



## 1997 ASSEMBLY BILL 438

June 24, 1997 - Introduced by Representatives URBAN, VRAKAS, HOVEN, TURNER, DUFF, POWERS, M. LEHMAN, R. YOUNG, JOHNSRUD, MUSSER, CULLEN, SCHNEIDER, GOETSCH, PORTER, BLACK, L. YOUNG, OTT, ALBERS, NOTESTEIN, F. LASEE, KAUFERT, SPRINGER, PLALE, HAHN, BALDWIN and RILEY, cosponsored by Senators GROBSCHMIDT, HUELSMAN, SHIBILSKI, FARROW and ROESSLER. Referred to Committee on Labor and Employment.

1     **AN ACT** *to renumber* 109.01 (1); *to amend* 109.01 (3), 109.01 (4), 109.03 (2),  
2           109.03 (3), 109.03 (4), 109.03 (5), 109.03 (6), 109.03 (7) (title), 109.09 (1), 109.09  
3           (2), 109.11 (1) (a), 109.11 (2) (a), 109.11 (2) (b), 109.11 (3), chapter 135 (title),  
4           135.01, 135.02 (intro.), 135.025 (1), 135.025 (2) (intro.), 135.025 (3), 135.05,  
5           135.06, 135.065 and 135.07 (intro.); and *to create* 109.01 (1m), 109.01 (1p),  
6           109.03 (2g), 109.03 (2m), 109.03 (4g), 109.11 (1m), subchapter I (title) of chapter  
7           135 [precedes 135.01] and subchapter II of chapter 135 [precedes 135.20] of the  
8           statutes; **relating to:** the payment of wages and commissions owed to employes  
9           and commission salespersons whose employment ends, the termination or  
10          alteration of sales representative agreements and providing penalties.

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### *Analysis by the Legislative Reference Bureau*

Under current law, an employer, including the state, must pay an employe whose employment ends and to whom wages are owed within certain time periods depending on the circumstances under which the employment ends. Specifically, an employe, except a sales agent employed on a commission basis, not having a written contract for a definite period, who quits his or her employment or who is discharged

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from employment must be paid in full by no later than the date on which the employe regularly would have been paid under the employer's established payroll schedule or, subject to certain exceptions, within 31 days after the employment ends, whichever is earlier. Also, in the case of an employe who dies, the full amount of the employe's wages due must be paid to the employe's spouse, child or other dependent on demand. In addition, if an employe is separated from the payroll of the employer as a result of the employer merging, liquidating, ceasing business operations or relocating, the employer must pay all unpaid wages to the employe within 24 hours after the time of separation.

Under current law, an employe who has a wage claim may file the wage claim with the department of workforce development (DWD), which may attempt to settle and compromise the wage claim or sue the employer on the employe's behalf to collect the wage claim, or the employe may commence an action in circuit court in his or her own behalf to collect the wage claim without first filing the wage claim with DWD. If a wage claim action is commenced in circuit court before DWD has completed its attempt to settle and compromise the claim, the circuit court may order the employer to pay, in addition to the amount of wages unpaid and in addition to or in lieu of any criminal penalties for which the employer may be liable, increased wages of not more than 50% of the amount of wages unpaid. If a wage claim action is commenced in circuit court after DWD has completed its attempt to settle and compromise the claim, the circuit court may order the employer to pay, in addition to the amount of wages unpaid and in addition to or in lieu of any criminal penalties for which the employer may be liable, increased wages of not more than 100% of the amount of wages unpaid.

This bill extends the wage payment law to commission salespersons whose employment ends. Specifically, the bill requires an employer, including the state, to pay wages as follows:

1. To an employe, *including* a sales agent employed on a commission basis other than an insurance agent, not having a written contract for a definite period, who is discharged from employment immediately upon the demand of the employe.

2. To an employe, *including* a sales agent employed on a commission basis other than an insurance agent, not having a written contract for definite period, who quits or resigns his or her employment on demand by no later than 5 days after the employe quits or resigns.

3. To an employe, *including* a sales agent employed on a commission basis other than an insurance agent, having a written contract for definite period, who gives not less than 5 days' notice of his or her intention to quit or resign his or her employment on demand by no later than 24 hours after the employe quits or resigns.

4. To an employe, *including* a sales agent employed on a commission basis other than an insurance agent, having a written contract for a definite period, who gives less than 5 days' notice of his or her intention to quit or resign his or her employment on demand by no later than the date on which the employe regularly would have been paid under the employer's established payroll schedule or, subject to certain exceptions, within 31 days after the employment ends, which ever is earlier.

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5. To a commission salesperson, other than an insurance agent or broker, who is an independent contractor rather than an employe (commission salesperson) and who gives not less than 5 days' written notice of his or her intention to resign his or her position or whose contract of employment is terminated, cancelled or nonrenewed by the employer on demand by no later than 3 working days after the commission salesperson's last day of employment.

