

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS35063-LT-4A (1/30)

Short Title: Sales Representative Commissions Revisions. (Public)

Sponsors: Senator Thomas.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING SALES REPRESENTATIVE
COMMISSIONS.

The General Assembly of North Carolina enacts:

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

"Article 27.

"Sales Representative Commissions.

"§ 66-190. Definitions.

The following definitions apply in this Article:

- (1) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of ~~orders or sales~~ orders, sales, or profits or as a specified amount per order or per sale.
- (2) "Person" means an individual, corporation, limited liability company, partnership, unincorporated association, estate, ~~or trust~~ trust, or other entity.
- (3) "Principal" means a person ~~who does not have a permanent or fixed place of business in this State and~~ who:
 - a. Manufactures, produces, imports, or distributes a ~~tangible product for sale at wholesale; or service;~~
 - b. Contracts with a sales representative to solicit orders for the product; and
 - c. Compensates the sales representative, in whole or in part, by commission.
- (4) "Sales representative" means a person who:

- 1 a. Contracts with a principal to solicit ~~wholesale orders;~~ orders for
2 products or services;
3 b. Is compensated, in whole or in part, by ~~commission;~~
4 commission; and
5 e. ~~Does not place orders or purchase for his own account or for~~
6 resale;
7 d. ~~Does not sell or take orders for the sale of products at retail; and~~
8 e. Is not an employee of the principal.

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

13 **"§ 66-190.1. Written contracts.**

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

17 **"§ 66-191. Payment of commissions. Termination; definition.**

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

27 **"§ 66-192. Civil liability.**

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

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

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

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

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

4 **"§ 66-192.1. Revocable offers of commission; entitlement.**

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

7 (1) The principal revokes the offer of commission and the sales
8 representative establishes that the revocation was for the purpose of
9 avoiding payment of the commission;

10 (2) The revocation occurs after the principal has obtained a written order
11 for the principal's product or service because of the efforts of the sales
12 representative; and

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

15 **"§ 66-193. Contracts void.**

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

19 **SECTION 2.** This act becomes effective October 1, 2003.