



SENATE BILL No. 662

September 20, 1995, Introduced by Senator HONIGMAN and referred to the Committee on Economic Development, International Trade and Regulatory Affairs.

A bill to regulate posttermination commissions for contracts between principals and sales representatives; to provide for remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Commission" means compensation accruing to a sales rep-
3 resentative for payment by a principal, the rate of which is
4 expressed as a percentage of the amount of orders or sales or as
5 a percentage of the dollar amount of profits.

6 (b) "Person" means an individual, corporation, partnership,
7 association, governmental entity, or any other legal entity.

8 (c) "Prevailing party" means a party who wins on all the
9 allegations of the complaint or on all of the responses to the
10 complaint.

1 (d) "Principal" means a person that does either of the
2 following:

3 (i) Manufactures, produces, imports, sells, or distributes a
4 product in this state.

5 (ii) Contracts with a sales representative to solicit orders
6 for or sell a product in this state.

7 (e) "Sales representative" means a person who contracts with
8 or is employed by a principal for the solicitation of orders or
9 sale of products and is paid, in whole or in part, by
10 commission. Sales representative does not include a person who
11 places an order or sale for a product on his or her own account
12 for resale by that sales representative.

13 Sec. 2. (1) The terms of the contract between the principal
14 and sales representative shall determine when a commission
15 becomes due.

16 (2) If the time when the commission is due cannot be deter-
17 mined by a contract between the principal and sales representa-
18 tive, the past practices between the parties shall control or, if
19 there are no past practices, the custom and usage prevalent in
20 this state for the business that is the subject of the relation-
21 ship between the parties.

22 (3) All commissions that are due at the time of termination
23 of a contract between a sales representative and principal shall
24 be paid within 45 days after the date of termination.
25 Commissions that become due after the termination date shall be
26 paid within 45 days after the date on which the commission became
27 due.

1 Sec. 3. A principal who fails to comply with this act is
2 liable to the sales representative for both of the following:

3 (a) Actual damages caused by the failure to pay the commis-
4 sions when due.

5 (b) If the principal is found to have intentionally failed
6 to pay the commission when due, an amount equal to 2 times the
7 amount of commissions due but not paid as required by this sec-
8 tion or \$100,000.00, whichever is less.

9 Sec. 4. If a sales representative brings a cause of action
10 pursuant to this act, the court shall award to the prevailing
11 party reasonable attorney fees and court costs.

12 Sec. 5. A provision in a contract between a principal and a
13 sales representative purporting to waive any right under this act
14 is void.

15 Sec. 6. This act does not affect the rights of a principal
16 or sales representative that are otherwise provided by law.

17 Sec. 7. This act shall apply to all contracts in effect on
18 or after June 29, 1992.

19 Sec. 8. Section 2961 of the revised judicature act of 1961,
20 Act No. 236 of the Public Acts of 1961, being section 600.2961 of
21 the Michigan Compiled Laws, is repealed.