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# DAN KNODL

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STATE REPRESENTATIVE • 24<sup>TH</sup> ASSEMBLY DISTRICT

**Assembly Committee on Labor  
Assembly Bill 449  
State Representatives Dan Knodl  
October 23, 2013**

I would like to thank my fellow Assembly Labor Committee members for attending today's hearing on Assembly Bill 449 which updates and federalizes Wisconsin's existing exemption for direct sellers.

This update is extremely important to ensure that Wisconsin's 380,000 direct sellers, accounting for over \$600 million in annual sales, can maintain their independence. These people are usually our neighbors, relatives, and friends. They sell products for well-known producers such as Avon Products Inc., Amway, Mary Kay Inc., and Pampered Chef. These direct sellers are micro-entrepreneurs working part time to earn extra income.

The existing direct seller exemption was put into place in 1983. Since then, there has been a change in the way direct sellers conduct business. The issue stems from the current language in statute that states sales must occur "primarily in the home." As you know, in today's world direct sellers may conduct transactions at work or even at a coffee shop. This has caused confusion for both the department and the direct sellers when it comes to applying the definition to today's business.

Assembly Bill 449 updates existing statute to mirror the language found in federal statute 26 U.S.C. § 3508. By doing this, we would be providing greater clarity and consistency to the business community and those involved in direct selling, and bring Wisconsin into conformity with how more than 30 other states treat this issue.

This legislation was presented to the Unemployment Insurance Advisory Council and they have stated they do not object to this bill pending a minor language change. This change will be reflected in a forthcoming amendment that is agreeable to all parties involved.

I would like to thank the committee for their time and I would be happy to entertain any questions that you may have.



One World. One Vision.

Jeremy J. Smuckler  
Corporate Counsel  
Phone: 704-260-3433  
Fax: 704-260-3304  
Email: [jsmuckle@acninc.com](mailto:jsmuckle@acninc.com)

October 22, 2013

Members of the Wisconsin Assembly Labor Committee

Re: Comments in support of LRB 2588 relating to direct sellers' unemployment compensation exemption

Dear Members of the Assembly Labor Committee:

ACN, Inc. would like to **voice its support of LRB 2588**. This bill would clarify Wisconsin's existing unemployment compensation exemption language for direct sellers under Wisc. Stat. Ann. § 108.02(15)(k)(16), and ensure direct selling can continue to offer economic opportunities to all Wisconsin residents. It is important to note this bill is not a new law, but is simply a clarification of an existing statute.

In Wisconsin, as in the rest of the country, individuals selling for direct selling companies are independent contractors. These individuals typically sell on a part-time basis to their neighbors, relatives, and friends to supplement their family income. These direct selling companies, with over 15.9 million individual American direct sellers, include some of the nation's most well-known commercial names. The direct selling industry attracts individuals seeking job flexibility, offering low start-up costs to many who often have minimal work experience. Their direct selling activities are generally neither extensive nor sophisticated. Direct sellers are quintessential micro-entrepreneurs.

ACN is a direct selling company headquartered near Charlotte, North Carolina, currently in its 20<sup>th</sup> year of business, with operations around the world. ACN offers a suite of home telecommunications and other essential service products, such as local/long distance, video telephone, wireless service, satellite television, and home security. ACN contracts with approximately 200,000 independent sales representatives (called "Independent Business Owners" or "IBOs" by ACN) globally, 100,000 in the United States, and 1,000 in Wisconsin. ACN gives individuals working as IBOs the opportunity to earn supplemental income by marketing ACN's products to their friends, family, and other contacts. Through these IBOs, ACN also serves thousands of Wisconsinites as customers and generates tens of thousands of dollars in various tax revenues for the State.

By separate letter, the Direct Selling Association has set forth its position supporting the need for clarification to the current Direct Seller Exemption. ACN fully agrees with the DSA's position, as ACN has learned firsthand of the need for clarification in the exemption. Although ACN's sales practices are demonstrably more in line with the current exemption than the practices of many of its more well-known peers, ACN has spent more than \$250,000 defending against arbitrary misclassifications under the current exemption. In addition, ACN has spent full months' in time devoted to working through and litigating these misclassifications. ACN can only imagine that State resources have been similarly spent. Litigation of the misclassifications remains active and,

ACN World Headquarters | 1000 Progress Place | Concord, NC 28025  
704.260.3000 | [www.acninc.com](http://www.acninc.com) | [www.myacn.com](http://www.myacn.com)