6. To a commission salesperson who gives less than 5 days' notice of his or her intention to resign his or her position on demand by no later than 6 working days after the commission salesperson's last day of employment.

7. To the spouse, child or other dependent of a commission salesperson who dies on demand.

8. To a commission salesperson who is separated from the payroll of an employer as a result of the employer merging, liquidating, ceasing business operations or relocating on demand by no later than 24 hours after the time of separation.

Under the bill, the wages to which a commission salesperson is entitled on the ending of his or her employment are all commissions earned though the last day of employment, which is defined in the bill as commissions owed for any sale of goods made by the commission salesperson and approved by the employer on or before the last day of employment or for any sale of services made by the commission salesperson and delivered to and accepted by the customer on or before the last day of employment.

Also, under the bill, if the employe or commission salesperson whose employment ends was entrusted with money or property, the employer has 10 working days after the employe's or commission salesperson's last day of employment to audit and adjust the accounts of the employe or commission salesperson. In that case, the employe or commission salesperson may not demand his or her wages until after the expiration of the 10-day period.

In addition, under the bill, if an employer fails to pay an employe, on demand, within the applicable time period specified in the bill, DWD or a circuit court may order the employer to pay to the employe, in addition to the amount of wages due and unpaid and in addition to or in lieu of the increased wages and criminal penalties specified under current law, increased wages in the amount of the employe's average daily earnings for each day for which the employer is late in paying the employe's wages. Similarly, if an employer fails to pay a commission salesperson, on demand, within the applicable time period specified in the bill, DWD or a circuit court may order the employer to pay to the commission salesperson, in addition to the amount of wages due and unpaid and in addition to or in lieu of the increased wages and criminal penalties specified under current law, increased wages in the amount of one-fifteenth of the commission salesperson's commissions earned through the last day of employment that remain unpaid for each day for which the employer is late in paying the commission salesperson's wages.

Under current law, no person who grants a dealership (grantor), that is, a contract by which a dealer is granted the right to sell or distribute goods or services or to use a trade name, trademark, service mark, logotype, advertising or other

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commercial symbol, may terminate, cancel, fail to renew or substantially change the competitive circumstances of the dealership without good cause, that is, failure by the dealer to comply substantially with essential, reasonable and nondiscriminatory requirements imposed by the grantor or bad faith by the dealer. Also, under current law, a grantor must give a dealer 90 days' notice of termination, cancellation, nonrenewal or substantial change in competitive circumstances, stating the reasons for that action and giving the dealer 60 days in which to rectify any claimed deficiency, except that, if the reason for that action is the nonpayment of sums due under the dealership agreement, the dealer has only 10 days to cure the default and that, if the reason for the action is the dealer's insolvency, bankruptcy or an assignment for the benefit of creditors, the notice provisions do not apply.

This bill provides similar coverage for sales representative agreements, that is, contracts by which a sales representative is granted the right to represent, sell or offer for sale the goods of a manufacturer, wholesaler or importer by use of a trade name, trademark, service mark, logotype, advertising or other commercial symbol. The bill defines a "sales representative" as a person who contracts with a principal to solicit wholesale orders, that is, orders for goods to be ultimately sold at retail, and who is compensated by commission, but excludes from that definition an employee of the principal, a person who purchases goods for his or her own account for resale, a person who holds goods on consignment for resale, a person who sells goods to end users and not for resale and a person who is an insurance agent or broker.

Under the bill, no manufacturer, wholesaler or importer may terminate, cancel, fail to renew or substantially change the competitive circumstances of a sales representative agreement without good cause, which is defined in the bill as any of the following:

1. A material breach of a written sales representative agreement.
2. In the absence of a written sales representative agreement, a failure by the sales representative to comply with any material, reasonable and nondiscriminatory requirements of the manufacturer, wholesaler or importer.
3. The nonpayment of any sums due under the sales representative agreement.
4. The bankruptcy or insolvency of the sales representative.
5. An assignment for the benefit of creditors or similar disposition of the assets of the sales representative's business.
6. The voluntary abandonment by the sales representative of his or her business with no provision made for the resumption of that business by the sales representative or for the continuation of that business by a transferee of the sales representative.
7. The conviction of the sales representative for any offense the circumstances of which substantially relate to the circumstances of the sales representative's business.
8. Any act by the sales representative that materially impairs the good will associated with the manufacturer's, wholesaler's or importer's trade name, trademark, service mark, logotype, advertising or other commercial symbol.

