



RAC & LDW #LDW2010

Legislative Issues Review

PowerPoints and handouts: www.regionalassociation.org

A Bird's Eye View Of DC



... and the Rest of the Country



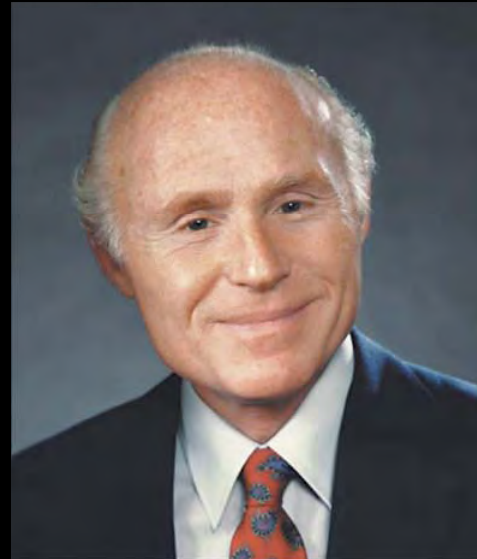
Current Issues

- Healthcare marketing
- Independent contractors
- Product safety legislation
- Forms 1099
- Other issues



Physician Payments Sunshine Act S.301 (PPSA)

- Introduced by Senators Chuck Grassley (R-Iowa) and Herb Kohl (D-Wisconsin)
- Was our primary focus for much of 2009



Physician Payments Sunshine Act S.301 (PPSA)

- In a nutshell, as **originally** written, PPSA would have effectively prohibited the distribution of promotional products to healthcare professionals.

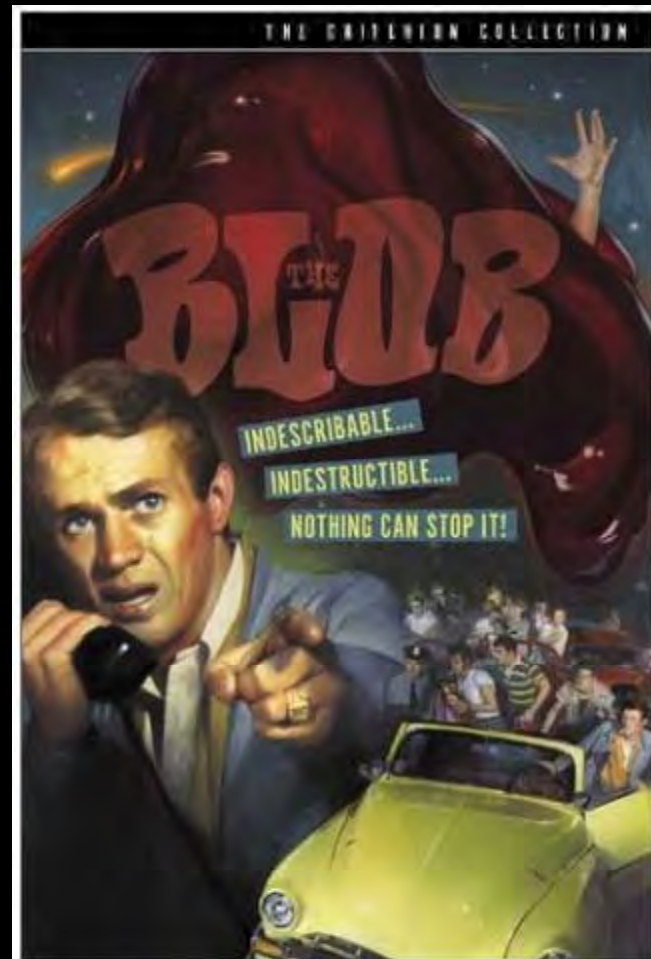


Industry Response to PPSA

- January 22, 2009—Senators Grassley and Kohl introduced S.301—the Physicians Payments Sunshine Act.
- January 23, 2009—within less than 24 hours—PPAI issued the first “PPAI Action Alert” of the year.
- 12 months later—PPAI members have sent more than 8,400 e-mails to Washington voicing opposition to legislation.