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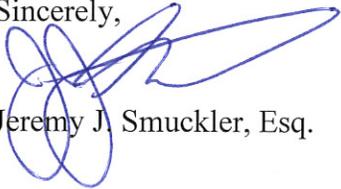
Jeremy J. Smuckler  
Corporate Counsel  
Phone: 704-260-3433  
Fax: 704-260-3304

Email: [jsmuckle@acninc.com](mailto:jsmuckle@acninc.com)

absent the proposed legislation, has no end in sight. Perhaps most unfortunate is that all of these efforts are being expended by ACN and the State over what amounts to, in the worst case for ACN, well under \$10,000 in unemployment insurance tax liability.

ACN fully supports the proper classification of employees for purposes of unemployment compensation, and in fact pays unemployment insurance tax on each of its approximately 400 corporate employees, primarily located in North Carolina. It is vital to clarify the current Wisconsin Direct Seller Exemption statute, however, in order to ensure legitimate independent contractors working as direct sellers are not classified as employees for the purposes of unemployment compensation. For the foregoing reasons, **the ACN respectfully asks you to vote "Yes" on LRB 2588.**

Sincerely,

  
Jeremy J. Smuckler, Esq.

ACN World Headquarters | 1000 Progress Place | Concord, NC 28025  
704.260.3000 | [www.acninc.com](http://www.acninc.com) | [www.myacn.com](http://www.myacn.com)

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1667 K Street, NW  
Suite 1100  
Washington, DC 20006  
202-452-8866 | 202-452-9010 Fax  
www.dsa.org

October 23, 2013

Members of the Wisconsin Assembly Labor Committee

Re: Comments in support of LRB 2588 relating to direct sellers' unemployment compensation exemption

Dear Members of the Assembly Labor Committee:

The Direct Selling Association ("DSA") would like to **voice its support of LRB 2588**. This bill would clarify Wisconsin's existing unemployment compensation exemption language for direct sellers under Wisc. Stat. Ann. § 108.02 (15)(k)(16), and ensure direct selling can continue to offer economic opportunities to all Wisconsin residents. It is important to note this bill is not a new law, but is simply a clarification of an existing statute.

In Wisconsin, as in the rest of the country, individuals selling for direct selling companies are independent contractors. These individuals typically sell on a part-time basis to their neighbors, relatives, and friends to supplement their family income. These direct selling companies, with over 15.9 million individual American direct sellers, include some of the nation's most well-known commercial names. The direct selling industry attracts individuals seeking job flexibility, offering low start-up costs to many who often have minimal work experience. Their direct selling activities are generally neither extensive nor sophisticated. Direct sellers are quintessential micro-entrepreneurs.

DSA and our over 175 member companies encourage this Committee to ensure the over 380,000 direct sellers in Wisconsin, accounting for over \$629 million in annual sales, maintain their independence by clarifying existing law to conform to the law in more than 30 other states (including Michigan, Iowa, Montana, Nebraska and Missouri) and federal law. While current Wisconsin law classifies direct sellers as independent contractors for unemployment compensation purposes, the language is outdated and when it is applied to direct sellers, can be confusing and lead to erroneous determinations of employment status. DSA proposes that Wisconsin amend its direct seller provision to conform to federal law and clarify the status of direct sellers.

DSA, on behalf of Wisconsin direct sellers, seeks this change because:

- This proposed direct seller provision is a non-substantive change in state law. It simply allows Wisconsin to conform to federal law and the majority of states. Direct sellers are currently independent contractors under the law in Wisconsin; however, this proposed language would provide clarity and consistency to the business community and state regulators.

- Current Wisconsin law is outdated and can lead to confusion and the inappropriate classification of direct sellers as employees rather than independent contractors.
- Direct sellers do not participate in the unemployment compensation system – they do not pay into the system and do not draw from it based on their direct selling activities. That is because they are not employees.

DSA fully supports the proper classification of employees for purposes of unemployment compensation, a public policy concern we share. However, it is vital to clarify the current statutory language in order to ensure legitimate independent contractors working as direct sellers are not classified as employees for the purposes of unemployment compensation. For the foregoing reasons, **the Direct Selling Association respectfully asks you to vote “Yes” on LRB 2588.**

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Jeff Hanscom".

Jeff Hanscom  
Attorney & Manager, Government Relations  
Direct Selling Association