Session Law 84-123

Florida Senate & House of Representatives

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A BILL relating to
(Brief statement of subject)
direct sellers,

By Senator

By the Committee on

Chairman's signature

and

SENATE ACTION

HOUSE ACTION

Read 1st Time
Referred to Committees on

COMMERCE
Fav Unfav With Amend Com Sub
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Read 2nd Time
Read 3rd Time
and

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Read 2nd Time
Read 3rd Time
and

Secretary of Senate

Clerk, House of Representatives

☑ Immediately Certified to Senate
☑ Laid on Table
☑ Motion to Reconsider by Senator

☑ SENATE AMEND TO HOUSE AMEND, ACTION —
A bill to be entitled
An act relating to direct sellers, amending ss 440.02, 443.036, F S; exempting direct sellers from the definitions of "employee" and "employment" for purposes of the workers' compensation and unemployment compensation laws; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (2) of section 440.02, Florida Statutes, is amended to read 440.02 Definitions -- When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(2)
(d) The term "employee" does not include:
1. An independent contractor, including:
   a. An individual who agrees in writing to perform services for a person or corporation without supervision or control as a real estate salesman or agent, if such service by such individual for such person or corporation is performed for remuneration solely by way of commission,
   b. Bands, orchestras, and musical and theatrical performers, including disk jockeys, performing in licensed premises as defined in chapter 562, provided that a written contract evidencing an independent contractor relationship is entered into prior to the commencement of such entertainment;
   c. A direct seller, if the direct seller is a person:
      (I)(A) Who is engaged in the trade or business of selling or soliciting the sale of consumer products to buyers.

CODING Words in struck through type are deletions from existing law, words underlined are additions.
on a buy-sell basis, a deposit-commission basis, or any
similar basis, for resale in the home or in any other place
that is not a permanent retail establishment, or

(B) Who is engaged in the trade or business of selling
or soliciting the sale of consumer products in the home or in
any other place that is not a permanent retail establishment;

(II) Substantially all of whose remuneration for
services described in sub-sub-subparagraph (I), whether or not
paid in cash, is directly related to sales or other output,
rather than to the number of hours worked, and

(III) Who performs such services pursuant to a written
contract with the person for whom the services are performed,
which contract provides that the person will not be treated as
an employee with respect to such services for federal tax
purposes.

2. A person whose employment is both casual and not in
the course of the trade, business, profession, or occupation
of the employer; or

3. A volunteer, except a volunteer worker for the
state, or a county, city, or other governmental entity

a. Notwithstanding the provisions of s. 440 26, a
person not receiving monetary remuneration for his services
shall be presumed to be a volunteer unless there is
substantial evidence that valuable consideration was intended
by both employer and employee.

b. For purposes of this chapter, volunteer includes
but is not limited to:

(I) Persons who serve in private nonprofit agencies
and who receive no compensation other than expenses in an
amount less than or equivalent to the standard mileage and per
diem expenses provided to salaried employees in the same
agency or, in the event that such agency does not have salaried employees who receive mileage and per diem, then such volunteers who receive no compensation other than expenses in an amount less than or equivalent to the customary mileage and per diem paid to salaried workers in the community as determined by the division.

(II) Volunteers participating in federal programs established pursuant to Pub. L. No. 93-113.

4. Any officer of a corporation who elects to be exempt from coverage under this chapter.

Section 2. Paragraph (n) of subsection (17) of section 443.036, Florida Statutes, is amended to read

443.036 Definitions.—As used in this chapter, unless the context clearly requires otherwise:

(17) EMPLOYMENT.—"Employment," subject to the other provisions of this chapter, means any service performed by an employee for the person employing him.

(n) Exclusions generally.—The term "employment" does not include.

1. Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in paragraph (g).

2. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States.

3. Service performed by an individual in, or as an officer or member of the crew of a vessel while it is engaged in, the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including...
service performed by any such individual as an ordinary
incident to any such activity, except:

  a. Service performed in connection with the catching
or taking of salmon or halibut for commercial purposes.

  b. Service performed on, or in connection with, a
vessel of more than 10 net tons, determined in the manner
provided for determining the register tonnage of merchant
vessels under the laws of the United States.

4. Service performed by an individual in the employ of
his son, daughter, or spouse, and service performed by a child
under the age of 18 in the employ of his father or mother.

5. Service performed in the employ of the United
States Government or of an instrumentality of the United
States which is:

  a. Wholly or partially owned by the United States.

  b. Exempt from the tax imposed by § 3301 of the
Internal Revenue Code by virtue of any provision of federal
law which specifically refers to such section, or the
corresponding section of prior law, in granting such
exemption; except that to the extent that the Congress shall
permit states to require any instrumentalities of the United
States to make payments into an unemployment fund under a
state unemployment compensation law, all of the provisions of
this law shall be applicable to such instrumentalities, and to
services performed for such instrumentalities, in the same
manner, to the same extent, and on the same terms as to all
other employers, employing units, individuals, and services.

