

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on January 31, 1995, at 1:00 P.M.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 155
HB 98
SB 110
Executive Action: SB 151
SB 155
SB 80
HB 98

{Tape: One; Side: One}

HEARING ON SB 155

Opening Statement by Sponsor:

SENATOR CHUCK SWYSGOOD, SD 1, Dillon, MT, expressed gratitude to the Labor and Employment Relations Committee for the flexibility in rescheduling SB 155. Senate Bill 155 would exempt a motor carrier vehicle lessor, who is an independent contractor, from the requirements of Unemployment Insurance and Worker's Compensation Laws. **SENATOR SWYSGOOD** requested the committee to table SB 155.

HEARING ON HB 98Opening Statement by Sponsor:

REPRESENTATIVE BOB PAVLOVICH, HD 37, Butte, MT, stated the intent of HB 98 is to revise state labor laws to exclude from minimum wage, overtime, unemployment insurance, and Workers' Compensation requirements for a direct seller as defined by federal law.

Proponents' Testimony:

Dave Brown, Butte, Montana pointed out proposed changes. Mr. Brown distributed a document, 26, USC 3508, which gave the federal definition of "direct seller". The definition is: "Such a person is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, and deposit-commission basis, or any similar basis which the Secretary describes by regulations for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment, or 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" After review of the changes in the law, Mr. Brown deemed it necessary to enter the definition into the record. Mr. Brown stated last session's (1993) Workers Comp bill, sponsored by REP. DRISCOLL exempted direct sellers from workers compensation; consequently, it is important that the law be equalized (EXHIBIT 1).

Eric J. Ellman, Associate Attorney and Public Relations Manager of Direct Selling Association, 1666 K. Street, NW, Suite 1010, Washington DC, stated a direct selling representative sells for companies like Kirby, Avon, Mary Kay, Amway, Tupperware and the Encyclopedia Britannica. Mr. Ellman handed out letters of support from direct selling companies (EXHIBIT 2). Ellman stated there are 5.5 million direct sellers nationwide and an estimated 10 to 20 thousand direct sellers in Montana. Direct sellers are independent business people, who invest in their own business, suffer profits and losses, and set their own hours and territory. Direct sellers decide what products to sell, when to sell them, and set their own prices. Direct sellers are exempt from worker compensation laws in every state. Montana law questions the interpretation of exempt and non-exempt people. Senate Bill 98 clarifies the fact that direct sellers are exempt.

Richard Herthneck, Burney & Herthneck Co., LPA. Attorneys and Counselors at Law, 160 Plaza West Building, Rocky River, Ohio 44116, stated for the last 18 years he has represented independent distributors and dealers throughout the United States. Mr. Herthneck explained Kirby cleaning systems are manufactured in Ohio and Texas, and the systems are sold at wholesale to independent distributors. The distributors are independent business people. The price of the systems are determined by the distributors and not by the manufacturers. The

dealer's profit is the difference between what he/she buys the system for at wholesale and the price the buyer is willing to pay. Kirbys have been sold in this manner since the 1930's. Dealers are truly independent business people, who have their own place of business. These people are required to complete reports, etc. Kirby dealers are successful business people. **Mr. Herthneck** submitted written testimony and urged the committee to support HB 98 (EXHIBIT 3).

Brad Griffens, Montana Retail Association, stated support of HB 98. Independent sellers are exempt from workers compensation. The amendment codifies the exemption of independent sellers. **Mr. Griffens** asked support for HB 98.

David Rott, Attorney, Missoula, MT, offered support for HB 98.

Mike Davis, Kirby Distributor, Helena, MT, offered support for HB 98.

Blaine Schaff, Missoula, MT, offered support for HB 98.

Bob Gustafson, Kirby Distributor, Billings, MT, offered support for HB 98.

Dan Fouts, Kirby Distributor, Butte, MT, offered support for HB 98.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR FRED VAN VALKENBURG asked **Chuck Hunter, Department of Labor and Industry**, how does the department deal with the issue of direct sellers, such as Kirby distributors. **Mr. Hunter** replied that currently direct sales personal are excluded from the Workers' Compensation Act. In other areas, such as unemployment insurance and wage/hour issues, each case is looked at individually to see what the wages were and if there have been any violations. **SENATOR VAN VALKENBURG** asked if there have been any violations concerning the wage/hour issue. **Mr. Hunter** replied that there have been no issues before the Labor and Industry Department.

SENATOR BAER asked if the department has opposition to the federal definition of the direct seller, as opposed to having an independent and a different Montana definition. **Mr. Hunter** stated the department sees value in having the definition entered into the record. The idea of consistency could prove to be a benefit. **SENATOR VAN VALKENBURG** said testimonial support had been given in earlier testimony from such companies as Amway, Shaklee, Mary Kay Cosmetics and from the direct selling association representative. **SENATOR VAN VALKENBURG** asked if any of the

proponents in the audience could think the bill would do something other than what the department's interpretation of what the bill would do. **Mr. Hunter** stated the companies that testified had been operating in Montana for a long period of time, and had been doing business in the same way. The department was comfortable with the language.

SENATOR BARTLETT asked **Mr. Fouts** if the job he has now would be affected by the bill. **Mr. Fouts** said no. **SENATOR BARTLETT** asked the general audience if any individual, direct seller would be affected by the proposed legislation. No audience member responded.

CHAIRMAN KEATING asked **REP. PAVLOVICH** what was the reason for the "passage on approval" date. **Mr. Brown** answered for **REP. PAVLOVICH**. He stated the passage and approval date had been chosen by the department because the department actively works on such issues. The effective date should stay the passage and approval date.

REPRESENTATIVE PAVLOVICH closed the hearing on HB 98.

REPRESENTATIVE PAVLOVICH stated organized labor did not oppose HB 98 in the House of Representatives. **SENATOR BECK** would carry the bill.

CHAIRMAN KEATING turned over the gavel to **VICE-CHAIRMAN GARY AKLESTAD** in order to sponsor SB 110.

HEARING ON SB 110

Opening Statement by Sponsor:

SENATOR TOM KEATING, SD 5, Billings, stated SB 110 is a statute repealer, dealing with the Uninsured Employer's Provision of the Workers Compensation Act and the Underinsured Employer Fund of the Department of Labor. **SENATOR KEATING** stated in the past couple years he visited independent workers and small business employers in Billings, and elsewhere. Comments from people focused attention to the Workers' Comp requirements and how violators can avoid liability for not having the necessary Workers Compensation insurance. **SENATOR KEATING** described a could-be situation. An independent contractor is asked how many employees he has. The contractor says he doesn't hire employees, he works independent contractors because he can't compete with guys that go bare. Sometimes, out of state contractors come to work, but do not buy Workers' Comp insurance. If an employee gets hurt, the contractor can sue for liability. If uninsured contractors are sued, they go to the Department of Labor, and the claims are satisfied and benefits are paid.

SENATOR KEATING asked what happens if the employer does not have Workers' Comp insurance. The employer pays double premiums and pays the claim. Although, the Montana Constitution says the employer is exempt from liability if he/she provides Workers

Compensation. Liability is a much greater penalty for the violator than paying double premiums and satisfying the claim. **SENATOR KEATING** wanted to know why there is a safety net, which is unfair competition against the employer who works within the Workers Compensation Law. **SENATOR KEATING** stated some small business people have a hard time employing people because of the high costs of payroll taxes, etc. A would-be employee could say they would be an independent contractor and would do the job for a contract fee and avoid payroll taxes. So, in turn, the small business owner obtains the "yellow book" from the Department of Labor and finds out how to establish an "arrangement" between the independent contractor and the person who wants to contract the independent contractor. The forms are filled out, signed and returned to the Department of Labor. So... the worker falls off a roof, hits the ground hard, and instantly becomes an employee. This is wrong, but, now, the department policy has to follow certain procedures. The department must review the cause under the AVC Rules for Employment. The deciding factor is onsite supervision by telephone. The worker is told how to do something in a telephone conversation. A claim is valid, and the outcome goes against the small employer. **SENATOR KEATING** stated this is unfair. The small business, now, has to pay double benefits and pay the claim. They also get audited, and the amount of the contract, that was paid to the so-called independent contractors, becomes payroll, subject to IRS regulation. The IRS will now be required to collect unemployment insurance, social security, and payroll tax. The small business is bankrupted. Montana laws required Workers' Compensation to be paid and the requirements must be fulfilled.

SENATOR KEATING stated the underinsured section of the law deals primarily with Workers' Compensation premium rates, as defined by codes in the NCCI scopes. Employers give job descriptions for code qualification. When the job description is less, and consequently less expensive, than the actual job description, the "underinsuring" premium payment will be lower. Now, the State Fund is a quasi-private insurance company and is not part of the Department of Labor. Audits are in order to protect actuarial figures. **SENATOR KEATING** stated an underinsured section in the law is not necessary. The State Fund has a job to do, just as the private carriers and the self-insured companies have a job to do. **SENATOR KEATING** requested the committee to correct the uninsurance and the under-insured employer section of the law. The argument should be with the law and with the subject of liability. The state has required workers comp, so the employers must meet the requirement, according to law. If the employer does not comply and a problem arises, the employer and the employee should go to court of settle the discrepancies.

