Again, in the interest of not providing valuable information to a potential competitor, that company-specific information has not been provided herein.

(l) "Rural telephone company" has the meaning ascribed to it in the federal act, excluding any local exchange carrier which together with all of its affiliates has 20,000 or more access lines in the state.

(m) "Telecommunications carrier" means a corporation, company, individual, association of persons, their trustees, lessees or receivers that provides a telecommunications service, including, but not limited to, interexchange carriers and competitive access providers, but not including local exchange carriers certified before January 1, 1996.

~~(n)~~ (n) "Telecommunications public utility" means any public utility, as defined in K.S.A. 66-104, and amendments thereto, which owns, controls, operates or manages any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages, as defined in K.S.A. 66-104, and amendments thereto, *or the provision of telecommunications services in or through throughout any part of Kansas.*

~~(b)~~ "Commission" means the state corporation commission.

(o) "Telecommunications service" means the provision of a service for the transmission of telephone messages, or two-way video or data messages.

(p) "Universal service" means telecommunications services and facilities which include: single party, two-way voice grade calling; stored program controlled switching with vertical service capability; E911 capability; tone dialing; access to operator services; access to directory assistance; and equal access to long distance services.

(q) "Enhanced universal service" means telecommunications services, in addition to those included in universal service, which shall include: Signaling system seven capability, with CLASS service capability; basic and primary rate ISDN capability, or the technological equivalent; full-fiber interconnectivity, or the technological equivalent, between central offices; and broadband capable facilities to: All schools accredited pursuant to K.S.A. 72-1101 *et seq.*, and amendments thereto; hospitals as defined in K.S.A. 65-425, and amendments thereto; public libraries; and state and local government facilities which request broadband services.

New Sec. 3. The commission shall:

(a) Adopt a definition of "universal service" and "enhanced universal service," pursuant to subsections (p) and (q) of section 2;

(b) authorize any requesting telecommunications carrier to provide local exchange or exchange access service pursuant to subsection (a) of section 4;

(c) on or before July 1, 1996, the commission shall initiate a proceeding to adopt guidelines to ensure that all telecommunications carriers and local exchange carriers preserve and enhance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers;

(d) review, approve and ensure compliance with network infrastructure plans submitted by local exchange carriers pursuant to section 6;

(e) review, approve and ensure compliance with regulatory plans submitted by local exchange carriers pursuant to section 6;

(f) on or before January 1, 1997, establish, pursuant to section 7, the Kansas lifeline service program, hereinafter referred to as the KLSP;

(g) initiate and complete a proceeding by January 1, 1997, to establish a competitively neutral mechanism or mechanisms to fund: dual party relay services for Kansans who are speech or hearing impaired; telecommunications equipment for persons with visual impediments; and telecommunications equipment for persons with other special needs. This funding mechanism or mechanisms shall be implemented by March 1, 1997;

(h) on or before January 1, 1997, establish the Kansas universal service fund pursuant to section 9, hereinafter referred to as the KUSF, and make various determinations relating to the implementation of such fund;

(i) authorize all local exchange carriers to provide internet access as outlined in section 12 and report on the status of the implementation

*Senate Commerce  
Committee*

*March 19, 1997*

*Attachment 2*

WHITNEY B. DAMRON, P.A.  
COMMERCE BANK BUILDING  
100 EAST NINTH STREET - SECOND FLOOR  
TOPEKA, KANSAS 66612-1213  
(913) 354-1354 ♦ 232-3344 (FAX)

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TO: Senator Alicia Salisbury, Chair  
and Members of the Senate Committee on Commerce

FROM: Whitney Damron  
on behalf of the Kirby Company of Winfield

RE: HB 2022 Simplified Employment Security Test for Independent  
Contractors

DATE: March 19, 1997

Good morning Madam Chair Salisbury and Members of the Senate  
Committee on Commerce:

My name is Whitney Damron, and I am pleased to appear before you today  
on behalf of my client, the Kirby Company of Winfield, in support of HB 2022, the  
Simplified Employment Security Test for Independent Contractors.

