



April 5, 2019

State of Oregon  
Oregon House Business and Labor Committee

RE: **Support for House Bill 3416**

Dear Oregon House Business and Labor Committee:

The Kirby Company (the “Company”) is writing to **support** to House Bill 3416 (“HB 3416” or the “Bill”), which would clarify direct sellers’ status as independent contractors under Oregon statute. The Company is appreciative of Representative Jeff Barker’s sponsorship of the Bill due to the positive impact it will have on the great entrepreneurial opportunity provided by direct selling.

The Company celebrated its centennial year in 2015. For over one-hundred years, the Company has made one of the finest home cleaning systems available. The Company’s home cleaning systems remain one of the last, if not the last, vacuum cleaners made in the United States.

The Company markets its home cleaning systems to independently owned and operated businesses or “distributorships.” These authorized distributors, through a network of independent salespeople or “dealers,” then sell the home cleaning systems to consumer end-users via in-home demonstrations. This distribution system allows consumers the opportunity to use the product in their homes before purchasing. Furthermore, the distribution system has enabled thousands of men and women to live the American dream of owning their own businesses.

Distributors of Kirby products own and operate their own businesses without having to pay the Company franchise fees or royalties. The dealers affiliated with the distributorships decide the hours they want to work and the consumers to whom they want to sell. Some dealers work to supplement their families’ incomes while others work to eventually become distributors themselves by demonstrating their abilities to sell Kirby products legally and ethically.

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. While this is how distributors of Kirby products sell Kirby home cleaning systems, it is not how distributors for many other direct selling companies sell their products. As such, the Company is supporting the Bill to help preserve the great opportunity direct selling affords individuals affiliated with other direct selling companies and for the sake of consistency, which is further described below.

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*A Scott Fetzer Company*

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.”

The Bill would more closely align with ORS 316.209 and would be 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.

For these reasons, the Company is respectfully asking you to **support** HB 3416, thus updating Oregon statute to be consistent with the Internal Revenue Service Code (26 U.S.C. § 3508) and ORS 316.209. Thank you for your time and consideration.

Very truly yours,



Halle Sminchak  
Chief Compliance Officer