In addition, under the bill, a manufacturer, wholesaler or importer must give a sales representative 90 days' notice of termination, cancellation, nonrenewal or

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substantial change in competitive circumstances, stating the reasons for that action and giving the sales representative 60 days in which to rectify any claimed deficiency, except that, if the reason for that action is the nonpayment of sums due under the sales representative agreement, the sales representative has only 10 days to cure the default and that, if the reason for that action is any of the reasons specified in items 4. to 8. above, the notice provisions do not apply.

Finally, the bill requires a manufacturer, wholesaler or importer who cancels, terminates or fails to renew a sales representative agreement to pay the sales representative for all sales made by the sales representative and approved by the manufacturer, wholesaler or importer on or before the effective date of that action as provided in the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 109.01 (1) of the statutes, as affected by 1997 Wisconsin Act 3, is  
2           renumbered 109.01 (1r).

3           **SECTION 2.** 109.01 (1m) of the statutes is created to read:

4           109.01 (1m) “Commission salesperson” means a person, other than an  
5           insurance agent or broker, who is paid on the basis of commissions for sales and who  
6           is not covered under s. 109.03 (2) or (2g) because the person is an independent  
7           contractor rather than an employe.

8           **SECTION 3.** 109.01 (1p) of the statutes is created to read:

9           109.01 (1p) “Commissions earned through the last day of employment” means  
10           commissions due a commission salesperson for any sale of goods made by the  
11           commission salesperson and approved by the employer on or before the commission  
12           salesperson’s last day of employment or for any sale of services made by the  
13           commission salesperson and delivered to and accepted by the customer on or before  
14           the commission salesperson’s last day of employment.

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1           **SECTION 4.** 109.01 (3) of the statutes is amended to read:

2           109.01 (3) “Wage” or “wages” mean remuneration payable to an employe or  
3 commission salesperson for personal services, including salaries, commissions,  
4 commissions earned through the last day of employment, holiday and vacation pay,  
5 overtime pay, severance pay or dismissal pay, supplemental unemployment  
6 compensation benefits when required under a binding collective bargaining  
7 agreement, bonuses and any other similar advantages agreed upon between the  
8 employer and the employe or commission salesperson or provided by the employer  
9 to the employer’s employes or commission salespersons as an established policy.

10           **SECTION 5.** 109.01 (4) of the statutes is amended to read:

11           109.01 (4) “Wage deficiency” means the difference between the amount  
12 required by law to be paid and the amount actually paid to an employe or commission  
13 salesperson.

14           **SECTION 6.** 109.03 (2) of the statutes is amended to read:

15           109.03 (2) (title) ~~PAYMENT TO DISCHARGED OR RESIGNED EMPLOYES.~~ Any Subject  
16 to sub. (4g), any employe, ~~except including~~ a sales agent employed on a commission  
17 basis other than an insurance agent, not having a written contract for a definite  
18 period, who ~~quits employment or who is discharged from employment~~ shall be paid  
19 in full ~~by no later than the date on which the employe regularly would have been paid~~  
20 ~~under the employer’s established payroll schedule or the date of payment required~~  
21 ~~under sub. (1), whichever is earlier~~ immediately on the demand of the employe.

22           **SECTION 7.** 109.03 (2g) of the statutes is created to read:

23           109.03 (2g) **PAYMENT TO RESIGNED EMPLOYES.** (a) Subject to sub. (4g), any  
24 employe, including a sales agent employed on a commission basis other than an  
25 insurance agent, not having a written contract for a definite period, who quits or

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1 resigns his or her employment shall be paid in full on demand by no later than 5 days  
2 after the employe quits or resigns his or her employment.

3 (b) 1. Subject to sub. (4g), any employe, including a sales agent employed on a  
4 commission basis other than an insurance agent, having a written contract for a  
5 definite period, who gives his or her employer not less than 5 days' written notice of  
6 his or her intention to quit or resign his or her employment shall be paid in full on  
7 demand by no later than 24 hours after the employe quits or resigns his or her  
8 employment.

9 2. Subject to sub. (4g), any employe, including a sales agent employed on a  
10 commission basis other than an insurance agent, having a written contract for a  
11 definite period, who gives his or her employer less than 5 days' written notice of his  
12 or her intention to quit or resign his or her employment shall be paid in full on  
13 demand by no later than the date on which the employe regularly would have been  
14 paid under the employer's established payroll schedule or the date of payment  
15 required under sub. (1), whichever is earlier.

16 **SECTION 8.** 109.03 (2m) of the statutes is created to read:

17 109.03 (2m) PAYMENT TO TERMINATED OR RESIGNED COMMISSION SALESPERSON. (a)  
18 Subject to subs. (4) and (4g), any commission salesperson who gives his or her  
19 employer not less than 5 days' written notice of his or her intention to resign his or  
20 her position or whose contract of employment is terminated, canceled or nonrenewed  
21 by the employer shall be paid all commissions earned through the last day of  
22 employment on demand by no later than 3 working days after the commission  
23 salesperson's last day of employment.

24 (b) Subject to sub. (4g), any commission salesperson who gives his or her  
25 employer less than 5 days' written notice of his or her intention to resign his or her

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1 position shall be paid all commissions earned through the last day of employment on  
2 demand by no later than 6 working days after the commission salesperson's last day  
3 of employment.

4 **SECTION 9.** 109.03 (3) of the statutes is amended to read:

5 109.03 (3) (title) PAYMENT UPON DEATH OF EMPLOYEE OR COMMISSION SALESPERSON.  
6 ~~In~~ Subject to sub. (4g), in case of the death of an employe or commission salesperson  
7 to whom wages are due, the full amount of the wages due shall ~~upon~~ on demand be  
8 paid by the employer to the spouse, ~~children~~ child, or other dependent living with  
9 ~~such~~ the employe or commission salesperson at the time of death. In the case of an  
10 employe or commission salesperson of the state, the amount of the wage due includes  
11 all unused vacation allowance. Any county or municipality may include unused  
12 vacation allowances for any employe or commission salesperson who died after  
13 January 1, 1961. An employer may, not less than 5 days after the death of an employe  
14 or commission salesperson and before the filing of a petition for letters testamentary  
15 or of administration in the matter of the decedent's estate, make ~~payments~~ payment  
16 of the wage due the deceased employe or commission salesperson to the spouse,  
17 ~~children~~ child, parent, brother or sister of the decedent, giving preference in ~~the~~  
18 ~~foregoing~~ that order; or, if ~~no such~~ none of those relatives survive, the employer may  
19 apply ~~such~~ that payment or so much ~~thereof~~ of that payment as may be necessary to  
20 paying creditors of the decedent in the order of preference prescribed in s. 859.25 for  
21 satisfaction of debts by executors and administrators. The making of payment in  
22 ~~such~~ that manner shall be a discharge and release of the employer as to the amount  
23 of ~~such~~ that payment.

24 **SECTION 10.** 109.03 (4) of the statutes is amended to read:

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1           109.03 (4) (title) PAYMENT TO CERTAIN SEPARATED EMPLOYES AND COMMISSION  
2           SALESPERSONS. Whenever Subject to sub. (4g), if an employe or commission  
3           salesperson is separated from the payroll of an employer as a result of the employer  
4           merging, liquidating or otherwise disposing of the business, ceasing business  
5           operations in whole or in part, or relocating all or part of the business to another area  
6           within or without the state, the employer, or the successors in interest of the  
7           employer, shall pay all unpaid wages to the employe or commission salesperson at  
8           the usual place of payment within on demand by no later than 24 hours of after the  
9           time of separation.

10           **SECTION 11.** 109.03 (4g) of the statutes is created to read:

11           109.03 (4g) PAYMENT TO EMPLOYES OR COMMISSION SALESPERSONS ENTRUSTED WITH  
12           MONEY OR PROPERTY. Notwithstanding subs. (2), (2g), (2m), (3) and (4), if the  
13           discharged, terminated, resigned, deceased or separated employe or commission  
14           salesperson, during his or her employment, was entrusted with the collection,  
15           disbursement or handling of money or property, the employer shall have 10 working  
16           days after the employe's or commission salesperson's last day of employment to audit  
17           and adjust the accounts of the employe or commission salesperson before the  
18           employe or commission salesperson may demand his or her wages. In cases covered  
19           under this subsection, the penalties specified in s. 109.11 (1m) shall apply only from  
20           the date of demand made after the expiration of the 10 working days allowed for audit  
21           and adjustment.

22           **SECTION 12.** 109.03 (5) of the statutes is amended to read:

23           109.03 (5) ENFORCEMENT. Except as provided in sub. (1), no employer may by  
24           special contract with employes an employe or a commission salesperson or by any  
25           other means secure exemption from this section. Each employe shall have a right

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1 of action against any employer for the full amount of the employee's wages due on each  
2 regular pay day as provided in ~~this section sub. (1)~~ and for increased wages as  
3 provided in s. 109.11 (2), and each employe and commission salesperson shall have  
4 a right of action against any employer for the full amount of the employe's or  
5 commission salesperson's wages due as provided in sub. (2), (2g), (2m), (3), (4) or (4g),  
6 whichever is applicable, and for increased wages as provided in s. 109.11 (1m) and  
7 (2), in any court of competent jurisdiction. An employe or commission salesperson  
8 may bring an action against an employer under this subsection without first filing  
9 a wage claim with the department under s. 109.09 (1). An employe or commission  
10 salesperson who brings an action against an employer under this subsection shall  
11 have a lien upon all property of the employer, real or personal, located in this state  
12 as described in s. 109.09 (2).

