

1 **COMMISSION PAYMENT ACT**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: David Ure**

5 Senate Sponsor: Sheldon L. Killpack

6

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

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

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 ENACTS:

27 **34-44-101**, Utah Code Annotated 1953



- 28 34-44-102, Utah Code Annotated 1953
- 29 34-44-103, Utah Code Annotated 1953
- 30 34-44-104, Utah Code Annotated 1953
- 31 34-44-201, Utah Code Annotated 1953
- 32 34-44-202, Utah Code Annotated 1953
- 33 34-44-203, Utah Code Annotated 1953
- 34 34-44-301, Utah Code Annotated 1953
- 35 34-44-302, Utah Code Annotated 1953

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

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

39 **CHAPTER 44. COMMISSION PAYMENT ACT**

40 **Part 1. General Provisions**

41 **34-44-101. Title.**

42 This chapter is known as the "Commission Payment Act."

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

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

45 As used in this chapter:

46 (1) "Business relationship" means any agreement ~~H~~→ [~~entered into or renewed on or after~~
 47 ~~May 1, 2006;~~ ~~←H~~ that governs the relationship of principal and sales representative ~~H~~→ [~~H~~→~~after~~
 47a ~~May 1, 2006~~←~~H~~] ←~~H~~ .

48 (2) "Commission" means:

49 (a) compensation:

50 (i) that accrues to a sales representative;

51 (ii) for payment by a principal; and

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

53 or

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

56 (i) fees for services; and

57 (ii) a retainer.

58 (3) "Principal" means a person who:

59 (a) engages in any of the following activities with regard to a product or service:

60 (i) manufactures;

61 (ii) produces;

62 (iii) imports;

63 (iv) sells; or

64 (v) distributes;

65 (b) establishes a business relationship with a sales representative to solicit orders for a
66 product or a service described in Subsection (3)(a); and

67 (c) agrees to compensate a sales representative, in whole or in part, by commission.

68 (4) (a) Except as provided in Subsection (4)(b), "sales representative" means a person
69 who enters into a business relationship with a principal:

70 (i) to solicit orders for a product or a service; and

71 (ii) under which the person is compensated, in whole or in part, by commission.

72 (b) "Sales representative" does not include an employee of a principal.

73 (5) "Terminates" or "termination" means the end of a business relationship between a
74 sales representative and a principal, whether by:

75 (a) agreement;

76 (b) expiration of a time period; or

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

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

79 **34-44-103. Jurisdiction in courts.**

80 An action under this chapter may be brought against a principal in a court of this state if
81 the principal:

82 (1) enters into a business relationship in this state with a sales representative to solicit
83 orders for a product or a service; or

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

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

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

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

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

89 **34-44-104. Void provisions.**

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

- 92 (1) an express waiver of any right under this chapter;
- 93 (2) for a writing required by Section 34-44-201 that is entered into in this state, a
94 provision that makes the sales representative subject to the laws of another state; or
- 95 (3) a requirement that the sales representative pursue a claim under this chapter in a
96 court not located in the state.

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

98 **Part 2. Requirements and Prohibitions**

99 **34-44-201. Written business relationship.**

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

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

- 104 (a) computed; and
- 105 (b) paid.

106 (3) The principal shall provide the sales representative with a copy of the signed
107 writing required by Subsection (1).

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

109 **34-44-202. Payment of commission -- Payment on termination -- Settlement.**

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

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

115 (a) within 30 days after the effective date of the termination, all commissions due at the
116 effective date of the termination; and

117 (b) within 14 days after the day on which a commission becomes due if the
118 commission is due after the effective date of the termination.

119 (3) (a) Unless payment is made pursuant to a binding and final written settlement
120 agreement and release, the acceptance by a sales representative of a partial commission

121 payment from the principal does not constitute a release as to the balance of any commission
122 claimed due.

123 (b) A full release of all commission claims required by a principal as a condition to a
124 partial commission payment is null and void.

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

126 **34-44-203. Revocable offer of commission.**

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

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

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

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

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

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

137 **Part 3. Remedies**

138 **34-44-301. Failure to pay commission.**

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

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

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

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

145 (a) three times the amount calculated by:

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

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

149 (b) reasonable attorney's fees; and

150 (c) court costs.

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

152 **34-44-302. Other remedies.**

153 This chapter does not:

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

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

Legislative Review Note
as of 2-1-06 10:13 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0368

Commission Payment Act

06-Feb-06

11:18 AM

State Impact

No fiscal impact.

Individual and Business Impact

Individual and business fiscal impact will vary according to circumstances.

Office of the Legislative Fiscal Analyst