If this state shall not be certified for any year by the
Secretary of Labor under § 3304 of the federal Internal
Revenue Code, the payments required of such instrumentalities
with respect to such year shall be refunded by the division
from the fund in the same manner and within the same period as is provided in s. 443.141(6) with respect to contributions erroneously collected.

6. Service performed in the employ of a state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions, except as provided in paragraph (b), and any service performed in the employ of any instrumentality of one or more states or political subdivisions, to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by s. 3301 of the Internal Revenue Code.

7. Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, except as provided in paragraph (c).

8. Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress.

9.a. Service performed in any calendar quarter in the employ of any organization exempt from income tax under s.
501(a) of the Internal Revenue Code, other than an organization described in § 401(a), or under § 521, if the remuneration for such service is less than $50.

b. Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

10. Services performed in the employ of a foreign government, including service as a consular or other officer or employee of a nondiplomatic representative

11. Service performed in the employ of an instrumentality wholly owned by a foreign government:

   a. If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof, and

   b. The Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

12. Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to a state law; service performed as an intern in the employ of a hospital by an individual who has completed a 4-year course in a medical school chartered or approved pursuant to state law; and service performed by a patient of a hospital for such hospital.
13. Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

14. Service performed by an individual for a person as a real estate salesman or agent, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

15. Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

16. Service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law.

17. Service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its education activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

CODING: Words in angle through type are deletions from existing law, words underlined are additions.
18. Service performed by an individual for a person as a barber, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

19. Casual labor not in the course of the employer's trade or business.

20. Services performed by a direct seller. For purposes of this subparagraph, "direct seller" means a person:
   a. (I) Who is engaged in the trade or business of selling or soliciting the sale of consumer products to buyers on a buy-sell basis, a deposit-commission basis, or any similar basis, for resale in the home or in any other place that is not a permanent retail establishment, or
   (II) Who is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or in any other place that is not a permanent retail establishment;
   b. Substantially all of whose remuneration for services described in sub-subparagraph a., whether or not paid in cash, is directly related to sales or other output, rather than to the number of hours worked; and
   c. Who performs such services pursuant to a written contract with the person for whom the services are performed, which contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes.

Section 3. This act shall take effect October 1, 1984.
SENA TE SUMMARY

Exempts direct sellers from the definitions of "employee" and "employment" for purposes of workers' compensation and unemployment compensation.
Journal
of the
SENATE
State of Florida

SIXTEENTH REGULAR SESSION
UNDER THE CONSTITUTION AS REVISED IN 1968
APRIL 3 THROUGH JUNE 1, 1984

Please return to
FLORIDA LEGISLATIVE LIBRARY,
701 The Capitol
Tallahassee, Florida 32304
Amendment 1—On page 1, line 11-31, on page 2, lines 1-31 and on page 3, lines 1-10, strike all of said lines and renumber subsequent sections.

Amendment 2—In title, on page 1, strike all of lines 2-7 and insert An act relating to direct sellers, amending § 3036, F.S., exempting direct sellers from the definitions of "employee" and "employment" for purposes of the workers' compensation and unemployment compensation laws, providing an effective date

—was read the second time by title

Senator Vogt moved the following amendments which were adopted

Amendment 1—On page 1, lines 11-31, on page 2, lines 1-31 and on page 3, lines 1-10, strike all of said lines and renumber subsequent sections.

Amendment 2—In title, on page 1, strike all of lines 2-7 and insert An act relating to direct sellers, amending § 3036, F.S., exempting direct sellers from the definition of "employment" for purposes of the unemployment compensation laws, providing an effective date

On motion by Senator Vogt, by two-thirds vote SB 90 as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was

Yea—35
Nay—2

Mr President—MR. GERSTEN: The vote on passage was

Mr President—MR. GERMER: The vote on passage was

Mr President—MR. HADEN: The vote on passage was

Mr President—MR. McPHERSON: The vote on passage was

Mr President—MR. JOHNSON: The vote on passage was

Mr President—MR. PLUMMER: The vote on passage was

Mr President—MR. REHM: The vote on passage was

Mr President—MR. SCOTT: The vote on passage was

Mr President—MR. THOMAS: The vote on passage was

Mr President—MR. THOMSON: The vote on passage was

Mr President—MR. THURMAN: The vote on passage was

Mr President—MR. WEINSTEIN: The vote on passage was

Mr President—MR. WITTMAN: The vote on passage was
B. EFFECT OF PROPOSED CHANGES

This bill would add a definition of "direct seller" to chapters 440 and 443 to include these people in the definition of "independent contractor," thereby excluding them from the provisions of the workers' compensation and unemployment compensation laws. A "direct seller" is defined in the bill as a person who sells consumer products in the home (or for resale in the home) on a buy-sell, deposit-commission, or similar basis, substantially all of whose remuneration is related to sales rather than hours worked, and who has a contract with the person for whom services are performed stating that the person will not be treated as an employee for federal tax purposes.