13 **SECTION 13.** 109.03 (6) of the statutes is amended to read:

14 109.03 (6) WAGE CLAIM. In an action by an employe, a commission salesperson  
15 or the department against the an employer on a wage claim, no security for payment  
16 of costs is required. In any ~~such proceeding~~ action on a wage claim the court may  
17 allow the prevailing party, in addition to all other costs, a reasonable sum for  
18 expenses. No person other than an employe, commission salesperson or the  
19 department shall be benefited or otherwise affected by this subsection.

20 **SECTION 14.** 109.03 (7) (title) of the statutes is amended to read:

21 109.03 (7) (title) PROTECTION OF EMPLOYES AND COMMISSION SALESPERSONS.

22 **SECTION 15.** 109.09 (1) of the statutes is amended to read:

23 109.09 (1) The department shall investigate and attempt equitably to adjust  
24 controversies between employers and employes or commission salespersons as to  
25 alleged wage claims. The department may receive and investigate any wage claim

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1 which is filed with the department, or received by the department under s. 109.10  
2 (4), no later than 2 years after the date the wages are due. The department may, after  
3 receiving a wage claim, investigate any wages due from the employer against whom  
4 the claim is filed to any employe or commission salesperson during the period  
5 commencing 2 years before the date the claim is filed. The department shall enforce  
6 this chapter and ss. 66.293, 103.02, 103.49, 103.82 and 104.12. In pursuance of this  
7 duty, the department may sue the employer on behalf of the employe or commission  
8 salesperson to collect any wage claim or wage deficiency and ss. 109.03 (6) and 109.11  
9 (1m), (2) and (3) shall apply to such actions. Except for ~~actions~~ a wage claim or wage  
10 deficiency under s. 109.10, the department may refer ~~such an action~~ a wage claim or  
11 wage deficiency to the district attorney of the county in which the violation ~~occurs~~  
12 occurred for prosecution and collection and the district attorney shall commence an  
13 action in the circuit court having appropriate jurisdiction. Any number of wage  
14 claims or wage deficiencies against the same employer may be joined in a single  
15 proceeding, but the court may order separate trials or hearings. In actions that are  
16 referred to a district attorney under this subsection, any taxable costs recovered by  
17 the district attorney shall be paid into the general fund of the county in which the  
18 violation ~~occurs~~ occurred and used by that county to meet its financial responsibility  
19 under s. 978.13 (2) for the operation of the office of the district attorney who  
20 prosecuted the action.

21 **SECTION 16.** 109.09 (2) of the statutes is amended to read:

22 109.09 (2) The department, under its authority under sub. (1) to maintain  
23 actions for the benefit of employes and commission salespersons, or an employe or  
24 commission salesperson who brings an action under s. 109.03 (5) shall have a lien  
25 upon all property of the employer, real or personal, located in this state for the full

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1 amount of any wage claim or wage deficiency. A lien under this subsection takes  
2 effect when the department ~~or~~, employe or commission salesperson files a verified  
3 petition claiming the lien with the clerk of the circuit court of the county in which the  
4 services or some part of the services were performed, pays the fee specified in s.  
5 814.61 (5) to that clerk of circuit court and serves a copy of that petition on the  
6 employer by personal service in the same manner as a summons is served under s.  
7 801.11 or by certified mail with a return receipt requested. The department ~~or~~,  
8 employe or commission salesperson must file the petition within 2 years after the  
9 date ~~that~~ on which the wages were due. The petition shall specify the nature of the  
10 claim and the amount claimed, describe the property upon which the claim is made  
11 and state that the petitioner claims a lien on that property. The lien shall take  
12 precedence over all other debts, judgments, decrees, liens or mortgages against the  
13 employer, except a lien under s. 292.31 (8) (i), 292.41 (6) (d) or 292.81, and may be  
14 enforced in the manner provided in ss. 779.09 to 779.12, 779.20 and 779.21, insofar  
15 as ~~such~~ those provisions are applicable. The lien ceases to exist if the department  
16 ~~or~~, the employe or commission salesperson does not bring an action to enforce the lien  
17 within the period prescribed in s. 893.44 for the underlying wage claim.

18 **SECTION 17.** 109.11 (1) (a) of the statutes is amended to read:

19 109.11 (1) (a) In adjusting a controversy between an employer and an employe  
20 or commission salesperson as to an alleged wage claim filed with the department  
21 under s. 109.09 (1), the department may compromise and settle that wage claim for  
22 ~~such a sum as may be~~ that is agreed upon between the department, the employe or  
23 commission salesperson and the employer.