Proponents' Testimony:

Carl Hafer, Butte, Montana, stated in April 1994 he unsuccessfully attempted to discuss his plight with **Governor Racicot, Lt. Governor Rehberg, Laurie Ekanger, and Karen Doig**.

Finally he met with Betti Hill, an assistant to the Lt. Governor, and Kevin Braun. Mr. Hafer was encouraged to hear Betti Hill ask Mr. Braun if he would actually say that the plaintiff, Mr. Richards and his attorney, Michael McKeon, Anaconda, who had claimed he was an employee of Mr. Hafer, defrauded the state of Montana after submitting a signed contract verifying he had an independent contractor agreement. Allegedly, Mr. Richards had reached for an air gun while constructing a barn. He had made contact with a live overhead wire and burned his arm; missed three weeks of work, but had remodeled his home in the interim; received \$150,000; and had proceeded to sue Mr. Hafer. Mr. Richards had filled out a report and checked off qualifying items to be classified as an "employee". Mr. Richards received \$34,000 from the Uninsured Employer Funds, \$20,000 cash from Mr. Hafer. In a court situation, Mr. Richards and attorney, Mr. McKeon, admitted that Mr. Richards was an independent contractor. The Department's Uninsurance staff was concerned, but, because the department was understaffed, the complete and timely management of the case was impossible to accomplish. Mr. Richards was required to pay back \$34,000, but after four to five years only paid back a negotiated \$19,000. Mr. Richards refused to pay Mr. Hafer's court costs. Mr. Hafer closed his testimony but stating the need to dismantle the Uninsured Employment Fund and the need for definite sanctions (EXHIBIT 4).

Opponents' Testimony:

Chuck Hunter, Department of Labor and Industry, Administrator, Employment Relations Division, the regulatory body for Workers' Compensation, stated there are two programs under consideration, which are the underinsured program and the uninsured program. Mr. Hunter offered written testimony (EXHIBIT 5). Montana, like 47 other states has a mandatory requirement for Workers' Compensation coverage. Every employer is bonded by law to have Workers' Compensation coverage. The reason for the mandatory coverage is because it is considered a social contract. Under the program workers are supposed to get speedy access to benefits after job related injuries. Employers get protection from liability. The injured workers get benefits and payments through the Workers' Comp system, and they cannot sue the employers for any reason or purpose. Unfortunately, rules were circumvented to get competitive advantages against the compliant business people. The uninsured employer fund has two basic purposes: First, to insure compliance with the law and to insure the employers who are supposed to have coverage. Second, to pay benefits to workers who are injured at the business place, and who are not covered by the Workers' Comp insurance. The underinsured program started in 1993 as part of the Work Comp revisions in the fraud area to deal with businesses that misrepresented or misclassified workers for the purpose of lowering premium costs. In 1994, the department conducted approximately 500 uninsured fund audits; uncovered approximately \$1M of unpaid premiums; and collected approximately \$800,000 penalties from employers who did not have coverage. The department paid benefits to over one hundred

workers who were injured, while working at a business that did not have Workers' Comp. The benefits totaled approximately \$300,000. There are many employers questioned whether or not they have Workers Comp insurance. The State Fund is continually dealing with the uninsured and underinsured issues. This is only the tip of the iceberg. If the programs are eliminated, there will be no compliance efforts. More businesses will go bare. It will be harder for level playing businesses to stay afloat. Many more workers will be without Workers' Comp coverage, without knowing they were not covered. If the workers were injured, there would be no insurance benefits, and they be forced to use personal resources to pay medical costs, or be forced to move into other social programs, such as Medicaid and Welfare. The court system is the only recovery avenue, and that recovery process can take at least two years. The injured workers are successful for large liability rewards. The impacted businesses may be forced to close.

Don Judge, Montana State AFL-CIO, offered opposition to SB 110.

Mr. Judge stated the proposed legislation will encourage more employers to go bare; more workers will not have coverage; and more cost shifting will take place to social programs. The collection issue is difficult. Contractors show up in Montana with a pickup full of tools, hire a couple local people to help put the roof on a barn, and someone gets injured in a roof accident. Damages cannot be satisfied without assets. The AFL-CIO agrees that the funds were established for protection of the employee and were established to provide exclusive remedy to the employers. By eliminating the two funds, more problems will be created. The section of law authorized State Fund and the Department of Labor to enforce a cease and desist order on those employers who do not have workers compensation insurance (sections 3971509 and 3971515). The information describes the limits on employer's defenses against an injured worker filing suit for an on the job injury and allows for the employee, in case of an uninsured employer, to eliminate arguments that an employer may otherwise use in the defense of "going bare."

Russell Hill, Montana Trial Lawyers Association, expressed opposition. **Mr. Hill** stated the constitutional provision, exclusive remedy, is questioned. The proposed legislation does not get tough on employers who will go bare, but actually surrenders that everyone can go bare. The bill will encourage employers go bare, and will allow employers the option of getting out of the Workers' Compensation system with no penalties or threats for doing so. This is not so with the employees. The bill is a lopped-sided option, because not only does the bill allow employers to go bare, but it gives them new and powerful defenses if they do decide to go bare. The misunderstanding is not because the employers who go bare don't get sued. It is not because they can not get sued, it is because the principals of adverse selections involved in Workers' Compensation. Employers who DO NOT have assets are the ones most likely to go bare and can not make monetary restitution. The repealed section of

Section 3, of the proposed law, takes away the right of the employee, not only to sue an employer who is not covered by Work Comp, but to have an independent separate cause of action against him/her and to recover the uninsured or underinsured benefits that they would have had if the employer had been covered. Current law was meant to be a strong incentive for employers to carry Work Comp. The bill surrenders to the few cases where the system does not work and gives up all the benefits of the system.

Nancy Butler, Workers' Compensation Fund, stated the State Fund concern focused on the idea that without enforcement provisions, more employers will be able to go without coverage. The insurance companies will make more use of section 405 of the Workers' Compensation Act, which is the section that allows employees of uninsured employers, to get coverage from the insurance carrier of the primary contractor. So the State Fund assumes more claims will be made, and that other employers who have coverage will carry the burden debt. The impact is great.

Jacqueline Terrell Lenmark, American Insurance Association, a trade association for employees in Plan 2 Insurance Carriers, stated reluctant opposition to SB 110. Serious problems have been identified and must be addressed. SB 110 does not provide the answer for the identified problems. The judgement against employers who have no assets to satisfy judgment present real problems. Workers' Compensation affords Montana an important social purpose. Should SB 110 pass, the social purpose would be undermined.

Don Allen, Helena, MT, representing Workers' Compensation System Improvement, Montana Medical Benefit Plan, stated the reasons to oppose the bill have been correctly outlined. The option was understood, but the consensus thought was that the bill did not satisfy the need. The coalition standard of supporting both employer and employee's need had not been satisfied. Therefore, the bill should be opposed.

Jim Tutweiler, Montana Chamber of Commerce, Helena, MT, stated the Chamber represents Plan 1, Plan 2, and Plan 3 employers. Although, there are many employers who abuse the system, the Chamber believe the majority of Montana employers participate in the Work Comp system. The Chamber embraces the compliant workers. The uninsured and underinsured programs should be looked into and changed in order to correct the problem.

George Wood, Executive Secretary, Montana Self-insured Association, representing a group of Montana employers, stated adequate reasons have been presented to sway the DO NOT PASS motion. Mr. Wood urged the committee to stop SB 110.

{Tape: One; Side: Two}

Informational Testimony: None.

Questions from the Committee Members and Responses:

SENATOR BENEDICT asked **CHAIRMAN KEATING** how the bill fits with a scenario concerning a small, somewhat successful, employer who has a worker accident. **CHAIRMAN KEATING** replied the employer obviously has an investment. If the employer would choose to go bare, the business investment could be lost, as could his assets. This is not the type of employee to go bare, nor are other such businesses. **SENATOR BENEDICT** asked what about the employer in a similar situation who decides to go bare to undercut the competition and does not have assets. This employer has a worker who is injured for life. Who takes care of the employee? **SENATOR KEATING** stated there is excess abuse of the current system. Montana has a problem, and now is the time to weigh the "good and the bad". The people who exploit the system must be stopped. **SENATOR KEATING** asked what is the obligation of government to each and every individual employee or employer. Can both the individual entities be responsible. Can the employee question the employer about benefits, medical coverage. There is a certain amount of responsibility on the individual employee part to make sure the employer is complying with law and carrying Workers' Compensation insurance.

SENATOR BURNETT asked about **Mr. Hafer's** situation. What can the Department of Labor do when such a claimant has a loss. **Mr. Hunter** replied that he could not address all the specifics of **Mr. Hafer's** case without additional research. Part of the case hinged on the contractual evidence, but both parties were represented by counsel. After lengthy divisions and discussions, there came a point in time that a closure was appropriate. **SENATOR BURNETT** asked why was a full recovery not granted. **Mr. Hunter** stated part of the settlement had to deal with what would be paid back. There would have probably been the ability to include, to ask for more recovery than what was received in the settlement, but the parties all agreed. The parties involved were the department, **Mr. Hafer** and the people charged. **Mr. Hunter** stated he did not have all the specifics during testimony and that he was not involved in the case personally.

