

(123rd General Assembly)  
(Amended Senate Bill Number 18)

# AN ACT

To amend section 1335.11 of the Revised Code to regulate contracts for the solicitation by a sales representative of product or service orders whether or not the place of business of the manufacturer or distributor of the product is in Ohio, to define "termination" of a contract, to specify that exemplary damages may be awarded for a failure to pay on a timely basis commissions due that constitutes willful, wanton, or reckless misconduct or bad faith, and to create a presumption when bad faith exists.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That section 1335.11 of the Revised Code be amended to read as follows:

Sec. 1335.11. (A) As used in this section:

(1) "Commission" means compensation accruing to a person for payment by another person, the rate of which is expressed as a percentage of the dollar amount of orders, sales, or profits.

(2) "Principal" means ~~any a person who does not have a permanent or fixed place of business in this state and who~~ does all of the following:

(a) Engages in either of the following:

(i) The business of manufacturing, producing, importing, or distributing one or more products for sale to customers who purchase products for resale or for consumption or utilization in the manufacturing process;

(ii) The business of providing services to customers.

(b) Utilizes one or more sales representatives to solicit ~~wholesale~~ orders for those products or orders for those services;

(c) Compensates the sales representatives in whole or in part by commission.

(3) "Sales representative" means a person who contracts with a principal to solicit ~~wholesale~~ orders for a product within this state or orders for the provision of services and who is compensated, in whole or in part, by commission, but does not include a person who places orders for or

hases the product for his that person's own account for resale or places orders for the provision of or purchases services for that person's own account, a person who is an employee of a principal, or a person who sells the product to the ultimate consumer contracts with a principal to solicit within this state orders for a product or orders for the performance of services and who is not compensated, in whole or in part, by commission.

(4) "Termination" means the end of the performance of services by a sales representative for a principal, including discharge of the sales representative by the principal, resignation of the sales representative, or expiration of the contract between the sales representative and the principal.

(B) For purposes of this section, the time at which a commission is due to a sales representative shall be determined in the following manner:

(1) If the contract between the principal and the sales representative is in writing and its terms unambiguously and clearly specify when the commission is due, the terms of the contract shall control the determination;

(2) If the contract between the principal and the sales representative is not in writing, or if the contract between them is in writing but its terms do not specify when the commission is due or its terms are ambiguous or unclear, the past practice used by the principal and the sales representative shall control the determination;

(3) If neither division (B)(1) nor (B)(2) of this section can be used to clearly ascertain when a commission is due, the custom and usage prevalent in this state for the principal's and sales representative's industry shall control the determination.

(C) If Upon the termination of a contract between a principal and a sales representative for the solicitation of wholesale orders is terminated for a product or orders for services, the principal shall pay the sales representative all commissions due him the sales representative at the time of the termination within thirteen thirty days of the termination; and shall pay the sales representative all commissions that become due after the termination within thirteen days of the date on which the commissions become due.

(D) A principal who fails to comply with division (C) of this section or with any contractual provision concerning timely payment of commissions due upon termination of a contract with a sales representative; is liable in a civil action for exemplary damages in an amount not to exceed three times the amount of the commissions owed to the sales representative if the sales representative proves that the principal's failure to comply with division (C) of this section or the contractual provision constituted willful, wanton, or reckless misconduct or bad faith. If a principal receives a written demand for payment of the commissions owed to a sales representative that was sent by

certified mail, the failure of the principal to respond to the written demand in writing within twenty days after the principal receives the written demand shall raise a presumption that the principal acted willfully and in bad faith.  
The prevailing party in an action brought under this section is entitled to reasonable attorney's fees and court costs.

(E) Division (A)(1) of section 2307.382 of the Revised Code applies to a principal who is not a resident of this state and who enters into an agreement with a sales representative for the solicitation of orders in this state, to authorize the exercise by a court of personal jurisdiction over the principal.

(F) Any provision in any contract between a sales representative and principal purporting to waive is void if it purports to do any of the following:

- (1) Waive any of the provisions of this section is void;
- (2) Make the contract subject to the laws of another state;
- (3) Limit the right of the sales representative to initiate litigation or alternative dispute resolution in this state.

(G) Nothing in this section invalidates or restricts any other or additional right or remedy available to a sales representative; or precludes a sales representative from seeking to recover in one action on all claims against a principal.

(H) This section does not apply to any person licensed by the superintendent of insurance to engage in the business of issuing or selling insurance, as defined in division (D) of section 3901.19 of the Revised Code.

SECTION 2. That existing section 1335.11 of the Revised Code is hereby repealed.

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*Speaker \_\_\_\_\_ of the House of Representatives.*

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*President \_\_\_\_\_ of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_