Although I am appearing before you today on behalf of the Kirby Company of  
Winfield, my comments are supported by the eight Distributors and eleven Area  
Distributors of Kirby products operating in Kansas.

By way of background, Kirby Distributors purchase their products directly  
from the Kirby Company whereas Area Distributors purchase their products directly  
from the Kirby Company or from a Kansas Distributor.

Kirby Distributors and Area Distributors resell or consign Kirby cleaning  
systems to independent dealers pursuant to terms and conditions of a written  
Independent Dealer Agreement. Included with my testimony is a sample copy of  
such an agreement.

*Senate Commerce Committee  
March 19, 1997*

*Attachment 3-1 thru 3-12*

Independent Dealers, in turn, resell Kirby cleaning systems to consumer end-users through in-home demonstrations. The only way a consumer can purchase a Kirby cleaning system is through an in-home demonstration which is designed to demonstrate all the facets and features of the Kirby cleaning system; to demonstrate the capacities of the system; and to build the value. An average demonstration takes between two to three hours.

Dealers earn profits (as opposed to commissions or wages) as measured by the difference between what the Dealer pays for or consigns the Kirby cleaning system for from the Distributor or Area Distributor and what he or she resells it for to the consumer end-user.

Although Kansas sales taxes are paid by the Distributor or Area Distributor based on the sale of the Kirby cleaning system (which enables the Distributor or Area Distributor to be certain that such taxes are paid), all local, state and Federal taxes are paid by the dealer as an independent business person.

Each Distributor and Area Distributor averages between five to ten dealers at any one time. Therefore, with a total of 19 Distributors and Area Distributors in the State of Kansas, we have approximately 150 total Kirby Dealers. Assuming an average number of sales throughout the State of Kansas to be 500 per month at an average sale of \$1,500.00, this amounts to gross taxable revenues of approximately \$750,000.00 per month.

Currently there are at least four Distributors and/or Area Distributors having their operations audited by the Kansas Department of Human Resources under the existing Kansas Common Law test for Direct Sellers and Independent Contractors. According to our information, Kirby Company of Wichita, Henderson & Associates in Hutchinson, Kirby Company of Newton and my client, Kirby Company of



Winfield have all been audited or received inquiries from the State of Kansas. My testimony includes summaries of those actions. A list of all Kirby Distributors and Area Distributors is also included with my testimony.

According to our information, thirty states have adopted a Direct Selling exemption for Independent Contractors. 22 of these states are modeled after Federal law, while 8 use variations based upon commission sales and in-the-home salesperson exemptions. A listing of all 50 states' statutes or references is included with my testimony.

HB 2022 is based on the Federal exemption. However, a balloon amendment was adopted in the House Business, Commerce and Labor Committee in efforts to address concerns raised with the bill last year. Opponents to the bill have historically expressed concerns regarding the potential for application to other areas of employment which are not being contemplated with this bill. While it is impossible to foretell the future, the House amendment is intended to restrict the Direct Seller language to those situations involving face-to-face meetings and sales.

We believe the bill before you is a fair balance for those engaged in face-to-face sales practices utilizing Independent Contractors and will help clarify the Direct Seller issue in Kansas. The Common Law test is cumbersome and confusing. The test also exposes Distributors and Area Distributors to potential liability for taxes, interest and penalties, not to mention liability implications, which can be substantial.

March 19, 1997

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HB 2022, as amended by the House Committee, was adopted by the full House on a vote of 120-4. HB 664 from 1996, which did not include the House amendment, was adopted by a vote of 29-10 in the Senate last session. With the House amendment, there were no opponents to the bill in the House hearings this session.

On behalf of the Kirby Company of Winfield and other Kirby Distributors and Area Distributors in Kansas, we thank you for your time and respectfully request your favorable consideration of HB 2022 in its present form. I would be pleased to stand for questions at the appropriate time.

Attachments:

- Listing of Kansas Kirby Distributors and Area Distributors.
- Summary of ongoing cases with KDHR.
- Sample copy of an Independent Dealer Agreement.
- State Directory of Legal Test for Unemployment Compensation.

January 15, 1997

Whitney B. Damron, P.A.  
Commerce Bank Building  
100 East Ninth Street - 2nd Floor  
Topeka, KS 66612-1213

Re: Direct Sales in Kansas

Dear Mr. Damron:

Please be advised that the following list represents active independent distributors and area distributors of Kirby cleaning systems in the State of Kansas. Distributors purchase product directly from the Kirby Company whereas area distributors either purchase their products directly from the Kirby Company or from a Kansas distributor. Daran Slack is in the process of becoming an active area distributor in Lyons and we do not have a street address at this time.

<u>Distributors</u>	<u>Address/Phone</u>
Darin & Bobbi Wendelin Kirby of Pittsburgh	119 West 5th Pittsburgh, KS 66762 316/232-2900 316/232-1389
Doug & Liz Brickey Dwitt Kirby Company	4930 East Lincoln Wichita, KS 67218 316/683-5871 316/683-2635 - fax
J.D. & Charlene Cole JDC Enterprises	2208 W. Wyatt Earp Blvd. Dodge City, KS 67801 316/227-2190 316/227-6130 - fax
Jim Lattin Kirby Company of Wichita	1905 E. Central Wichita, KS 67214 316/683-5673 316/262-6831 - fax
Bob & Rose Rein Kirby of Great Bend	1212 Main Street Great Bend, KS 67530 316/793-7714 316/793-5292 - fax

Whitney B. Damron, P.A.

January 15, 1997

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Lance & Carla Schroeder  
Kirby Vacuum Company

1506 Taylor Plaza  
Garden City, KS 67846  
316/276-7309  
316/628-8812 - fax

Randy & Kay Unruh  
Midwest Kirby Vacuum Co.

2406 Vine Street  
Hays, KS 67601  
913/628-8416  
913/628-8812 - fax

Chet Janzen  
Janzen Sales & Service

2834 S.E. Madison  
Topeka, KS 66605  
913/232-1747  
913/232-1774 - fax

Area Distributors

Address/Phone

Dale Henderson  
Henderson & Associates

327 N. Main  
Hutchinson, KS 67501  
316/663-6700

Jack Hensley  
Kirby Company of Winfield

121 College  
Winfield, KS 67156  
316/221-0590

Tim Moeder  
Colby Kirby Company

760 East 4th Street  
Colby, KS 67701  
913/462-3304

Ralph Peterson  
R. Peterson

2229 E. Kansas  
McPherson, KS 67460  
316/241-3111  
316/241-1020 - fax

Randy Rein  
R & R Enterprises

1329 E. 4th  
Hutchinson, KS 67501  
316/669-8018

Bill Varnadore  
P.A.W. Distributing

1300 E. Iron  
Sallina, KS 67401  
913/825-6038  
913/825-7120 - fax

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Whitney B. Damon, P.A.

January 15, 1997

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Bob Blair  
Bless Distributing

156 N. Main  
Haysville, KS 67060  
316/522-1062

Joe Closson  
AIS Enterprises

2300 Anderson Ave. B.  
Newton, KS 67114  
316/283-8620

Joe Gillen

1019 Commercial  
Emporia, KS 66801  
316/342-0355 - phone & fax

J.M. Cox  
AIA Distributing

1522 E. U.S. Hwy. 54  
Andover, KS 67002  
316/733-6288  
316/733-6290 - fax

Currently there are a number of distributor and/or area distributors having their operations audited by the Kansas Department of Human Resources under the existing Kansas common law test. These activities are briefly summarized as follows:-