The Division of Workers' Compensation uses the criteria established by the Supreme Court as an aid in determining whether a person is an independent contractor or an employee. In a majority of cases, a person who sells consumer products in the home on a buy-sell or deposit-commission basis would be classified by the division as an independent contractor and would be exempt from the provisions of the workers' compensation law. However, it is possible that some direct sellers who under present law are considered employees and who are eligible for workers' compensation benefits due to a high degree of control exercised by the employer would, under the provisions of this bill, be classified as independent contractors and excluded from workers' compensation provisions.

III. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

Generally, companies which contract with direct sellers treat those salespersons as independent contractors and do not pay workers' compensation premiums or unemployment compensation taxes. So this bill should have little, if any, fiscal impact on these companies. However, in the event that the bill excludes persons from workers' compensation coverage who are presently covered, such persons would lose compensation benefits with resultant cost savings to their employers.

B. PUBLIC SECTOR CONSIDERATIONS

None

IV. COMMENTS

This bill was apparently drafted before the final 1983 statute text was released, so there are some differences between present law and what is represented in this bill as present law. Staff has prepared an amendment which will clear up these differences.

V. AMENDMENTS

Prepared by: Marsha Morrison

Staff Director: Wyatt Martin
I. SUMMARY AND PURPOSE

This bill is intended to exclude direct sellers from the definitions of "employee" and "employment" for purposes of the workers' compensation and unemployment compensation laws.

II. CURRENT LAW AND EFFECT OF CHANGES

A. CURRENT LAW

Chapter 440, the Workers' Compensation Law, excludes independent contractors from the definition of "employee" for whom workers' compensation benefits must be provided.

Chapter 443, the Unemployment Compensation Law, excludes independent contractors by implication. Section 443.036(17)(a)1.b., F.S., includes in the definition of "employment" services performed by "any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee."

The Federal Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) includes a definition of "direct sellers" for the purpose of excluding these business people from the definition of "employee" under the Federal Workers' Compensation Act. The Federal Unemployment Tax Act (FUTA) expressly exempts direct sellers from coverage under the act.

In Margarian v. Southern Fruit Distributors, 1 So.2d 858, (1941), and other subsequent cases, the Supreme Court established guidelines which are used in determining whether a person is an independent contractor or an employee. The main criteria for making this determination is the degree of control the employer has over the activities of the worker.
that the person will not be treated as an employee for federal tax purposes.

This bill conforms state unemployment compensation law with federal law and should not affect the current practices of the Bureau of Unemployment Compensation.

III. ECONOMIC IMPACT CONSIDERATIONS

A. PRIVATE SECTOR CONSIDERATIONS

Generally, companies which contract with direct sellers treat those salespersons as independent contractors and do not pay unemployment compensation taxes. So this bill should have little, if any, fiscal impact on these companies.

B. PUBLIC SECTOR CONSIDERATIONS

None

IV. COMMENTS

None

V. LEGISLATIVE HISTORY

A. ENACTED BILL

As introduced, SB 90 excluded direct sellers from the definitions of "employee" and "employment" in ss. 440.02 and 443.036, F.S., for purposes of both workers' compensation and unemployment compensation laws.

The Senate Committee on Commerce passed the bill on March 6, 1984.

On April 10, 1984, the Senate passed the bill 35-2 with two amendments (SJ 98). The amendments removed from the bill the exemption of direct sellers from the definition of "employee" in s. 440.02, relating to workers' compensation.

In the House, the bill was substituted for CS/HB 375 and passed 112-0 on May 23, 1984 (HJ 560).

B. DISPOSITION OF COMPANION

HB 375 was passed by the Subcommittee on Property and Casualty Insurance of the Committee on Commerce on April 4, 1984.

The bill was amended by the full Commerce Committee on April 19, 1984, to apply only to unemployment compensation. An additional amendment adopted by Commerce changed the phrase "any similar commission basis" in the definition of "direct seller." The Committee then adopted the bill as a Committee Substitute.

On May 23, 1983, SB 90 was substituted for CS/HB 375 and the House Bill was laid on the table under the Rules.

Prepared by: 

Staff Director: 

Wyatt T. Martin
Bill Analysis

Florida House of Representatives

Flame P. Bell, Ill
Chairman
Dexter W. Lehtinen
Vice Chairman

FINAL STAFF SUMMARY

SB 20 by Vogt & others Date: May 30, 1984
(as enacted by the Legislature) Became Law: June 7, 1984
relating to direct sellers

Committee Consideration:
Senate Commerce
Identical*/Similar Bills:
CS/HB 375 Effective Date:
Ch. 84-123, Laws of Florida October 1, 1984

I. SUMMARY AND PURPOSE

This bill excludes direct sellers from the definition of "employment" for purposes of the unemployment compensation law.

II. CURRENT LAW AND EFFECT OF CHANGES

A. CURRENT LAW

Chapter 443, the Unemployment Compensation Law, excludes independent contractors by implication. Section 443.036(17)(a)(b), F.S., includes in the definition of "employment" services performed by "any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee."

The Federal Unemployment Tax Act (FUTA) expressly exempts direct sellers from coverage under the act.

B. EFFECT OF CHANGES

This bill adds a definition of "direct seller" to chapter 443 to include these people in the definition of "independent contractor," thereby excluding them from the provisions of the unemployment compensation law. A "direct seller" is defined in the bill as a person who sells consumer products in the home (or for resale in the home) on a buy-sell, deposit-commission, or similar commission basis, substantially all of whose remuneration is related to sales rather than hours worked, and who has a contract with the person for whom services are performed stating
House Commerce Committee  
Subcommittee on Property and Casualty Insurance  
April 4, 1984  
1:15 p.m., Room 24 House Office Building

TAPE #1, SIDE A

1:40 Meeting begins; roll is called, a quorum is present

HB 866 and HB 877 are Temporarily Passed at the request of the Sponsors.

1:45 Take up HB 375
Amended and adopted as a PCS

1:55 Take up HB 573
Adopted

2:04 Take up HB 831
Adopted

2:20 Take up HB 677
Adopted

2:25 Take up HB 822 and HB 921
Both bills adopted

2:30 Meeting rises
Notice of COMMITTEE MEETING
House of Representatives
March 26, 1984

Property & Casualty Insurance subcommittee of the Committee on Commerce will meet in Committee Room 24 House Office Building at 1:15-3:15 p.m. on Weds., April 4, 1984 to consider:

1. HB 375 - Bronson - Direct sellers
2. HB 573 - Danson - Workers' compensation
3. HB 677 - Mackenzie - Foreign or alien insurers
4. HB 822 - Gustafson - Insurance; readable language requirements
5. HB 831 - Davis - Unemployment compensation; benefit eligibility conditions
6. HB 866 - Wallace - Unemployment compensation; agricultural service
7. HB 877 - Pajcic & Hazouri - Insurance; rehabilitation and liquidation
8. HB 921 - Silver - Insurance; surplus lines

I certify this notice was received in the Office of the Sergeant at Arms at 4:35 p.m. o'clock, on 3/26/84.

I certify this notice was filed by me in the Office of the Sergeant at Arms and the Office of the Clerk on 3/26/84, and copies have been sent in compliance with House Rules.

Chairman
Committee Secretary

White - to be posted
Canary - Calendar
Pink - Computer
Goldenrod - your file
Notice of  
COMMITTEE MEETING  
House of Representatives  

Page 1 of 2  

April 12, 1984  

the Committee on Commerce  

will meet in Committee Room 21 HOB (Morris Hall) at 3:30-5:30 p.m.  

on Mon., April 16, 1984 to consider:  

Agenda items numbered 1 through 16 are unfinished business from the April 9, 1984 committee meeting.  

1. HB 717 - Dunbar & Thompson - Business entities  
2. HB 366 - McEwan - Baggage insurance  
3. HB 291 - Armstrong & Gordon - Sales representatives  
   PCS/HB 291 - Armstrong & Gordon - Sales representatives  
4. HB 41 - McEwan - Mortgage escrow accounts  
   PCS/HB 41 - McEwan - Mortgage escrow accounts  
5. HB 489 - Ogden - Variable life insurance  
6. HB 475 - Martinez - Insurance; chiropractic coverage  
7. HB 871 - Silver - Florida Patient's Compensation Fund  
8. HB 831 - Davis - Unemployment compensation; benefit eligibility conditions  
9. HB 677 - Mackenzie - Foreign or alien insurers  
10. HB 822 - Gustafson - Insurance; readable language requirements  
11. HB 719 - Peeples - Cemeteries; columbaria  
12. HB 792 - Gallagher - Financial matters  
13. HB 843 - Tobiassen - Retail installment sales  
14. HB 375 - Bronson - Direct sellers  
   PCS/HB 375 - Bronson - Direct sellers  
15. HB 702 - Bankhead - Home equity conversion  
16. HB 713 - Gallagher - Interest rates and finance charges  

Samuel P. Bell, III  
Chairman  

I certify this notice was received in the Office of the Sergeant at Arms at 3:30 p.m., o'clock, on 4/12/84.  

Sergeant at Arms  

I certify this notice was filed by me in the Office of the Sergeant at Arms and the Office of the Clerk on 4/12/84, and copies have been sent in compliance with House Rules.  

Committee Secretary  

H-14(1982)
Chairman

I certify this notice was received in the Office of the Sergeant at Arms at 2:00 p.m. o'clock, on 4/12/84.

Sergeant at Arms

I certify this notice was filed by me in the Office of the Sergeant at Arms and the Office of the Clerk on 4/12/84, and copies have been sent in compliance with House Rules.

Committee Secretary

White - to be posted
Canary - Calendar
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Goldenrod - your file
4-16-84 House Commerce Committee Meeting, Bill Hearing, Samuel P. Bell, III, Chairman, 21 House Office Building, 3:30-5:30 p.m.

TAPE 1 - SIDE A
3:40 a.m.  Meeting opens

HB 717 - Rep. Dunbar speaks on bill

remarks by Rep. Hazouri

vote taken - CS adopted

3:45

HB 797 - Rep. Silver requests that this bill be TP'd

3:46

HB 366 - Rep. McEwan presents the bill

Rep. Gallagher offers amendments which are adopted

vote on HB 366 w/3 amendments passes favorably

3:50

PCS/HB 291 - Rep. Armstrong presents the bill

Rep. Silver moves the bill

Rep. Upchurch has questions regarding subsection (4)

Rep. Bell TP's PCS/ HB 291

3:58

PCS/ HB 41 - Rep. McEwan presents the bill

Rep. Gallagher offers 2 amendments which are adopted without objection

PCS/ HB 41 voted favorable as amended

4:00

HB 489 - Rep. Danson presents the bill

Rep. Kutun, Danson, and Lehtinen debate the bill

4:04

3 amendments pass without objection

vote on bill as amended passes favorably

4:05

Rep. Bell on PCS/ HB 291 which was previously TP'd

technical amendment adopted without objection


CS adopted

4:10

Rep. Martinez presents the bill

Sen. Jim Glisson, Peer Review Committee of the Florida Chiropractic Board speaks as proponent to the bill

4:20

Rep. Hazouri debates the bill

Bill voted favorable as amended
4:25  HB 871 - Rep. Silver presents the bill
      bill voted out favorably

4:28  HB 831 - Rep. Helen Gordon Davis speaks for the bill

4:30  TAPE TURNED OVER TO SIDE B
      Rep. Davis on the bill (HB 831) continued

4:32  Rep. Gardner offers an amendment (an Associated
      Industries of Florida, Inc. amendment)
      Rep. Kutun debate on the amendment
      Rep. Gardner, Martinez, and Danson debate the
      bill and amendment

4:40  Karen Woodall, Florida IMPACT, speaks to HB 831
      Fernando Cuevas, Farm Labor Organizing Committee,
      speaks as a proponent to the bill

4:45  Rep. Gallagher offer an amendment to remove April,
      May, June quarter of 1983 from HB 831
      Rep. H. G. Davis, Pajcic, Kutun, Gallagher, Gardner
      debate the amendment

      amendments due to the Appropriations Subcommittee
      referral
      Rep. Kutun speaks on the proposed amendment to HB 831
      Thurman Burnette, Department of Labor and Employment
      Security, furnishes information to Committee about the
      bill and amendment.

5:00  Rep. Danson debates the bill

5:02  Vote on HB 831 is favorable with 2 amendments

5:03  HB 677 voted favorably

5:05  HB 822 - Rep. Gustafson presents the bill which is
      voted out of committee favorably
      HB 719 - Rep. Peeples presents the bill which is
      voted out of committee favorably

5:08  HB 792 - voted out favorably with 2 amendments
5:10 HB 843 - Sen. Tobiassen presents the bill
Rep. Pajcic has a question on the bill
Dick Hollahan, General Electric Credit Corporation, speaks on the bill
Rep. Simon has a question on the bill

5:15 Rep. Simon and Dick Hollahan debate the bill
Rep. Bell offers amendment
Rep. Upchurch speaks regarding raising interest rates

TAPE 2 INSERTED - SIDE A

5:18 Rep. Hargrett on HB 843

5:18 HB 843 CS adopted

5:18 PCS/HB 375 - Rep. Bronson presents the bill on behalf of Amway and Avon

5:20 CS adopted

5:22 HB 702 - Rep. Bankhead presents bill and amendments
Rep. Martinez has questions on the bill

5:25 Rep. Gallagher offers an amendment and asks the question, "Should the state be involved in the mortgage business"

5:30 Rep. Bell delays further discussion of HB 702 until Wednesday
Meeting Closes.
TALK SHEET FOR PCS/HB 375

THIS BILL EXCLUDES DIRECT SELLERS FROM THE DEFINITION OF "EMPLOYMENT" FOR PURPOSES OF THE UNEMPLOYMENT COMPENSATION LAW.
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

SUBJECT: Direct Sellers

BILk NO. AND SPONSOR: SB 90 by Senator Vogt and others

I. SUMMARY:

A. Present Situation:

Chapter 440, the Workers' Compensation law, excludes "independent contractors" from the definition of "employee", for whom workers' compensation benefits must be provided. Chapter 443, the Unemployment Compensation law, also excludes independent contractors from the definition of "employment", for which unemployment compensation benefits must be provided. The statute excludes independent contractors by implication; "employment" includes services performed by "any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee." s. 440.036(17)(1)(b), F.S.

Some confusion has arisen as to whether "direct sellers", such as those who sell products for Amway, Tupperware, and Avon, are employees or independent contractors for purposes of workers' compensation and unemployment compensation benefits. The Federal TEFRA law (1982 Tax Equity and Fiscal Responsibility Act) includes an express definition of "direct sellers" for purposes of excluding such business people from the definition of employee. The Federal Unemployment Tax Act (FUTA) expressly exempts direct sellers from coverage under the act. In 1983 several other states (California, Colorado, Nevada, Wisconsin, Alabama, Minnesota and Oregon) enacted similar laws to exclude "direct sellers" from the definition of employees.

B. Effect of Proposed Changes:

This bill would add the TEFRA definition of "direct sellers" to both chapter 440 and chapter 443, F.S., the Workers' Compensation and Unemployment Compensation laws, to clarify that "direct sellers" are not employees, but rather, are independent contractors. The bill makes the Florida unemployment compensation law consistent with Federal law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Most companies which contract with direct sellers (such as Tupperware, Avon, etc.) have been treating them as independent contractors and thus these companies have not been paying workers' compensation or unemployment compensation premiums or taxes. Consequently, there should be no fiscal impact to these companies as a result of this bill.

B. Government:

None.
III. COMMENTS:

IV. AMENDMENTS:

None.
I. SUMMARY:

A. Present Situation:

Chapter 440, the Workers' Compensation law, excludes "independent contractors" from the definition of "employee", for whom workers' compensation benefits must be provided. Chapter 443, the Unemployment Compensation law, also excludes independent contractors from the definition of "employment", for which unemployment compensation benefits must be provided. The statute excludes independent contractors by implication; "employment" includes services performed by "any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee." s. 440.036(17)(1)(b), F.S.

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B. Government:
III. COMMENTS:

IV. AMENDMENTS:

None.
NOTICE
COMMITTEE MEETING

TO Joe Brown
Secretary of the Senate

You are hereby notified that the __________ Commerce __________ Committee will meet Tuesday, March 6, 1984 at 9:00 a.m. - 12 noon (time) in Room "A", Senate Office Building (place of meeting) and will consider the following:

<table>
<thead>
<tr>
<th>Bill Number</th>
<th>Introducer By</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>PCB #2</td>
<td>Commerce Committee</td>
<td>Governor's Council on Handicapped Concerns</td>
</tr>
<tr>
<td>SB 295</td>
<td>Commerce Committee</td>
<td>Bail Bondsmen and Runners, Chapter 648</td>
</tr>
<tr>
<td>SB 11</td>
<td>Senator Myers</td>
<td>Pugilistic Exhibitions</td>
</tr>
<tr>
<td>SB 257</td>
<td>Senator Margolis</td>
<td>Insurance</td>
</tr>
<tr>
<td>SB 8</td>
<td>Senator Carlucci</td>
<td>Financial Responsibility</td>
</tr>
<tr>
<td>SB 90</td>
<td>Senator Vogt and others</td>
<td>Direct Sellers</td>
</tr>
<tr>
<td>SB 187</td>
<td>Senator W. D. Childers</td>
<td>Interest Rates and Finance Charges</td>
</tr>
<tr>
<td>SB 214</td>
<td>Senator Vogt</td>
<td>Workers' Compensation</td>
</tr>
<tr>
<td>SB 86</td>
<td>Senator McPherson</td>
<td>Alcoholic Beverages and Tobacco</td>
</tr>
<tr>
<td>SB 5</td>
<td>Senator Scott and others</td>
<td>Telephone Companies</td>
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<tr>
<td>SB 353</td>
<td>Senator Thomas and others</td>
<td>Insurance</td>
</tr>
</tbody>
</table>

(PRIOR to regular Session file 3 copies with Secretary of Senate 14 days before meeting (Rule 2.6) and DURING regular Session at least 2 days before meeting (Rules 2.1 and 2.8). File 1 copy with President, 1 copy with Sergeant-at-Arms.)
A bill to be entitled
An act relating to direct sellers; amending ss.
440.02, 443.036, F.S.; exempting direct sellers
from the definitions of "employee" and
"employment" for purposes of the workers'
compensation and unemployment compensation
laws; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (2) of section
440.02, Florida Statutes, is amended to read.

440.02 Definitions.--When used in this chapter, unless
the context clearly requires otherwise, the following terms
shall have the following meanings:

(2)

(d) The term "employee" does not include:
1. An independent contractor, including:
   a. An individual who agrees in writing to perform
   services for a person or corporation without supervision or
   control as a real estate salesman or agent, if such service by
   such individual for such person or corporation is performed
   for remuneration solely by way of commission;
   b. Bands, orchestras, and musical and theatrical
   performers, including disk jockeys, performing in licensed
   premises as defined in chapter 562, provided that a written
   contract evidencing an independent contractor relationship is
   entered into prior to the commencement of such entertainment;
   c. A direct seller, if the direct seller is a person;

   (I)(A) Who is engaged in the trade or business of
   selling or soliciting the sale of consumer products to buyers

