



Kirsten J. Gross

Bill Analysis
Legislative Service Commission

S.B. 18

123rd General Assembly
(As Passed by the Senate)

Sens. Drake, Prentiss, Armbruster, Spada, Ray

BILL 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 bill'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.
- Creates a presumption that the principal acted 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 failed 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.

CONTENT AND OPERATION

Definition of "principal"

Existing law

"Principal" is defined in existing law as any person who does *not* have a permanent or fixed place of business in Ohio and who does all of the following (sec. 1335.11(A)(2)): (1) engages in the business of manufacturing, producing, importing, or distributing one or more products for sale to customers who purchase products for resale, (2) utilizes one or more sales representatives to solicit wholesale orders for those products, and (3) compensates the sales representatives in whole or in part by commission.

Operation of the bill

Under the bill, "principal" continues to include the persons within the existing definition and also includes: (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. Under the bill as under existing law, the principal, must utilize one or more sales representatives to solicit orders and must compensate the sales representatives in whole or in part by commission. (Sec. 1335.11(A)(2).)

Definition of "sales representative"

Existing law

Under existing law, a "sales representative" is a person who contracts with a principal to solicit wholesale orders for a product within this state and who is compensated, in whole or in part, by commission. "Sales representative" does not include a person who places orders for or purchases the product for the person's own account for resale, a person who is an employee of a principal, or a person who sells the product to the ultimate consumer. (Sec. 1335.11(A)(3).)

Operation of the bill

The bill expands the definition of "sales representative" to apply to all orders, not just to wholesale orders, and to apply to persons who contract with a principal to solicit orders for the provision of *services*. The bill also eliminates the requirement that a sales representative solicit orders only in Ohio. (Sec.

1335.11(A)(3).) A person who purchases products (or services) for the person's own account, or is an employee of a principal, or is not compensated by commission would not be a sales representative under the bill.

Payment of the sales representative's commission

Existing law

Under existing law, if a contract between a principal and a sales representative for the solicitation of wholesale orders is terminated, the principal must pay the sales representative all commissions due to the sales representative at the time of the termination within 13 days of the termination and must pay the sales representative all commissions that become due after the termination within 13 days of the date on which the commissions become due.

A principal who fails to comply with these requirements or with any contractual provision concerning timely payment of commissions due upon termination of a contract is 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. The prevailing party in such an action is entitled to reasonable attorney's fees and court costs. (Sec. 1335.11(C) and (D).)

Operation of the bill

The bill defines "termination" to mean the end of the performance of services by a sales representative for a principal, including discharge of the sales representative by the principal, resignation of the sales representative, or expiration of the contract between the sales representative and the principal (sec. 1335.11(A)(4)). Under the bill, upon the termination of a contract between a principal and a sales representative for the solicitation of orders for a product or for services, the principal must pay the sales representative all commissions due to the sales representative within 30 days of the termination (as opposed to 13 days under existing law). (Principals would have to pay commissions that become due *after* contract termination within 13 days as under current law.) 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 exemplary damages *only* if the sales representative proves that the principal's failure to comply with the provisions constituted willful, wanton, or reckless misconduct or bad faith. If a principal receives a written demand for the payment of the commissions that the sales representative sent by certified mail, the failure of the principal to respond to the written demand in writing within 20 days after the principal receives the demand raises a presumption that the principal acted willfully and in bad faith.

The bill also revises these provisions to apply to any orders for products or services, rather than to "wholesale orders" as under existing law. (Sec. 1335.11(C) and (D).)

Void contractual provisions

Under existing law, any provision in any contract between a sales representative and principal purporting to waive any of the above-described provisions regarding principals, sales representatives, and the agreements between them is void (sec. 1335.11(F)).

Under the bill, any provision in any contract between a sales representative and principal is void if it purports to do any of the following (sec. 1335.11(F)): (1) waive any of the above-described provisions regarding principals, sales representatives, and the agreements between them (same as existing 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 Ohio.

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

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