



House of Representatives

General Assembly

File No. 94

January Session, 2005

Substitute House Bill No. 6072

House of Representatives, March 30, 2005

The Committee on General Law reported through REP. STONE, C. of the 9th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT PROTECTING THE COMMISSIONS OF SALES REPRESENTATIVES.

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

1 Section 1. (NEW) (*Effective from passage*) As used in sections 1 to 4,
2 inclusive, of this act:

3 (1) "Commission" means compensation that accrues to a sales
4 representative, for payment by a principal, at a rate expressed as a
5 percentage of the dollar amount of sales, orders or profits or any other
6 method of compensation agreed to between a sales representative and
7 principal including, but not limited to, fees for services and retainers;

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

11 (3) "Principal" means a person who: (A) Manufactures, produces,
12 imports, sells or distributes a product or service, (B) establishes a

13 business relationship with a sales representative to solicit orders for a
14 product or service, and (C) compensates a sale representative, in
15 whole, or in part, by commission;

16 (4) "Sales representative" means a person who: (A) Establishes a
17 business relationship with a principal to solicit orders for products or
18 services, and (B) is compensated in whole, or in part, by commission.
19 "Sales representative" does not include an employee or a person who
20 places orders or purchases on the person's own account or for resale or
21 a seller, as defined in subsection (c) of section 42-134a of the general
22 statutes; and

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

27 Sec. 2. (NEW) (*Effective from passage*) (a) Not later than thirty days
28 after the effective date of termination, the principal shall pay to the
29 sales representative any and all commissions due under a contract for
30 payment of commissions on the effective date of such termination and
31 shall pay any such commission that becomes due after the effective
32 date of such termination not later than thirty days after such
33 commission becomes due.

34 (b) Any principal who wilfully, wantonly, recklessly or in bad faith
35 fails to comply with the provisions of subsection (a) of this section
36 shall be liable in a civil action brought by a sales representative for
37 twice the full amount of the commission owed to such sales
38 representative.

39 (c) The failure of a principal to respond to the written demand for
40 commissions owed to a sales representative not later than thirty days
41 after such principal receives such written demand shall create a
42 rebuttable presumption that such principal acted wilfully and in bad
43 faith provided such written demand is sent to such principal by
44 certified mail.

45 (d) The prevailing party in any action brought pursuant to
46 subsection (b) of this section shall be entitled to reasonable attorney's
47 fees and court costs.

48 (e) Any principal who establishes a business relationship with a
49 sales representative to solicit orders for products or services in this
50 state shall be deemed to be doing business in this state for purposes of
51 establishing jurisdiction over such principal in an action brought
52 pursuant to subsection (b) of this section.

53 Sec. 3. (NEW) (*Effective from passage*) (a) The acceptance by a sales
54 representative of a commission payment from a principal shall not
55 constitute a release by such sales representative of any other
56 commissions which such sales representative claims are due except if
57 such payment is made pursuant to a binding and final written
58 settlement agreement and release. Any full release of all commissions
59 claimed to be owed by a sales representative as a condition to a partial
60 commission payment shall be null and void.

61 (b) In the event that a principal makes a revocable offer of a
62 commission to a sales representative, whether written or verbal, such
63 sales representative shall be entitled to such commission if: (1) The
64 principal revokes the offer of commission and the sales representative
65 establishes that such revocation was made for the sole purpose of
66 avoiding payment of such commission; (2) such revocation occurs after
67 the principal has obtained a written order for the principal's product or
68 service through the efforts of the sales representative; and (3) the
69 principal's product or service that is the subject of the order is
70 provided to and paid for by a customer.

71 Sec. 4. (NEW) (*Effective from passage*) (a) Any provision in a contract
72 between a sales representative and a principal that provides for the
73 waiver of any provision of sections 2 and 3 of this act shall be void.

74 (b) Nothing in sections 2 and 3 of this act shall be construed to
75 invalidate or restrict any right or remedy available to a sales
76 representative or preclude a sales representative from seeking to

77 recover in one action all claims against such principal.

78 (c) Nothing in sections 2 and 3 of this act shall be construed to apply
79 to an insurance producer or producer, as defined in section 38a-702a of
80 the general statutes, or to an insurer, as defined in section 38a-1 of the
81 general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section

GL *Joint Favorable Subst.*

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-Effect	FY 06 \$	FY 07 \$
Consumer Protection, Dept.; Judicial Dept.	GF - None	None	None

Note: GF=General 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 thirty days of the termination of said contract. A principal who wilfully, wantonly or recklessly fails to comply with the provisions in the bill is liable in a civil action for damages of up to two 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. Furthermore, passage of this bill would not impact the Department of Consumer Protection.

OLR Bill Analysis

sHB 6072

AN ACT PROTECTING THE COMMISSIONS OF SALES REPRESENTATIVES

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 30 days of their becoming due. The bill defines "commission" as the compensation that accrues to a sales representative at a percentage of the amount of sales, orders, or profits or any other agreed-upon compensation method, including fees for services and retainers. A business relationship between a sales representative and a principal may terminate by agreement, expiration of time, or by one party exercising a right to terminate.

The bill gives sales representatives the right to sue 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 suits between principals and sales representatives, voided contract provisions, and revocable offers of commission. It exempts certain insurance professionals and businesses from its provisions.

EFFECTIVE DATE: Upon passage

PRINCIPALS AND SALES REPRESENTATIVES

Under the bill, a "principal" (1) manufactures, produces, imports, sells, or distributes a product or service; (2) establishes a business relationship 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" establishes a business relationship with a principal to solicit orders for products or services

and receives compensation in whole or part by commission. A sales representative is not an employee or someone who (1) places orders, (2) buys on his own account or for resale, or (3) is a seller subject to regulation by the Home Solicitations Sales Act (see BACKGROUND). An individual, corporation, limited liability company, partnership, unincorporated association, estate trust, or other entity can be a principal or sales representative.

CIVIL ACTION

The bill makes a principal who willfully, wantonly, recklessly, or in bad faith fails to comply with its payment requirements liable for twice the amount of commission owed. The bill creates a rebuttable presumption that the principal acted willfully and in bad faith if he does not pay a commission or respond within 30 days of receiving a written demand from the sales representative. It also entitles the prevailing party in a lawsuit court costs and reasonable attorney's fees. 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.

The bill provides that it must not be construed to invalidate or restrict any right or remedy available to a sales representative or preclude a representative from seeking to recover all claims in a single suit.

VOIDED CONTRACT PROVISION

The bill voids provisions in contracts between a sales representative and principal that waive any of the bill's provisions.

REVOCABLE OFFERS OF COMMISSION

If a principal makes a written or oral revocable offer of a commission to a sales representative, the bill entitles the sales representative to the commission if (1) the sales representative establishes that the principal revoked the offer for the sole purpose of avoiding 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.

EXCLUSIONS

The bill does not apply to 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).

BACKGROUND

Home Solicitation Sales Act

The Home Solicitation Sales Act gives a consumer three days to cancel a home solicitation sale. A “home solicitation sale” is a transaction involving consumer goods or services that occurs anywhere other than the seller’s own place of business. The act establishes minimum contract requirements for the sales contracts. For example, they must be signed and dated by the buyer. Further, sellers may not include provisions in contracts that waive a consumer’s rights or misrepresent the right to cancel.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute
Yea 15 Nay 0