1. Kirby Company of Wichita - an audit of all payroll records for dealers is currently underway and subpoenas have been issued requesting information on all payments made to dealers. Documents requested are "any and all sales materials/notebooks, contracts between sales representatives and company, sales representative demonstration outline, consignment agreements, sales contracts, invoices, price lists, sales brochures and advertisements, sales contract for buying on time, business cards for sales representatives and owner, sales contract for credit card purchases and any written policy and procedure provided to the sales representative. A copy of the test you use for sales, the mission statement, the price scheduling list, the 30 day optional dealer agreement for years 1992, 1993, 1994, 1995 and first quarter ending March 31, 1996 and second quarter ending June 30, 1996". Additionally, Kirby Company of Wichita has been asked to answer the 20 common law questions proposed by representatives of the Kansas Department of Human Resources and investigators are interviewing former dealers to ask the same "20" questions.
2. The same type of audit has taken place with Kirby Company of Winfield which resulted in the depositions and statements of 3 Kirby dealers as well as the area distributor himself. Following a finding by the Kansas Department of Human Resources that dealers do not meet the common law tests to establish an independent contractor relationship, this matter was appealed and hearings were held in Topeka which resulted in a November, 1996 recommendation by a hearing officer which affirmed the Department's October 19, 1996 determination that dealers were employees and not independent contractors of Kirby of Winfield. This matter had now been appealed in the District Court of Cowley County, Kansas.
3. Henderson & Associates in Hutchinson, Kansas has been asked to complete a survey information by the Department of Human Resources and a "Employer/Employee Relationship Worksheet" which asks questions on the 20 common law factors used by the State of Kansas is determining employer/employee relationships. Although this matter does not involve an actual claim made for unemployment compensation, it is the same type of information requested and the audits involving Kirby of Winfield and Kirby Company of Wichita and we can anticipate ongoing activity with Henderson & Associates.
4. A similar type worksheet has been requested from a former area distributor, Charles Enfield operating as Kirby Co. of Newton with a former location at 1019 South Washington, Newton, Kansas. At the request of the Department, responses have been provided to 34 questions concerning Kirby Co. of Newton's operations and its association with its dealers.

# KIRBY INDEPENDENT DEALER AGREEMENT

THIS AGREEMENT, made this ..... day of....., 19....., between  
....., with its  
principal place of business at .....  
....., (hereinafter called  
"Distributor") and .....  
of .....  
..... (hereinafter called "Dealer").

WHEREAS, Distributor is an independent authorized factory Distributor, or an independent Area Distributor nominated and approved by said Distributor, of Kirby vacuum cleaners, accessories and attachments (hereinafter referred to as "Kirby Systems") manufactured by The Kirby Company, a division of The Scott Fetzer Company;

WHEREAS, Distributor is engaged in the business of selling Kirby Systems at wholesale to independent Kirby Dealers for resale; and  
WHEREAS, the Dealer desires to engage in his/her own business of buying and reselling Kirby Systems to consumer end-users as an independent Dealer;

NOW, THEREFORE, the parties hereto agree as follows:

1. Distributor shall sell to Dealer, Kirby Systems in such quantities and at such times as Dealer may order during the term of this Agreement (unless Distributor is prevented from so doing by strikes, fires, accidents, lack or shortage of supply or other cause beyond its control), and Dealer shall purchase the same from Distributor at Distributor's place of business upon the terms and conditions expressed herein.

2. Dealer shall pay the full purchase price of all Kirby Systems purchased by Dealer from Distributor, together with any charges which may accrue from time to time to Dealer's account with Distributor. Dealer may, at Dealer's option, make payment for said Kirby Systems by paying cash or by selling and assigning with or without (as the case may be) recourse, to Distributor any conditional or time sale contract taken by Dealer upon the resale of such Kirby Systems, in which event Dealer will receive cash or credit on account of the purchase of said Kirby Systems to the extent of the balance upon said conditional or time sale contract, provided, however, that the financial institution shall have the right to reject any conditional sale contract not in conformity with the payment schedules acceptable to Distributor or when, in its judgment, the credit risk is undesirable. Under these circumstances, Dealer's profit or loss, on resale, will be measured by the difference between Dealer's wholesale cost and Dealer's retail price received from the consumer end-user. At Distributor's option, Distributor may consign Kirby Systems to Dealer for sale to the consumer end-user. In such event, all moneys collected by the Dealer will be held in trust for Distributor and Dealer's profit or loss shall be measured by the difference between the retail price received from the consumer end-user and the value established by Distributor and Dealer for the consigned Kirby Systems. In the event Dealer receives a used vacuum cleaner taken in trade on sales of Kirby Systems, Distributor, based on prior agreement with Dealer, will either purchase such used vacuum cleaners for cash, allow Dealer an amount therefor which shall be in accordance with the schedule of trade-in allowances maintained by Distributor thereby crediting such amount to the account of Dealer, or such used vacuum cleaners may be given to Distributor by Dealer without any such compensation.