SENATOR EMERSON asked if the group ever settled a claim, knowing that there was a contractual, signed, contract. **Mr. Hunter** stated he could not quote a specific case. But, there are many times when the department is shown cases where there is representative information in a contractual relationship, and they, in fact, have a signed contract. This is not the case in fact. If it was the case, then we would have an uninsured situation. The independent contractor, even with a contract, could be found in fault. This happens in this program and other parts of the Work Comp system. There are a lot of views and interpretations of the Montana law. **SENATOR EMERSON** stated if there is a signed contract, the contract must be considered valid. **Mr. Hunter** stated case law over the course of years has said that what is determined is the actual facts of the relationship between the parties. Whatever is put on paper has

little bearing, compared to what is the true and actual fact in a relationship. This has been the basis for many Supreme Court cases.

SENATOR EMERSON asked **Nancy Butler** to discuss the current law. There is a section of law, Section 405, which addresses the situation of when a primary contractor contracts with a subcontractor, and the subcontractor is uninsured. The uninsured subcontractors are employees if they are injured, and they will be able to get unemployment compensation benefits under the primary contractor's insurance policy. The law exists because the exposure, that what is not anticipated, can be corrected. Without the uninsured fund and the enforcement aspect of the law, **Ms Butler** stated she believes more employers will go without coverage. The State Fund may see greater use of Section 405. **SENATOR EMERSON** questioned the propriety of Section 405. **Ms. Butler** stated the law has been on the books for a long time, and assumed the original reason to enact such a law was to protect the employees who worked for uninsured employers, where there was a primary contractor. That primary contractor could have been involved and could have made sure the subcontractor had insurance.

SENATOR BAER asked a hypothetical question. If the State Fund disbursed \$100,000 to a claimant who has subsequently shown they had defrauded the State Fund, which is a crime, does the State Fund have the authority to settle the case without full restitution for the money that was paid to the fraudulent claim? **SENATOR BAER** asked for confirmation. **Mr. Hunter** replied to **SENATOR BAER's** hypothetical question. If the Department of Labor had paid \$100,000 out of the Labor's Fund and, subsequently, found the person to be fraudulent, the department would recover the money. However, that was not the fact of the Hafer case.

SENATOR SUE BARTLETT asked **Mr. Hunter**, subsequent to the period of time in which **Mr. Hafer** was having controversy with **Mr. Richards**. Could that case be considered by a tribunal and pursued further. **Mr. Hunter** stated, unfortunately, that could not happen. The fraud unit was set up specifically to deal with State Fund fraud. So cases of fraud that arise in the uninsured employee fund can not be transferred or sent to the State Fund Fraud Unit. **SENATOR VAN VALKENBURG** stated the Montana Bar Association has a commission on practice that essentially regulates the conduct of lawyers. **SENATOR VAN VALKENBURG** asked if **Mr. Hafer** pursued a complaint with the State Bar Commission of Practice in respect to the actions of the attorney, **Mr. McKeon**, who represented **Mr. Richards**. **Mr. Hafer** said no, but he did consider the action. **SENATOR VAN VALKENBURG** asked why **Mr. Hafer** did not pursue the complaint. **Mr. Hafer** said he did not inquire [about his complaint] to that association. He asked an attorney about the State Bar Commission on Practice and was told "well, I am not saying that it wouldn't work, but [he said] that is generally if you are a client and you feel the attorney did not do a good job for you. You are paying him and he didn't file in

a timely manner, whatever...' I got the feeling that was not the case. It would be more kind of "sour grapes" thing, because things didn't go my way. For me to say the attorney for that man, for **Mr. Richards**, did a poor job. All I am saying is, and I think it is very plain there, and I do have copies and the department has copies of a letter that I wrote to **Mr. Braun**. **Mr. Hunter** said he thought that maybe all the parties, and I assume he meant my attorney, **Mr. McKeon**, **Mr. Richard's** attorney, and myself agreed to this settlement. That was not the case in any manner. There is a letter in their department, where I said to **Mr. Braun** in a letter form, as a citizen of Montana, a long time citizen, you know, that I thought I had the right to say that I felt that uninsured employer's fund should try to get all this money back. Whether they had to go to Workers' Compensation Court or whatever. I never, ever agreed that they should settle for \$19,000. Not to reiterate, and not to take your time, but they didn't... If they had said they weren't an independent contractor, then they dinged the insurance company for a \$100K. And they certainly dinged me for the \$20K."

SENATOR VAN VALKENBURG asked opponents to SB 101 to submit a written response to clarify proposed changes in the uninsured and underinsured employers' provisions of Code. The changes are to address the problems identified by **SENATOR KEATING** in his opening statement and **Mr. Hafer** in his testimony. The change results would not repeal existing law (**EXHIBITS 6, 7, 8 & 9**).

Closing by Sponsor:

SENATOR KEATING closed the hearing stating Mr. Hafer's testimony was new, he did not originally know about Mr. Hafer's plight. He received the information after the bill draft, request-deadline date. **SENATOR KEATING** stated there are other small businesses that are being abused by the current system. **SENATOR KEATING** stated he checked with counsel regarding a list of remedies. Under the uninsured employers section of law, there are several remedies for the uninsured employee for recovery. The first is to have the medical claims paid for by the state, then the state would collect from the employer. The last remedy would be the civil action, to sue for liability. **SENATOR KEATING** stated he researched other places in law that an uninsured employee could recover damages civilly. He researched other parts of the statutes, such as under negligence, where the employee would have an excellent case of proving negligence and collecting liability. Repealing the section does not eliminate the opportunity for the uninsured employee to sue the employer. The questions from **SENATOR EMERSON** highlight part of the problem in this situation. The problem is: The independent contractors sign a contract; the department sees it and signs off on it and everyone thinks the relationship is fine. But when there is a problem, then it comes back to the department and they begin to review it, case by case, under the ABC rules of employment versus the independent contractors status for the job description and on-site supervision etc. The ABC clauses are subjected. They are not

specific; they are not clean cut; and they are subjective to interpretation and opinion. The department, then, has the right to interpret the ABC the way they want to and throw out an independent contractor status. The department can say "you" were the employer and "you" are stuck with the interpretation. If you want to override the interpretation, a lawyer has to be hired, a battle fought, and costs incurred. Either you pay the claim and the double premium or end up in the Supreme Court, fighting over \$150K to \$200K. **SENATOR KEATING** stated he appreciated **SENATOR VAN VALKENBURG'S** request to correct the problem. Amputation is a very severe method of solving a problem, but when the body has gangrene, sometimes amputation would be the only thing to do. So if the "body" is not corrected in some other way, **SENATOR KEATING** suggested the committee pass SB 101 and amputate the "body". A hiatus must be put on employers who are going bare. The individual employee must be made to accept the responsibility and/or the challenge to make sure they are covered in the work place. Montanans should not continue to expect the state to take care of everybody, all the time. State government and the various departments are not equipped to do that. **SENATOR KEATING** stated the ironic part about the testimony is that the opponents who testified in opposition to SB 110 are covered by Workers' Compensation insurance. They are paying a tax on the premiums. They pay for Workers' Comp to finance those who are going bare and those independent contractors who are abusing the situation. The Department does not collect one hundred percent on those claims that they have in their regulatory authority, or are they covered entirely by those claims. A lot of what they do is paid for on assessments against those who are paying for Workers' Comp. Being the good guys, they are also paying an additional assessment to take care of the bad guys. Something has to be done. If the committee can not do something to begin to rectify the situation, **SENATOR KEATING** suggested amputation.

SENATOR AKLESTAD asked opponents to leave addresses so correspondence could be mailed. The response is due by the middle of next week. Executive action will take place on February 7, 1995.

EXECUTIVE ACTION ON SB 151

Motion:

SENATOR SUE BARTLETT MOVED TO AMEND SB 151.

Discussion:

SENATOR SUE BARTLETT presented an amendment to include limited liability companies, a phrase that has become standard language. On page four, line 16, following "partnership" insert "limited liability company". This is for temporary service contractors.

Vote: THE DO PASS MOTION FOR TO AMEND SB 151 PASSED UNANIMOUSLY.

Motion:

SENATOR BARTLETT MOVED SB 151 DO PASS AS AMENDED.

Discussion:

SENATOR BARTLETT stated the bill changes the definitions of temporary service contractor and temporary worker in the definition portion of the Workers' Compensation Act. It is a change that was brought about by problems within the temporary service industry, concerning the old definitions. The State Fund, Department of Labor and Industry, and Temporary Service Contractors reached agreement on the language. The language is workable and preferred to the current language.

Vote:

THE DO PASS AS AMENDED MOTION FOR SB 151 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 155

Motion/Vote:

SENATOR BENEDICT MOVED TO TABLE SB 155. THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON 80

Motion:

SENATOR BENEDICT MOVED TO AMEND SB 80.

Discussion:

SENATOR BENEDICT stated exemption to SB 80 would make the exemption a small market, radio exemption. By taking out the television stations, the amendment makes the exemption only apply to Second and Third Class cities and towns, those towns under 10,000. SENATOR AKLESTAD asked if the bill would strictly be for radio stations, only. SENATOR BENEDICT agreed. SENATOR VAN VALKENBURG stated that is only radio, by virtue of the fact, there are no television stations in Second and Third Class towns. The amendment does not make some distinction between radio and TV. Eddy McClure state number 4, at the word and, the amendment will strike "concern a radio". SENATOR KEATING asked for the definition of Second Class city. SENATOR BENEDICT stated Second and Third Class cities are: Every city having a population of 10,000 or more, is a city of First Class; every city or town having a population of less than 10,000 and more than 5,000 is a Second Class city; every city having a population of 5,000 or more than 1,000 is a city of third class: and a municipal corporation having a population of less than 1,000 and more than 300 is a town.