24 **SECTION 18.** 109.11 (1m) of the statutes is created to read:

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1           109.11 **(1m)** LATE PAYMENT PENALTIES. (a) If an employer fails to pay any wages  
2           due an employe, on demand, within the time period specified in s. 109.03 (2), (2g),  
3           (3), (4) or (4g), whichever is applicable, the department or a circuit court, subject to  
4           par. (c), may order the employer to pay to the employe, in addition to the amount of  
5           wages due and unpaid and in addition to or in lieu of any increased wages specified  
6           in sub. (1) (b) or (2) (a) or (b) or criminal penalties specified in sub. (3), increased  
7           wages in the amount of the employe's average daily earnings for each day for which  
8           the employer is late in paying those wages or in compromising and settling the wage  
9           claim to the satisfaction of the employe.

10           (b) If an employer fails to pay any wages due a commission salesperson, on  
11           demand, within the time period specified in s. 109.03 (2m) (3), (4) or (4g), whichever  
12           is applicable, the department or a circuit court, subject to par. (c), may order the  
13           employer to pay to the commission salesperson, in addition to the amount of wages  
14           due and unpaid and in addition to or in lieu of any increased wages specified in sub.  
15           (1) (b) or (2) (a) or (b) or criminal penalties specified in sub. (3), increased wages in  
16           the amount of one-fifteenth of the commission salesperson's commissions earned  
17           through the last day of employment that remain unpaid for each day for which the  
18           employer is late in paying those wages or in compromising and setting the wage  
19           claim to the satisfaction of the commission salesperson.

20           (c) Notwithstanding pars. (a) and (b), if an employer disputes the amount of a  
21           wage claim under s. 109.03 (2), (2g), (2m), (3), (4) or (4g) made by an employe or  
22           commission salesperson and pays to the employe or commission salesperson the  
23           amount that the employer in good faith reasonably believes is due within the time  
24           period specified in s. 109.03 (2), (2g), (2m), (3), (4), (4g), whichever is applicable, the  
25           penalties provided in pars. (a) and (b) do not apply, unless the department or a court

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1 later determines that the amount actually owed to the employe or commission  
2 salesperson is greater than the amount paid by the employer.

3 **SECTION 19.** 109.11 (2) (a) of the statutes is amended to read:

4 109.11 (2) (a) In a wage claim action that is commenced by an employe or  
5 commission salesperson before the department has completed its investigation  
6 under s. 109.09 (1) and its attempts to compromise and settle the wage claim under  
7 sub. (1), a circuit court may order the employer to pay to the employe or commission  
8 salesperson, in addition to the amount of wages due and unpaid and in addition to  
9 or in lieu of the late payment penalties specified in sub. (1m) and the criminal  
10 penalties specified in sub. (3), increased wages of not more than 50% of the amount  
11 of wages due and unpaid.

12 **SECTION 20.** 109.11 (2) (b) of the statutes is amended to read:

13 109.11 (2) (b) In a wage claim action that is commenced after the department  
14 has completed its investigation under s. 109.09 (1) and its attempts to settle and  
15 compromise the wage claim under sub. (1), a circuit court may order the employer  
16 to pay to the employe or commission salesperson, in addition to the amount of wages  
17 due and unpaid to an employe or commission salesperson and in addition to or in lieu  
18 of the late payment penalties specified in sub. (1m) and the criminal penalties  
19 specified in sub. (3), increased wages of not more than 100% of the amount of those  
20 wages due and unpaid.

21 **SECTION 21.** 109.11 (3) of the statutes is amended to read:

22 109.11 (3) CRIMINAL PENALTIES. Any employer who, having the ability to pay,  
23 fails to pay the wages due and payable as provided in this chapter or falsely denies  
24 the amount or validity ~~thereof~~ of those wages or that such ~~those~~ those wages are due, with  
25 intent to secure any discount upon such ~~that~~ that indebtedness or with intent to annoy,

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1 harass, oppress, hinder or defraud the person to whom such those wages are due,  
2 may be fined not more than \$500 or imprisoned not more than 90 days or both. Each  
3 failure or refusal to pay each employe or commission salesperson the amount of  
4 wages due at the time, or under the conditions required in this chapter, constitutes  
5 a separate offense.

6 **SECTION 22.** Chapter 135 (title) of the statutes is amended to read:

7 **CHAPTER 135**

8 **DEALERSHIP AND SALES**

9 **REPRESENTATION PRACTICES**

10 **SECTION 23.** Subchapter I (title) of chapter 135 [precedes 135.01] of the statutes  
11 is created to read:

12 **CHAPTER 135**

13 **SUBCHAPTER I**

14 **DEALERSHIP PRACTICES**

15 **SECTION 24.** 135.01 of the statutes is amended to read:

16 **135.01 Short title.** This ~~chapter~~ subchapter may be cited as the “Wisconsin  
17 Fair Dealership Law”.

