

SENATE BILL No. 717

February 11, 1992, Introduced by Senator HONIGMAN and referred to the Committee on Commerce.

A bill to amend Act No. 236 of the Public Acts of 1961, entitled as amended

"Revised judicature act of 1961,"

as amended, being sections 600.101 to 600.9947 of the Michigan Compiled Laws, by adding section 2961.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Act No. 236 of the Public Acts of 1961, as
2 amended, being sections 600.101 to 600.9947 of the Michigan
3 Compiled Laws, is amended by adding section 2961 to read as
4 follows:

5 SEC. 2961. (1) AS USED IN THIS SECTION:

6 (A) "COMMISSION" MEANS COMPENSATION ACCRUING TO A SALES REP-
7 RESENTATIVE FOR PAYMENT BY A PRINCIPAL, THE RATE OF WHICH IS
8 EXPRESSED AS A PERCENTAGE OF THE AMOUNT OF ORDERS OR SALES OR AS
9 A PERCENTAGE OF THE DOLLAR AMOUNT OF PROFITS.

1 (B) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, PARTNERSHIP,
2 ASSOCIATION, GOVERNMENTAL ENTITY, OR ANY OTHER LEGAL ENTITY.

3 (C) "PREVAILING PARTY" MEANS A PARTY WHO WINS ON THE ENTIRE
4 RECORD.

5 (D) "PRINCIPAL" MEANS A PERSON THAT DOES EITHER OF THE
6 FOLLOWING:

7 (i) MANUFACTURES, PRODUCES, IMPORTS, SELLS, OR DISTRIBUTES A
8 PRODUCT IN THIS STATE.

9 (ii) CONTRACTS WITH A SALES REPRESENTATIVE TO SOLICIT ORDERS
10 FOR OR SELL A PRODUCT IN THIS STATE.

11 (E) "SALES REPRESENTATIVE" MEANS A PERSON WHO CONTRACTS WITH
12 OR IS EMPLOYED BY A PRINCIPAL FOR THE SOLICITATION OF ORDERS OR
13 SALE OF GOODS AND IS PAID, IN WHOLE OR IN PART, BY COMMISSION.
14 SALES REPRESENTATIVE DOES NOT INCLUDE A PERSON WHO PLACES AN
15 ORDER OR SALE FOR A PRODUCT ON HIS OR HER OWN ACCOUNT FOR RESALE
16 BY THAT SALES REPRESENTATIVE.

17 (2) THE TERMS OF THE CONTRACT BETWEEN THE PRINCIPAL AND
18 SALES REPRESENTATIVE SHALL DETERMINE WHEN A COMMISSION BECOMES
19 DUE.

20 (3) IF THE TIME WHEN THE COMMISSION IS DUE CANNOT BE DETER-
21 MINED BY A CONTRACT BETWEEN THE PRINCIPAL AND SALES REPRESENTA-
22 TIVE, THE PAST PRACTICES BETWEEN THE PARTIES SHALL CONTROL OR, IF
23 THERE ARE NO PAST PRACTICES, THE CUSTOM AND USAGE PREVALENT IN
24 THIS STATE FOR THE BUSINESS THAT IS THE SUBJECT OF THE RELATION-
25 SHIP BETWEEN THE PARTIES.

26 (4) ALL COMMISSIONS THAT ARE DUE AT THE TIME OF TERMINATION
27 OF A CONTRACT BETWEEN A SALES REPRESENTATIVE AND PRINCIPAL SHALL

1 BE PAID WITHIN 45 DAYS AFTER THE DATE OF TERMINATION.
2 COMMISSIONS THAT BECOME DUE AFTER THE TERMINATION DATE SHALL BE
3 PAID WITHIN 45 DAYS AFTER THE DATE ON WHICH THE COMMISSION BECAME
4 DUE.

5 (5) A PRINCIPAL WHO FAILS TO COMPLY WITH THIS SECTION IS
6 LIABLE TO THE SALES REPRESENTATIVE FOR BOTH OF THE FOLLOWING:

7 (A) ACTUAL DAMAGES CAUSED BY THE FAILURE TO PAY THE COMMIS-
8 SIONS WHEN DUE.

9 (B) IF THE PRINCIPAL IS FOUND TO HAVE INTENTIONALLY FAILED
10 TO PAY THE COMMISSION WHEN DUE, AN AMOUNT EQUAL TO 2 TIMES THE
11 AMOUNT OF COMMISSIONS DUE BUT NOT PAID AS REQUIRED BY THIS SEC-
12 TION OR \$100,000.00, WHICHEVER IS LESS.

13 (6) IF A SALES REPRESENTATIVE BRINGS A CAUSE OF ACTION PUR-
14 SUANT TO THIS SECTION, THE COURT SHALL AWARD TO THE PREVAILING
15 PARTY REASONABLE ATTORNEY FEES AND COURT COSTS.

16 (7) IN AN ACTION BROUGHT UNDER THIS SECTION, JURISDICTION
17 SHALL BE DETERMINED IN ACCORDANCE WITH CHAPTER 7.

18 (8) A PROVISION IN A CONTRACT BETWEEN A PRINCIPAL AND A
19 SALES REPRESENTATIVE PURPORTING TO WAIVE ANY RIGHT UNDER THIS
20 SECTION IS VOID.

21 (9) THIS SECTION DOES NOT AFFECT THE RIGHTS OF A PRINCIPAL
22 OR SALES REPRESENTATIVE THAT ARE OTHERWISE PROVIDED BY LAW.