SENATOR BARTLETT asked if SB 80 will exempt the positions covered by the amendment from overtime requirements. **SENATOR BENEDICT** explained SB 80 would bring these people into compliance with national, small market exemptions. The bill would only be applied to the small markets of less than 10,000. **SENATOR KEATING** stated SB 80 would exempt those people from time and a half, after 40 hour work week. **SENATOR BARTLETT** asked if there are radio stations for those outside the incorporated cities or towns. **SENATOR BENEDICT** stated every radio station has to be licensed to a city or town. There are no radio stations in unincorporated towns

Vote:

THE MOTION TO AMEND SB 80 PASSED, WITH SENATOR WILSON VOTING NO.

Motion:

SENATOR BENEDICT MOVED SB 80 DO PASS AS AMENDED.

Discussion:

SENATOR WILSON asked **SENATOR BENEDICT** if the amendments are stripped and the bill is returned to the Senate, will you reject the House amendments. **SENATOR BENEDICT** stated he would support the Senate amendment.

Vote:

THE DO PASS MOTION FOR SB 145 AS AMENDED PASSED, WITH SENATORS BARTLETT, VAN VALKENBURG, AND WILSON VOTING NO.

EXECUTIVE ACTION ON HB 98


Motion/Vote:

SENATOR BENEDICT MOVED HB 98 BE CONCURRED IN. THE MOTION CARRIED, WITH SENATOR BARTLETT VOTING NO.

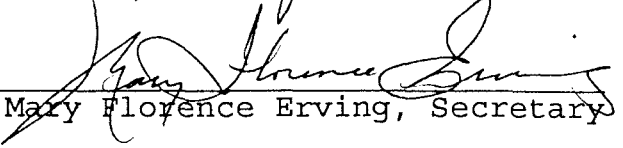
SENATOR EMERSON stated he had the Department Head inform him, after he fired a person for just cause, he would have to pay unemployment benefits, otherwise the fired employee would have to go on welfare. **SENATOR EMERSON** stated to her that unemployment is not a welfare bill. **SENATOR EMERSON** was told by **SENATOR KEATING** that particular areas of concern can be brought before the committee. If the committee is convinced that there is a cause to create a committee bill, the concern can be remedied.

ADJOURNMENT

Adjournment: The meeting was adjourned at 2:47 p.m.



SENATOR TOM KEATING, Chairman



Mary Florence Erving, Secretary

TK/mfe

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE JAN 31, 1995

[illegible]

SEN:1995
wp.rollcall.man
CS-09

#1

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1 1 of 3
DATE 1-31-95
BILL NO. HB 98

26 U.S.C. 3508

Subtitle E—Employment Taxes

PART I—IN GENERAL

SEC. 269. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS

(a) *GENERAL RULE.*—Chapter 25 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new section:

"SEC. 3508. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS

"(a) *GENERAL RULE.*—For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

"(1) the individual performing such services shall not be treated as an employee, and

"(2) the person for whom such services are performed shall not be treated as an employer.

"(b) *DEFINITIONS.*—For purposes of this section—

"(1) *QUALIFIED REAL ESTATE AGENT.*—The term 'qualified real estate agent' means any individual who is a sales person if—

"(A) such individual is a licensed real estate agent,

"(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

"(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

"(2) *DIRECT SELLER.*—The term 'direct seller' means any person if—

"(A) such person—

"(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary 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) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

"(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

"(3) COORDINATION WITH RETIREMENT PLANS FOR SELF-EMPLOYED.—This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals)."

(b) AMENDMENT OF SOCIAL SECURITY ACT.—Section 210 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Treatment of Real Estate Agents and Direct Sellers

"(p) Notwithstanding any other provision of this title, the rules of section 5508 of the Internal Revenue Code of 1954 shall apply for purposes of this title."

(c) INDEFINITE EXTENSION OF PROVISIONS RELATING TO EMPLOYMENT STATUS FOR EMPLOYMENT TAXES.—

(1) TERMINATION OF CERTAIN EMPLOYMENT TAX LIABILITY.—

(A) Subparagraph (A) of section 530(a)(1) of the Revenue Act of 1978 (relating to termination of certain employment tax liability for periods before July 1, 1982) is amended by striking out "ending before July 1, 1982".

(B) Paragraph (3) of section 530(a) of such Act is amended by striking out "and before July 1, 1982".

(C) The subsection heading of subsection (a) of section 530 of such Act is amended by striking out "FOR PERIODS BEFORE JULY 1, 1982".

(2) PROHIBITION AGAINST REGULATIONS AND RULINGS ON EMPLOYMENT STATUS.—Subsection (b) of section 530 of such Act is amended—

(A) by striking out "July 1, 1982 (or, if earlier.", and

(B) by striking out "taxes" and inserting in lieu thereof "taxes".

(3) CERTAIN REGULATIONS, ETC., PERMITTED.—Nothing in section 530 of the Revenue Act of 1978 shall be construed to prohibit the implementation of the amendments made by this section.

(d) CLERICAL AMENDMENT.—The table of sections for chapter 25 of such Code is amended by adding at the end thereof the following new item:

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to services performed after December 31, 1982.

(2) SUBSECTION (c).—The amendments made by subsection (c) shall take effect on July 1, 1984.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1 3 of 3

DATE 1-31-95

BILL NO. 14098

**DIRECT SELLING ASSOCIATION**

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

January 31, 1995

The Honorable Thomas Keating
Chairman, Senate Labor Committee
Montana State Senate
Helena, MT 59620

Dear Chairman Keating:

I write on behalf of the Direct Selling Association (DSA) to ask your support of H.B. 98. Passage of this legislation would statutorily confirm the reality that direct sellers are independent businesspeople, and thus exempt from state workers' and unemployment compensation law. The legislation before your committee would benefit the direct selling industry, consumers who rely on direct selling, and the state as a whole.

By way of background, (DSA) is the national trade association representing over 150 companies which sell their products and services by personal presentation and demonstration, primarily in the home. Our membership, with 5.1 million direct sellers, includes some of the nation's most well-known commercial names. The home party and person-to-person sales methods used by our companies and their independent 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 a unique group of people. They work independent of the companies for which they sell products, they determine their own hours, set their own territory, and they bear the financial benefits and burdens of the business. Direct sellers do not earn salaries and only make money when they sell their products.

Direct sellers have always been found to be independent (and exempt) businesspeople at the federal level and in all states, including Montana. In 1982, Congress passed the Tax Equity and Fiscal Responsibility Act (TEFRA) and enacted section 3508 of the Internal Revenue Code. This law makes clear that for federal employment tax purposes, direct sellers are "non-employees". Presently, some 28 states have similar or identical specific statutory classifications for direct sellers.

The Honorable Thomas F. Keating
January 31, 1995
Page 2

In Montana, direct sellers are statutorily excluded from the workers' compensation section of the code, but not the wage and hour or unemployment sections of the code. House Bill 98 would not only recognize the realities of direct selling, it would also bring uniformity to the state code.

The Montana unemployment compensation section of the code uses what is commonly called an "ABC" test to determine who is and is not exempt from that law. Specifically, to be an exempt businessperson, an individual must be: (A) free from control or direction over the performance of his services; (B) such services are either outside the usual course of business for which such services are performed or that the services are performed outside the place of business of the putative employer; and (C) the individual is customarily engaged in an independent trade or business.

Up until recently, the direct selling industry has operated knowing that the tens of thousands of direct sellers in Montana satisfied the ABC test, were indeed independent and exempt businesspeople, and would not be misclassified as "employees". This feeling of comfort was based on the nature of the industry's operations in light of all other ABC test states (approximately 16 states). Up until recently, all ABC states (and for that matter, all other states) found direct sellers to be exempt from workers' and unemployment compensation law.

A recent decisions by the Department of Labor found that at least one direct seller was an employee. DSA is concerned because this decision could signal a trend in the misinterpretation of the law and this alarming trend could be reversed by legislative relief. If not corrected, direct selling companies could be forced to contribute to the unemployment and workers' compensation funds, and could be liable for compliance with regulations normally associated with employers, but not independent businesspeople. Direct sellers are not employees, and direct selling companies are not employers. Direct sellers operate at low profit margins and calling a direct seller an employee and a direct selling company an employer would not only be incorrect, but it could impose a serious financial burden on the industry.

The unsettled state of the law leaves the rest of the direct selling industry, including the thousands of Montana direct sellers, in limbo. To prevent the erosion of direct selling in Montana, DSA is asking for your help.

Adoption of the suggested amendment will not change the treatment of the vast majority of direct sellers, but will merely clarify the status of direct sellers, who have never been, on the whole, considered employees. Adoption of the amendment should not impose any additional financial burdens on the state or the unemployment compensation insurance fund. In fact, the clarification of the law could reduce the overall costs of the labor department in making determinations regarding direct sellers' status.