18 **SECTION 25.** 135.02 (intro.) of the statutes is amended to read:

19 **135.02 Definitions.** (intro.) In this ~~chapter~~ subchapter:

20 **SECTION 26.** 135.025 (1) of the statutes is amended to read:

21 135.025 (1) This ~~chapter~~ subchapter shall be liberally construed and applied  
22 to promote its underlying remedial purposes and policies.

23 **SECTION 27.** 135.025 (2) (intro.) of the statutes is amended to read:

24 135.025 (2) (intro.) The underlying purposes and policies of this ~~chapter~~  
25 subchapter are as follows:

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1           **SECTION 28.** 135.025 (3) of the statutes is amended to read:

2           135.025 (3) The effect of this ~~chapter~~ subchapter may not be varied by contract  
3 or agreement. Any contract or agreement purporting to do so is void and  
4 unenforceable to that extent only.

5           **SECTION 29.** 135.05 of the statutes is amended to read:

6           **135.05 Application to arbitration agreements.** This ~~chapter~~ subchapter  
7 shall not apply to provisions for the binding arbitration of disputes contained in a  
8 dealership agreement concerning the items covered in s. 135.03, if the criteria for  
9 determining whether good cause existed for a termination, cancellation, nonrenewal  
10 or substantial change of competitive circumstances, and the relief provided is, are  
11 no less than that provided for in this ~~chapter~~ subchapter.

12           **SECTION 30.** 135.06 of the statutes is amended to read:

13           **135.06 Action for damages and injunctive relief.** If any grantor violates  
14 this ~~chapter~~ subchapter, a dealer may bring an action against ~~such~~ that grantor in  
15 any court of competent jurisdiction for damages sustained by the dealer as a  
16 consequence of the grantor's violation, together with the actual costs of the action,  
17 including reasonable actual attorney fees, and the dealer also may be granted  
18 injunctive relief against unlawful termination, cancellation, nonrenewal or  
19 substantial change of competitive circumstances.

20           **SECTION 31.** 135.065 of the statutes is amended to read:

21           **135.065 Temporary injunctions.** In any action brought by a dealer against  
22 a grantor under this ~~chapter~~ subchapter, any violation of this ~~chapter~~ subchapter by  
23 the grantor is ~~deemed~~ considered to be an irreparable injury to the dealer for  
24 purposes of determining if a temporary injunction should be issued.

25           **SECTION 32.** 135.07 (intro.) of the statutes is amended to read:



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1 (c) A person who holds goods on a consignment basis for resale.

2 (d) A person who distributes, sells or offers goods, other than samples, to end  
3 users and not for resale.

4 (e) A person who is an insurance agent or broker.

5 (4) "Sales representative agreement" means a contract or agreement, either  
6 express or implied, whether oral or written, for a definite or indefinite period,  
7 between a sales representative and another person, by which a sales representative  
8 is granted the right to represent, sell or offer for sale the goods of a manufacturer,  
9 wholesaler or importer by use of the trade name, trademark, service mark, logotype,  
10 advertising or other commercial symbol of the manufacturer, wholesaler or importer,  
11 and in which there exists a community of interest between the sales representative  
12 and the manufacturer, wholesaler or importer in the marketing of the goods at  
13 wholesale, by lease, agreement or otherwise.

14 (5) "Wholesale orders" means orders for goods to be ultimately sold at retail.

15 **135.21 Scope; variation by contract. (1) SCOPE.** This subchapter applies  
16 to a sales representative to whom, during some part of the period of the sales  
17 representative agreement, any of the following applies:

18 (a) The sales representative is a resident of this state or maintains his or her  
19 principal place of business in this state.

20 (b) The sales representative's geographical territory, as specified in the sales  
21 representative agreement, includes all or part of this state.

22 (2) **VARIATION BY CONTRACT.** The effect of this subchapter may not be varied by  
23 contract or agreement. Any contract or agreement purporting to do so is void and  
24 unenforceable to that extent only.

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1           **135.22 Cancellation and alteration of sales representative**  
2 **agreements.** No manufacturer, wholesaler or importer, directly or through any  
3 officer, agent or employe, may terminate, cancel, fail to renew or substantially  
4 change the competitive circumstances of a sales representative agreement without  
5 good cause. The burden of proving good cause is on the manufacturer, wholesaler or  
6 importer.

