

2A:61A-1

LEGISLATIVE HISTORY CHECKLIST  
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NJSA: 2A:61A-1

(Sales  
representative--contracts  
of relationship)

LAWS OF: 1990

CHAPTER: 93

Bill No: A2897

Sponsor(s): Cimino, Patero & Watson

Date Introduced: February 5, 1990

Committee: Assembly: Economic Growth

Senate: Labor, Industry & Professions

Amended during passage: Yes Amendments during passage  
denoted by asterisks.

Date of Passage: Assembly: March 1, 1990

Senate: May 17, 1990

Date of Approval: September 7, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

Attached: model bill

KBG/SLJ

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NY

[FIRST REPRINT]  
ASSEMBLY, No. 2897

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 5, 1990

By Assemblymen CIMINO, Patero and Watson

1 AN ACT concerning sales representatives and supplementing  
2 Title 56 of the Revised Statutes.

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4 BE IT ENACTED *by the Senate and General Assembly of the*  
5 *State of New Jersey:*

6 1. As used in this act:

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

13 b. "Principal" means a person, including a person who does not  
14 have a permanent or fixed place of business in this State, who  
15 manufactures, produces, imports or distributes a product for  
16 wholesale; contracts to solicit orders for the product; and  
17 compensates persons who solicit wholesale orders, in whole or in  
18 part, by commission.

19 c. "Sales representative" means a person other than an  
20 employee, who contracts with a principal to solicit wholesale  
21 orders and who is compensated, in whole or in part, by  
22 commission but shall not include one who places orders or  
23 purchases exclusively for his own account for resale and shall not  
24 include one who sells or takes orders for the sale of products to  
25 the ultimate consumer.

26 d. "Day" means a calendar day including Saturdays, Sundays  
27 and legal holidays.

28 e. "Termination" means the end of services performed by the  
29 sales representative for the principal by any means other than a  
30 discharge.

31 f. "Discharge" means the removal of a sales representative by  
32 the principal and shall include any action taken by the principal  
33 against the sales representative that concludes the relationship of  
34 the parties.

35 2. When a contract between a principal and a sales  
36 representative to solicit wholesale orders is terminated, the  
37 commissions and other compensation earned and unpaid through  
38 the last day of the contract shall become due and payable within  
39 30 days. When a sales representative is discharged the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:  
1 Senate SLI committee amendments adopted April 26, 1990.

1 commissions and other compensation earned and unpaid through  
2 the last day of the contract shall become due and payable within  
3 seven days.

4 A sales representative shall receive commissions on goods  
5 ordered up to and including the last day of the contract even if  
6 accepted by the principal, delivered, and paid for after the end of  
7 the agreement. The commissions shall become due and payable  
8 within 30 days after payment would have been due under the  
9 contract if the contract had not been terminated.

10 3. a. A principal who violates or fails to comply with the  
11 provisions of section 2 of this act shall be liable to the sales  
12 representative for all amounts due the sales representative <sup>1</sup>[plus  
13 exemplary damages in an amount not to exceed two times the  
14 amount of commissions due the sales representative]<sup>1</sup> and all  
15 attorney's fees actually and reasonable incurred by the sales  
16 representative in the action and court costs.

17 b. Where the court determines that an action brought by a  
18 sales representative against a principal pursuant to this section is  
19 frivolous, pursuant to P.L.1988, c.46 (C.2A:15-59.1), the sales  
20 representative shall be liable to the principal for attorney's fees  
21 actually and reasonably incurred by the principal in defending the  
22 action and court costs.

23 4. The commissions and other compensation shall be paid at  
24 the usual place of payment unless the sales representative  
25 requests that the commissions and other compensation be sent  
26 through first class mail. If, in accordance with a request by the  
27 sales representative, the sales representative's commissions and  
28 other compensation are sent through the mail, the commissions  
29 and compensation shall be deemed to have been paid as of the  
30 date of their registered postmark.

31 5. A principal who is not a resident of this State who contracts  
32 with a sales representative to solicit orders in this State is  
33 declared to be doing business in this State for purposes of the  
34 exercise of personal jurisdiction.

35 6. A provision in any contract between a sales representative  
36 and a principal purporting to waive any provision of this act,  
37 whether by express waiver or by a provision stipulating that the  
38 contract is subject to the laws of another state, shall be void.

39 7. Nothing in this act shall invalidate or restrict any other or  
40 additional right or remedy available to a sales representative or  
41 principal, or preclude a sales representative from seeking to  
42 recover in one action on all claims against a principal, or  
43 preclude a principal from seeking to recover in one action on all  
44 claims against a sales representative.

45 8. This act shall take effect immediately.

41 claims against a sales representative.

42 8. This act shall take effect immediately.