I ask you to support legislation that would follow the example set by the Congress and a majority of states and enact a definition in Montana's unemployment compensation law stating that direct sellers are exempt from the application of that law. This conformity would add certainty to the operations of honest, independent businesspeople and a vital industry.

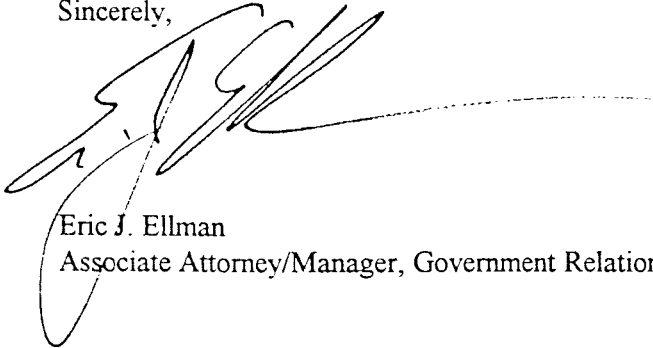
The Honorable Thomas F. Keating

January 31, 1995

Page 3

I should note that real estate agents enjoy exempt status in the same section of federal law (TEFRA) as do direct sellers. Real estate agents, however, have a statutory definition as exempt in the Montana unemployment compensation section of the code. Adoption of the proposed amendment would codify the commercial realities of direct selling and provide parity with real estate agents and federal law as well.

Sincerely,



Eric J. Ellman

Associate Attorney/Manager, Government Relations

January 27, 1995

Senator Thomas F. Keating
Senate Labor Committee
Montana State Senate
State Capitol
Helena, Montana 59620

Dear Senator Keating:

On behalf of Mary Kay Cosmetics, Inc. and its sales force in Montana, let me express support for HB 98 which would clarify the status and exemption of direct sellers, such as Mary Kay Beauty Consultants, for workers' compensation, unemployment compensation, and wage hour purposes in the State of Montana.

The Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 classified direct sellers as non-employees for federal tax purposes. They are, therefore, exempt from unemployment compensation coverage.

Throughout the years, Mary Kay Cosmetics, Inc., in conjunction with the Direct Selling Association and other DSA member companies, has sought to make state laws consistent with this federal provision. Conformity with federal law is desirable for states, as the direct selling industry provides income earning opportunities for over four million Americans annually.

HB 98 is revenue neutral because no contributions are currently made to the unemployment insurance fund or workers' compensation plan on behalf of direct sellers.

Direct sellers are independent small business people and value their independence as much as the income they earn. In fact, they were an integral part of the grassroots effort included in the passage of TEFRA in 1982. They treasure their status as independent consultants, operating their own businesses, maintaining their own records, inventories and expenses, and bearing risk of loss.

Mary Kay Cosmetics, Inc.
6787 Eldorado Freeway
Dallas, Texas 75247-1794

SENT BY: MARY KAY COSMETICS
1-31-95 10:07AM : MARY KAY CORPORATION-
406 449 0155: 2 / 3

EXHIBIT NO. 2 58

DATE 1-31-95

Page 2

The amendments would benefit Montana's system by clarifying direct sellers' non-coverage and eliminate the need for costly administrative proceedings which might otherwise be necessary to determine employment status. It thus saves the system money and time by further defining who can file, benefiting those waiting to appropriately qualify for unemployment or workers' compensation. It does not change the substance of current labor laws.

The language of the suggested amendments is drawn very tightly so as to address only direct sellers such as Mary Kay Beauty Consultants, Amway distributors, Avon representatives, Kirby distributors, etc., which is our only purpose.

Most Mary Kay Beauty Consultants enter the career to supplement family income, many times as a second job, in these challenging economic times. Addition of this language will give Montana direct sellers additional security regarding their statutory classification as independent business people.

Mary Kay joins the Direct Selling Association, Kirby, and others in endorsing passage of these technical amendments.

Thank you for your time and consideration of this proposal.

Sincerely,

Anne Crews

Anne Crews
Manager
Corporate Affairs

cc: Eric Ellman, Direct Selling Association

SEN BY MARY KAY COSMETICS
1-31-95 10:07AM MARY KAY CORPORATION-
406 449 0155: 3/3



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

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2 (HB98) 60
DATE 1-31-95
BILL NO. HB 98

January 26, 1995

The Honorable Thomas F. Keating, Chairman
Senate Committee on Labor and Employment Relations
Capitol Station #413
Helena, MT 596

Subject: House Bill 98 / TEFRA Conformity Proposal

Dear Chairman Keating:

I understand House Bill 98 may soon come before the Senate Labor and Employment Relations Committee. On behalf of the many independent Montana Amway distributors, Amway would like to express its support for this legislation.

House Bill 98 would help both the state and the direct selling industry by codifying the status of direct sellers as independent contractors under the Unemployment Compensation and Wage & Hour laws. These direct sellers, who include persons such as independent Amway distributors, Avon ladies and Mary Kay beauty consultants, are treated as non-employees under Montana common law. Direct sellers are already specifically exempted from the state Workers' Compensation Act.

Amway proposes to amend the Unemployment Compensation and Wage & Hour laws 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, at least 18 states have already enacted the TEFRA conformity language including: Alabama, Arizona, California, Florida, Illinois, Louisiana, Maryland, Minnesota, Missouri, Nevada, New Jersey, Oklahoma, Oregon, Tennessee, Texas, Virginia, Washington and Wisconsin. 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.

January 26, 1995
Page 2

The status of direct sellers as non-employees is therefore not disputed. Nonetheless, Amway Corporation and the direct selling industry wish to have the Montana Unemployment Compensation and Wage & Hour laws amended to statutorily clarify that non-employee status and make these laws consistent with the Montana Workers' Compensation law. 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.

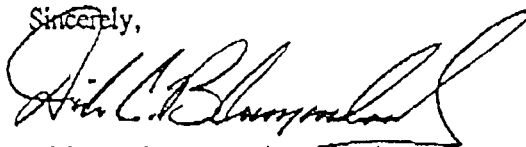
Usually an evidentiary hearing is required to resolve such claims, involving the expense of attorneys and administrative personnel. Although the common law is consistent in its treatment of direct sellers as being ineligible for unemployment compensation benefits, the standards set out in the proposed direct seller exemption are concise, precise and easy to prove. The proposal is revenue neutral and may even result in a savings of administrative expenses 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.

Further, there is no question that to ensure consistency the provisions of the Wage and Hour law which relate to employer-employee relationships should also specifically exempt direct sellers as non-employees. House Bill 98 does this.

HB 98's proposed test recognizes the Department of Labor and Industry'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 House Bill 98.

If I may be of further assistance in this matter, please call me at (616) 676-7010 or Brad Griffin of the Montana Retail Association, of which Amway is a member. Thank you for your kind attention.

Sincerely,



Dirk C. Bloemendaal, Counsel
Corporate Government Affairs

CC: Members of Senate Labor and Employment Relations Committee
Brad Griffin, Montana Retail Association
Eric Ellman, Direct Selling Association

Shaklee Corporation

Shaklee Terraces 444 Market Street
San Francisco, CA 94111
Telephone 415-954-2016
FAX 415-954-2155

Evelyn Jarvis-Ferris

Vice-President
Government Relations

January 26, 1995

The Honorable Thomas F. Keating
Chairman, Senate Labor and Employment Relations Committee
Montana State Senate
State Capitol
Helena, MT 59620

Dear Senator Keating:

I understand that the Senate Labor and Employment Relations Committee will be considering H.B. 98, relating to unemployment and workers compensation at a hearing scheduled for January 31. This bill was unanimously passed by the House on January 12. Shaklee supports this legislation which will ensure that direct selling distributors will retain their independent businessperson status in Montana.

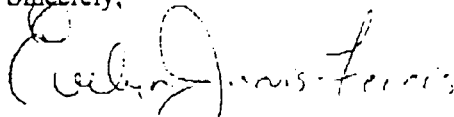
Shaklee, as you may know, is a direct selling company that distributes its nutritional, household and personal care products through independent businesspersons who work primarily out of their homes. The majority of our Distributors are women who sell Shaklee products on a part-time basis to supplement the family income.

Direct sellers are specifically defined as independent businesspersons in federal law and in many states by an exemption similar to that included in H.B. 98. This exemption clearly delineates what direct sellers are and what they are not and assures that they are able to operate their small businesses independently.

Many people start a Shaklee business precisely because they want to work for themselves. With a Shaklee business, people work independently making their own business decisions, including deciding what the size of their business will be and how much time they will devote to it. Some make it a full-time business while most others make it a part-time business. Some are in business for many years while others operate a business for only a short time. Given the nature and variety of Shaklee business people, it is essential that they continue to be classified as independent businesspersons. H.B. 98 will accomplish this and I urge your support of it.

Please let me know if I can be of further assistance.

Sincerely,



Evelyn Jarvis-Ferris
Vice President, Government Relations

Richard Herthneck
Deponent *HB 98*

Burney & Herthneck Co., L.P.A.

