Date: March 6, 2013

HB 3141

SUBJECT: Excludes certain direct sales from definition of "employment" for purposes of unemployment insurance taxation. Excludes certain direct sellers from definition of "covered workers" for purposes of workers' compensation.

SPONSOR: Committee on Business and Labor

Existing Law:

- Chapter 657, concerning unemployment insurance, generally exempts individuals from the definition of employment if their remuneration is paid through commissions or profit sharing.
- Chapter 656, concerning workers' compensation matters, does not expressly include or exempt people soliciting home improvement contracts, or performing direct sales who receive their remuneration as commissions or profit sharing rather than wages or salary, from being included as a subject worker.

This bill:

- Clarifies that the definition of employment for unemployment insurance that currently excludes people whose compensation consists of commissions or profit sharing also specifically excludes people in that category who are direct sellers of other than home improvements whose compensation does not include salary or wages.
- Adds two new worker groups to the list of workers not subject to workers' compensation law. These new groups are people who solicit home improvement contracts whose remuneration is paid as commissions or profit sharing and people who are direct sellers of other than home improvements if they are not paid through salary or wages, but are paid through commissions or profit sharing, and they do not work in a permanent retail establishment.

Analysis:

1. As to unemployment insurance, the bill clarifies an existing definition that already excludes from the definition of employment for chapter 657 people who are paid through commissions or profit sharing. The bill adds language to the existing definition to specify this provision applies to direct sellers of other than home improvements and who are not paid through salary or wages.
2. As to the workers' compensation portion of this bill, it adds new definitions not currently in the statute. The statute currently states all workers are subject to the requirements of the workers' compensation statutes except workers who are expressly exempted. The relevant statute does not currently expressly address the groups this bill concerns. The bill expressly adds an exemption to workers' compensation law for workers who solicit home improvement

contracts or who are direct sellers of products or services other than home improvements, and who are paid by commission or profit sharing.

Questions and/or suggested amendments:

1. It is not clear why the two provisions being added to the workers' compensation statutes use slightly different definitions. The provision addressing people who sell home improvement contracts says it applies to people who are paid through commissions or shared profits. The provision that concerns people who sell other products or services includes that language but also adds language that it applies to people who are not paid through salary or wages. The language referring to salary and wages is not included in the exemption for people who sell home improvement contracts. This wording parallels the definitions in ORS 657.087, but creates an ambiguity because of the difference between the definitions in the two groups that appear to be intended to cover the same types of workers.

Fiscal Impact to DCBS: The bill will not change Workers' Compensation Division procedures and should not increase work load. There could be some reduction in litigation because certain workers have been clearly identified as not being subject to workers' compensation law, so that issue would not have to be litigated when investigations concern workers in those groups.

Other Economic Impact: Some workers that may currently be subject to workers' compensation insurance will be excluded from coverage under this bill, having to cover the cost of any work-related injury on their own. Employers that hire these workers will not have to pay workers' compensation premiums to cover these workers. These employers could face civil litigation for injuries because they will not have the exclusive remedy protections provided by workers' compensation insurance.

Support: Unknown

Opposition: Unknown

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