3. Dealer fully understands that in order to protect and maintain The Kirby Company's trade name, reputation and competitiveness in the marketplace, Kirby Systems must be sold exclusively to consumer end-users by in-home demonstration.

4. Dealer certifies and agrees that any Kirby System consigned to Dealer will only be sold to consumer end-users after a personal demonstration which will be conducted in the home of the consumer end-user. Dealer understands that any other type of resale of Kirby Systems to wholesalers, retailers, or to anyone who is purchasing the product for the purpose of resale as opposed to consumer end-use, will constitute a breach of this Agreement and that Dealer's right to sell Kirby Systems will be terminated immediately.

5. Dealer is and at all times will operate as an independent merchant and is not subject to direction and control by Distributor with respect to his/her selling activities. Dealer is not an agent or employee of Distributor and shall have no authority to pledge, bind or obligate Distributor in any manner or for any purpose.

6. The relationship between Distributor and Dealer is that of vendor and vendee and all work and duties to be performed by Dealer shall be performed by him/her as an independent contractor, and Dealer shall not be treated as an employee with respect to any services for federal, state, local taxes and workers' compensation purposes. Dealer understands that he/she is a self-employed individual and not the agent or employee of Distributor and/or The Kirby Company and has no authority to bind or obligate Distributor and/or The Kirby Company Division, The Scott Fetzer Company in any way whatsoever. Dealer understands his/her duty as a self-employed individual to assume full responsibility for the payment of his/her federal, state and local income taxes and to pay self-employment social security taxes required by the Self-Employment Contribution Act ("SECA"). Dealer understands that he/she is solely responsible for:

(a) Payment of any self-employment taxes which may be due by virtue of earnings made as an independent contractor under the terms of this Agreement;

(b) Payment of any federal, state or local income taxes which may be due as a result of compensation earned as an independent contractor per the terms of this Agreement;

(c) Payment of any federal, state or local quarterly tax payments which may result from federal, state or local income taxes due; and

(d) Payment of self-employment social security taxes.

7. The only warranty applicable to Kirby Systems is that set forth in the Kirby Owner Care Program Booklet, as it may be amended from time to time. THE REMEDIES PROVIDED BY SAID LIMITED WARRANTY ARE EXCLUSIVE AND NEITHER THE KIRBY COMPANY NOR DISTRIBUTOR MAKE ANY WARRANTIES WHICH EXTEND BEYOND THE STATEMENTS AND DESCRIPTION OF THE FACE THEREOF. SAID LIMITED WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, AND OF ALL OBLIGATIONS OR LIABILITIES.

8. Dealer should keep such records as will show the name and address of the consumer end-user, the date of sale, and any other information reasonably requested by Distributor with respect to each Kirby System sold by Dealer, and should comply with all directives of The Kirby Company with regard to said limited warranty.

9. Dealer acknowledges that the Kirby trademarks, trade names and emblems are the property of The Kirby Company, and that it is expressly understood that no license to use said trademarks is granted herein to Dealer. It is further understood that any use by Dealer of any such trade name, trademark, or emblems shall be in the name of Distributor. Upon termination of this Agreement, Dealer shall immediately and permanently discontinue, and cease and desist from engaging in any activity which would tend to indicate that Dealer is affiliated with anyone who is authorized to sell or service Kirby Systems.