JON R. BURNEY
RICHARD E. HERTHNECK
MICHAEL P. MEEHAN

ATTORNEYS AND COUNSELORS AT LAW
160 PLAZA WEST BUILDING
20220 CENTER RIDGE ROAD
ROCKY RIVER, OHIO 44116
FACSIMILE (216) 356-6090

(216) 331-4660

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2 182
DATE 1-31-95
BILL NO. HB 98

January 27, 1995

Senator Thomas F. Keating
Chairman Senate Labor and
Employment Relations Committee
Helena, Montana 59620

Re: Direct Sellers

Dear Senator Keating:

The Kirby Company, located in Cleveland, Ohio, manufactures Kirby cleaning systems primarily used in the home.

Kirby has manufactured Kirby cleaning systems since the early 1900's and has written agreements with approximately 700 independent distributors of these cleaning systems throughout the United States.

Kirby cleaning systems are wholesaled to these distributors who, in turn, retail them to direct selling dealers, who have independent agreements with the distributors.

Dealers then perform in-home demonstrations at a consumer end-user's home.

Any such sale to a consumer end-user is at prices established by the dealer and the dealer's profit is measured by the difference he or she pays the distributor for the cleaning system and his or her sale to the consumer end-user.

Kirby cleaning systems have always been sold in this manner since, amongst other things, the Kirby cleaning system is a multi-faceted cleaner which needs explanation in order to understand its many functions and purposes.

In addition to a dealer establishing his or her own retail selling price to the consumer end-user, dealers are free from control or direction from the distributor concerning their sales activities with the consumer and such services are provided by the dealer outside of the distributor's establishment.

Senator Thomas F. Keating
Chairman Senate Labor and
Employment Relations Committee
January 27, 1995
Page 2.

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3 2 of 2

DATE 1-31-95

BILL NO. HB 98

More specifically, a dealer establishes his or her own territory; develops their own leads; provides his or her own transportation; receives no perquisites from the distributor; is free to hire or otherwise utilize assistance; is free to engage in other activities, including representing a competitor's lines of products or services; obtains his or her permits as may be required for the demonstration and sale of Kirby cleaning systems to the consumer end-user; is responsible for his or her taxes; receives a form 1099 for federal tax purposes; and generally performs services until that time that the distributor and dealer agree that the services are no longer needed or necessary.

A dealer who is a successful direct seller normally applies those skills to the direct sale of other goods and services for other companies and/or continues in his or her efforts as a direct sales person.

Activities of a dealer comply with Section 3508 of the Internal Revenue Code in that dealers are not deemed to be employees but are direct sellers.

House Bill 98 proposes to include the definition of "direct seller", as defined by the referenced Internal Revenue Code Section as someone who is customarily engaged in an independently established trade, occupation, profession or business as a legislative exemption since such dealers truly are independent in their direct sale capacities.

We believe that Montana House Bill 98 will clarify the status of direct sellers and ask for your support of this Bill.

Sincerely,



Richard E. Herthneck

REH:lm

.5h

OFFICE OF THE GOVERNOR

STATE OF MONTANA



MARC RACICOT
GOVERNOR

May 3, 1994

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4 1 of 4
DATE 1-31-95
BILL NO. HB 110
STATE CAPITOL
HELENA, MONTANA 59620-0801

Mr. Carl Hafer
6050 Porter Avenue
Butte, Montana 59701

Dear Carl:

I have received and carefully reviewed your recent letter explaining your situation with an uninsured contractor that you hired in 1989. It appears that you were certainly caught in an extremely difficult and frustrating situation.

I have visited with Betti Hill who met with you on my behalf. Betti has explained to me that the State has settled out of court with the claimant to recover \$19,000 of the disbursed benefits.

As you mention, it is a shame when someone abuses the system. The laws in regard to independent contractors can be confusing and allow for abuse. Many people want to work as independent contractors until they are injured, then they want to have the benefits of an employee. As a result, some people have been caught in the "catch 22" created by this scenario. Both the state legislature as well as the Internal Revenue Service continue to work to tighten the laws governing this work classification.

As you know, I did not serve you in this capacity during the majority of the years when your situation took place. Since most of the involved state employees are either gone or now are holding different positions, it is impossible for me to address why the details were handled in the manner they were.

Nonetheless, I sympathize with the terrible dilemma that you confronted in dealing with this over the past five years. I hope now that it is settled, that you can get on to more productive possibilities. I extend my best wishes and warm regards.

Sincerely,

A handwritten signature in cursive script that reads "Marc Racicot".

Marc Racicot
GOVERNOR

April 18, 1994

Governor Marc Racicot
State Capital Building
Helena, MT 59601

Dear Governor Racicot:

I am sending you this letter to convey my feeling to you that my State (Montana) has failed to perform its duty to ensure that its citizens are not taken advantage of by professional people employed by the state and other people who take advantage.

In September of 1989, I entered into a written contract with J.R. Richards to build a barn for me. During the course of working, J.R. Richards was injured and sued me as an employee. From the onset, I maintained that J.R. Richards was an independent contractor. I furnished the written contract and the required accident form to the Uninsured Employers Fund. In addition, I furnished a list of people J.R. Richards had performed independent contract work for. I went to Helena and met with Karen Doig who was at that time a supervisor with the Uninsured Employers Fund. Based on this information, the Uninsured Employers Fund determined that J.R. Richards was an independent contractor and not able to claim benefits as an employee. At that point, J.R. Richards had shopped around for an attorney and had not found one, then he retained Mr. Wade Dahood of Anaconda, who after a short period of time, informed J.R. Richards that he could not represent him as J.R. Richards had worked for his wife, Nancy Dahood, as an independent contractor at the M&M Bar in Butte.

At that point, J.R. Richards retained Micheal McKeon of Anaconda. Then Micheal McKeon and J.R. Richards submitted to the Uninsured Employers Fund (Karen Doig) a report which fulfilled every requirement of being an employee instead of being an independent contractor. At this time, despite my objections, Karen Doig revised her earlier determination of independent contractor status and said that J.R. Richards was an employee. When I later asked Karen Doig why she had accepted this erroneous accident report by Micheal McKeon and J.R. Richards without doing any checking on all of the information I had submitted and all of

Mr. Carl Hafer

Page 2

April 18, 1994

the people I had listed who J.R. Richards had worked for as an independent contractor and who had stated that they would testify that he was and had been an independent contractor. Karen Doig's statement to me was that there was not sufficient staff to check on my submitted information. Then Micheal McKeon had a court order tying up my assets. During the course of the legal matter which had now progressed, J.R. Richards received \$34,000 from the Uninsured Employers Fund and \$20,000 from me. At that point in the legalities, Micheal McKeon and J.R. Richards admitted that he was an independent contractor and got \$100,000 from my insurance company. By their admitting that he was an independent contractor J.R. Richards and Micheal McKeon admitted that the report they had filed to qualify J.R. Richards as an employee was a fabrication. When I sent the copy of this admission by J.R. Richards to Karen Doig, she said to me in her office that Micheal McKeon had taken advantage of the system by lying about J.R. Richards' status. Karen Doig then stated that Micheal McKeon and J.R. Richards would have to pay back to the Uninsured Employers Fund the total of \$34,000 that they had received by lying.

As time went on and I spoke with Karen Doig's successor, who I cannot recall by name, who said to me what did I care as it did not come out of my pocket. In 1993, I began to speak to Laurie Ekanger the chief supervisor of the Uninsured Employers Fund who asked me why I was pursuing this? Did I want revenge? I said to her that I did not want revenge, but I felt that J.R. Richards and Micheal McKeon should repay the \$34,000 to the State of Montana because they abused the system to get it. At about this time, Laurie Ekanger requested that I not call her anymore. At that time, I began to call a Kevin Braun, an attorney for the Insured Employers Fund.

At the onset, Kevin Braun stated that it was too bad that the statute of limitations had passed because J.R. Richards and Micheal McKeon had defrauded the state of Montana. When I continued to insist that the money be repaid to the state, Kevin Braun stated to me that he was sick of arguing with Micheal McKeon and was going to sue J.R. Richards and myself in the Workers Compensation Court. Micheal McKeon finally agreed to pay back \$19,000 to the Uninsured Employers Fund.

This is not a complete word by word account of all that transpired from September of 1989 to March of 1994, but I hope it shows that there is a problem with the Workers Compensation system that everyone is reluctant to address, that is the slick tactics of some attorneys who take advantage of the system. Everyone, including myself, are acquainted

Mr. Carl Hafer

Page 3

with attorneys for whom we have a high degree of respect which they deserve. When an attorney utilizes slick maneuvers to use the system it degrades the entire profession. As for individuals like J.R. Richards, we all see them every day as they try the various ways to use the system. It is only when they are able to enlist the talent's of a slick attorney are they able to use the system. If the state of Montana really wants to bring credibility to its Workers Compensation Program, it must ask the employees of that system to perform their work in a manner commensurate with their obligations to the citizens of Montana. To ensure that they are not paying their money to people who do not deserve it.

The state of Montana must be willing to say that individuals and slick attorneys who misuse the system will not be tolerated.

Sincerely,

Mr. Carl Hafer

jri



DEPARTMENT OF LABOR AND INDUSTRY

EMPLOYMENT RELATIONS DIVISION

MARC RACICOT, GOVERNOR

STATE OF MONTANA

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #5 10/5
DATE Jan 31 1995
BILL NO. SB 110
P.O. BOX 8011

TELEPHONE: (406) 444-6530
FAX: (406) 444-4140
TDD: (406) 444-5549

HELENA, MONTANA 59604-8011

February 6, 1995

Senator Tom Keating, Chairman
Senate Labor Committee
State Capitol Building
Helena, Montana

Dear Senator Keating:

In response to the request of the committee and of Senator Van Valkenburg, we are providing our views on what might be done to improve the uninsured and underinsured employers funds. In general, we believe that the uninsured and underinsured programs are both sound programs, and would benefit from only minor enhancements. We see the true problem being the independent contractor problem, and most of our recommendations center on that issue.

We have also taken the liberty of including some background information of the case involving Mr. Hafer, so that the committee has a frame of reference on his particular case. That case was extremely unusual; in my five years in this division, it is the only case of its kind, out of literally thousands of cases.

Synopsis and Recommendations

We believe the uninsured employer program is effective in bringing businesses into compliance with the coverage requirements of the workers' compensation act, and that the underinsured program, although new, will be effective in ensuring businesses are reporting workers' compensation classifications properly.

Both programs have a common problem, however: the independent contractor. Under current law, an independent contractor (IC) is required to have coverage, but may elect out of the workers' compensation system by applying and receiving an exemption from our department. Our exemption (and the IC definition on which it is based) contemplates a single individual, working alone, who is an independent businessman.

In many cases, the reality is far different. Through both programs, we find the following problems: 1) exempt ICs regularly hire others; 2) ICs "hire" other ICs, and now we see whole jobs performed by IC "partners"; 3) employers make workers get an IC exemption as a condition of employment, yet continue to treat them as employees; 4) workers regularly lie about their status to get the exemption; 5) employers treat workers as ICs and then put them on the payroll as soon as an accident occurs. And these are just the main categories of problems we see.

Simply put, the independent contractor status creates the majority of coverage and liability questions in our system, because it is too easy to get, too easy to lie about, has too many easy loopholes, and there are no meaningful consequences when IC status is abused.

Recommendations Regarding Independent Contractors

1. Make workers compensation coverage mandatory for all ICs.
2. If coverage is not made mandatory, make the current exemption process meaningful by:
 - A. charging a meaningful fee for the exemption;
 - B. requiring ICs to post a bond;
 - C. considering combining the public contractor license and IC license in the construction industry;
 - D. requiring an IC to actually have an official exemption, if they claim IC status - and considering those without exemptions as employees;
 - E. making the exemption an annual certification process, rather than the current indefinite time frame;
 - F. instituting meaningful penalties for those who abuse the IC status.

There are, in addition to the independent contractor issues listed above, some minor technical changes that could be made to the uninsured and underinsured programs to make them more effective.

Recommendations Regarding Uninsured Employers Fund (UEF)

1. Allow the UEF program to utilize the services of the Criminal Investigations Bureau and the Special Workers Compensation Fraud Prosecutor at the Department of Justice.
2. Increase the minimum penalty for being uninsured from \$200 to \$1000, but allow the Department to negotiate the penalty amount.
3. Increase enforcement staff. UEF staff pay for themselves on a better than 2 to 1 ratio, and there are many more cases than we can handle with current staff.

Page 3

Recommendations Regarding Underinsured Employers Fund (UIEF)

1. Redefine "knowingly" in the current statute from the criminal definition to one that is less difficult to prove.
2. Create a statute which would clearly require insurers to cooperate with UIEF in investigations and to provide payroll information.
3. Clarify the penalty authorized in 39-71-532.
4. Increase the minimum penalty to \$1000 but allow the Department to negotiate the amount of penalty.
5. Create a penalty for insurance carriers who are a party to the misclassification.

Please don't hesitate to call on me if I can provide any additional information or can provide more background on the recommendation made above. We look forward to working with the committee as it deliberates this bill.

Sincerely,



Chuck Hunter, Administrator

Richards/Hafer Case Synopsis

1. J.R. Richards was retained by Carl Hafer to construct a barn on Mr. Hafer's property.
2. On September 25, 1989, Mr. Richards came into contact with a high voltage powerline which ran over the construction site.
3. Mr. Richards filed a claim for compensation with the UEF alleging himself to be an employee of Mr. Hafer. Mr. Hafer did not have workers' compensation insurance coverage as he believed that he hired Mr. Richards as an independent contractor.
4. The UEF initially denied Mr. Richards claim, finding that he was an independent contractor. That denial was reconsidered after Mr. Richards submitted additional information which the UEF found to be determinative of employee status. The claim was picked up and \$34,473.14 was paid out by the UEF.
5. Subsequent to the UEF picking up the claim, Mr. Richards sued Mr. Hafer in district court. That case settled for the limits of Mr. Hafer's homeowner's insurance policy (\$100,000) plus a \$20,000 contribution from Mr. Hafer.
6. During the course of settlement of that claim, Mr. Richards responded to a set of admissions. The relevant request for admission and response is as follows:

REQUEST FOR ADMISSION NO. 3: Admit that you worked as an independent contractor building the barn for Defendant at the time you were injured.

RESPONSE:

Admit that I was both an independent contractor and statutory employee of Carl Hafers when I built his barn. See, Cain v. Stevenson, ___ Mont. ___, 706 P.2d 128.

7. That admission came after the UEF's determination of employee status.
8. After Richards' admission, the UEF sought to recover the amounts paid on the claim from Richards. Richards was not cooperative and the UEF was forced to file a petition for mediation. That petition was dismissed so a petition for trial was filed in the Workers' Compensation Court. The UEF filed its petition in the alternative, i.e., that Richards was either an employee or an independent contractor, not both. If an employee, the UEF wanted reimbursement from Hafer. If an independent contractor, the UEF wanted reimbursement from Richards. The UEF settled with Richards for reimbursement in

NEW YORK & LONDON & EMPLOYMENT
EXHIBIT NO. 5 5 of 5
DATE Jan 31, 1995
BILL NO. SB 110

the sum of \$19,236.57.



STATE COMPENSATION INSURANCE FUND

5 SOUTH LAST CHANCE GULCH

P.O. BOX 4759

HELENA, MONTANA 59604-4759

General Information (406) 444-6500

Carl W. Swanson, President

Executive (406) 444-6518

February 8, 1995

Senator Tom Keating
Senate Labor Chairman
Montana State Senate
Capitol Bldg
Helena, MT 59620-0500

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #6 10/1
DATE 1-31-95
BILL NO. SB 110

RE: SB 110

Dear Senator:

Thank you for your letter of February 1, 1995 regarding Sen. VanValkenberg's request to opponents of SB 110 to suggest alternatives/amendments to the current law, short of repeal.

The State Fund cannot comment on the particular circumstance that occurred in the case of Mr. Hafer. We do believe that his experience should be the exception and not the rule regarding enforcement of the uninsured/underinsured laws. Our suggestion is that the Department of Labor and Industry be funded to identify, investigate, and prosecute fraud to curb any abuses associated with the current statute.

We believe the uninsured/underinsured laws are a useful and integral component of a successful workers' compensation system.

Thank you for the opportunity to provide additional comment.

Very truly yours,

Nancy Butler
General Counsel

LAW OFFICES

**Keller, Reynolds, Drake,
Johnson and Gillespie, P.C.**

P. KEITH KELLER
THOMAS Q. JOHNSON
RICHARD E. GILLESPIE
G. CURTIS DRAKE
JACQUELINE TERRELL LENMARK
ROBERT R. THROSSSELL
JOE SEIFERT

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #7 1 of 2
DATE January 31, 1995
BILL NO. SB 110

38 SOUTH LAST CHANCE GULCH
HELENA, MONTANA 59601
TELEPHONE (406) 442-0230
FAX (406) 449-2256

OF COUNSEL
PAUL T. KELLER
PAUL F. REYNOLDS
GLEN L. DRAKE

February 6, 1995

The Honorable Senator Thomas Keating
Chairman, Senate Labor & Employment
Relations Committee
Montana State Senate
Capitol Building
Helena, MT 59620-0500

RE: Senate Bill 110

Dear Senator Keating:

Thank you for the opportunity to provide information to your Committee on Senate Bill 110 and the problems presented to Montana by independent contractors that attempt to avoid workers' compensation insurance requirements. We all understand that independent contractors pose a significant problem in Montana as Mr. Hafer's unfortunate experience clearly underscored. AIA does not believe that abolishing the uninsured and underinsured employer's fund is the appropriate response to the problem, however. Rather, AIA would prefer to see a combination of remedies to address this problem.

I am enclosing for your review a brief report on independent contractors drafted by one of AIA's experts for the NCCI Fraud Commission premium fraud subcommittee. (The lengthy attachments referenced in the report are omitted.) The summary should give you a sense of the alternatives that AIA supports exploring. (Please note that the Florida project noted under "Rating plans" was not regarded as a success.)

Additionally, it is AIA's understanding that Senator Forrester will be introducing a bill regarding independent contractors that will require a significant fee registration and posting of a security bond. While AIA cannot absolutely endorse Senator Forrester's proposed legislation until it can be reviewed, in concept, the approach is one that AIA would support.

