



***Final Analysis***

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*Legislative Service Commission*

**Am. S.B. 18**  
123rd General Assembly  
(As Passed by the General Assembly)

**Sens. Drake, Prentiss, Armbruster, Spada, Ray**

**Reps. Trakas, Sullivan, D. Miller, Calvert, DePiero, Amstutz, Harris, Mead, Young, O'Brien, Schuring, Corbin, Patton, Logan, Thomas, Householder, Opfer, Austria, Willamowski**

**Effective date:** \*

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**ACT SUMMARY**

- Expands the law governing contracts between a "principal" and a "sales representative" to apply to all principals regardless of whether the principal has a permanent or fixed place of business in Ohio, to apply to the provision of services, and to apply to all sales (not just wholesale sales).
- Expands from 13 to 30 days the length of time within which a principal must pay a sales representative all commissions due to the sales representative upon the termination of a contract between a principal and a sales representative.
- Defines "termination" of a contract between a principal and a sales representative.
- Permits the imposition of exemplary damages on a principal who fails to comply with the act's provisions concerning timely payment of commissions due upon termination of a contract with a sales representative only if the sales representative proves that the principal's failure to comply with those provisions constituted willful, wanton, or reckless misconduct or bad faith.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Creates a presumption that the principal acts willfully and in bad faith if the principal receives a written demand for the payment of the commissions owed to a sales representative that was sent by certified mail and the principal fails to respond to the demand in writing within 20 days after the principal receives the demand.
- Expands the circumstances under which a provision in a contract between a sales representative and a principal is void.
- Exempts persons licensed to engage in the business of issuing or selling insurance from the law governing the payment of commission to sales representatives.

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## CONTENT AND OPERATION

### Persons covered by the act

#### Principals

The act modifies the existing definition of a principal to include (1) persons who engage in the business of manufacturing, producing, importing, or distributing one or more products for sale to customers who purchase products for consumption or utilization in the manufacturing process, and (2) persons who engage in the business of providing services to consumers and utilize sales representatives to solicit orders for those services. The act also expands the definition of "principal" to include all principals (whether or not they have a permanent or fixed place of business in Ohio) using sales representatives compensated by commission to solicit orders for products or services for resale or consumption or utilization in the manufacturing process. The definition of a principal in prior law included only those principals that did not have a fixed or permanent place of business in Ohio and who engaged in manufacturing, producing, importing, or distributing products to customers who purchased products for resale and who used one or more sales representatives compensated by commission to do so. (Sec. 1355.11(A)(2).)

#### Sales representatives

The act expands the definition of "sales representative" to cover persons who solicit any type of order for products or services, whereas prior law covered only those who solicited wholesale orders for products in Ohio. Continuing law provides that a person who purchases products (or services) for the person's own

account, or who is an employee of a principal, or who is not compensated by commission is not considered a sales representative. (Sec. 1335.11(A)(3).)

### **Exemptions**

The act specifies that persons licensed to engage in the business of issuing or selling insurance are specifically exempted under the act from the law governing payment of commissions due to sales representatives. (Sec. 1335.11(H).)

### **Payment of sales representatives' commission**

The act defines "termination" as the end of the performance of services by a sales representative for a principal, including discharge or resignation of the sales representative, or expiration of the contract between the sales representative and the principal (sec. 1355.11(A)(4)). The act requires that upon the termination of a contract between a principal and a sales representative the principal must pay the sales representative all commissions due at that time within 30 days of termination (as opposed to 13 days under prior law). Continuing law requires that principals pay commissions that become due after contract termination within 13 days of the date that the commissions become due.

Under the act, a principal who fails to comply with the provisions concerning timely payment of commissions due upon termination of a contract with a sales representative is liable for treble exemplary damages only if the sales representative proves that that principal's failure to comply with the provisions constitute willful, wanton, or reckless misconduct or bad faith.<sup>1</sup> If a principal receives a written demand by certified mail for the payment of commissions due and fails to respond in writing within 20 days after the principal receives the demand, then a presumption arises that the principal acted willfully and in bad faith. (Sec. 1335.11(D).)

Under prior law, a principal who failed to pay commissions due within 13 days of termination or within 13 days of the commissions becoming due after termination, or who failed to comply with any contractual provision concerning timely payment of commissions due upon termination was liable in a civil action for exemplary damages in an amount not to exceed three times the amount of the commissions owed to the sales representative.

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<sup>1</sup> *Exemplary damages are an award to a plaintiff over and above actual or ordinary damages, where wrong done to the plaintiff was aggravated by circumstances of malice, fraud, or wanton conduct on the part of the defendant.*

**Void contractual provisions**

Under the act, any provision in any contract between a sales representative and principal is void if it purports to do any of the following: (1) waive any of the above-described provisions regarding principals, sales representatives, and the agreements between them (same as prior law), (2) make the contract subject to the laws of another state, or (3) limit the right of the sales representative to initiate litigation or alternative dispute resolution in this state. (Sec. 1335.11(F).)

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 28
Reported, S. Economic Development, Technology & Aerospace	04-14-99	p. 283
Passed Senate (32-0)	04-14-99	p. 287
Reported, H. Commerce & Labor	06-16-99	p. 844
Passed House (70-22)	06-17-99	p. 888
Senate concurred in House amendments (32-0)	06-23-99	p. 661

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