As expected, PPSA
was absorbed into
other legislation ...
but thanks to your
efforts, the language
was modified



PPACA Becomes Law

- On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act (PPACA).



What does this mean to us?

- The bad news:
 - This bill includes a \$100 annual aggregate amount that “triggers” reporting requirements for all transfers of value—not just promotional products
 - That means that although physicians can receive items valued at less than \$10 without the giver reporting, once the giver gives \$100 in value in one year, everything must be reported.
 - This “trigger” effectively renders the \$10 *de minimis* exclusion meaningless.

What does this mean to us?

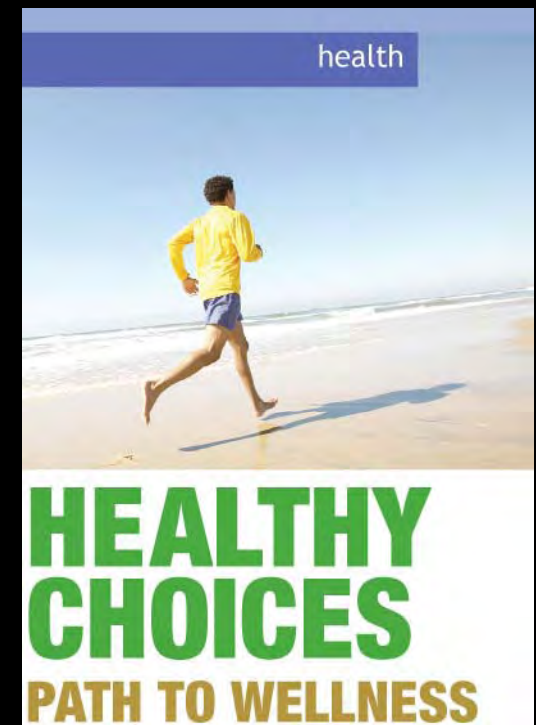
- The good news:
 - The final version of this bill includes a *de minimis* of \$10—the original version of the Sunshine Act had no *de minimis* which would have meant that *everything* must be reported.

What does this mean to us?

- The better news:
 - The term “covered recipients” originally included more than 20 different categories of recipients and covered virtually all healthcare workers.
 - The final bill includes only 2 types of covered recipients:
 - Physicians
 - Teaching hospitals

The Best News

- PPACA establishes a grant program for small businesses to provide comprehensive workplace wellness programs through the Department of Health and Human Services.



How Do You Qualify?

- Small businesses (*i.e.*, fewer than 100 employees)
- No existing wellness programs
- Program must run for five years
- Program must include:
 - Health-awareness initiatives
 - Employee engagement
 - Initiatives to change behaviors
 - Supportive environments



What Do You Need To Do?

- Nothing yet
- We are waiting for more specifics from the Department of Health & Human Services
- Keep an eye out for more updates from PPAI



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H.R. 3408 / S. 2882 Would Limit the Use of Independent Contractors

- Using independent contractors to perform sales-related services is a long-standing practice in the promotional products industry.
- H.R. 3408 (S. 2882) would eliminate a “safe harbor” provision of tax law, known as “Section 530” that recognizes the long-standing industry practice as a basis for classification as an independent contractor.

H.R. 3408 / S. 2882 Would Limit the Use of Independent Contractors

- Current Status: Still in wait-and-see mode. This bill has the support to move – but it is not moving yet.
- We are meeting with key Washington players to protect this business model.
- Collected testimonials from many in the industry that noted that the IC model allows them to be small business owners – rather than employees – with both risks and opportunities.

H.R. 3408 / S. 2882 Would Limit the Use of Independent Contractors

- What do you need to do?
- Voice your opposition to these bills.
- Go to www.ppailaw.org

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Consumer Product Safety Improvement Act of 2008



- Congress approved the CPSIA on July 31, 2008
- The President signed it into law on August 14, 2008 as Public Law 110-314
- The Consumer Product Safety Commission (CPSC) has expanded authority for ensuring product safety

The New CPSIA Law Addresses

- Definition of a children's product
- Lead
 - Content
 - Paint/Surface Coatings
- Children's Product Hazards Safety Standard
- Phthalates
- Children's products in general
 - Testing and Certification
 - Tracking
 - Advertising
 - Labels
- Consumer products in general
 - Database
 - Supply chain
 - Penalties and recall
 - Whistleblower protections
 - Pre-emption



CPSIA – Relevant Definitions

- **Consumer Product** – any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in, or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in, or around a permanent or temporary household or residence, a school, in recreation, or otherwise.
- **Children's Product** – a product designed, or intended primarily for use by children 12 years of age, or younger.
- **Children's Toy** – a consumer product designed, or intended by the manufacturer for a child 12 years of age, or younger for use by the child when the child plays.

CPSIA – Product Safety Provisions

- Section 101 – Children’s Products Containing Lead;
Lead Paint Rule
- Section 102 – Mandatory Third Party Testing for Certain Children’s Products; General Conformity Certificate
- Section 103 – Tracking Labels for Children’s Products
- Section 105 – Labeling Requirements for Advertising Toys & Games
- Section 106 – Mandatory Toy Safety Standards
- Section 108 – Prohibition on Sale of Certain Products Containing Specified Phthalates

What Products Are Affected by CPSIA?

- Any product regulated by the CPSC
 - Flammable Fabric Act
 - Federal Hazardous Substances Act
 - Consumer Product Safety Act

H.R. 1815, Consumer Product Safety Improvement Act of 2009

- Legislation has been introduced in the House to mitigate the impact of the CPSIA.
- Energy and Commerce Committee Ranking Member Joe Barton, R-Texas, introduced a bill, H.R. 1815, the Consumer Product Safety Solutions Act of 2009, to fix flaws in the Consumer Product Safety Improvement Act that are driving millions of small businesses toward bankruptcy.

H.R. 1815, Consumer Product Safety Improvement Act of 2009

- What do you need to do?
- Urge your elected officials to support H.R. 1815 in hopes that three things will happen:
 - Deadlines need to be extended,
 - The CPSC must be given the flexibility to provide reasonable exemptions, and
 - Testing and labeling requirements must be adjusted to provide alternative methods to attain the same goals.
- Go to www.ppailaw.org

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H.R. 5141, Small Business Paperwork Mandate Elimination Act

- Did you know that the new health care law expands reporting requirements for business-to-business payments?
- The current law only requires unincorporated businesses to report payments for services over \$600.
- These changes expand the reporting requirement to include **incorporated businesses** and all payments for **goods and services** over \$600.

H.R. 5141, Small Business Paperwork Mandate Elimination Act

- What does that mean in English?
- You will have to file 1099s not only for payments made by check, but those by credit card:
 - Airlines, hotels, rental cars and restaurants
 - All of your suppliers of products
- And, of course, any business that pays you more than \$600 will be sending *you* a Form 1099.

H.R. 5141, Small Business Paperwork Mandate Elimination Act

- The goal behind the provision is to increase third-party reporting as a way to close the tax gap. Little evidence exists that this will reduce the tax gap – despite the \$17 billion revenue score and places a new burden on compliant taxpayers.



H.R. 5141, Small Business Paperwork Mandate Elimination Act

- What do you need to do?
- Urge your elected officials to support H.R. 5141 and repeal this reporting.
- Go to www.ppailaw.org

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H.R. 5116, COMPETES Act

- H.R. 5116, The America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education and Science (COMPETES)
- COMPETES aims to maintain and strengthen our nation's global economic competitiveness by improving science, technology, engineering and math (STEM) education.
- The law also establishes a variety of basic research programs in several agencies.

H.R. 5116, COMPETES Act

- At the last minute, Rep. Brad Ellsworth (D-IN), who is not a member of the House Science and Technology Committee which has jurisdiction over the legislation, offered the following amendment:
- ***“No funds authorized to be appropriated by this Act, or the amendments made by this Act may be used to purchase gift items, knickknacks, souvenirs, trinkets, or other items without direct educational value.”***
- In very short order, the amendment was accepted without any discussion as a part of block of amendments. The House then passed the bill.

H.R. 5116, COMPETES Act

- The next step is for the Senate to decide whether it wishes to consider the House bill, develop its own bill, or do nothing.
- While it is not clear how many opportunities for promotional products in the programs administered under the COMPETE Act would be affected if this becomes law, we are certain that, regardless, this is the kind of precedent we *cannot* accept.

H.R. 5116, COMPETES Act

- What can you do?

- Are you from Indiana? Call Ellsworth.

- Are you from:

WV HI MA NC CA FL WA

NJ AR MO MN NM VA AK

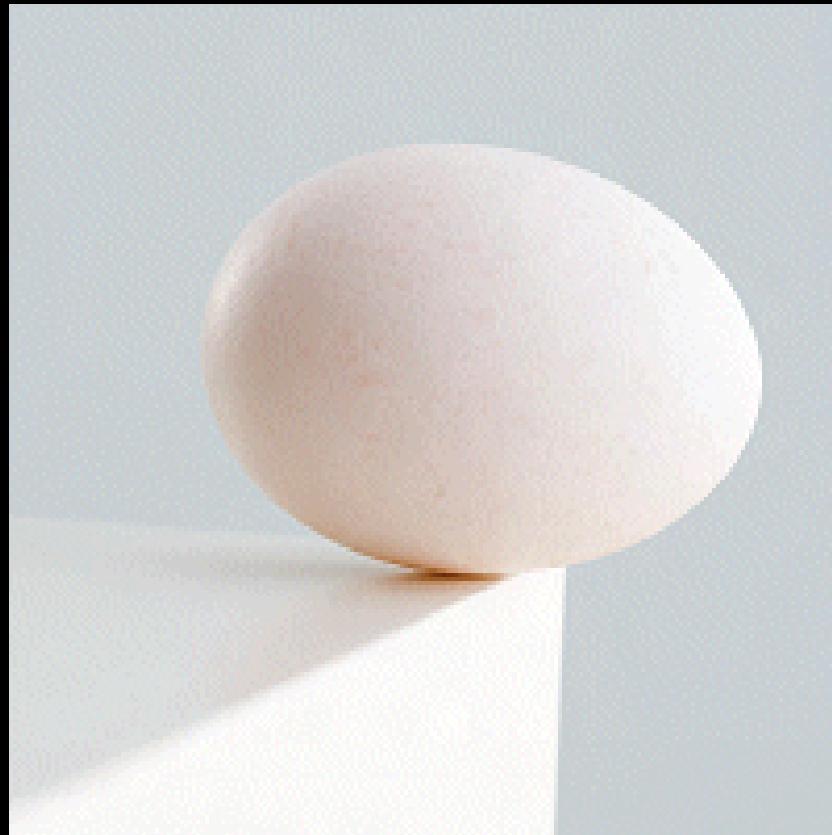
ME TX NV SC SD MS FA

LA KS NB

- Call your Senator on the Commerce, Science and Transportation committee.

The Rules Of Advocacy ...

1. The tipping point



2. All politics is local

- Keep a list of local legislative contacts
- Mobilize your local Association
- Emphasize the impact the issue will have on the local economy
- Your voice matters ...
make it be heard!



3. “I know Senator So and So ...”

- Don't tell us ...
- Tell the Senator about the issue!

THE ORACLE OF BACON

The screenshot shows a search path on the 'The Oracle of Bacon' website. At the top, the title 'THE ORACLE OF BACON' is displayed in large white letters on a dark blue background. Below the title, a vertical chain of nodes is connected by arrows. The nodes are: 'Samuel L. Jackson' (green box), 'was in' (small grey text), 'Losing Isaiah (1995)' (blue box), 'with' (small grey text), 'Laura Ceron' (green box), 'was in' (small grey text), 'Rails & Ties (2007)' (blue box), 'with' (small grey text), and 'Kevin Bacon' (green box). At the bottom of the screenshot, there is a search interface with two input fields: the first contains 'Kevin Bacon' and the second contains 'Jackson, Samuel L.'. To the right of the second field are two buttons: 'Find link' and 'More options >>'.

4. Where do I find the words?

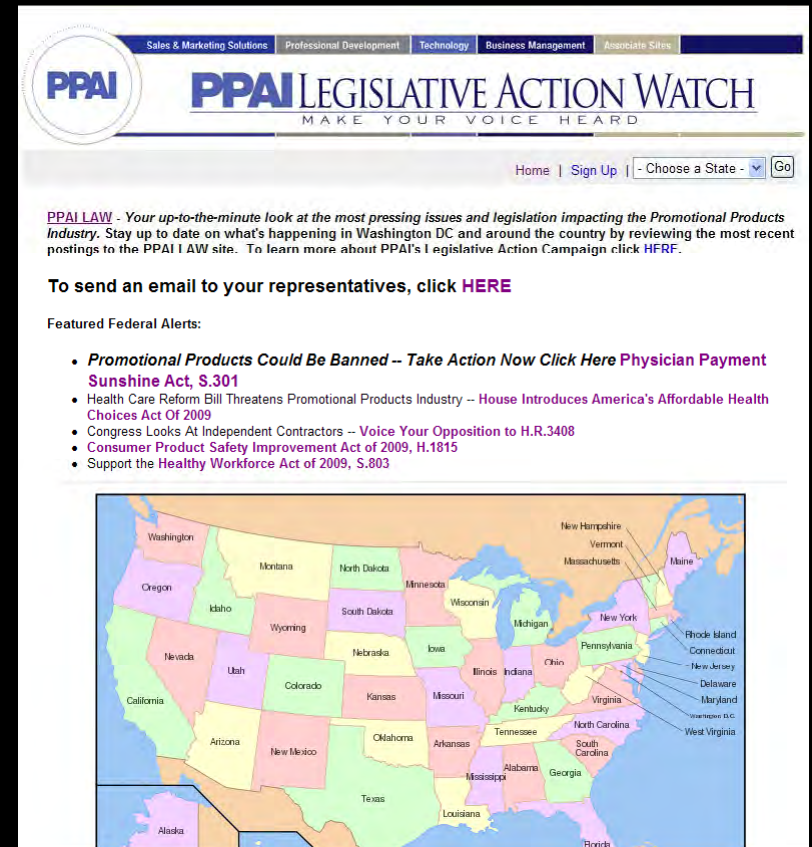
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Tools at Your Disposal ...

- Website
- Call scripts
- Presentations
- Washington lobbyists
- Staff resources



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PPAI LAW - Your up-to-the-minute look at the most pressing issues and legislation impacting the Promotional Products Industry. Stay up to date on what's happening in Washington DC and around the country by reviewing the most recent postings to the PPAI LAW site. To learn more about PPAI's Legislative Action Campaign click [HERE](#).

To send an email to your representatives, click [HERE](#)

Featured Federal Alerts:

- **Promotional Products Could Be Banned -- Take Action Now Click Here** [Physician Payment Sunshine Act, S.301](#)
- Health Care Reform Bill Threatens Promotional Products Industry -- [House Introduces America's Affordable Health Choices Act Of 2009](#)
- Congress Looks At Independent Contractors -- [Voice Your Opposition to H.R.3408](#)
- [Consumer Product Safety Improvement Act of 2009, H.1815](#)
- [Support the Healthy Workforce Act of 2009, S.803](#)



Tracking Bills at the Local Level

- Track state legislation and regulations daily
- Track trends: healthcare, product safety, independent contractors, insurance, small business issues and more
- Issue alerts and mobilize regional teams



Where do we go from here?

- Lawmakers must understand the value and benefits of promotional products.
- Rules, bans and codes seem to be presented without clearly understanding their impact on this \$16 billion industry.
- It is our collective responsibility to make sure that legislators understand the value of promotional products as essential elements in the advertising and marketing mix.

What do you need to do?

- Mobilize the community
- Educate your colleagues and other industry representatives
 - Make them aware of the issue
 - Motivate them to *immediately* take action
- Give them the tools they need to take action

Tell 6 Friends!



Five Easy Steps

- 1: Learn
- 2: Call
- 3: Fax
- 4: E-mail
- 5: Write to the local office only

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Watch the PPAI LEAD Video Recap

[Independent Contractors -- PPAI Needs Your Stories](#): Click [HERE](#) to get more information

To contact your representatives, click [HERE](#)

Featured Federal Alerts:

- **Small Business Paperwork Mandate Elimination Act (HR 5141) -- Repeal 1099 Reporting Requirements**

Without this repeal, you must submit a Form 1099 for all goods and services purchased in excess of \$600 (i.e. utilities, airlines, car rentals).

Need to know more about the source of this requirement?
Are people you communicate with in disbelief that this requirement was part of the Patient Protection and Affordable Care Act?
Click [HERE](#) for the specific section (H.R. 3590-737) or [HERE](#) for the full text.

- **Congress Looks At Independent Contractors -- Voice Your Opposition to H.R.3408 and to S.2882**
- **Consumer Product Safety Improvement Act of 2009, H.1815**
- Support the **Healthy Workforce Act of 2009, S.803**



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Action Alert

H.R. 3408 Would Limit The Use Of Independent Contractors

H.R. 3408 Would Eliminate "Safe Harbor" Provision

INDEPENDENT CONTRACTORS

STATUS

Representative Jim McDermott (D-WA) has introduced H.R. 3408, The Taxpayer Responsibility, Accountability, and Consistency Act.

Senator John Kerry (D-MA) has introduced S. 2882, a similar bill, in the Senate. The bill is co-sponsored by Senators Dick Durbin (D-IL), Tom Harkin (D-IA), Chuck Schumer (D-NY), Sherrod Brown (D-OH), Bob Menendez (D-NJ), and Paul Kirk (D-MA).

The Internal Revenue Service (IRS) employment classification audit activity has increased.

BACKGROUND

As long as there have been employment taxes, tax administrators and taxpayers have been engaged in a dialogue to answer the question "Who is an employee?"

The IRS, faced with the responsibility to make determinations of the status of individuals, uses a "facts and circumstances" approach appropriate with its statutory authority. Thus it has largely fallen to the courts to determine whether various facts and factors are relevant to the determination of "who is an employee." Over time, that body of cases and rulings under our system of jurisprudence is what is referred to as the "common law." In 1987, in Revenue Ruling 87-41, the IRS distilled the "common law" into 20 factors.

To deal with the unique circumstances of industries whose practices do not fit within the common law factors, Section 530 of the Revenue Act of 1978 provided a "safe harbor" which is generally stated in the negative: "Section 530 allows a taxpayer to treat a worker as not being an employee for employment tax purposes (but not income tax purposes), regardless of the worker's actual status under the common law test, unless the taxpayer has no reasonable basis for such treatment or fails to meet certain requirements." One of the "reasonable bases" is a long-standing recognized practice in the industry. This has been a particularly important safe harbor for the promotional products industry.

An important provision of Section 530, that has had an influence on the determination process over the last 30 years, states "No regulation or Revenue Ruling shall be published on or after the date of the enactment of this Act and before the effective date of any law hereafter enacted clarifying the employment status of individuals for purposes of the employment taxes by the Department of the Treasury (including the IRS) with respect to the employment status of any individual for purposes of the employment taxes."

LEGISLATION

H.R. 3408/S. 2882 would repeal section 530 and replace it with one new safe harbor. The industry practice safe harbor would be repealed.

PPAI Law

- Congress Looks At Independent Contractors -- **Voice Your Opposition to H.R.3408** and to **S.2882**
- **Consumer Product Safety Improvement Act of 2009, H.1815**
- Support the **Healthy Workforce Act of 2009, S.803**



- Alabama
- Alaska
- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Florida
- Georgia
- Hawaii
- Idaho
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Mississippi
- Missouri
- Montana
- Nebraska
- Nevada
- New Hampshire
- New Jersey
- New Mexico
- New York
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Oregon
- Pennsylvania
- Puerto Rico
- Rhode Island
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Vermont
- Virginia
- Washington
- West Virginia
- Wisconsin
- Wyoming

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Take Action

1 COMPOSE MESSAGE

Message Recipients:

- Your U.S. House Representative

Delivery Method:

- Email
 Printed Letter

Subject:

HR 3408 Would Limit The Use Of Independent Contractors

Editable text:

(edit or add your own text - 8853 characters left)

As your constituent, and a member of the Promotional Products Association International (PPAI), I am writing to express my concerns about H.R. 3408, a bill that would limit the use of independent contractors.

Using independent contractors to perform sales-related services is a long-standing practice in the promotional products industry. In our industry, the distributor develops solutions to marketing challenges through the innovative use of promotional products and is a resource to corporate buyers, marketing professionals, and others. A supplier manufactures, imports, converts, imprints or otherwise produces or processes promotional products offered for sale through distributors and the distributors' sales force known as promotional consultants. The promotional consultants are the independent contractors.

H.R. 3408 would eliminate a "safe harbor" provision of tax law, known as "Section 530" that recognizes the long-standing

Tip: Cutting-and-pasting? Save as [plain text](#) first.

Your Closing:

Sincerely,

Your Name:

Anne Lardner

- Remember Me! ([what's this?](#))
 Sign me up for the Action E-List.

A copy of your message will be sent to the e-mail address entered above.

Your Contact Information:

This system requires that you provide your name and contact information. This information will not be used for any purpose other than to identify you to the recipient.

Prefix (required by some officials)

Ms.

First *

Anne

Last *

Lardner

Email *

annel@ppai.org

Address *

3125 Skyway Circle North

City *

Irving

State *

Texas

ZIP * ZIP + 4

75038

3526

Phone

Send Message

(Please click only once.)

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Additional information is required

Some elected officials require the sender to enter validation code before the message can be sent. Please enter the validation code below.

John Cornyn (R-TX)



Validation code:

You can also use [Contact form](#) from elected official's website to send a message

Send Message

(Please click only once.)

If you have trouble answering a question or recognizing letters in an image, please don't select anything. Instead, click the 'Send Message' button. This will refresh the page and often will display a different question and/or image.

If the image did not show up, that means there was a problem accessing the recipient's website to get the validation code. Please [click here](#) to try again. This will refresh the page and often will display a different image.

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Confirmation

Your e-mail message was sent to:

- Senator John Cornyn (R-TX)
- Senator Kay Bailey Hutchison (R-TX)

Tell-A-Friend

Tell your friends about the page you were just looking at by filling in the form below.

Your Name:

Your e-mail address:

Enter the e-mail addresses of up to 6 friends below:

Subject:

Compose your message to your friends:

I just took action on this issue and thought you might find it interesting too.

A copy of your message will be sent to your e-mail address entered above.

Remember Me

Send Email

PPAI Law

Extra line breaks in this message were removed.

From: donotreply@cornyn.senate.gov
To: Anne Lardner
Cc:
Subject: Your Message To Senator Cornyn

Sent: Mon 8/24/2009 11:23 AM

Dear Anne Lardner,

Thank you for contacting my offices. Your correspondence has been received, and we will respond to you as quickly as possible. A copy of your message is attached below for your records.

If you need immediate assistance regarding an urgent problem you are experiencing with the federal government, visit the "Help With Federal Agencies" section of the website for details on how to proceed so that your difficulties are brought to my attention as soon as possible.

If you are seeking information or services from my offices that are NOT related to my Legislative duties, please visit my "Services For Texans" section for more information.

Warmest Regards,
U.S. Senator John Cornyn

Name/Email:
Anne Lardner (anne1@ppai.org)

Street Address:
3125 Skyway Cir N,
Irving, TX
75038

Phone/Fax:

Your Message:
Health
Anne Lardner
3125 Skyway Circle North
Irving, TX 75038-3526

August 24, 2009

The Honorable John Cornyn
United States Senate
517 Hart Senate Office Building
Washington, DC 20510-4302

Dear Senator Cornyn:

Take hope ...

- Last year, PPAI's then-Board Chair-elect Scott Siegel, MAS, R.S. Owens, traveled to Washington, DC, to meet with President Obama and represent small business issues as part of a virtual town hall meeting on the economy.



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ZIP

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THE WHITE HOUSE IS
OPEN *for* QUESTIONS

ONLINE TOWN HALL

The President is holding a new kind of online town hall where he will answer the questions you submitted and voted on for him. The event begins here at 11:30am ET. You can read the most popular questions submitted on the economy below.



34:15 / LIVE



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