7           **135.23 Notice of termination or change in sales representative**  
8 **agreement.** Except as provided in this section, a manufacturer, wholesaler or  
9 importer shall provide a sales representative with at least 90 days' prior written  
10 notice of termination, cancellation, nonrenewal or substantial change in competitive  
11 circumstances. The notice shall state all the reasons for termination, cancellation,  
12 nonrenewal or substantial change in competitive circumstances and shall provide  
13 that the sales representative has 60 days after the date of delivery or posting of the  
14 notice in which to rectify any claimed deficiency. If the deficiency is rectified within  
15 those 60 days the notice shall be void. If the reason for termination, cancellation,  
16 nonrenewal or substantial change in competitive circumstances is nonpayment of  
17 sums due under the sales representative agreement, the sales representative shall  
18 be entitled to written notice of that default, and shall have 10 days after the date of  
19 delivery or posting of the notice to remedy that default. The notice provisions of this  
20 section shall not apply if the reason for termination, cancellation or nonrenewal is  
21 any of the following:

22           **(1)** The bankruptcy or insolvency of the sales representative.

23           **(2)** An assignment for the benefit of creditors or similar disposition of the assets  
24 of the sales representative's business.

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1           **(3)** The voluntary abandonment by the sales representative of his or her  
2 business with no provision made by the sales representative for the resumption of  
3 that business by the sales representative or for the continuation of that business by  
4 a transferee of the sales representative as determined by a totality of the  
5 circumstances.

6           **(4)** The conviction of the sales representative for any offense the circumstances  
7 of which substantially relate to the circumstances of the sales representative's  
8 business.

9           **(5)** Any act by the sales representative that materially impairs the good will  
10 associated with the manufacturer's, wholesaler's or importer's trade name,  
11 trademark, service mark, logotype, advertising or other commercial symbol.

12           **135.24 Rights on termination of agreement.** If a manufacturer, wholesaler  
13 or importer, directly or through any officer, agent or employe, terminates, cancels or  
14 fails to renew a sales representative agreement, the manufacturer, wholesaler or  
15 importer shall pay the sales representative for all sales made by the sales  
16 representative and approved by the manufacturer, wholesaler or importer on or  
17 before the effective date of the termination, cancellation or nonrenewal of the sales  
18 representative agreement. The manufacturer, wholesaler or importer shall pay the  
19 commissions owed to the sales representative as provided in s. 109.03 (2m), (4) or  
20 (4g), whichever is applicable.

21           **135.25 Application to arbitration agreements.** This subchapter shall not  
22 apply to provisions for the binding arbitration of disputes contained in a dealership  
23 agreement concerning the items covered in s. 135.23, if the criteria for determining  
24 whether good cause existed for a termination, cancellation, nonrenewal or

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1 substantial change of competitive circumstances, and the relief provided, are no less  
2 than that provided for in this subchapter.

3 **135.26 Action for damages and injunctive relief.** If any manufacturer,  
4 wholesaler or importer violates this subchapter, a sales representative may bring an  
5 action against the manufacturer, wholesaler or importer in any court of competent  
6 jurisdiction for damages sustained by the sales representative as a consequence of  
7 the violation, together with the actual costs of the action, including reasonable actual  
8 attorney fees, and the sales representative also may be granted injunctive relief  
9 against unlawful termination, cancellation, nonrenewal or substantial change of  
10 competitive circumstances.

11 **135.27 Temporary injunctions.** In any action brought by a sales  
12 representative against a manufacturer, wholesaler or importer under this  
13 subchapter, any violation of this subchapter by the manufacturer, wholesaler or  
14 importer is considered to be an irreparable injury to the sales representative for  
15 purposes of determining if a temporary injunction should be issued.

16 **SECTION 93. Initial applicability.**

17 (1) **WAGE PAYMENTS, CLAIMS AND COLLECTIONS.** The treatment of sections 109.01  
18 (1), (1m), (1p), (3) and (4), 109.03 (2), (2g), (2m), (3), (4), (4g), (5), (6) and (7), 109.09  
19 (1) and (2) and 109.11 (1) (a), (1m), (2) (a) and (b) and (3) of the statutes first applies  
20 to an employe or commission salesperson, as defined in section 109.01 (1m) of the  
21 statutes, as created by this act, whose last day of employment is the effective date  
22 of this subsection.

23 (2) **SALES REPRESENTATIVE AGREEMENTS.** The treatment of subchapter II of  
24 chapter 135 of the statutes first applies to a sales representative agreement, as  
25 defined in section 135.20 (4) of the statutes, as created by this act, that is entered into,

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1 extended, renewed or modified on the effective date of this subsection. A sales  
2 representative agreement is extended or renewed on the effective date of this  
3 subsection if any of the following occurs:

4 (a) The period specified in the sales representative agreement has expired or  
5 expires, but the relationship governed by the sales representative agreement  
6 continues, either for a new specified period or for an indefinite period, on the effective  
7 date of this subsection.

8 (b) The sales representative agreement is for an indefinite period and, with the  
9 consent or acquiescence of the manufacturer, wholesaler or importer, the sales  
10 representative solicits wholesale orders, as defined in section 135.20 (5) of the  
11 statutes, as created by this act, on the effective date of this subsection.

12 (END)