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April 4, 2019

Members of the Oregon House Business and Labor Committee

Re: Support for HB 3416: Clarifying the Independent Contractor Status of Direct Sellers

Dear Members of the Oregon House Business and Labor Committee:

I am writing on behalf of Shaklee Corporation ("Shaklee") to voice its support for HB 3416, sponsored by Representative Jeff Barker. The bill would clarify the status of direct sellers as independent contractors under Oregon law.

Shaklee is a direct selling company founded in 1956 which sells all of its products via independent contractor distributors. Nearly ninety percent (90%) of such distributors are women working from home to supplement the family income. Thousands of Shaklee Independent Distributors reside in the State of Oregon. They rely upon the flexibility that direct selling affords in allowing them to choose when to work and how many hours to devote to their business.

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 sales occur in-person and in the home in order to meet its requirements. The statute does not reflect the way direct sellers conduct their business today.

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

In May 2018, the Oregon Supreme Court ruled in *ACN Opportunity, LLC v. Employment Department* that ACN was responsible for unemployment

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compensation for certain of its distributors because the company could not show that the sales had been made in the home.

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.

Shaklee requests your support for HB 3416 to update the Oregon statute and make it consistent with the Internal Revenue (26 U.S.C. Section 3508) and ORS 316.209. Thank you for your attention to this matter.

Sincerely,



Marjorie L. Fine

Cc: Direct Selling Association

Mlf:lt