

**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.)

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Prepared By: The Professional Staff of the Rules Committee

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BILL: SB 474

INTRODUCER: Senator Evers

SUBJECT: Sales Representative Contracts

DATE: April 25, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McCarthy	Cooper	CM	<b>Favorable</b>
2.	Maclure	Maclure	JU	<b>Favorable</b>
3.	Maclure	Phelps	RC	<b>Pre-meeting</b>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This bill repeals a statute which requires that a contract to solicit orders within this state between a principal and a commissioned sales representative be in writing and specify the terms of the commission. In the event that there is no written contract, this statute requires that the sales representative be paid within 30 days of termination of the unwritten contract. Should the principal not comply with this payment requirement, the sales representative has a cause of action for damages equal to triple the amount of commission found to be due, as well as reasonable attorney's fees and court costs. Licensed real estate brokers, sales associates, and appraisers are exempt from this statute.

This bill repeals section 686.201, Florida Statutes.

**II. Present Situation:**

Under s. 686.201, F.S., when a principal contracts with a sales representative to solicit orders within this state, the contract shall be in writing and 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 obtain a signed receipt for the contract from the sales representative.<sup>1</sup>

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

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<sup>1</sup> Section 628.201(2), F.S.

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's fees and costs.<sup>2</sup>

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.<sup>3</sup>

A sales representative is a person or business which contracts with a principal to solicit orders and who is compensated, in whole or in part, by commission. However, a sales representative 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.<sup>4</sup>

A principal is a person or business which:

- Manufactures, produces, imports, or distributes a product or service.
- Contracts with a sales representative to solicit orders for the product or service.
- Compensates the sales representative, in whole or in part, by commission.<sup>5</sup>

The Legislature enacted this statute in 1984<sup>6</sup> and originally applied it solely to out-of-state principals.<sup>7</sup> In 1992, the Third District Court of Appeal heard a case filed by a sales representative to recover commissions the sales representative claimed he was owed by an out-of-state principal.<sup>8</sup> The court upheld the trial court's decision to award the sales representative the sales commission that the sales representative had earned under an oral agreement with the principal.<sup>9</sup> However, the appellate court disagreed with the trial court that the sales representative was owed double<sup>10</sup> the damages because the appellate court found that s. 686.201, F.S., was unconstitutional under the Commerce Clause of the U.S. Constitution. The court found that the statute violated the Commerce Clause because it imposed requirements on an out-of-state principal or business which did not apply to an in-state principal or business.<sup>11</sup>

In 2004, the Legislature revised the statute to correct this constitutional problem – amending the definition of principal to remove language that applied the provisions of the statute only to out-of-state entities.<sup>12</sup>

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<sup>2</sup> Section 686.201(3), F.S.

<sup>3</sup> Section 686.201(4), F.S.

<sup>4</sup> Section 686.201(1)(c), F.S.

<sup>5</sup> Section 686.201(1)(b), F.S.

<sup>6</sup> Chapter 84-76, s. 1, Laws of Fla. One court noted that in enacting the law it “appears that the Florida [L]egislature sought to address the inherent problem of the disparity in bargaining power between a sales representative and a manufacturer or importer.” *Rosenfeld v. Lu*, 766 F. Supp. 1131, 1140 (S.D. Fla. 1991).

<sup>7</sup> The statute defined a “principal” as a person without a permanent or fixed place of business in this state (s. 686.201(1)(b), F.S. (2003)).

<sup>8</sup> *D.G.D., Inc. v Berkowitz*, 605 So. 2d 496 (Fla. 3rd DCA 1992).

<sup>9</sup> *Id.* at 497.

<sup>10</sup> At that time, the statute provided for damages equal to double the amount of commission found to be due.

<sup>11</sup> *D.G.D., Inc.*, 605 So. 2d at 498. The district court of appeal follow the lead of a U.S. district court that has similarly declared the statute unconstitutional. *Rosenfeld*, 766 F. Supp. at 1142.

<sup>12</sup> Chapter 2004-90, s. 1, Laws of Fla. At that time, the Legislature made other revisions to the statute as well, including increasing the damages recoverable in a lawsuit to three times the amount of commission found to be due.

### III. Effect of Proposed Changes:

This bill repeals s. 686.201, F.S. In doing so, the bill eliminates the statutory requirement that contracts between sales representatives and principals to solicit orders within this state be in writing and prescribe the method for calculating and paying commissions. Repeal of the statute would also eliminate the remedies associated with a failure of the parties to have a written contract upon termination of the relationship while commissions are still owed. These remedies include:

- Payment of owed commissions within 30 days of termination of the relationship;
- Authority for the sales representative to sue if the principal fails to pay within 30 days and to win damages equal to three times the amount of commission due; and
- An award of attorney's fees and costs to whichever party prevails in the litigation.

The bill provides an effective date of July 1, 2011.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

To the extent that a sales representative fails to obtain a written contract for his or her services, and the sales representative has a dispute with the principal over commissions, he or she will have less leverage in resolving the dispute. The principal will no longer be required to formalize in a written contract and will not be subject to triple the amount of commission found to be due should the principal lose in a litigated dispute with a commissioned sales representative when there is an unwritten contract.

To the extent that the relationship between sales representatives and principals is by practice already governed by contract, 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.<sup>13</sup>

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>13</sup> From the bill analysis of SB 474 prepared by professional staff of the Senate Committee on Commerce and Tourism, available at <http://www.flsenate.gov/Session/Bill/2011/0474/Analyses/5wyhqFU3gqNoNfV7g2bq8nB2AZU=%7C7/Public/Bills/0400-0499/0474/Analysis/2011s0474.cm.PDF>.