

1 **SALES REPRESENTATIVE COMMISSION**

2 **PAYMENT ACT**

3 2007 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Sheldon L. Killpack**

6 House Sponsor: Melvin R. Brown

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions related to Labor in General to enact the Sales
11 Representative Commission Payment Act.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ enacts the Sales Representative Commission Payment Act;
- 15 ▶ defines terms;
- 16 ▶ addresses jurisdiction;
- 17 ▶ addresses void provisions;
- 18 ▶ requires written agreements;
- 19 ▶ provides for payment requirements, including upon termination and settlement;
- 20 ▶ addresses revocable commission offers; and
- 21 ▶ addresses remedies.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 ENACTS:

28 **34-44-101**, Utah Code Annotated 1953

29 **34-44-102**, Utah Code Annotated 1953

- 30 **34-44-103**, Utah Code Annotated 1953
- 31 **34-44-104**, Utah Code Annotated 1953
- 32 **34-44-201**, Utah Code Annotated 1953
- 33 **34-44-202**, Utah Code Annotated 1953
- 34 **34-44-203**, Utah Code Annotated 1953
- 35 **34-44-301**, Utah Code Annotated 1953
- 36 **34-44-302**, Utah Code Annotated 1953



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **34-44-101** is enacted to read:

40 **CHAPTER 44. SALES REPRESENTATIVE COMMISSION PAYMENT ACT**

41 **Part 1. General Provisions**

42 **34-44-101. Title.**

43 This chapter is known as the "Sales Representative Commission Payment Act."

44 Section 2. Section **34-44-102** is enacted to read:

45 **34-44-102. Definitions.**

46 As used in this chapter:

47 (1) "Business relationship" means an agreement that governs the relationship of
48 principal and sales representative.

49 (2) "Commission" means:

50 (a) compensation:

51 (i) that accrues to a sales representative;

52 (ii) for payment by a principal; and

53 (iii) at a rate expressed as a percentage of the dollar amount of sales, orders, or profits;

54 or

55 (b) any other method of compensation agreed to between a sales representative and a
56 principal including:

57 (i) fees for services; and

- 58 (ii) a retainer.
- 59 (3) "Principal" means a person who:
- 60 (a) engages in any of the following activities with regard to a product or service:
- 61 (i) manufactures;
- 62 (ii) produces;
- 63 (iii) imports;
- 64 (iv) sells; or
- 65 (v) distributes;
- 66 (b) establishes a business relationship with a sales representative to solicit orders for a
- 67 product or a service described in Subsection (3)(a); and
- 68 (c) agrees to compensate a sales representative, in whole or in part, by commission.
- 69 (4) (a) Except as provided in Subsection (4)(b), "sales representative" means a person
- 70 who enters into a business relationship with a principal:
- 71 (i) to solicit orders for a product or a service described in Subsection (3)(a); and
- 72 (ii) under which the person is compensated, in whole or in part, by commission.
- 73 (b) "Sales representative" does not include:
- 74 (i) an employee of a principal;
- 75 (ii) a person licensed under Title 31A, Insurance Code;
- 76 (iii) a person licensed under Title 41, Chapter 3, Part 2, Licensing;
- 77 (iv) a person licensed under Title 61, Chapter 2, Division of Real Estate;
- 78 (v) a person who provides a product or service under a business relationship with a
- 79 principal that is incident to the purchase or sale of real property; or
- 80 (vi) a person who places an order or purchases a product or service for that person's
- 81 own account for resale.
- 82 (5) "Terminates" or "termination" means the end of a business relationship between a
- 83 sales representative and a principal, whether by:
- 84 (a) agreement;
- 85 (b) expiration of a time period; or

86 (c) exercise of a right of termination by either the principal or the sales representative.

87 Section 3. Section **34-44-103** is enacted to read:

88 **34-44-103. Jurisdiction in courts.**

89 An action under this chapter may be brought against a principal in a court of this state

90 if:

91 (1) the principal enters into a business relationship in this state with a sales

92 representative to solicit orders for a product or a service; or

93 (2) (a) a product of the principal is:

94 (i) manufactured, distributed, sold, or received in this state; or

95 (ii) imported to or from this state; or

96 (b) a service of the principal is provided in this state.

97 Section 4. Section **34-44-104** is enacted to read:

98 **34-44-104. Void provisions.**

99 Any of the following provisions in an agreement between a sales representative and a
100 principal is void:

101 (1) an express waiver of any right under this chapter;

102 (2) for a writing required by Section 34-44-201 that is entered into in this state, a
103 provision that makes the sales representative subject to the laws of another state; or

104 (3) a requirement that the sales representative pursue a claim under this chapter in a
105 court not located in the state.

106 Section 5. Section **34-44-201** is enacted to read:

107 **Part 2. Requirements and Prohibitions**

108 **34-44-201. Written business relationship.**

109 (1) The business relationship between a sales representative and a principal shall be in
110 a writing signed by both the principal and the sales representative.

111 (2) The writing required by Subsection (1) shall set forth the method by which the sales
112 representative's commission is:

113 (a) computed; and

114 (b) paid.
115 (3) The principal shall provide the sales representative with a copy of the signed
116 writing required by Subsection (1).

117 Section 6. Section **34-44-202** is enacted to read:

118 **34-44-202. Payment of commission -- Payment on termination -- Settlement.**

119 (1) The principal shall pay a sales representative all commissions due to the sales
120 representative during the time the business relationship between the principal and sales
121 representative is in effect in accordance with the writing required by Section 34-44-201.

122 (2) If a business relationship between a principal and sales representative terminates,
123 the principal shall pay to the sales representative:

124 (a) within 30 days after the day on which the termination is effective, all commissions
125 due on the day on which the termination is effective; and

126 (b) within 14 days after the day on which a commission becomes due if the
127 commission is due after the day on which the termination is effective.

128 (3) (a) Unless payment is made pursuant to a binding and final written settlement
129 agreement and release, the acceptance by a sales representative of a partial commission paid by
130 the principal under the business relationship does not constitute a release as to the balance of
131 any commission that the sales representative claims is due because of the business relationship.

132 (b) A full release of all commission claims required by a principal as a condition to a
133 partial commission payment is void.

134 Section 7. Section **34-44-203** is enacted to read:

135 **34-44-203. Revocable offer of commission.**

136 If a principal makes a revocable offer of a commission to a sales representative, the
137 sales representative is entitled to the commission agreed upon under the business relationship
138 if:

139 (1) the principal revokes the offer of commission;

140 (2) the sales representative establishes that the revocation is for a purpose of avoiding
141 payment of the commission;

142 (3) the revocation occurs after the principal obtains an order for the principal's product
143 or service through the efforts of the sales representative; and

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

146 Section 8. Section **34-44-301** is enacted to read:

147 **Part 3. Remedies**

148 **34-44-301. Failure to pay commission.**

149 (1) A sales representative may bring a civil action in a court of competent jurisdiction
150 against a principal for failure by the principal to comply with:

151 (a) any provision of an agreement relating to the payment of commission; or

152 (b) Subsection 34-44-202(1) or (2).

153 (2) If a principal is found liable under Subsection (1), the principal is liable to the sales
154 representative for:

155 (a) three times an amount calculated by:

156 (i) determining the sum of unpaid commission owed to the sales representative; and

157 (ii) subtracting from the amount determined under Subsection (2)(a)(i) monies the sales
158 representative owes the principal;

159 (b) reasonable attorney fees; and

160 (c) court costs.

161 Section 9. Section **34-44-302** is enacted to read:

162 **34-44-302. Other remedies.**

163 This chapter does not:

164 (1) invalidate or restrict any alternative or additional right or remedy available to a
165 sales representative; or

166 (2) preclude a sales representative from seeking to recover in an action on all claims
167 against a principal.