FINAL BILL ANALYSIS

BILL #: HB 4023

FINAL HOUSE FLOOR ACTION: 93 Y's 25 N's

SPONSOR: Rep. Plakon

GOVERNOR'S ACTION: Approved

COMPANION BILLS: SB 474

SUMMARY ANALYSIS

HB 4023 passed the House on March 24, 2011, and passed the Senate on May 2, 2011. The bill was approved by the Governor on May 31, 2011, chapter 2011-96, Laws of Florida, and becomes effective July 1, 2011. The bill repeals s. 686.201, F.S, removing the statutory requirements on sales representative contracts involving commissions and the provisions relating to a private cause of action.

The bill does not have a fiscal impact on state funds.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

<u>Current Situation</u>

A sales representative contract is an agreement between a principal and a sales representative for the sales representative to solicit orders for the principal's product or service.

Sales representatives include persons or companies soliciting orders for a principal who are compensated, in whole or in part, by commission. Employees of the sales representative and resellers are not sales representatives.

Florida law places the following restrictions on certain sales representative contracts involving commissions:

- Contracts must be in writing;
- Contracts must set forth the method by which commissions are computed and paid; and
- Sales representatives must be given a signed copy of the contract.

If a sales representative contract is not in writing, all commissions due must be paid within 30 days of the contract's termination. If the commissions are not paid, the sales representative has a cause of action for damages equal to three times the unpaid commissions. Attorney fees and court costs are awarded to the prevailing party.

Real estate professionals regulated under chapter 475, F.S., are exempt from the statute.

The statute was enacted in 1984. "It appears that the Florida legislature sought to address the inherent problem of the disparity in bargaining power between a sales representative and a manufacturer or importer."[1] Originally, the statute applied only to out-of-state principals, a classification ultimately found to be an unconstitutional burden on interstate commerce.[2] A federal court explained the premise for the statute as follows:

> Upon termination of the employment relationship, sales representatives apparently encountered difficulties in recovering the commissions they had earned from out-of-state companies. According to [the State], the out-of-state principals were aware of the fact that the expense of litigation would deter sales representatives from filing a law suit. As a result, out-of-state corporations would allegedly withhold commissions, thereby forcing sales representatives to negotiate a distress settlement. Based on [the State's evidence], it appears that the purpose of the double damages provision of the bill was to neutralize the alleged unfair advantage of the principal and place the principal and sales representative on a parity for settlement.[3]

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[1] Rosenfeld v. Lu, 766 F.Supp. 1131, 1140 (S.D.Fla. 1991).
[2] *Id.*
[3] *Id.* at 1139. The original statute contained a cause of action for double the unpaid commissions. This was amended to provide for triple the unpaid commissions in 2004.

In 2004, the Legislature applied the statute to both in-state and out-of-state principals, curing the constitutionality problem.

Effect of the Bill:

The bill repeals the requirements on sales representative contracts involving commissions and the provisions relating to a private cause of action.

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:

Principals who use sales representatives could see a reduction in costs as they will no longer be required to provide written contracts.

Sales representatives could experience increased difficulty in recovering unpaid commissions as the bill would remove some incentives for principals to avoid litigation.

These impacts could be negated by contract.

D. FISCAL COMMENTS:

None.