

TESTIMONY: HB 647
Joseph Aquilina on behalf of Direct Selling Association
MARYLAND JUDICIARY COMMITTEE
February 13, 2020

Bill Number: HB 647

Position: Oppose unless Amended

I want to thank the Judiciary Committee for holding this hearing, and for the opportunity to speak with you today. The Direct Selling Association (DSA) respectfully opposes HB 647.

- This bill contains numerous reporting requirements for individual direct sellers and would be burdensome to direct selling companies and the independent contractor salesforce utilized by our companies. Additionally the bill conflates “independent contractor” with “employee” even though these are legally distinct classifications.
- In 2018, 279,723 Marylanders were involved in direct selling and the industry contributed \$657 million in sales. Our businesses attract individuals seeking job flexibility, offering low start-up costs to many who often have minimal work experience. Their direct selling activities are generally neither extensive nor sophisticated. Direct sellers are quintessential micro-entrepreneurs.
- In Maryland, 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 75% of the sales channels are women.

Although our business model may not be considered during these discussions, many of the policy proposals intended for these companies could impact our industry. There have been efforts in other jurisdictions to examine worker misclassification issues. For example, the recently passed A.B. 5 in California had language that *specifically defined direct sellers as independent contractors*.

- Because of the potential for confusion and burdens on direct sellers we suggest amending HB 647.

For example, specific language offered could draw on the unemployment compensation code as defined under [Maryland § 8-206\(b\)](#) to specifically define and exempt direct sellers defined as:

(b) Direct sellers. -- Work that a direct seller performs is not covered employment if the Secretary is satisfied that:

- (1) the direct seller is engaged in the trade or business of selling consumer products:
 - (i) in the home or at any other location outside of a permanent retail establishment; or
 - (ii) to a buyer on a buy-sell basis, a deposit-commission basis, or any similar basis for resale by the buyer or any other person in the home or at any other location outside of a permanent retail establishment;
- (2) the direct seller and the person for whom the work is performed have entered into a written agreement that is currently in effect;
- (3) substantially all of the compensation for the employment is related directly to sales or other output, including the performance of a service, rather than to the number of hours worked; and
- (4) the written agreement states that the direct seller will not be treated as an employee for the purpose of State and federal income taxes with respect to the employment performed under the agreement.

For the foregoing reasons, the Direct Selling Association respectfully asks that you vote against HB 647 or specifically amend the bill to explicitly recognize direct sellers as independent contractors by incorporating Maryland § 8-206(b) of the Code setting forth that direct sellers are not included in the term “employment.”

###