



DAN KNODL

STATE REPRESENTATIVE • 24TH ASSEMBLY DISTRICT

October 11, 2013

Scott Manley
501 E Washington Avenue
Madison, WI 53703

Phil Neuenfeldt
6333 West Bluemound Road
Milwaukee, WI 53213

Dear Respective Chairs,

Under State Statute 108.02 (15) (k) 16, people who engage in the business of direct selling (Avon, Mary Kay, Pampered Chef, etc.) are considered independent contractors, and are exempt from the unemployment insurance system. Unfortunately, the statute was put into place in 1983 and has become outdated, causing confusion for both the department and the direct sellers when it comes to applying the definition to today's business.

The issue stems from the current language of the statute that states that sales must occur "primarily in the home." As you know, in today's world direct sellers may conduct transactions at work or even at a coffee shop. This has caused confusion for both the department and the direct sellers when it comes to applying the definition to today's business.

I am seeking the council's opinion on updating the statute to mirror the language found in federal statute 26 U.S.C. § 3508. By doing so, we would be providing greater clarity and consistency to the business community and those involved in direct selling, and bring Wisconsin into conformity with how more than 30 other states treat this issue.

Please let me know if you have any questions and I look forward to your prompt attention on this matter.

Sincerely,

Dan Knodl
State Representative
24th Assembly District



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2588/4
JTK:eevjf

2013 BILL

- 1 **AN ACT to repeal and recreate 108.02 (15) (k) 16. of the statutes; relating to:**
2 coverage of certain individuals engaged in sales activity outside a permanent
3 retail establishment under the unemployment insurance law.

Analysis by the Legislative Reference Bureau

Currently, if an individual is performing services for an employer other than a governmental or nonprofit employer, except as the employer otherwise elects with the approval of the Department of Workforce Development (DWD), and the individual receives remuneration solely from commissions, overrides, bonuses, or differentials directly related to sales or other output derived from in-person sales or solicitation of orders from ultimate consumers primarily in the home, the services performed by the individual are not covered under the unemployment insurance (UI) law. An individual who performs such services is not eligible to claim UI benefits based on the performance of the services and a person who employs an individual to perform such services is not subject to a state UI contribution requirement (a requirement to pay taxes) based on the performance of the services.

This bill provides instead that if an individual is performing services for an employer other than a governmental or nonprofit employer, except as the employer otherwise elects with the approval of DWD, and the individual is engaged, in a home or otherwise than in a permanent retail establishment, in selling or soliciting the sale of consumer products for use, sale, or resale by the buyer and substantially all of the remuneration for the services is directly related to the sales or other output rather than to hours worked, then a claimant is not eligible to claim UI benefits based on

