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POSTTERMINATION COMMISSIONS

Senate Bill 36 with House committee amendments
First Analysis (6-6-91)

Sponsor: Sen. Dave Honigman
Senate Committee: Labor
House Committee: Labor

THE APPARENT PROBLEM:

Regardless of geographic territory or type of product sold, many wholesale sales representatives reportedly experience difficulty in recovering commissions they have justly earned after the business relationship between the sales representative and the principal (e.g., manufacturer or distributor) has been terminated. Often, in order to recover a commission, a sales representative must sue in the domicile of the principal, and bear the added costs of attending depositions and trial in other states. Knowing that recovery through the courts can be a costly and time-consuming proposition that many sales representatives would wish to avoid, some principals allegedly withhold earned commissions, thus forcing sales representatives either to accept distress settlements (i.e., a portion of their earned commissions not yet received) or to forgo the remuneration completely. To ensure that sales representatives receive the commissions to which they are entitled, it has been suggested that prompt payment of posttermination commissions, and penalties for failure to make the payment, be statutorily mandated.

THE CONTENT OF THE BILL:

The bill would create a new law to regulate the payment of posttermination commissions for contracts between principals and sales representatives for the wholesale solicitation of goods within the state. "Principals" would be defined under the bill to mean those who either manufacture, produce, import, sell, or distribute a product in the state for wholesale, or who contract with sales representatives to solicit wholesale orders for a product in the state; and "sales representatives" would mean those who solicited wholesale orders and were paid, in whole or in part, by commission. A "sales representatives" would not include a person who placed a wholesale order for a product on his or her own account for resale by that sales representative.

Commission Due Date. The bill would require that the terms of a contract between a principal and a sales representative determine when the sales representative's commission was due. If the time could not be determined by the contract, then past practices between the parties would decide the date, or, if there were no past practices, by the custom and usage prevalent in the state for the type of business the parties had contracted for. The bill also provides that, upon the termination of a contract between a principal and a sales representative, the principal would have to pay commission accrued within 45 days after the effective date of the termination. A commission that became due after the termination date would have to be paid within 45 days after the date it became due.

A provision in a contract between a principal and a sales representative purporting to waive any right under the bill would be void. The bill specifies that it would not affect the rights of a principal or sales representative that are otherwise provided by law.

Penalties. If a principal failed to comply with requirements regarding payment of commissions, the sales representative could sue for both of the following:

-- The actual damages caused by the failure to pay the commissions when due.

-- An amount equal to 2 times the amount of commissions due, but not paid, or $100,000, whichever was less.

If a sales representative brought a cause of action under the provisions of the bill, then the court would be required to award reasonable attorney fees and court costs to the prevailing party.

Jurisdiction. In an action to recover a commission, jurisdiction would be determined in accordance with the Revised Judicature Act.

HOUSE COMMITTEE ACTION:

The House Labor Committee amended the bill to require that contracts between principals and sales representatives must state the time that a commission would become due, and to extend -- from 14 to 45 days -- the mandatory time period in which fees must be paid. The amendments also placed a cap of $100,000 or 2 times the amount of commissions due, plus actual damages, on the amount that could be awarded a sales representative against a principal who failed to pay within 45 days after the sales representative's date of termination.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency reported that the Senate-passed version of the bill would have no fiscal impact on state or local government. (3-25-91)

ARGUMENTS:

For:

The bill would help ensure that wholesale sales representatives receive the sales commissions to which they are entitled, and upon which they often heavily depend for income, without having to resort to expensive and time-consuming lawsuits that they cannot afford. In addition to the mandatory payment of fees within 45 days, the provision for awarding damages in the event of noncompliance should deter recalcitrant principals from failing to pay earned commissions. By requiring that attorney fees and court costs be awarded to the prevailing party, the bill would also prohibit the filing of frivolous lawsuits. Further, the bill would bring Michigan into line with 29 other states that have adopted protective legislation for sales representatives.

POSITIONS:

The Michigan State AFL-CIO supports the bill. (6-4-91)

The Bureau of Wholesale Sales Representatives (a private organization representing apparel sales representatives) supports the bill. (6-4-91)