

DRAFT MINUTES
SENATE AND HOUSE INTERIM COMMITTEES ON INSURANCE AND COMMERCE
Room 171, State Capitol, Little Rock, Arkansas
Thursday, February 20, 2014

The Senate and House Interim Committees on Insurance and Commerce met jointly Thursday, February 20, 2014, upon adjournment of both chambers in Room 171 at the State Capitol in Little Rock, Arkansas.

Committee members present: Senators Jason Rapert, Chair; Keith Ingram, Vice Chair; Johnny Key, Cecile Bledsoe, Joyce Elliott and John Cooper. Representatives Robert Dale, Vice Chair; Mark Biviano, Harold Copenhaver, Joe Farrer, Mark Perry, and Terry Rice.

Non-Voting members present: Representatives Bruce Cozart, Homer Lenderman, and Douglas House.

Senator Rapert called the meeting to order.

CONSIDERATION TO APPROVE NOVEMBER 4, 2013, and NOVEMBER 19, 2013, MINUTES [EXHIBITS C1 and C2]

Senator Key made a motion to approve the November 4, 2013, and November 19, 2013, meeting minutes. The motion was seconded by Representative Dale, and without objection, the motion carried.

PRESENTATION ON RHEA LANA'S FRANCHISE SYSTEMS, INCORPORATED – DISCUSSION OF ISSUE REGARDING “VOLUNTEERS” VERSUS “EMPLOYEES” – U.S. DEPARTMENT OF LABOR PROCEEDINGS

Ms. Rhea Lana Riner, CEO and Founder, Rhea Lana's Franchise Systems, Incorporated, was [HANDOUT 1] recognized and stated in 1997 she began her small business by inviting a few friends to a small event in her living room to buy and sell each other's children's clothing. Rhea Lana's is now operated by volunteer moms, some of which are consigners and are not paid. They agree to volunteer in exchange for shopping prior to the event opening.

Ms. Riner explained:

- Spring of 2011, an email was sent to central Arkansas families announcing an upcoming Rhea Lana's event. The email mentioned that moms could volunteer at the event if they were interested in helping out. One of these emails went to a family member of an Arkansas Department of Labor (DOL) employee signed-up for the mailing list.
- Arkansas labor officials began investigating Rhea Lana's to determine if they were violating any laws by allowing volunteers to help with the events.
- Rhea Lana's cooperated fully and received a favorable response from the Arkansas DOL. After tweaking their business model they signed a consent agreement with the Arkansas DOL in January 2012, allowing them to continue using consigner volunteers. [Handout 1, Exhibit 2]
- The Arkansas DOL audited Rhea Lana's in June 2012 utilizing the consent agreement to interpret their findings.
- In January 2013, the United States Department of Labor (U.S. DOL) contacted Rhea Lana's and an initial meeting with the U.S. DOL was held in Little Rock on February 28, 2013. Staff members from Congressman Griffin and Senator Boozman's office attended along with Ms. Denise Oxley, Counsel for the Arkansas DOL.

- The U.S. DOL requested payroll records going back two years, submitted formal questions (that required the assistance of lawyers to respond) and showed up at one of the events to interview moms.
- The U.S. DOL informed Rhea Lana's that the participating moms should be considered employees, because they volunteer at events.
- In August 2013, U.S. DOL sent Rhea Lana's a letter citing a legal provision that provide for the assessment of a civil money penalty for any repeated or willful violations in an amount not to exceed \$1,100 for each such violation. Rhea Lana had administrative staff they paid as contractors. The AR DOL affirmed that this was a correct business practice; however, the U.S. DOL determined contractors should have been classified as employees. Rhea Lana's paid \$6,369.74 due to 39 employees [*Handout 1, Exhibit 6*].
- Currently two bills in Congress: House Bill HR 3173 sponsored by Representative Tim Griffin and co-sponsored by all of Arkansas's Congressmen as well as Missouri Congresswoman Vicki Hartzley [*Handout 1, Exhibit 8*]. Senate Bill S1665 sponsored by Senator Mark Pryor and Senator Boozman [*Handout 1, Exhibit 9*].
- January 6, 2014, Cause of Action, an advocacy group for economic freedom, filed a legal complaint on behalf of Rhea Lana's against the U.S. DOL in the U.S. District Court for the District of Columbia. [*Handout 1, Exhibit 10*].

Rhea Lana's disagrees with the U.S. DOL's assertion that consigning volunteers are employees.

Ms. Keely Gray and **Ms. Natalie Stanton**, both volunteers and consigners, informed the committee of their support of Rhea Lana's. Consigners keep 70% of their sales and Rhea Lana's retains 30%.

Ms. Denise Oxley, Chief Counsel, Arkansas Department of Labor, was recognized. She stated the Arkansas DOL sent the issue to the U.S. DOL, because Rhea Lana's operates in multiple states. The U.S. DOL declined to open an investigation, therefore Arkansas DOL initiated an investigation in 2011.

She stated Rhea Lana's had two distinct groups of workers they collectively referred to as volunteers. One group was unpaid workers who volunteered their time solely in exchange for shopping early. The other group of workers volunteered their time not only to shop early, but were also consigners. The consigners had a financial stake in the event. The Arkansas DOL looked at state law and made the assessment that those volunteers who were working solely to get in early were employees within the definition of the Arkansas Minimum Wage Act. The consigners were not employees. A consent agreement was signed January 2012, and Rhea Lana's has complied with this agreement. There were no back wages or civil money penalties assessed.

Ms. Oxley stated state law is very clear. There is an exemption for volunteers if the volunteer is working for a charitable, religious, educational or non-profit organization. Rhea Lana's is a for-profit business. The Arkansas DOL used the ten-point test by the Arkansas Supreme Court to determine the distinction between volunteer and employee. She stated they have investigated similar organizations to make sure they are consistent in how they apply state law. She stated the Arkansas DOL made the correct decision based on the law.

Mr. Ricky Belk, Director, Arkansas Department of Labor, stated he has been on the job since January 2013, and this occurred prior to him becoming agency director. He stated he will get detailed information pertaining to this case to see if a different approach should be used when investigating cases.

Senator Rapert requested the following information from the Arkansas DOL:

- The ten-point test applied for determining an "employee"
- Any correspondence, written or electronic, relating to Rhea Lana; and
- Any other relevant information

There being no further business, the meeting adjourned at 4:28 p.m.