

State of Wisconsin



1997 Senate Bill 226

Date of enactment: **April 9, 1998**
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1997 WISCONSIN ACT 71

AN ACT to amend 895.85 (2); and to create 134.93 of the statutes; relating to: the payment of commissions owed to an independent sales representative.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 134.93 of the statutes is created to read:

134.93 Payment of commissions to independent sales representatives. (1) DEFINITIONS. In this section:

(a) "Commission" means compensation accruing to an independent sales representative for payment by a principal, the rate of which is expressed as a percentage of the dollar amount of orders or sales made by the independent sales representative or as a percentage of the dollar amount of profits generated by the independent sales representative.

(b) "Independent sales representative" means a person, other than an insurance agent or broker, who contracts with a principal to solicit wholesale orders and who is compensated, in whole or in part, by commission. "Independent sales representative" does not include any of the following:

1. A person who places orders or purchases products for the person's own account for resale.
2. A person who is an employe of the principal and whose wages must be paid as required under s. 109.03.

(c) "Principal" means a sole proprietorship, partnership, joint venture, corporation or other business entity, whether or not having a permanent or fixed place of business in this state, that does all of the following:

1. Manufactures, produces, imports or distributes a product for wholesale.
2. Contracts with an independent sales representative to solicit orders for the product.
3. Compensates the independent sales representative, in whole or in part, by commission.

(2) COMMISSIONS; WHEN DUE. (a) Subject to pars. (b) and (c), a commission becomes due as provided in the contract between the principal and the independent sales representative.

(b) If there is no written contract between the principal and the independent sales representative, or if the written contract does not provide for when a commission becomes due, or if the written contract is ambiguous or unclear as to when a commission becomes due, a commission becomes due according to the past practice used by the principal and the independent sales representative.

(c) If it cannot be determined under par. (a) or (b) when a commission becomes due, a commission becomes due according to the custom and usage prevalent in this state for the particular industry of the principal and independent sales representative.

(3) NOTICE OF TERMINATION OR CHANGE IN CONTRACT. Unless otherwise provided in a written contract between a principal and an independent sales representative, a principal shall provide an independent sales representative with at least 90 days' prior written notice of any termination, cancellation, nonrenewal or substantial change

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

in the competitive circumstances of the contract between the principal and the independent sales representative.

(4) COMMISSIONS DUE; PAYMENT ON TERMINATION OF CONTRACT. A principal shall pay an independent sales representative all commissions that are due to the independent sales representative at the time of termination, cancellation or nonrenewal of the contract between the principal and the independent sales representative as required under sub. (2).

(5) CIVIL LIABILITY. Any principal that violates sub. (2) by failing to pay a commission due to an independent sales representative as required under sub. (2) is liable to the independent sales representative for the amount of the commission due and for exemplary damages of not more than 200% of the amount of the commissions due. In addition, the principal shall pay to the independent sales representative, notwithstanding the limitations specified in s. 799.25 or 814.04, all actual costs, including reasonable actual attorney fees, incurred by the independent sales representative in bringing an action, obtaining a

judgment and collecting on a judgment under this subsection.

SECTION 2. 895.85 (2) of the statutes is amended to read:

895.85 (2) SCOPE. This section does not apply to awards of double damages or treble damages, or to the award of exemplary damages under ss. 46.90 (6) (c), 51.30 (9), 51.61 (7), 103.96 (2), 134.93 (5), 153.85, 252.14 (4), 252.15 (8) (a), 943.245 (2) and (3) and 943.51 (2) and (3).

SECTION 3. Initial applicability.

(1) This act first applies to an independent sales representative, as defined in section 134.93 (1) (b) of the statutes, as created by this act, who is affected by an agreement that contains provisions that are inconsistent with section 134.93 (3), (4) or (5) of the statutes, as created by this act, on the day after the agreement expires or on the day on which the agreement is extended, modified or renewed, whichever occurs first.