

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

SALES REPRESENTATIVE COMMISSION

PAYMENT ACT

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheldon L. Killpack

House Sponsor: Melvin R. Brown

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

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

37

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;

75a **Š→ (iii) a person licensed under Title 41, Chapter 3, Part 2, Licensing;**

76 **[~~(iii)~~ (iv) ←Š a person licensed under Title 61, Chapter 2, Division of Real Estate; Š→ [or]**

77 **[~~(iv)~~ (v) ←Š a person who provides a product or service under a business relationship with a**

78 **principal that is incident to the purchase or sale of real property Š→ ; or**

78a **(v) a person who places an order or purchases a product or service for that person's**

78b **own account for resale ←Š .**

79 (5) "Terminates" or "termination" means the end of a business relationship between a

80 sales representative and a principal, whether by:

81 (a) agreement;

82 (b) expiration of a time period; or

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

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

85 **34-44-103. Jurisdiction in courts.**

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

87 if:

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

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

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

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

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

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

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

95 **34-44-104. Void provisions.**

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

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

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

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

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

104 **Part 2. Requirements and Prohibitions**

105 **34-44-201. Written business relationship.**

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

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

110 (a) computed; and

111 (b) paid.

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

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

115 **34-44-202. Payment of commission -- Payment on termination -- Settlement.**

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

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

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

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

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

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

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

132 **34-44-203. Revocable offer of commission.**

133 If a principal makes a revocable offer of a commission to a sales representative, the
134 sales representative is entitled to the commission agreed upon under the business relationship
135 if:

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

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

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

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

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

144 **Part 3. Remedies**

145 **34-44-301. Failure to pay commission.**

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

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

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

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

- 152 (a) three times an amount calculated by:
153 (i) determining the sum of unpaid commission owed to the sales representative; and
154 (ii) subtracting from the amount determined under Subsection (2)(a)(i) monies the sales
155 representative owes the principal;
156 (b) reasonable attorney fees; and
157 (c) court costs.
158 Section 9. Section **34-44-302** is enacted to read:
159 **34-44-302. Other remedies.**
160 This chapter does not:
161 (1) invalidate or restrict any alternative or additional right or remedy available to a
162 sales representative; or
163 (2) preclude a sales representative from seeking to recover in an action on all claims
164 against a principal.

Legislative Review Note
as of 1-12-07 4:08 PM

Office of Legislative Research and General Counsel

S.B. 126 - Sales Representative Commission Payment Act

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/24/2007, 9:06:06 AM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst