



House of Representatives

File No. 549

General Assembly

January Session, 2003

(Reprint of File No. 190)

House Bill No. 6590
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
April 25, 2003

AN ACT CONCERNING THE PROTECTION OF SALES COMMISSIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2003*) This act shall be known
2 as the Commission Protection Act.

3 Sec. 2. (NEW) (*Effective October 1, 2003*) (a) As used in sections 2 to 8,
4 inclusive, of this act:

5 (1) "Commission" means compensation that accrues to a sales
6 representative, for payment by a principal, at a rate expressed as a
7 percentage of the dollar amount of sales, orders or profits.

8 (2) "Person" means an individual, corporation, limited liability
9 company, partnership, unincorporated association, estate, trust or
10 other entity.

11 (3) "Principal" means a person who: (A) Manufactures, produces,
12 imports, sells or distributes a product or service; (B) contracts with a
13 sales representative to solicit orders for the product or service; and (C)

14 compensates the sales representative, in whole or in part, by
15 commission.

16 (4) "Sales representative" means a person who: (A) Contracts with a
17 principal to solicit orders for products or services; and (B) is
18 compensated, in whole or in part, by commission. "Sales
19 representative" does not include an employee or person who places
20 orders or purchases on such person's own account or for resale.

21 (5) "Termination" means the end of a business relationship between
22 a sales representative and a principal, whether by agreement, by
23 expiration of time, or by exercise of a right of termination by either
24 party.

25 Sec. 3. (NEW) (*Effective October 1, 2003*) A business relationship
26 between a sales representative and a principal shall be in writing
27 signed by both parties.

28 Sec. 4. (NEW) (*Effective October 1, 2003*) (a) Upon termination, the
29 principal shall, not later than thirty days after the effective date of
30 termination, pay to the sales representative all commissions due under
31 the contract as of the effective date of termination and shall pay to the
32 sales representative all commissions that become due after the effective
33 date of termination not later than fourteen days after such
34 commissions become due.

35 (b) A principal who wilfully, wantonly, recklessly or in bad faith
36 fails to comply with subsection (a) of this section shall be liable, in a
37 civil action brought by the sales representative, for damages in an
38 amount not to exceed three times the sum of the commission owed to
39 the sales representative.

40 (c) If a principal receives a written demand for payment of the
41 commissions owed to a sales representative, the failure of the principal
42 to pay the amount demanded or respond to the written demand in
43 writing not later than twenty days after the principal receives the
44 demand shall raise a presumption that the principal acted wilfully and

45 in bad faith.

46 (d) The prevailing party in an action brought pursuant to this act
47 shall be awarded court costs and reasonable attorney's fees.

48 Sec. 5. (NEW) (*Effective October 1, 2003*) A principal who contracts
49 with a sales representative to solicit orders for products or services in
50 this state shall be deemed to be transacting business in this state for the
51 purpose of jurisdiction of the courts of this state.

52 Sec. 6. (NEW) (*Effective October 1, 2003*) If a principal makes a
53 revocable offer of a commission to a sales representative, the sales
54 representative is entitled to the commission agreed upon if the
55 following conditions are met: (1) The principal revokes the offer of
56 commission and the sales representative establishes that the revocation
57 was for a purpose of avoiding payment of the commission; (2) the
58 revocation occurs after the principal has obtained a written order for
59 the principal's product or service because of the efforts of the sales
60 representative; and (3) the principal's product or service that is the
61 subject of the order is provided to and paid for by a customer.

62 Sec. 7. (NEW) (*Effective October 1, 2003*) A provision in a contract
63 between a sales representative and a principal that purports to waive a
64 provision of this act by an express waiver or by a contract subject to
65 the laws of another state is void.

66 Sec. 8. (NEW) (*Effective October 1, 2003*) The provisions of this act
67 shall be in addition to and not in lieu of any other remedy available at
68 law to a sales representative.

69 Sec. 9. (NEW) (*Effective October 1, 2003*) The provisions of this act
70 shall not be applicable to the following: (1) Banks and out-of-state
71 banks, as defined in section 36a-2 of the general statutes, or a
72 subsidiary or affiliate of such banks or out-of-state banks; (2) a
73 mortgage lender, as defined in section 36a-485 of the general statutes
74 or a licensee, as defined in section 36a-510 of the general statutes; (3) a
75 broker-dealer registered in this state; (4) an investment advisor

76 registered in this state or an investment advisor that has filed a notice
77 of exemption pursuant to subsection (c) of section 36b-6 of the general
78 statutes; and (5) an insurance producer or producer, as defined in
79 section 38a-702a of the general statutes, or insurer, as defined in
80 section 38a-1 of the general statutes.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>
Sec. 8	<i>October 1, 2003</i>
Sec. 9	<i>October 1, 2003</i>

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Judicial Dept.; Consumer Protection, Dept.	GF - None	None	None
Banking Dept.	BF - None	None	None

Note: GF=General Fund; BF=Banking Fund

Municipal Impact: None

Explanation

This bill requires all commissions due to a sales representative pursuant to a contract between the sales representative and a principal to be honored within specified due dates. The bill also includes exemptions to the provisions in the bill for certain banks, mortgage lenders and secondary mortgage lenders and brokers, broker-dealers, investment advisors, insurance producers and insurers. These provisions will not impact the Departments of Banking or Consumer Protection.

A principal who fails to comply with the provisions in the bill is liable in a civil action for damages of up to three times the sum of the commission owed. Any resulting change to the caseload of the Superior Court’s civil division is anticipated to be negligible, and would have no fiscal impact.

House “A” which adds the exemptions for certain financial institutions will have no fiscal impact.

OLR Bill Analysis

HB 6590 (File 190, as amended by House "A")*

AN ACT CONCERNING THE PROTECTION OF SALES COMMISSIONS**SUMMARY:**

This bill requires a principal, when a business relationship with a sales representative terminates, to pay (1) all commissions due the sales representative under the contract as of the termination's effective date, within 30 days of that date and (2) all commissions that become due at a later date, within 14 days of their becoming due. A commission is compensation that accrues to a sales representative at a percentage of the amount of sales, orders, or profits. The bill does not apply to certain financial entities and professionals.

The bill also creates a civil cause of action for certain violations and specifies that its provisions are in addition to other legal remedies available to a sales representative.

The bill includes provisions on contracts between principals and sales representatives, court jurisdiction, and revocable offers of commission.

*House Amendment "A" adds the exemptions from the bill's provisions for certain banks, mortgage lenders and secondary mortgage lenders, brokers, broker-dealers, investment advisors, insurance producers, and insurers.

EFFECTIVE DATE: October 1, 2003

DEFINITIONS

Under the bill, a principal (1) manufactures, produces, imports, sells, or distributes a product or service; (2) contracts with a sales representative to solicit orders for the product or service; and (3) compensates the sales representative in whole or part by commission. A sales representative (1) contracts with a principal to solicit orders for products or services and (2) receives compensation in whole or part by

commission. An employee or someone who places orders or buys on his own account or for resale is not a sales representative.

An individual, corporation, limited liability company, partnership, unincorporated association, estate, trust, or other entity can be a principal or sales representative.

Termination is the end of a business relationship between a sales representative and a principal, by agreement, expiration of time, or either party exercising a right of termination.

EXCLUSIONS

The bill does not apply to:

1. Connecticut, federal, and out-of-state banks and their subsidiaries and affiliates;
2. a mortgage lender (a first mortgage lender, first mortgage correspondent lender, or both) and Connecticut-licensed secondary mortgage lenders and brokers;
3. a Connecticut-registered broker-dealer (someone in the business of effecting securities transactions for the accounts of others or his own account);
4. a Connecticut-registered investment advisor or one that has filed an exemption notice (certain exemptions to the registration requirement apply); or
5. an insurance producer (a person required to be registered in Connecticut to sell, solicit, or negotiate insurance) or an insurer (any corporation, association, partnership, or combination of persons doing any kind of insurance business other than a fraternal benefit society).

CIVIL ACTION

The bill gives the sales representative a civil action against a principal who willfully, wantonly, recklessly, or in bad faith fails to comply. The principal is liable for up to three times the amount owed for the commission. The bill creates a presumption that the principal acted

willfully and in bad faith if he does not pay a commission or respond within 20 days of receiving a written demand from the sales representative. It also awards the prevailing party in a lawsuit court costs and reasonable attorney's fees.

CONTRACTS

The bill requires a business relationship between a sales representative and a principal to be in writing and signed by both parties. It voids provisions in contracts between a sales representative and principal that waive any of the bill's provisions. It also prohibits a principal from waiving the bill's provisions through a contract subject to another state's laws.

COURT JURISDICTION

Under the bill, a principal who contracts with a sales representative to solicit orders for products or services in Connecticut is considered to be transacting business in the state for purposes of court jurisdiction.

REVOCABLE OFFERS OF COMMISSION

If a principal makes a revocable offer of a commission to a sales representative, the sales representative is entitled to the agreed-upon commission when (1) the sales representative establishes that the principal revoked the offer to avoid payment, (2) the principal revoked the offer after obtaining a written order for his products or services due to the sales representative's efforts, and (3) the principal provided the products or services and the customer paid for them.

BACKGROUND

Legislative History

On April 11, the House referred the bill, File 190, to the Judiciary Committee, which reported favorably it without change on April 16.

COMMITTEE ACTION

General Law Committee

Joint Favorable Report

Yea 18 Nay 0

Judiciary Committee

Joint Favorable Report

Yea 41 Nay 0