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on a buy-sell basis, a deposit-commission basis, or any
similar basis, for resale in the home or in any other place
that is not a permanent retail establishment; or

(B) Who is engaged in the trade or business of selling
or soliciting the sale of consumer products in the home or in
any other place that is not a permanent retail establishment;

(II) Substantially all of whose remuneration for
services described in sub-sub-subparagraph (I), whether or not
paid in cash, is directly related to sales or other output,
rather than to the number of hours worked; and

(III) Who performs such services pursuant to a written
contract with the person for whom the services are performed,
which contract provides that the person will not be treated as
an employee with respect to such services for federal tax
purposes;

2. A person whose employment is both casual and not in
the course of the trade, business, profession, or occupation
of the employer; or

3. A volunteer, except a volunteer worker for the
state, or a county, city, or other governmental entity.

a. Notwithstanding the provisions of s 440.26, a
person not receiving monetary remuneration for his services
shall be presumed to be a volunteer unless there is
substantial evidence that valuable consideration was intended
by both employer and employee.

b. For purposes of this chapter, volunteer includes
but is not limited to:

(I) Persons who serve in private nonprofit agencies
and who receive no compensation other than expenses in an
amount less than or equivalent to the standard mileage and per
diem expenses provided to salaried employees in the same

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agency or, in the event that such agency does not have salaried employees who receive mileage and per diem, then such volunteers who receive no compensation other than expenses in an amount less than or equivalent to the customary mileage and per diem paid to salaried workers in the community as determined by the division.

(II) Volunteers participating in federal programs established pursuant to Pub. L. No. 93-113.

4. Any officer of a corporation who elects to be exempt from coverage under this chapter.

Section 2. Paragraph (n) of subsection (17) of section 443.036, Florida Statutes, is amended to read:

443.036 Definitions.--As used in this chapter, unless the context clearly requires otherwise:

(17) EMPLOYMENT.--"Employment," subject to the other provisions of this chapter, means any service performed by an employee for the person employing him.

(n) Exclusions generally.--The term "employment" does not include:

1. Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in paragraph (g)

2. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States.

3. Service performed by an individual in, or as an officer or member of the crew of a vessel while it is engaged in, the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including

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service performed by any such individual as an ordinary
criment to any such activity, except:

a. Service performed in connection with the catching
or taking of salmon or halibut for commercial purposes.

b. Service performed on, or in connection with, a
vessel of more than 10 net tons, determined in the manner
provided for determining the register tonnage of merchant
vessels under the laws of the United States.

4. Service performed by an individual in the employ of
his son, daughter, or spouse, and service performed by a child
under the age of 18 in the employ of his father or mother

5. Service performed in the employ of the United
States Government or of an instrumentality of the United
States which is:

a. Wholly or partially owned by the United States.

b. Exempt from the tax imposed by s. 3301 of the
Internal Revenue Code by virtue of any provision of federal
law which specifically refers to such section, or the

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from the fund in the same manner and within the same period as is provided in s. 443.141(6) with respect to contributions erroneously collected.

6. Service performed in the employ of a state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions, except as provided in paragraph (b), and any service performed in the employ of any instrumentality of one or more states or political subdivisions, to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by s. 3301 of the Internal Revenue Code.

7. Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, except as provided in paragraph (c).

8. Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress.

9.a. Service performed in any calendar quarter in the employ of any organization exempt from income tax under s.
501(a) of the Internal Revenue Code, other than an
organization described in s. 401(a), or under s. 521, if the
remuneration for such service is less than $50.

b. Service performed in the employ of a school,
college, or university, if such service is performed by a
student who is enrolled and is regularly attending classes at
such school, college, or university.

10. Services performed in the employ of a foreign
government, including service as a consular or other officer
or employee of a nondiplomatic representative.

11. Service performed in the employ of an
instrumentality wholly owned by a foreign government:

a. If the service is of a character similar to that
performed in foreign countries by employees of the United
States Government or of an instrumentality thereof; and

b. The Secretary of State shall certify to the
Secretary of the Treasury that the foreign government, with
respect to whose instrumentality exemption is claimed, grants
an equivalent exemption with respect to similar service
performed in the foreign country by employees of the United
States Government and of instrumentalities thereof.

12. Service performed as a student nurse in the employ
of a hospital or a nurses' training school by an individual
who is enrolled and is regularly attending classes in a
nurses' training school chartered or approved pursuant to a
state law; service performed as an intern in the employ of a
hospital by an individual who has completed a 4-year course in
a medical school chartered or approved pursuant to state law;
and service performed by a patient of a hospital for such
hospital.
13. Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

14. Service performed by an individual for a person as a real estate salesman or agent, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

15. Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

16. Service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law.

17. Service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its education activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.
18. Service performed by an individual for a person as a barber, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

19. Casual labor not in the course of the employer's trade or business.

20. Services performed by a direct seller. For purposes of this subparagraph, "direct seller" means a person:
   a. (I) Who is engaged in the trade or business of selling or soliciting the sale of consumer products to buyers on a buy-sell basis, a deposit-commission basis, or any similar basis, for resale in the home or in any other place that is not a permanent retail establishment; or
   (II) Who is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or in any other place that is not a permanent retail establishment;
   b. Substantially all of whose remuneration for services described in sub-subparagraph a., whether or not paid in cash, is directly related to sales or other output, rather than to the number of hours worked; and
   c. Who performs such services pursuant to a written contract with the person for whom the services are performed, which contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes.

