

Substituted by the House, on motion of Mr. Cohen of Newton, for a bill with the same title (House, No. 1312). October 7.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Five.

AN ACT RELATIVE TO SALES REPRESENTATIVES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after chapter
2 150E the following chapter: —

3 **CHAPTER 150F.**
4 **SALES REPRESENTATIVES.**

5 Section 1. The following terms as used in the chapter unless the
6 context otherwise requires, shall have the following meanings:

7 "Commission" compensation accruing to sales representatives
8 for payment by a principal, earned through the last day on which
9 services were performed by the sales representative, the rate of
10 which is expressed as a percentage of the dollar amount of orders
11 or sales.

12 "Principal", a person who manufactures, produces, imports or
13 distributes a product for wholesale; contracts to solicit orders for
14 the product; and compensates individuals who solicit wholesale
15 orders, in whole or in part, by commission.

16 "Sales representative", an individual other than an employee,
17 who contracts with a principal to solicit wholesale orders and who
18 is compensated, in whole or in part, by commission but shall not
19 include one who places orders or purchases exclusively for his own
20 account for resale.

21 "Day", calendar days including Saturdays, Sundays and legal
22 holidays.

23 "Termination", the end of services performed by the sales repre-

24 sentative for the principal by any other means than a discharge or
25 resignation.

26 “Discharge”, the removal of a sales representative by the princi-
27 pal and shall include any action taken by the principal against the
28 sales representative that concludes the relationship of the parties.

29 “Resignation” the termination of a sales contract by the sales
30 representative and shall include any action taken by the sales
31 representative against the principal that concludes the relationship
32 of the parties.

33 Section 2. At the request of either party the principal and sales
34 representative shall enter into a written agreement which shall
35 include provisions regarding the following: —

36 (A) The form of payment and the method by which it is to be
37 computed and made,

38 (B) the period of time within which services are to be performed,

39 (C) the manner and extent to which job incurred expenses will
40 be reimbursed,

41 (D) the reasonable grounds for termination of an agreement
42 between the sales representative and the principal,

43 (E) either the geographical territory in which services are to be
44 performed or the specified accounts with respect to which services
45 are to be performed or both,

46 (F) the reasonable grounds for change or reduction of a speci-
47 fied geographical territory or specified accounts,

48 (G) the manner and time in which disputes arising out of the
49 agreement will be resolved.

50 The principal shall provide the sales representative a signed copy
51 of an written contract entered into pursuant to this section.

52 Section 3. (A) Any territory or account changes or reductions
53 shall be preceded by at least 60 days written notice.

54 (B) A written notice of not less than 60 days shall be provided to
55 the sales representative by the principal in the case of a termination
56 or discharge.

57 (C) A written notice, of not less than 60 days shall be provided
58 to the principal by the sales representative in the case of a
59 resignation.

60 (D) if a sales quota is included in the terms of the contracts it
61 shall be reasonable in light of all relevant circumstances.

62 Section 4. When a contract is terminated, the commissions and

63 other compensation earned and unpaid through the last day of
64 employment shall become due and payable within thirty days.
65 When the sales representative is discharged the commissions and
66 other compensation earned and unpaid through the last day of
67 employment shall become due and payable within seven days.

68 A sales representative shall receive commissions on goods or-
69 dered prior to the last day of employment but delivered, accepted
70 and paid for after the end of the agreement. The commissions shall
71 become due and payable within thirty days following receipt of
72 payment to the principal.

73 Section 5. A principal who violates or fails to comply with the
74 provisions of this chapter or any contractual terms set forth in
75 section 2, shall be liable to the sales representative for actual
76 damages or one hundred dollars, whichever is greater; or up to
77 three but not less than two times the amount of actual damages if a
78 court finds that the violation was willful and knowing. A sales
79 representative who violates or fails to comply with the provisions
80 of this chapter or any contractual terms set forth in section 2, shall
81 be liable to the principal for actual damages or one hundred
82 dollars, whichever is greater; or up to three but not less than two
83 times the amount of actual damages if the court finds that the
84 violation was willful and knowing. If the court finds the petitioner
85 in any action commenced hereunder, said petitioner shall, in addi-
86 tion to other relief provided for by this section be awarded reason-
87 able attorney's fees and costs incurred in connection with said
88 action.

89 Section 6. If, after a period of time set forth pursuant to clause
90 (G) of section two, a dispute remains unresolved, upon the applica-
91 tion by either party the matter shall be submitted to binding
92 arbitration by an established professional arbitration firm.

93 Section 7. The commissions and other compensation shall be
94 paid at the usual place of payment unless the sales representative
95 requests that the commissions and other compensation be sent
96 through first class mail. If, in accordance with a request by the sales
97 representative, the sales representative's commissions and other
98 compensation are sent through the mail, the commissions and
99 compensation shall be deemed to have been paid as of the date of
100 their registered postmark.

101 Section 8. Nothing in this chapter shall invalidate or restrict

102 any other or additional right or remedy available to a sales repre-
103 sentative, or principal or preclude a sales representative from
104 seeking to recover in one action on all claims against a principal, or
105 preclude a principal from seeking to recover in one action on all
106 claims against a sales representative.