HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 679 Sales representative contracts
SPONSOR(S): Henriquez
TIED BILLS: **IDEN./SIM. BILLS:** SB 1842

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Trades, Professions, & Reg. Business (Sub)		Livingston	Liepshutz
2) Business Regulation			
3)			
4)			
5)			

SUMMARY ANALYSIS

Currently, section 686.201, F.S., addresses various aspects of the business relationship between a wholesale sales representative and the employer, known as the principal. The provisions of this section address contract requirements, termination requirements, requirements for the payment of sales commissions, and civil remedies.

The bill addresses five substantive changes to s. 686.201, F.S.

It deletes the limitation that this section apply only to out-of-state businesses ("persons who do not have a permanent or fixed place of business in this state") which pay commissions to wholesale sales representatives selling products in Florida.

It adds reference to the term business, in addition to, person.

It adds reference to service, in addition to, product.

It deletes the limitation and reference to ~~wholesale~~ sales only.

It increases the damages that may be awarded from ~~double~~ to triple the amount of commission found to be due to the sales representative. The bill addresses current constitutional questions and would appear to make the treble damages constitutional by applying the penalties equally to all principals, in-state and out-of-state, within the guidelines of the Commerce Clause of the United States Constitution.

The bill is not anticipated to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[X]
2. Lower taxes?	Yes[]	No[]	N/A[X]
3. Expand individual freedom?	Yes[]	No[X]	N/A[]
4. Increase personal responsibility?	Yes[]	No[X]	N/A[]
5. Empower families?	Yes[]	No[]	N/A[X]

For any principle that received a "no" above, please explain:

3. Expand individual freedom?
4. Increase personal responsibility?

Currently, section 686.201, F.S., addresses various aspects of the business relationship between a sales representative and the employer, known as the principal. The bill institutes additional statutory guidelines and requirements to be imposed upon the business relationship between a sales representative and the principal.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Currently, section 686.201, F.S., addresses various aspects of the business relationship between a sales representative and the employer, known as the principal. This section addresses contract requirements, termination requirements, requirements for the payment of sales commissions, and civil remedies. These provisions apply to wholesale sales representatives who sell products in this state for commissions paid under a contract with out-of-state suppliers.

This section was enacted in 1984 and has only been amended by a reviser change in reference to gender. Archived committee documents reflect the reasoning and stated intent for adopting the provisions of this section. These documents indicate the legislation creating this section addressed two important needs of sales representatives by encouraging written agreements and prompt payment of sales commissions due them.

The legislation was designed to address the economic advantage of the principal over the sales representative especially when the principal did not have a permanent or fixed place of business in this state. Sales representatives who are independent contractors and are compensated by commission obtain orders for out-of-state principals at their own expense. Upon termination of the business relationship, they frequently incurred difficulty or expense in recovering the commissions they had earned. To recover, a sales representative had to sue in contract in the domicile of the principal which were usually "document battles" found to be expensive to litigate.

Legislation was enacted to attempt to place the principal and the sales representative on greater parity relating to the settlement of disputes over the payment of commissions. Section 686.201, F.S., requires a written contract between the parties and requires the agreement to include the method of computing and paying commissions. This section further addresses the payment of commissions by requiring that in the absence of a written contract commissions due to the sales representative must be paid by the principal within 30 days from the termination of the sales agreement.

If prompt payment is not made, the sales representative has a cause of action to recover double the commission due and the prevailing party may recover court costs and attorney fees. The courts have since declared the damages provision unconstitutional in violation of the Commerce Clause of the United States Constitution. See *Rosenfeld v. Lu*, 766 F.Supp. 1131 (S.D.Fla.1991). The court opined, "We reach this result because, simply stated, the statute on its face discriminates against interstate commerce by imposing requirements on out-of-state principals or companies which are not applicable to in-state businesses."

Section 686.201, F.S., applies to out-of state principals and sales at wholesale and, therefore, do not apply to door-to-door sales representatives, retail sales clerks or other sales persons who do not sell for resale. Additionally, a sales representative who represents a principal who maintains a permanent or fixed place of business in Florida is not covered by these protections.

The Florida statutes provide definitions for specified terms that are used in statutory text. Subsection (3) of section 1.01, F.S., defines the word "person" to include " individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations."

<u>Effect of Proposed Changes</u>

The bill addresses five substantive changes to s. 686.201, F.S.

> It deletes the limitation that this section apply only to out-of-state businesses ("persons who do not have a permanent or fixed place of business in this state") which pay commissions to wholesale sales representatives selling products in Florida.
>
> It adds reference to the term <u>business</u>, in addition to, person.
>
> It adds reference to <u>service</u>, in addition to, product.
>
> It deletes the limitation and reference to ~~wholesale~~ sales only.
>
> It increases the damages that may be awarded from ~~double~~ to <u>triple</u> the amount of commission found to be due to the sales representative.

As a result of these changes section 686.201, F.S., would apply to in-state and out-of-state principals, both business principals and person principals, principals located at permanent or fixed locations in this state or out-of-state or are transient without an established location and principals providing services and products at manufacture, wholesale, or retail.

The bill would appear to make the treble damages constitutional by applying the penalties equally to all principals, in-state and out-of-state, within the guidelines of the Commerce Clause of the United States Constitution.

C. SECTION DIRECTORY:

<u>Section 1.</u> Amends s. 686.201, F.S., to expand the application of provisions relating to sales representative contracts involving commissions.

<u>Section 2.</u> Effective date - upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   NA

2. Expenditures:

   NA

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is designed to address the economic advantage of the principal over the sales representative. Sales representatives are independent contractors and are compensated by commission. Upon termination of the business relationship, they frequently incur difficulty or expense in recovering the commissions they have earned. This legislation attempts to place the principal and the sales representative on greater parity relating to the settlement of disputes over the payment of commissions.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   Currently, section 686.201, F.S., is designed to address various aspects of the business relationship between a sales representative and the employer, known as the principal. This section was enacted to attempt to place the principal and the sales representative on greater parity relating to the settlement of disputes over the payment of commissions.

   If prompt payment is not made, the sales representative has a cause of action to recover double the commission due and the prevailing party may recover court costs and attorney fees. The courts have since declared the damages provision unconstitutional in violation of the Commerce Clause of the United States Constitution. See *Rosenfeld v. Lu*, 766 F.Supp. 1131 (S.D.Fla.1991). The court opined, “We reach this result because, simply stated, the statute on its face discriminates against interstate commerce by imposing requirements on out-of-state principals or companies which are not applicable to in-state businesses.”

   The bill would appear to make the treble damages (damages are elevated by the bill from double to triple) constitutional by applying the penalties equally to all principals, in-state and out-of-state, within the guidelines of the Commerce Clause of the United States Constitution.

B. RULE-MAKING AUTHORITY:

Not addressed.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES