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TALKING POINTS: Vermont Independent Contractor Bills

- Good afternoon Chairman Botzow and members of the Committee, my name is Brian Bennett, and I represent the Direct Selling Association (DSA). DSA is the national trade association for companies that market products and services directly to consumers through an independent, entrepreneurial sales force.
- DSA and our member companies represent over 22,000 Vermont residents that were involved in direct selling, accounting for more than \$60 million in sales.
- More than 90% of direct sellers choose to work part time, setting their own schedules for flexibility and work-life balance. Most people engage in direct selling in addition to other full time jobs. Due to the flexible, part-time nature of the business, the median annual net income, after expenses, for a direct selling consultant nationally is only \$1,500 a year before taxes.
- I know there were a few questions the Committee wanted answered, and since my time is short here today, I will answer the first two questions and then provide my comments on these bills.
- The Committee's goal for this work is simple. To address any abuses of companies in Vermont utilizing the independent contractor for individuals that are clearly employees. The principles that should inform your work are to have a narrowly tailored bill that addresses these abuses, without impacting genuine independent contractor relationship.
- Instead of running through each of the standards and requirements of each bill one-by-one, I would like to very generally describe a direct selling company's relationship with the 22,000 Vermont residents that engage in the business channel. I think you will find that these individuals would fall under the definition of each of these statutes, but specific language exempting direct sellers from the workers compensation statute, similar to the unemployment compensation statute is needed to provide clarity to the state and individual direct sellers.
- First, no DSA member company, has a physical presence in Vermont. Our companies sell products and services in Vermont via independent distributors.
- Distributors sign an agreement with companies that they are independent contractors and will not be treated as an employee for federal, state, or local tax purposes. The distributors are responsible for any payment of federal, state and local taxes. Except sales tax. Most companies enter into agreements with the proper

state taxation authorities to collect and remit sales tax for their distributors in the state.

- Training is dependent on the company, but there are usually websites or videos that distributors can watch to get acclimated with the company. The independent contractor agreement itself lists policies and procedures that may also set forth the scope of representations that the distributor can ethically market the products or services involved. Or, the person who brought them into the business can mentor them as they grow their business.
- Distributors are free to sell to whomever they wish. They are given no sales territory, nor given any leads. They work as much or as little as they need.
- They pay all of the expenses of operating their business and their success or failure is dependent upon the amount of products the distributor or anyone in their network can sell.
- Actual compensation is dependent upon the company, but distributors make a percentage of commission based upon the products they sell. The company does not set the prices of the products, but does provide a suggested retail price. Distributors can decide whether to sell the product at a price lower to sell more product (for example, buy one, get one 50% off). The distributor places orders with the company for products sold or for personal use. The company then pays distributors based on commissions for the sale of products.
- All commissions paid to an independent sales representative (above \$600, as required by federal law) are reported on a Form 1099 and independent sales representatives file a Schedule C with their federal income tax returns.
- Unlike many businesses, the typical relationship between a distributor and direct selling company is fairly standard. Unlike other industries where the scope of work and means and manner of performance can vary greatly. The Vermont legislature found this to be true, when in 2006, a statute was enacted that clearly made direct sellers independent contractors under the unemployment compensation statute.
- The language is consistent with Internal Revenue Service Code, 26 USC 3508, which defines real estate agents direct sellers as statutory non-employees for federal income taxation purposes. It is narrowly tailored to be applicable only to direct sellers.
- The changes suggested are subjective and confusing, providing little guidance to thousands of people engaging in direct selling in Vermont. If any change to Vermont workers compensation statute is to take place, I would like suggest including language identical to 21 V.S.A. § 1301(C)(xxi) that statutorily defines direct sellers as independent contractors.
- DSA supports the intent of this legislation, which serves to protect the misclassification of employees. However, this committee should not pass one bill that would do anything

to make entrepreneurial business less attractive to Vermonters. I'd be happy to answer any questions. Thank you.