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*Sponsor Statement on original bill*  
STATEMENT A 2897 (1990) starts  
on page 2

This bill requires a principal, a person who manufactures, produces, imports or distributes a product for wholesale and who uses sales representatives to solicit wholesale orders, to pay

A2897

3

1 commissions owed to a sales representative within a certain time  
2 period upon termination of the contract between the sales  
3 representative and the principal. The bill provides damages for  
4 any person injured by a violation of any provision of the act and  
5 also provides multiple damages if the violation was willful and  
6 knowing.

7 The bill conforms with a model bill proposed by the Bureau of  
8 Wholesale Sales Representatives. The bill thus provides that a  
9 principal who contracts with a sales representative to solicit  
10 orders in the State is declared to be doing business in the State  
11 for purposes of the exercise of personal jurisdiction. It also  
12 provides that any attempt to waive any provision of the act by  
13 contract would be void.

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COMMERCE AND INDUSTRY

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Regulates contractual relationships between sales representatives and wholesalers or manufacturers.

ASSEMBLY ECONOMIC GROWTH, AGRICULTURE, TOURISM  
AND COASTAL PROTECTION COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2897

STATE OF NEW JERSEY

DATED: FEBRUARY 8, 1990

The Assembly Economic Growth, Agriculture, Tourism and Coastal Protection Committee reports favorably Assembly Bill No. 2897.

This bill requires a principal, a person who manufactures, produces, imports or distributes a product for wholesale and who uses sales representatives to solicit wholesale orders, to pay commissions owed to a sales representative within a certain period of time upon termination of the contract between the sales representative and the principal. The bill provides for damages for any person injured by a violation of any provision of the act, and also provides for multiple damages if the violation is determined to be willful and knowing.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2897

with Senate committee amendments

STATE OF NEW JERSEY

DATED: APRIL 26, 1990

The Senate Labor, Industry and Professions Committee reports favorably and with committee amendments Assembly Bill No. 2897.

This bill concerns certain aspects of the termination of a contractual relationship between a sales representative and a principal who is a person who manufactures, produces, imports or distributes a product for wholesale and who uses sales representatives to solicit wholesale orders on a commission basis.

The bill requires a principal to pay commissions owed to a sales representative within seven days if the sales representative is discharged and within 30 days if the contract is otherwise terminated. For those orders accepted by the principal, delivered and paid for after the end of a sales representative's contract, the commissions are payable within 30 days after payment would have been due under the contract if the contract had not been terminated.

A principal who violates the provisions of this bill is liable to the sales representative for all commissions due, attorneys' fees incurred in the action and court costs. If a sales representative brings a frivolous action against a principal, he is liable to the principal for attorneys' fees and court costs incurred by the principal in defending the action.

The bill applies to any principal, whether in or out of State, who contracts with a sales representative to solicit orders in this State. The bill prohibits the waiver of any provision of the bill by contract.

The committee amended the bill to delete the provision concerning exemplary damages in the penalty section of the bill. The deleted provision provides that a principal who violates the provisions of section 2 of the bill would be liable for exemplary damages of up to twice the amount of the commissions due the sales representative.

# BUREAU OF WHOLESALE SALES REPRESENTATIVES

## MODEL BILL

### PROMPT PAYMENT OF POST-TERMINATION COMMISSIONS TO SALES REPRESENTATIVES

The style, language, and formatting of legislative proposals varies from state to state. Each proposal must strictly comply with both the requirements and the customs of the state where it is to be introduced.

Each legislature has a legislative drafting service or other resident experts to structure a proposal in proper form. Ordinarily, this service is available only to elected or appointed officials. Therefore, where appropriate, the bill's sponsor may elect to provide the "model" to assist the person or persons who will restructure the bill to satisfy local usage.

The annotations appearing in the left margin of the model are not part of the bill.

NOTE: Most states maintain an "official code" in which enacted laws are placed (codified) by subject matter, regardless of when they were adopted. Bills usually indicate the address in the Code where they will be placed if enacted. The divisions and names of divisions in the Code (e.g., Titles, Chapters, Articles, etc.) vary from state to state. After a law is enacted it is usually referred to or "cited" by its address in the Code, which is frequently expressed in a two-element (12-602) or three-element (10-7-430) reference. [Two-element cites contain Title or Chapter and Section; three-element cites provide Title, Chapter and Section or Chapter, Article and Section.]

The last number of a cite refers to a particular section of the law. The fictional numbering (X-001, etc.) used in the model merely suggests sectioning. Actual numbering and names of divisions (such as "Article" in the model) will depend upon the specific system used in a given state.

[MODEL BILL FOR PROMPT PAYMENT OF POST-TERMINATION  
COMMISSIONS TO SALES REPRESENTATIVES]

most states,  
bill is preceded  
with a number  
(SB/HB), sponsor's  
name (By:), and  
requently, a title  
or bill name.