The Honorable Senator Thomas Keating
February 6, 1995
Page 2

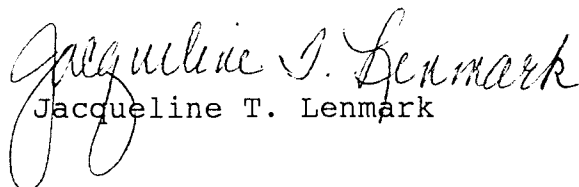
SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 208
DATE January 31, 1995
BILL NO. SB 110

Finally, the current statutes on uninsured and underinsured employers should be strengthened. Penalties and enforcement should be reevaluated to be certain that they are adequate for the problem presented.

I have considerable information provided to me by AIA on the problem of independent contractors. I provided the information to the Joint Interim Subcommittee on Workers' Compensation Alternatives this past summer. I would be happy to provide you with the information as well and discuss it with you if that would be useful. In the meantime, AIA recommends that the Committee defer action on Senate Bill 110 until Senator Forrester's bill can be evaluated.

As always, Senator, AIA appreciates your active concern about the integrity of Montana's workers' compensation system.

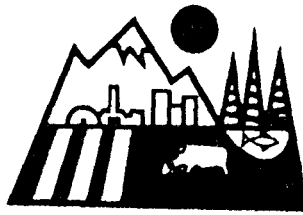
Very truly yours,


Jacqueline T. Lenmark

JTL/ko

Enclosure

cc: Terry Miller



SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #8 10/1
DATE Jan 31, 1995
BILL NO. SB 110

MONTANA CHAMBER OF COMMERCE

P. O. BOX 1730

• HELENA, MONTANA 59624

• PHONE 442-2405

February 3, 1995

The Honorable Senator Thomas Keating
Chairman, Senate Labor & Employment
Relations Committee
Montana State Senate
Capitol Building
Helena, MT 59620-0500

Dear Senator Keating,

Thank you for the opportunity to comment on the situation concerning the employer provisions of the uninsured and underinsured code and the case presented by Mr. Hafer.

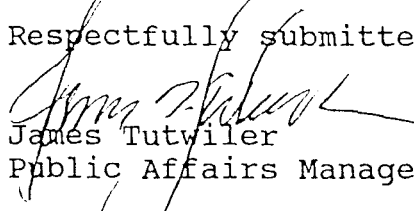
As stated in our previous testimony, we do not believe it is in the best interest of employers and employees in Montana to abolish the uninsured and underinsured programs administered by the State. Nevertheless, the Hafer case dramatically calls attention to a problem, one that Senator VanValkenburg has appropriately requested all concerned parties address.

Rather than abolish the insurance program and penalize deserving recipients because of the misdeeds of a few, we believe that the problem could be resolved by making needed changes in the statute pertaining to independent contractors. Specifically, there should be implemented a fee registration and bonding system designed to screen out unqualified independent contractors and empower the Department of Labor & Industry to readily detect abuses and enforce penalties against violation of the statute.

We have recently met with Senator Gary Forrester and it is his intention to introduce an independent contractor bill that will accomplish precisely what we have briefly outlined here.

In the interim, we would recommended the Committee withhold action on SB 110 until the merits of Senator Forrester's bill can be examined in a hearing and in the Committee.

Respectfully submitted,


James Tutwiler
Public Affairs Manager

cc: Senator Forrester

MONTANA SELF-INSURERS ASSOCIATION

GEORGE WOOD, Executive Secretary

February 3, 1995

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. Ex #9 1 of 2
DATE Jan 31, 1995
BILL NO. SB 110

Senator Thomas F. Keating
Montana State Senate
Capitol Building
Helena, MT 59620

RE: SB110

Dear Senator Keating:

This will acknowledge receipt of your letter of February 1, 1995.

Since the hearing on SB110, I have reviewed the statutes pertaining to the uninsured and underinsured provisions of the Workers' Compensation Act and discussed the question with Department of Labor and Industry personnel. The Department has a rules hearing scheduled on February 17, 1995 relating to the operation of the uninsured employers' fund and the underinsured employers' fund. I was advised that experience to date indicates most of the activity to date in the underinsured employers' fund relates to the State Fund and the costs will be assessed against the State Fund. I am still firmly convinced that the continued operation of the two funds is necessary to give employers and employees a place to report what they feel are irregularities and inaccuracies in the area of coverage, classification and rates.

The problems related at the hearing pertained primarily to the independent contractor determination and exemption. I would propose that changes be made in the standards for, and the granting of, the independent contractor exemption. No longer should the application be the main criterion.

I would ask that a procedure be required that

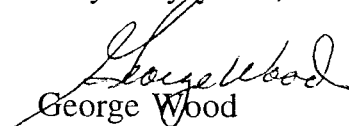
- (1) requires an application, in detail, requesting, among other information, the work and business history of the applicant;

- (2) requires the application to be made annually and that it be accompanied by the payment of a fee sufficient to cover the procuring of the application -- \$50;
- (3) requires the posting of a surety bond to be held by the Department -- \$5,000 --;
- (4) the applicant should certify that it is clearly understood that an exemption can be granted only to the applicant and not to any employee, if there are to be employees, a certificate of workers' compensation insurance should accompany the application;
- (5) require the applicant to certify that any work to be performed under the exemption will pass the ABC test or revise the ABC standards,
- (6) require that the applicant granted the exemption remain an independent contractor until the exemption is rescinded, in writing,
- (7) require the Department to maintain an easily accessible telephone roster of exempt independent contractors.

The Department should advise the public on the operation of and aggressively administer the program.

Solving the problem surrounding the independent contractor exemption and making employers and employees more aware of the uninsured and underinsured employer provisions of the law would be a responsible way to address the problem questions at the hearing.

Very truly yours,


George Wood
Executive Secretary

MONTANA SELF-INSURERS ASSOCIATION

GEORGE WOOD, Executive Secretary

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 9 1 of 1

DATE Jan 31, 1995

DIRECTORS

President Jerry Woods, Montana Power Company SB 110
 Vice-President Colleen Dunlop, Stone Container Corp.
 Directors Marilyn Dauber, Golden Sunlight Mines
 James Connelly, Champion International
 Dan Walker, US WEST Communications

MONTANA SELF-INSURED EMPLOYERS

1/1/95

No.	Organization	No.	Organization
2	ASARCO	37	Union Oil
3	AT&T	38	US WEST
4	Albertson's	39	Western Fruit Express
5	American Drug	40	Town Pump, Inc.
6	Ash Grove Cement	42	Plum Creek
7	Borden's, Inc.	43	Ryder Systems
8	Browning Ferris	44	Federal Express Corp.
9	Champion International	45	Columbus Hospital
11	Cominco American	46	St. Patrick Hospital
12	Con Agra	47	St. Joseph Hospital
13	Conoco Pipeline	49	Northwest Health Care Corp.
14	Conoco, Inc.	50	St. Thomas Child & Family Center
15	Consolidated Freightways	51	Montana Hospital Association
16	Continental Baking	52	J. C. Penney
18	Entech	53	Dayton Hudson Corp. (Target)
19	F. H. Stoltze Land & Lumber	54	Horizon Health Care Corp.
20	Georgia Pacific	55	Holy Rosary Hospital
21	Golden Sunlight	56	J.H. Kelly, Inc.
22	Holly Sugar	57	Harvest States Cooperatives
23	K-Mart	58	International Paper
24	Louisiana-Pacific	59	Stillwater Mining Co.
25	Montana Deaconess Medical Center	60	Montana Contractors
26	Montana Health Network	61	Plum Creek Management Co.
27	Montana Power	62	MT Electric & Telephone Systems
28	Peabody Coal		WC Pool
29	Rosauer's	63	Montana Resources (Partnership)
30	Shell Pipeline	64	Holnam, Inc.
31	Shell Western E & P		
34	Stan Watkins Trucking		
36	Stone Container		

Public Entity - Self-Insured

* 1. Montana School Group	1993 Payroll	\$1,412,068,026
* 2. Montana Association of Counties	Compensation Paid	\$13,819,230
* 3. Montana League of Cities & Towns	Employees	72,521
* 4. Missoula County		

1 of 3
SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1 of 3

DATE Jan 31, 1995

BILL NO.

DATE

SENATE COMMITTEE ON

BILLS BEING HEARD TODAY:

SB 155

HB 98

SB 110

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PLEASE PRINT

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Check One

Name	Representing	Bill No.	Support	Oppose
DAVE BROWN	KIRBY	HB-98	X	
DAVE ROTT	KIRBY	HB 98	X	
BOB Gustafson	KIRBY	HB 98	X	
Dan Fouts	KIRBY	HB 98	X	
Mike Davis	KIRBY	H. B. 98	X	
CARL HAGER		SB 110		
BLAIN SCHAFF	KIRBY	HB 98	X	
Richard HERTHUECK	KIRBY	HB 98	✓	
Eric J. Ellman	DIRECT SELLING ASSN	HB 98	X	
Jim Myn	Western Staff			
Angeline Benmark	Am. Ins. Assoc	SB 110 SB 155 HB 98		X
John Joh	Express Personal	SB 151		
Brad Griffin	MT Retail Assoc	HB 98	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

BILLS BEING HEARD TODAY:

DATE 20/3
BILL NO. Jan 31, 19

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PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATE COMMITTEE ON

BILLS BEING HEARD TODAY:

SB 155

HB 98

SB/10

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PLEASE PRINT

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VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY