

No. 1988-184

AN ACT

HB 1135

Providing for agreements between sales representatives and their principals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Commission.” Compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the dollar of orders or sales.

“Principal.” Any person who does not have a permanent or fixed place of business in this Commonwealth and who does all of the following:

- (1) Engages in the business of manufacturing, producing, importing or distributing a product for sale to customers who purchase such products for resale.
- (2) Utilizes sales representatives to solicit orders for such product.
- (3) Compensates sales representatives, in whole or in part, by commission.

“Sales representative.” A person who contracts with a principal to solicit wholesale orders from retailers rather than consumers and who is compensated, in whole or in part, by commission. The term does not include one who places orders or purchases for his own account for resale or one who is an employee of a principal.

“Termination.” The end of services performed by the sales representative for the principal. The term includes any action that concludes the relationship of the parties.

Section 2. Contracts.

(a) Contents.—When a sales representative enters into an agreement with the principal for the solicitation of wholesale orders, a written contract shall be entered into setting forth the following:

- (1) The form of payment and the method by which it is to be computed and made.
- (2) A specified period for the performance of services.
- (3) The manner and extent to which job-incurred expenses are to be reimbursed.
- (4) A specified geographical territory or specified accounts.

(b) Copy of contract.—The principal shall provide each sales representative with a signed copy of the contract.

Section 3. Termination.

If a contract between a sales representative and a principal is terminated, the principal shall, within 14 days after payment would have been due under the contract if the contract had not been terminated, pay to the sales representative all commissions accrued under the contract.

Section 4. Commissions on goods delivered after the end of the agreement.

Within 14 days after payment would have been due under the contract if the contract had not been terminated, a sales representative shall also receive commissions on goods ordered prior to termination, but shipped thereafter.

Section 5. Noncompliance.

(a) General.—A principal who willfully fails to comply with the provisions of section 3 or 4 shall be liable to the sales representative in a civil action for:

(1) All commissions due the sales representative, plus exemplary damages in an amount not to exceed two times the commissions due the sales representative.

(2) The cost of the suit, including reasonable attorney fees.

(b) Frivolous actions.—If judgment is entered for the principal and the court determines that the action was brought on frivolous grounds, the court shall award reasonable attorney fees and court costs to the principal.

Section 6. Construction of act.

Nothing in this act shall invalidate or restrict any other or additional right or remedy available to sales representatives or preclude sales representatives from seeking to recover in one action on all claims against a principal. The provisions of this act may not be waived. In applying the provisions of this act, the courts of this Commonwealth shall not recognize any purported waiver of the provisions of this act, whether by express waiver or by attempt to make a contract or agreement subject to the laws of another state.

Section 7. Applicability.

The provisions of this act shall apply to existing contracts which can be terminated at will and to contracts entered into or renewed after the effective date of this act. Nothing contained in this section is intended to violate section 17 of Article I of the Constitution of Pennsylvania, relative to impairing the obligations of contracts.

Section 8. Compliance with requirements for contracts.

Within 180 days after the effective date of this act, all contracts described in section 7 shall comply with the provisions of section 2.

Section 9. Effective date.

This act shall take effect immediately.

APPROVED—The 21st day of December, A. D. 1988.

ROBERT P. CASEY