Preamble: Serves  
as an introductory  
or prefatory clause.  
Specificity needed  
varies from state  
to state.

Enactment Clause:  
Form varies from  
state to state.

NOTE: Names used  
to indicate divi-  
sions and subdivi-  
sions of bills and  
method of numbering  
sections vary from  
state to state.  
The fictional  
X-001, etc. used  
in the model merely  
suggests sectioning.  
Actual numbering  
will depend upon  
specific system used  
in a given state.

Definitions

A BILL TO BE ENTITLED  
AN ACT

1 For the purpose of requiring an out-of-state  
2 principal to pay commissions owed to a sales  
3 representative within a certain period of time after  
4 termination; providing for certain exemplary damages  
5 and attorney's fees if post-termination commissions  
6 are not paid timely; providing for attorney's fees to  
7 be awarded against persons bringing frivolous  
8 actions; declaring personal jurisdiction over certain  
9 non-resident principals; providing any agreements  
10 that waive the requirements of this Act are void.

11 Section 1. BE IT ENACTED BY THE  
12 GENERAL ASSEMBLY OF \_\_\_\_\_:

13 ARTICLE \_\_\_\_\_\*  
14 X-001\*. As used in this Article, the following  
15 words have the meanings indicated:

16 (A) "Commissions" means compensation  
17 accruing to a sales representative for  
18 payment by a principal, the rate of which  
19 is expressed as a percentage of the amount  
20 of orders or sales or as a specified amount  
21 per order or per sale.



Definitions  
continued

22 (B) "Person" means an individual,  
23 corporation, partnership, association,  
24 estate, or trust.

25 (C) "Principal" means a person who does  
26 not have a permanent or fixed place of  
27 business in this state and who:

28 (1) Manufacturers, produces, imports,  
29 or distributes a tangible product for  
30 wholesale;

31 (2) Contracts with a sales  
32 representative to solicit orders for  
33 the product; and

34 (3) Compensates the sales  
35 representative, in whole or in part,  
36 by commission.

Definitions  
continued

37 (D) "Sales Representative" means a person  
38 who:

39 (1) Contracts with a principal to  
40 solicit wholesale orders;

41 (2) Is compensated, in whole or in  
42 part, by commission;

43 (3) Does not place orders or purchase  
44 for his own account or for resale; and

45 (4) Does not sell or take orders for  
46 the sale of products to the ultimate  
47 consumer.

Principal to pay sales rep all accrued commissions within 14 days of termination.

Where the principal fails to pay post-termination commissions timely and sales rep sues principal, rep may recover:

(A) Commissions due plus additional damages not to exceed twice the amount due as commissions, plus

(B) Attorney's fees and court costs.

If rep brings frivolous action, principal may be awarded attorney's fees and court costs.

Under "minimum contracts" theory, principal is doing business in the state. This provision buttresses that concept.

48 X-002. When a contract between a sales  
49 representative and a principal is terminated for any  
50 reason, the principal shall pay the sales  
51 representative all commissions accrued under the  
52 contract to the sales representative within 14 days  
53 after the effective date of such termination.

54 X-003. A principal who fails to comply with the  
55 provisions of § X-002 of this subtitle shall be  
56 liable to the sales representative in a civil action  
57 for:

58 (A) All amounts due the sales  
59 representative plus exemplary damages in an  
60 amount not to exceed two times the amount  
61 of commissions due the sales  
62 representative; and

63 (B) Attorney's fees actually and  
64 reasonably incurred by the sales  
65 representative in the action and court  
66 costs.

67 X-004. Where the court determines that an  
68 action brought by a sales representative against a  
69 principal under this Article is frivolous, the sales  
70 representative shall be liable to the principal for  
71 attorney's fees actually and reasonably incurred by  
72 the principal in defending the action and court costs.

73 X-005. A principal who is not a resident of  
74 this state that contracts with a sales representative  
75 to solicit orders in this state is declared to be

Provides for no loss of available remedies and allows for combining of all claims in a single action.

Provisions of this law cannot be waived.

76 doing business in this state for purposes of the  
77 exercise of personal jurisdiction over non-residents  
78 under Code Section \_\_\_\_\_ [cite appropriate "doing  
79 business" or "long-arm" statute].

80 X-006. Nothing in this Article shall invalidate  
81 or restrict any other or additional right or remedy  
82 available to a sales representative, or preclude a  
83 sales representative from seeking to recover in one  
84 action on all claims against a principal.

85 X-007. A provision in any contract between a  
86 sales representative and a principal purporting to  
87 waive any provision of this Article, whether by  
88 expressed waiver or by a contract subject to the laws  
89 of another state, shall be void.

90 SECTION 2. This Act shall take effect \_\_\_\_\_  
91 \_\_\_\_\_, 1987.