

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 293
Judiciary II Committee Substitute Adopted 4/2/03

Short Title: Sales Representative Commissions Revisions.

(Public)

Sponsors:

Referred to:

March 5, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW GOVERNING SALES REPRESENTATIVE
3 COMMISSIONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 27 of Chapter 66 of the General Statutes reads as
6 rewritten:

7 "Article 27.

8 "Sales Representative Commissions.

9 "§ 66-190. Definitions.

10 The following definitions apply in this Article:

- 11 (1) "Commission" means compensation accruing to a sales representative
12 for payment by a principal, the rate of which is expressed as a
13 percentage of the amount of ~~orders or sales~~ orders, sales, or profits or
14 as a specified amount per order or per sale.
- 15 (2) "Person" means an individual, corporation, limited liability company,
16 partnership, unincorporated association, estate, ~~or trust~~ trust, or other
17 entity.
- 18 (3) "Principal" means a person ~~who does not have a permanent or fixed~~
19 ~~place of business in this State and who:~~
20 a. Manufactures, produces, imports, or distributes a ~~tangible~~
21 ~~product for sale at wholesale; or service;~~
22 b. Contracts with a sales representative to solicit orders for the
23 ~~product; product or service; and~~
24 c. Compensates the sales representative, in whole or in part, by
25 commission.
- 26 (4) "Sales representative" means a person who:
27 a. Contracts with a principal to solicit ~~wholesale orders; orders for~~
28 products or services;
29 b. Is compensated, in whole or in part, by commission;

- 1 c. ~~Does not place orders or purchase for his own account or for~~
2 ~~resale; Is not a seller who complies with:~~
3 1. G.S. 25A-39 and G.S. 25A-40; or
4 2. 16 C.F.R. § 429; and
5 d. ~~Does not sell or take orders for the sale of products at retail; and~~
6 e. Is not an employee of the principal.

7 (5) "Terminate" and "termination" mean the end of the business
8 relationship between the sales representative and the principal, whether
9 by agreement, by expiration of time, or by exercise of a right of
10 termination of either party.

11 **§ 66-190.1. Written contracts.**

12 The agreement or contract between a sales representative and a principal shall be in
13 writing. The absence of a written agreement or contract shall not bar a cause of action
14 by, or any remedy available to, a sales representative pursuant to this Article.

15 **§ 66-191. Payment of ~~commissions.~~ commissions; termination.**

16 When a contract between a sales representative and a principal is terminated for any
17 reason other than malfeasance on the part of the sales representative, the principal shall
18 pay the sales representative all commissions ~~accrued under the contract to the sales~~
19 ~~representative within 45 days after the effective date of the termination.~~ due under the
20 contract within 30 days after the effective date of the termination and all commissions
21 that become due after the effective date of termination within 14 days after they become
22 due. When a sales representative sends a written demand for payment of commissions to
23 a principal by certified mail, the principal shall respond in writing to the demand within
24 30 days after the principal receives the written demand.

25 **§ 66-192. Civil liability.**

26 (a) A principal who fails to comply with the provisions of ~~G.S. 66-191~~ G.S.
27 66-191, or is shown to have wrongfully revoked an offer of commission under G.S.
28 66-192.1 is liable to the sales representative in a civil action for (i) all amounts due the
29 sales representative plus exemplary damages in an amount not to exceed three times the
30 amount of commissions due the sales representative, (ii) attorney's fees actually and
31 reasonably incurred by the sales representative in the action, and (iii) court costs.

32 (a1) A principal who fails to respond to a sales representative in writing within 30
33 days after the principal receives a written demand pursuant to G.S. 66-191 shall be
34 presumed to have acted willfully and in bad faith.

35 (b) Where the court determines that an action brought by a sales representative
36 against a principal under this Article is frivolous, the sales representative is liable to the
37 principal for court costs and for attorney's fees actually and reasonably incurred by the
38 principal in defending the action.

39 (c) A principal who is not a resident of this State who contracts with a sales
40 representative to solicit orders in this State shall be subject to personal jurisdiction as
41 provided in G.S. 1-75.4.

42 (d) Nothing in this Article shall invalidate or restrict any other or additional right
43 or remedy available to a sales representative or preclude a sales representative from
44 seeking to recover in one action on all claims against a principal.

1 **"§ 66-192.1. Revocable offers of commission; entitlement.**

2 If a principal makes a revocable offer of a commission to a sales representative, the
3 sales representative is entitled to the commission agreed upon if:

4 (1) The principal revokes the offer of commission;

5 (2) The sales representative establishes that the revocation was for the
6 purpose of avoiding payment of the commission;

7 (3) The revocation occurs after the principal has obtained a written order
8 for the principal's product or service because of the efforts of the sales
9 representative; and

10 (4) The principal's product or service that is the subject of the order is
11 provided to and paid for by a customer.

12 **"§ 66-193. Contracts void.**

13 A provision in any contract between a sales representative and a principal purporting
14 to waive any provision of this Article, whether by expressed waiver or by a contract
15 subject to the laws of another state, is void."

16 **SECTION 2.** This act becomes effective October 1, 2003, and applies to
17 causes of action accruing on or after that date.