10. This Agreement supersedes all prior agreements, if any, between the parties, and it constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties.

11. There is no time limit imposed upon the parties to this Agreement. Either party may cancel this Agreement at any time upon notice to the other party. This Agreement shall automatically terminate in the event Distributor's distribution agreement by and between Distributor and The Kirby Company terminates or, in the event this agreement is between the Area Distributor and Dealer, in the event the Area Distributor's agreement with the Distributor terminates. Upon termination Dealer agrees to promptly pay any balance due to Distributor.

12. If any provision of this Agreement is unenforceable or invalid or is waived by Distributor, the Agreement shall be ineffective only to the extent of such provision, and the enforceability or validity of the remaining provisions of this Agreement shall not be affected thereby.

13. This Agreement shall not be assigned by either party except with the written consent of the other.

14. Dealer has read and understands his/her relationship to Distributor covered by the terms of this Independent Dealer Agreement, a copy of which Dealer has retained.

IN WITNESS WHEREOF, we have signed this Agreement on the day and year written above.

.....  
Dealer  
.....  
Street Number  
.....  
City/State  
.....  
Telephone Number  
.....  
.....  
Distributor or Area Distributor  
By .....  
Name  
.....  
Title

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**State Directory of Legal Test for Unemployment Compensation**

State	Direct Seller Statute (or Commission Exemption where indicated)	Common Law	ABC Test
Alabama	ALA CODE §25-4-10(b) (23) (Supp. 1993)		
Alaska	ALASKA STAT. §23.20.526(a) (20) (1995) Commission sellers		
Arizona	ARIZ.REV. STAT. ANN. §23- 617 (22)(1983) In the Home		
Arkansas			ARK. CODE ANN. §11-10- 210(e) (Supp. 1993)
California	CAL. UNEMP. INS. CODE §650 (West 1986)		
Colorado	COLO. REV. STAT. §8-70-136 (Supp. 1993)		
Connecticut			CONN. GEN. STAT. ANN. §31- 222(a) (1) (B)(West Supp. 1993)
Delaware	DEL. CODE ANN. tit. 19, §3302(10) (Supp. 1992)		
District of Columbia		D.C. CODE ANN. §46-101 (1981)	
Florida	FLA. STA. ANN. §443.036(19)(n)(21)(West Supp. 1993)		
Georgia			GA. CODE ANN. §34-8- 35(f)(Supp. 1993)
Hawaii	HAW. REV. STAT. §383- 7(21)(1995)		
Idaho		IDAHO CODE §72-1316 (SUPP. 1993)	
Illinois	ILL. ANN. STAT. ch.820 §405/212 (Smith-Hurd 1993)		
Indiana			IND. CODE ANN. §22.4-8-1 (Burns 1992)
Iowa	IOWA CODE ANN. §96.19(18)(g)(7)(b) (West Supp.1993)		
Kansas		KAN. STAT. ANN. §44-703(i) (Supp. 1991)	
Kentucky		KY. REV. STAT. ANN. §341.050(l)(Baldwin 1993)	
Louisiana	LA. REV. STAT. ANN. §23:1472(12)(H)(XVIII) (West 1985)		



