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March 29, 2019

Oregon House Business and Labor Committee

Re: Support for HB 3416: Provide Clarity for Direct Sellers

Dear Oregon House Business and Labor Committee:

The Direct Selling Association (“DSA”) would like to voice its support for HB 3416, sponsored by Representative Jeff Barker. **The bill would clarify direct sellers’ status as independent contractors under Oregon statute.**

DSA is the national trade association for companies that sell their products and services directly to consumers through an independent, entrepreneurial salesforce. In 2017, over 259,000 Oregon residents were involved in direct selling and the industry contributed over \$509 million in sales to the state. Over 18 million Americans are involved in direct selling in every state, Congressional district and community in the United States.

In Oregon, as in the rest of the country, individuals selling for direct selling companies are independent contractors – 90% sell on a part-time basis to their neighbors, relatives, and friends to supplement their family income, while 74% of the sales channels are women. They like the freedom and flexibility to build businesses on their own terms. Their direct selling activities are generally neither extensive nor sophisticated. Direct sellers are quintessential micro-entrepreneurs.

ORS 657.087 specifically defines direct sellers as independent contractors under the state unemployment compensation statute. The statute was enacted in 1977 and requires that in order to meet the requirements of the statute, sales must occur in-person and in the home.

ORS 316.209 is consistent with Internal Revenue Service Code (26 U.S.C. § 3508) that specifically defines direct sellers as independent contractors. The law was enacted in 1983 immediately following Congress passing the Tax Equity and Fiscal Responsibility Act of 1982, which included this language. This language more clearly and specifically defines direct sellers and does not contain the requirement that sales be made in the home.

In May 2018, the Supreme Court in *ACN Opportunity, LLC v. Employment Department* ruled ACN was responsible for unemployment compensation for a handful of distributors. The court said that only the sales they could show were made in person and in the home would be eligible for this exemption.

In a concurring opinion, Chief Justice Balmer said “The requirements the legislature used to identify exempt direct sales in 1977—in-person solicitation and sales in the home---may no

longer be appropriate to delineate some of the kinds of direct sales the legislature intended to reach when it enacted the exemption.”

DSA requests your support for HB 3416 to update Oregon statute to be consistent with the Internal Revenue Service Code (26 U.S.C. § 3508) and ORS 316.209. Thank you.

Sincerely,

Brian Bennett
Vice President, Government Affairs & Policy
Direct Selling Association