Section 3. This act shall take effect October 1, 1984.

SENATE SUMMARY
Exempts direct sellers from the definitions of "employee" and "employment" for purposes of workers' compensation and unemployment compensation.
A bill to be entitled

An act relating to direct sellers; amending s. 443.036, F.S., exempting direct sellers from the definition of "employment" for purposes of the unemployment compensation law; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (n) of subsection (17) of section 443.036, Florida Statutes, is amended to read:

443.036 Definitions.--As used in this chapter, unless the context clearly requires otherwise:

(17) EMPLOYMENT.--"Employment," subject to the other provisions of this chapter, means any service performed by an employee for the person employing him.

(n) Exclusions generally.--The term "employment" does not include:

1. Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in paragraph (g).

2. Service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States.

3. Service performed by an individual in, or as an officer or member of the crew of a vessel while it is engaged in, the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including

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service performed by any such individual as an ordinary
incident to any such activity, except:

a. Service performed in connection with the catching
or taking of salmon or halibut for commercial purposes.
b. Service performed on, or in connection with, a
vessel of more than 10 net tons, determined in the manner
provided for determining the register tonnage of merchant
vessels under the laws of the United States.

4. Service performed by an individual in the employ of
his son, daughter, or spouse, and service performed by a child
under the age of 18 in the employ of his father or mother.

5. Service performed in the employ of the United
States Government or of an instrumentality of the United
States which is:
a. Wholly or partially owned by the United States.
b. Exempt from the tax imposed by s. 3301 of the
Internal Revenue Code by virtue of any provision of federal
law which specifically refers to such section, or the
corresponding section of prior law, in granting such
exemption; except that to the extent that the Congress shall
permit states to require any instrumentalities of the United
States to make payments into an unemployment fund under a
state unemployment compensation law, all of the provisions of
this law shall be applicable to such instrumentalities, and to
services performed for such instrumentalities, in the same
manner, to the same extent, and on the same terms as to all
other employers, employing units, individuals, and services.

If this state shall not be certified for any year by the
Secretary of Labor under s. 3304 of the federal Internal
Revenue Code, the payments required of such instrumentalities
with respect to such year shall be refunded by the division
from the fund in the same manner and within the same period as is provided in s. 443.141(6) with respect to contributions erroneously collected.

6. Service performed in the employ of a state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions, except as provided in paragraph (b), and any service performed in the employ of any instrumentality of one or more states or political subdivisions, to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by s. 3301 of the Internal Revenue Code.

7. Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, except as provided in paragraph (c).

8. Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress.

9.a. Service performed in any calendar quarter in the employ of any organization exempt from income tax under s.
501(a) of the Internal Revenue Code, other than an organization described in s. 401(a), or under s. 521, if the remuneration for such service is less than $50.

b. Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

10. Services performed in the employ of a foreign government, including service as a consular or other officer or employee of a nondiplomatic representative.

11. Service performed in the employ of an instrumentality wholly owned by a foreign government:

a. If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

b. The Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof.

12. Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to a state law; service performed as an intern in the employ of a hospital by an individual who has completed a 4-year course in a medical school chartered or approved pursuant to state law; and service performed by a patient of a hospital for such hospital.
13. Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

14. Service performed by an individual for a person as a real estate salesman or agent, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

15. Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

16. Service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election are deemed to be performed entirely within such agency's state or under such federal law.

17. Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph does not apply to service performed in a program established for or on behalf of an employer or group of employers.
18. Service performed by an individual for a person as a barber, if all such service performed by such individual for such person is performed for remuneration solely by way of commission.

19. Casual labor not in the course of the employer's trade or business.

20. Services performed by a direct seller. For purposes of this subparagraph, "direct seller" means a person:

   a. (I) Who is engaged in the trade or business of selling or soliciting the sale of consumer products to buyers on a buy-sell basis, a deposit-commission basis, or any similar commission basis, for resale in the home or in any other place that is not a permanent retail establishment; or

   (II) Who is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or in any other place that is not a permanent retail establishment;

   b. Substantially all of whose remuneration for services described in sub-subparagraph a., whether or not paid in cash, is directly related to sales or other output, rather than to the number of hours worked; and

   c. Who performs such services pursuant to a written contract with the person for whom the services are performed, which contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes.

Section 2. This act shall take effect October 1, 1984.

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HOUSE SUMMARY

Exempts direct sellers from the definition of "employment" for purposes of unemployment compensation.

CODING: Words stricken are deletions; words underlined are additions