HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 329 Sales Representative Contracts Involving Commissions
SPONSOR(S): Frishe
TIED BILLS: **IDEN./SIM. BILLS:** SB 2086

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Business Regulation	9 Y, 0 N	Livingston	Liepshutz
2) Jobs & Entrepreneurship Council		Livingston	Thorn
3)			
4)			
5)			

SUMMARY ANALYSIS

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 provisions of this section address contract requirements, termination requirements, requirements for the payment of sales commissions, and civil remedies. The bill addresses three substantive changes to s. 686.201, F.S.

The bill adds to the definition of "commission" reference to the terms <u>fixed fees or retainers</u> to be included along with the current calculation of commission payment due as a percentage of sales.

The bill deletes several statutory requirements for the contract between the principal and the sales representative, to remove:

- the contract shall be in writing;
- the contract shall set forth the method by which the commission is to be computed and paid;
- the principal shall provide the sales representative with a signed copy of the contract;
- the principal shall obtain a signed receipt for the contract from the sales representative.

The bill requires that when a contract, written or unwritten, ends any commission due must be paid within 30 days.

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

The effective date of the bill is July 1, 2007.

See III. D. of this analysis: STATEMENT OF THE SPONSOR

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Expand individual freedom/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 removes or changes several statutory guidelines and requirements imposed upon the business relationship between a sales representative and the principal.

B. EFFECT OF PROPOSED CHANGES:

<u>Present situation</u>

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 sales representatives who sell products in this state for commissions paid under a contract with a principal supplier.

This section was enacted in 1984. 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. As a practice sales representatives who were independent contractors and were compensated by commission would obtain sales orders in Florida 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.

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 damages 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.”

In 2004, legislation was adopted, chapter 2004-90, Laws of Florida, to address several aspects of this section. As a result of these changes section 686.201, F.S., applies to in-state and out-of-state principals, both business principals and individuals acting as a principal, 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 act increased the damages that may be awarded from double to triple the amount of commission found to be due to the sales representative. The changes made the damage provisions constitutional by applying the penalties equally to all principals, in-state and out-of-state.

Effect of proposed changes

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

(1) The bill adds reference, within the definition of "commission," to the terms fixed fees or retainers to be included along with the current calculation of payment due as a percentage of sales.

(2) The bill deletes several statutory requirements for the contract between the principal and the sales representative, to remove:

> the contract shall be in writing;
>
> the contract shall set forth the method by which the commission is to be computed and paid;
>
> the principal shall provide the sales representative with a signed copy of the contract;
>
> the principal shall obtain a signed receipt for the contract from the sales representative.

(3) Currently, this section requires 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. The bill requires that when a contract, [written or unwritten], ends ~~is terminated and the contract was not reduced to writing~~ any commission due must be paid within 30 days.

C. SECTION DIRECTORY:

Section 1. Amends s. 686.201, F.S., to revise the application of provisions relating to sales representative contracts involving commissions.

Section 2. Effective date - July 1, 2007.

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:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 removes or changes several statutory guidelines and requirements imposed upon the business relationship between a sales representative and the principal.

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:

None.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

NA

D. STATEMENT OF THE SPONSOR

"This bill allows for sales representatives to receive payment for work performed even if they do not have a written contract."

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 22, 2007, the Committee on Business Regulation adopted one amendment, as amended, and passed the bill out of committee by unanimous vote. The amendment clarifies that the provisions of the bill would not impair a valid contract and requires payment of the commission within 60 days rather than 30 days.