

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE BILL 293  
Judiciary II Committee Substitute Adopted 4/2/03  
House Committee Substitute Favorable 6/2/03

Short Title: Sales Representative Commissions Revisions. (Public)

Sponsors:

Referred to:

March 5, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAW GOVERNING SALES REPRESENTATIVE  
3 COMMISSIONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 27 of Chapter 66 of the General Statutes reads as  
6 rewritten:

7 "Article 27.

8 "Sales Representative Commissions.

9 "§ 66-190. Definitions.

10 The following definitions apply in this Article:

- 11 (1) "Commission" means compensation accruing to a sales representative  
12 for payment by a principal, the rate of which is expressed as a  
13 percentage of the amount of ~~orders or sales~~ orders, sales, or profits or  
14 as a specified amount per order or per sale.
- 15 (2) "Person" means an individual, corporation, limited liability company,  
16 partnership, unincorporated association, estate, ~~or trust.~~ trust, or other  
17 entity.
- 18 (3) "Principal" means a person ~~who does not have a permanent or fixed~~  
19 ~~place of business in this State and who:~~
- 20 a. Manufactures, produces, imports, or distributes a ~~tangible~~  
21 ~~product for sale at wholesale; or service;~~
- 22 b. Contracts with a sales representative to solicit orders for the  
23 ~~product;~~ product or service; and
- 24 c. Compensates the sales representative, in whole or in part, by  
25 commission.
- 26 (4) "Sales representative" means a person who:
- 27 a. Contracts with a principal to solicit ~~wholesale orders;~~ orders for  
28 products or services;

- 1 b. Is compensated, in whole or in part, by commission;  
2 c. ~~Does not place orders or purchase for his own account or for~~  
3 ~~resale; Is not a seller who complies with:~~  
4 1. G.S. 25A-39 and G.S. 25A-40; or  
5 2. Part 429 of 16 Code of Federal Regulations (January 1,  
6 2003);  
7 d. ~~Does not sell or take orders for the sale of products at retail; and~~  
8 e. Is not an employee of the ~~principal.~~ principal; and  
9 f. Does not sell or take orders for the sale of advertising services.

10 (5) "Terminate" and "termination" mean the end of the business  
11 relationship between the sales representative and the principal, whether  
12 by agreement, by expiration of time, or by exercise of a right of  
13 termination of either party.

14 **"§ 66-190.1. Written contracts.**

15 The agreement or contract between a sales representative and a principal shall be in  
16 writing. The absence of a written agreement or contract shall not bar a cause of action  
17 by, or any remedy available to, a sales representative pursuant to this Article.

18 **"§ 66-191. Payment of ~~commissions.~~ commissions; termination.**

19 When a contract between a sales representative and a principal is terminated for any  
20 reason other than malfeasance on the part of the sales representative, the principal shall  
21 pay the sales representative all commissions ~~accrued under the contract to the sales~~  
22 ~~representative within 45 days after the effective date of the termination.~~ due under the  
23 contract within 30 days after the effective date of the termination and all commissions  
24 that become due after the effective date of termination within 14 days after they become  
25 due. If the principal does not make payment as required by this section, the sales  
26 representative shall make a written demand upon the principal, sent by certified mail,  
27 for the commissions then due. The principal shall respond in writing to the demand  
28 within 15 days after the principal receives the written demand.

29 **"§ 66-192. Civil liability.**

30 (a) A principal who fails to comply with the provisions of ~~G.S. 66-191~~ G.S.  
31 66-191 or is shown to have wrongfully revoked an offer of commission under G.S.  
32 66-192.1 is liable to the sales representative in a civil action for (i) all amounts due the  
33 sales representative plus exemplary damages in an amount not to exceed three times the  
34 amount of commissions due the sales representative, (ii) attorney's fees actually and  
35 reasonably incurred by the sales representative in the action, and (iii) court costs.

36 (b) Where the court determines that an action brought by a sales representative  
37 against a principal under this Article is frivolous, the sales representative is liable to the  
38 principal for court costs and for attorney's fees actually and reasonably incurred by the  
39 principal in defending the action.

40 (c) A principal who is not a resident of this State who contracts with a sales  
41 representative to solicit orders in this State shall be subject to personal jurisdiction as  
42 provided in G.S. 1-75.4.

1 (d) Nothing in this Article shall invalidate or restrict any other or additional right  
2 or remedy available to a sales representative or preclude a sales representative from  
3 seeking to recover in one action on all claims against a principal.

4 **"§ 66-192.1. Revocable offers of commission; entitlement.**

5 If a principal makes a revocable offer of a commission to a sales representative, the  
6 sales representative is entitled to the commission agreed upon if:

7 (1) The principal revokes the offer of commission;

8 (2) The sales representative establishes that the revocation was for the  
9 purpose of avoiding payment of the commission;

10 (3) The revocation occurs after the principal has obtained a written order  
11 for the principal's product or service because of the efforts of the sales  
12 representative; and

13 (4) The principal's product or service that is the subject of the order is  
14 provided to and paid for by a customer.

15 **"§ 66-193. Contracts void.**

16 A provision in any contract between a sales representative and a principal purporting  
17 to waive any provision of this Article, whether by expressed waiver or by a contract  
18 subject to the laws of another state, is void."

19 **SECTION 2.** This act becomes effective October 1, 2003, and applies to  
20 causes of action accruing on or after that date.