



## DIRECT SELLING ASSOCIATION

March 1, 2023

Dear Member of Congress:

On behalf of more than 7.3 million active direct sellers who sell to 44.6 million preferred customers, discount buyers and many other consumers, we oppose re-introduction of the current version of the Protecting the Right to Organize (“PRO”) Act. Direct sellers contributed \$42.7 billion in estimated retail sales to the American economy in 2021. Sales increased 6.4% from 2020-2021 and have grown almost 22% since 2019.

The Direct Selling Association (DSA), the national trade association for companies that market products and services directly to consumers through independent sellers, appreciates the intent of the PRO Act to bolster the middle class and champion the rights of workers by expanding the right to organize under the National Labor Relations Act (NLRA).

However, DSA respectfully opposes the current bill because it contains damaging changes to current law that could undermine the flexibility afforded the millions of individual direct sellers across the country who don't want the NLRA to apply to them.

Through the more than 100 years direct sellers have been active contributors to the American economy, the individuals engaged in the business have always been considered independent contractors. Most importantly, these individuals want to work independently. It is their primary motivation for joining and staying with direct selling companies.

The [2019 DSA National Salesforce Survey](#) showed that fifty-nine percent of direct sellers cite flexibility as a reason for joining, and 61% cite flexibility as a reason they're staying in direct selling. A [2020 DSA/IPSOS Consumer Attitudes and Entrepreneurship](#) study found that 77% of Americans said they are interested in flexible, entrepreneurial income-earning opportunities and 79% see direct selling as an attractive option for entrepreneurial opportunities.

It is also why direct sellers have had special statutory non-employee status under the Internal Revenue Code (see 26 U.S.C. 3508) since 1983. Additionally, 43 states have recognized this status through statute, and all states treat direct sellers as independent contractors under the common law test.

Unfortunately, the proposed definition of employee could dramatically narrow the attractiveness of direct selling for millions of Americans who wish to sell on their own schedules, come in and out of the business, and make a bit of extra pocket money.

Specifically, the bill would universally impose the "ABC" test of employment on all businesses and individuals, even those, like direct selling, which are based on the flexibility of independent status. The "ABC" test is often misconstrued, and its provisions frequently are not easily applied to the direct selling relationship.

Passage of the PRO Act would create the possibility of inconsistent treatment of direct sellers between various aspects of federal law, impose unnecessary and inappropriate requirements on the direct selling relationship, and most importantly, discourage individuals from entering or continuing their direct selling. Additionally, imposing the "ABC" test on direct sellers into the NLRA could throw direct sellers' treatment under other laws such as the Fair Labor Standards Act into disarray.

We commend your efforts to revitalize the U.S. economy and support all stakeholders but also urge you to oppose the PRO Act and its current approach to independent work.

Sincerely,

A handwritten signature in black ink, appearing to read "J. N. Mariano". The signature is fluid and cursive, with a long horizontal stroke at the end.

Joseph. N Mariano  
President  
Direct Selling Association