



State of Wisconsin
1997 - 1998 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,
TO 1997 SENATE BILL 226**

February 12, 1998 - Offered by COMMITTEE ON LABOR, TRANSPORTATION AND
FINANCIAL INSTITUTIONS.

1 **AN ACT to amend** 895.85 (2); and **to create** 134.93 of the statutes; **relating to:**
2 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:

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

4 **134.93 Payment of commissions to independent sales representatives.**

5 **(1) DEFINITIONS.** In this section:

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

11 (b) "Independent sales representative" means a person, other than an
12 insurance agent or broker, who contracts with a principal to solicit wholesale orders

1 and who is compensated, in whole or in part, by commission. “Independent sales
2 representative” does not include any of the following:

3 1. A person who places orders or purchases products for the person’s own
4 account for resale.

5 2. A person who is an employe of the principal and whose wages must be paid
6 as required under s. 109.03.

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

10 1. Manufactures, produces, imports or distributes a product for wholesale.

11 2. Contracts with an independent sales representative to solicit orders for the
12 product.

13 3. Compensates the independent sales representative, in whole or in part, by
14 commission.

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

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

23 (c) If it cannot be determined under par. (a) or (b) when a commission becomes
24 due, a commission becomes due according to the custom and usage prevalent in this

1 state for the particular industry of the principal and independent sales
2 representative.

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

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

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

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

24 895.85 **(2) SCOPE.** This section does not apply to awards of double damages or
25 treble damages, or to the award of exemplary damages under ss. 46.90 (6) (c), 51.30

1 (9), 51.61 (7), 103.96 (2), 134.93 (5), 153.85, 252.14 (4), 252.15 (8) (a), 943.245 (2) and
2 (3) and 943.51 (2) and (3).

3 **SECTION 3. Initial applicability.**

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

10 (END)