

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: SB 474

INTRODUCER: Senator Evers

SUBJECT: Sales representative contracts

DATE: April 4, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	Pre-meeting
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill repeals s. 686.201, F.S., relating to sales representatives contracts.

Enacted in 1984, this provision requires a written contract between principal and commissioned sales representatives which specifies the terms of the commission.

In the event that there was no written contract, this provision requires that the sales representative be paid within 30 days of termination of the unwritten contract. Should the principal not comply with this requirement, the sales representative has a cause of action for damages equal to triple the amount of commission found to be due, and reasonable attorney's fees and court costs.

Under current law, licensed real estate brokers, sales associates, and appraisers are exempt from this provision.

This bill repeals s. 686.201, F.S.

II. Present Situation:

Pursuant to s. 686.201, F.S., when a principal contracts with a sales representative to solicit orders within this state, the contract must be in writing and shall set forth the method by which the commission is to be computed and paid. The principal must provide the sales representative with a signed copy of the contract and shall obtain a signed receipt for the contract from the sales representative.

In the event the contract between the sales representative and the principal is terminated and the contract was not reduced to writing, all commissions due must be paid within 30 days after termination. If the principal fails to comply as required, the sales representative has a cause of action for damages equal to triple the amount of the commission found to be due. The prevailing party in any such action is entitled to an award of reasonable attorney fees and costs.

This provision does not apply to real estate brokers, sales associates or appraisers licensed pursuant to ch. 475, F.S., who are performing within the scope of their license.

A sales representative means a person or business which contracts with a principal to solicit orders and who is compensated, in whole or in part, by commission, but does not include a person or business which places orders for his or her own account for resale, or a person who is an employee of the business.¹

A principal means a person or business which:

1. Manufactures, produces, imports, or distributes a product or service.
2. Contracts with a sales representative to solicit orders for the product or service.
3. Compensates the sales representative, in whole or in part, by commission.²

III. Effect of Proposed Changes:

Section 1 would repeal s. 686.201, F.S. It would eliminate the statutory requirement that contracts between sales representatives and principals to solicit orders within this state be in writing and the remedies associated with a failure of the parties to have a written contract upon termination of the relationship while commissions are still owed.

Section 2 provides that the act will take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹ Section 686.201(1)(c), F.S.

² Section 686.201(1)(b), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

To the extent that the sales representative fails to obtain a written contract for their services, and they have a dispute with the principal over commissions, they will have less leverage in resolving their disputes.

Conversely, the principals will no longer be subject to triple the amount of commission found to be due should they lose in a dispute with a commissioned sales representative.

To the extent that the relationship between sales representatives and principals is outdated, there will be minimal impact on both parties.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

There are currently 33 states with laws that offer sales representatives some form of protection with respect to their commissions.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.