State	Direct Seller Statute (or Commission Exemption where indicated)	Common Law	ABC Test
Maine	26 M.R.S.A. §1043 SUB. § 11(F)(38)CH. 612		
Maryland	MD. CODE ANN. Art.95A, §20(g)(6)(1990)		
Massachusetts			MASS. GEN. LAWS ANN. Ch. 151A §2 (West Supp. 1993)
Michigan	MICH. COMP. LAWS §421.50(S)(1995)		
Minnesota	MINN. STAT. ANN. §268.04(12)(15)(r)(West 1992)		
Mississippi		MISS. CODE ANN. §71-5-11(l)(Supp. 1992)	
Missouri	MO. ANN. STAT. §288.034(12)(16)(Vernon Supp.1991)		
Montana	MONT. CODE ANN. §39-51-204(l)(p)		
Nebraska			NEB. REV. STAT. §48-604(5)(1988)
Nevada	NEV. REV. STAT. ANN.§612.144(Michie 1992)		
New Hampshire	N.H. REV. STAT. ANN. §282-A:9(IV)(s)(1992)		
New Jersey	N.J. STAT. ANN. §43:21-19(i)(7)(O)(West Supp. 1993) (Commission Sales Exemption, in the Home)		
New Mexico			N.M. STAT. ANN. §51-1-42(F)(5)(Michie 1978)
New York <i>(Direct seller legislation is currently pending in New York)</i>		N.Y. LAB. LAW §511 (Mckinney 1988)	
North Carolina		N.C.GEN. STAT.§96-8 (1993)	
North Dakota		N.D. CENT. CODE §52-01-01(17)(e)(Supp. 1993)	
Ohio	OHIO REV. CODE ANN. §4141.01(B)(g)(Anderson 1991) (Commission Sales Exemption)		
Oklahoma	OKLA. STAT. ANN. tit. 40, §1-210(15)(v)(West Supp. 1994)		

State	Direct Seller Statute <small>(or Commission Exemption where indicated)</small>	Common Law	ABC Test
Oregon	OR. REV. STAT. §657.087 (1989) (Commission Sales Exemption in the home)		
Pennsylvania <i>(Direct seller legislation is currently pending in Pennsylvania.)</i>			PA. STAT. ANN. tit. 43, §753(l)(2)(1992)(A and C Test)
Puerto Rico	P.R. LAWS ANN. tit. 29, §702(k)(6)(1984)(Commission Sales Exemption)		
Rhode Island			R.I. GEN. LAWS §28-42-7 (1986)
South Carolina		S.C. CODE ANN. §41-27-230 (Law. Co-op. 1986)	
South Dakota			S.D. CODIFIED LAWS ANN. §61-1-11(1993)(A and C Test)
Tennessee	TENN. CODE ANN. §50-7- 207(c)(13)(Supp. 1993)		
Texas	Old Statute: TEX. LAB. CODE ANN. §52216-17 (West 1987)		
Utah	UTAH CODE ANN. §35-4-22-4(l)(s) (Supp. 1993)(Commission Sales Exemption)		
Vermont			VT. STAT. ANN. tit.21, §1301(16)(B)(Supp. 1993)
Virginia	VA. CODE ANN. §60.2- 219(21)(Michie 1992)		
Washington	WASH. REV. CODE ANN. §50.04.235(West 1990)(Commission Sales Exemption)		
West Virginia			W.VA. CODE §21A-1-3 (Supp. 1993)
Wisconsin	WIS. STAT. ANN. §108.02(15)(k)(16)(West Supp 1993) (Commission Sales Exemption, May Require Prior Approval)		
Wyoming			WYO. STAT. §27-3- 104(b)(1991)(A and C Test)

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REPRESENTATIVES

Testimony on HB 2022  
by Rep. Al Lane  
Senate Commerce Committee  
March 19, 1997

Thank you, Madam Chairman.

As you may remember, the Senate passed a "direct sellers" bill last year. It came to the House and after a delay in scheduling hearings, we heard the bill in the House Business, Commerce and Labor Committee. During that period of time, we were intensely lobbied by the Direct Sellers Association. So much so that we got "turned off." Even though it was a good bill it was killed in committee because of the lobbying effort.

After the meeting, I talked to Mr. Saul Kass, Vice President of Finance for the House of Lloyd, about what happened. I promised him that I would file the same bill this year which I did. I believe the only change from last year's bill was made in committee. It's on page 12, lines 23 through 26.

I hope the Senate Committee on Commerce will look favorably on HB 2022.

Thank you for your time and I'll be glad to stand for questions.

*Senate Commerce  
Committee  
March 19, 1997  
Attachment 4*