

House Labor Relations Committee
Public Hearing on HB 2400

April 23, 2008
1:00pm

Testimony of Dean Heyl
Direct Selling Association
on behalf of the PA Retailers' Association



DIRECT SELLING ASSOCIATION
1667 K Street, NW, Suite 1100, Washington, DC 20006-1660
202/452-8866 • Fax 202/452-9010
www.dsa.org

April 17, 2008

Labor Relations Committee
House of Representatives
The Commonwealth of Pennsylvania

Dear House Labor Relations Committee:

The Direct Selling Association (DSA) is the national trade association of the leading firms that manufacture and distribute goods and services sold directly to consumers. More than 200 companies are members of the association, including many well-known brand names. DSA wishes to express its concerns over House Bill 2400, which focuses on employees and independent contractors.

By way of background, direct sellers are not classified as employees under Pennsylvania's unemployment compensation statutes.

Pennsylvania Statutes Annotated, Title 43 Section 753 (4)(20) states:

(4) The word "EMPLOYMENT" shall not include—

(20) Services performed as a direct seller.

(A) The term "DIRECT SELLER" means any person (i) 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, or any similar basis which the United States Secretary of Treasury or his delegate prescribes by regulations for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment, or (ii) is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or otherwise than in a permanent retail establishment.

(B) To be a "DIRECT SELLER," (i) substantially all the remuneration whether or not paid in cash for the performance of the services described under this definition must be directly related to sales or other output, including the performance of services rather than to the number of hours worked, and (ii) the services performed by the person must be performed pursuant to a written contract between the person and the person for whom the services are performed and the contract provides that the person will not be treated as an employee with respect to the services for Federal tax purposes.

DSA's primary concern would be that direct selling companies would have to affirmatively show "to the satisfaction of the Department of Labor and Industry" that the independent distributor meets what is commonly known as the "ABC" independent contractor test.

On page 2, line 18, the bill states "... the individual shall be considered an employee of the party that pays the wages [emphasis added] ..." Direct selling companies do not pay wages to direct sellers. Instead, direct sellers earn compensation either from commissions or from the difference in selling products at retail after purchasing them at a wholesale price.

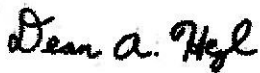
It should be noted that in addition to the above unemployment compensation section, direct sellers are classified as independent contractors for federal income tax purposes under Internal Revenue Code §3508. Furthermore, the standard direct selling sales consultant agreement contains a prominent notice that a direct salesperson is an independent contractor and clearly spells out the state and federal tax obligations of being a direct seller.

DSA believes that if House Bill 2400 were to apply to direct selling companies, it would have a chilling effect on individuals becoming direct sellers. Direct salespeople enjoy their independent contractor status, which provides the flexibility of setting their own hours in addition to the sense of pride they have owning their own businesses.

DSA supports the proper classification of employees and independent contractors. However, DSA believes that the independent contractor status established under the previously mentioned Pennsylvania unemployment compensation statute and Internal Revenue Code §3508 combined with written sales consultant agreements provide adequate safeguards for direct sellers.

For these reasons, DSA respectfully requests that House Bill 2400 be amended to clarify that direct salespeople are exempted from coverage. This will provide consistency with Pennsylvania's existing unemployment compensation law.

Sincerely,



Attorney and Director of Government Relations
Direct Selling Association
(202) 236-5985