

## CHAPTER 190—H.F.No. 786

*An act relating to contracts; providing for enforcement of certain contracts; making technical changes; correcting inconsistencies; clarifying certain provisions; amending Minnesota Statutes 1990, section 325E.37.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1990, section 325E.37, is amended to read:

**325E.37 TERMINATION OF SALES REPRESENTATIVES.**

Subdivision 1. **DEFINITIONS.** (a) As used in this section, the following terms have the meaning given them.

(b) "Good cause" means ~~failure by the sales representative to substantially comply with the material and reasonable requirements imposed by a material breach of one or more provisions of a written sales representative agreement governing the relationship with~~ the manufacturer, wholesaler, assembler, or importer, ~~including or in absence of a written agreement, failure by the sales representative to substantially comply with the material and reasonable requirements imposed by the manufacturer, wholesaler, assembler, or importer.~~ Good cause includes, but is not limited to:

(1) the bankruptcy or insolvency of the sales representative;

(2) assignment for the benefit of creditors or similar disposition of the assets of the sales representative's business;

(3) the voluntary abandonment of the business by the sales representative as determined by a totality of the circumstances;

(4) conviction or a plea of guilty or no contest to a charge of violating any law relating to the sales representative's business; ~~or~~

(5) any act ~~by or conduct~~ of the sales representative which materially impairs the good will associated with the manufacturer's, wholesaler's, assembler's, or importer's trademark, trade name, service mark, logotype, or other commercial symbol; or

(6) failure to forward customer payments to the manufacturer, wholesaler, assembler, or importer.

(c) "Person" means a natural person, but also includes a partnership, corporation, and all other entities.

(d) "Sales representative" means a person; ~~other than an employee;~~ who contracts with a principal to solicit wholesale orders and who is compensated, in whole or in part, by commission; ~~but does not include a person who places orders or purchases exclusively for the person's own account for resale.~~

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Sales representative does not include a person who:

- (1) is an employee of the principal;
- (2) places orders or purchases for the person's own account for resale;
- (3) holds the goods on a consignment basis for the principal's account for resale; or
- (4) distributes, sells, or offers the goods, other than samples, to end users, not for resale.

~~(d)~~ (e) "Sales representative agreement" means a contract or agreement, either express or implied, whether oral or written, for a definite or indefinite period, between a sales representative and another person or persons, whereby a sales representative is granted the right to ~~distribute~~, represent, sell, or offer for sale a manufacturer's, wholesaler's, assembler's, or importer's goods by use of the latter's trade name, trademark, service mark, logotype, advertising, or other commercial symbol or related characteristics, and in which there exists a community of interest between the parties in the marketing of the goods ~~or services~~ at wholesale, ~~retail~~, by lease, agreement, or otherwise. "Wholesale orders" means the solicitation of orders for goods by persons in the distribution chain for ultimate sale at retail.

Subd. 2. **TERMINATION OF AGREEMENT.** (a) A manufacturer, wholesaler, assembler, or importer may not terminate a sales representative agreement unless the person has good cause and:

- (1) that person has given written notice setting forth all the reasons ~~reason~~ reason(s) for the termination at least 90 days in advance of termination; and
- (2) the recipient of the notice fails to correct the reasons stated for termination in the notice within 60 days of receipt of the notice.

(b) A notice of termination is effective immediately upon receipt where the alleged grounds for termination are: the reasons set forth in subdivision 1, paragraph (b), clauses (1) to (6), hereof

- (1) voluntary abandonment of the relationship by the sales representative;
- (2) the conviction of the sales representative of an offense directly related to the business conducted pursuant to the sales representative agreement; or
- (3) material impairment of the good will associated with the manufacturer's, assembler's, or importer's trade name, trademark, service mark, logotype, or other commercial symbol.

Subd. 3. **RENEWAL OF AGREEMENTS.** Unless the failure to renew a sales representative agreement is for good cause, and the sales representative has failed to correct reasons for termination as required by subdivision 2, no person

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may fail to renew a sales representative agreement unless the sales representative has been given written notice of the intention not to renew at least 90 days in advance of the expiration of the agreement. For purposes of this subdivision, a sales representative agreement of indefinite duration shall be treated as if it were for a definite duration expiring 180 days after the giving of written notice of intention not to continue the agreement.

Subd. 4. **RIGHTS UPON TERMINATION.** If a sales representative is paid by commission under a sales representative agreement and the agreement is terminated, the representative is entitled to be paid for all sales ~~made and orders to creditworthy customers made in the representative's territory as to which the representative would have been entitled to commissions pursuant to the provisions of the sales representative agreement,~~ made prior to the date of termination of the agreement or the end of the notification period, whichever is later, regardless of whether the goods or services have been actually been delivered to the purchaser. The payments of commissions are due when the goods or services are delivered or at the date of termination, whichever occurs first shipped. Payment of commissions due the sales representative shall be paid in accordance with the terms of the sales representative agreement or, if not specified in the agreement, payments of commissions due the sales representative shall be paid in accordance with section 181.145.

Subd. 5. **ARBITRATION.** (a) The sole remedy for a sales representative ~~against a manufacturer, wholesaler, assembler, or importer who has allegedly violated alleges a violation of~~ any provision of this section is to submit the matter to arbitration. A sales representative may also submit a matter to arbitration, or in the alternative, at the employee's sales representative's option prior to the arbitration hearing, the employee sales representative may bring the employee's sales representative's common law claims in a court of law, and in that event the claims of all parties must be resolved in that forum. In the event the parties do not agree to an arbitrator within 30 days after the sales representative demands arbitration in writing, either party may request the appointment of an arbitrator from the American Arbitration Association. Each party to a sales representative agreement shall be bound by the arbitration. In the event that the American Arbitration Association declines to appoint an arbitrator, the arbitration shall proceed under chapter 572. The cost of an arbitration hearing must be borne equally by both parties unless the arbitrator determines a more equitable distribution. Except as provided in paragraph (c), the arbitration proceeding is to be governed by the uniform arbitration act, sections 572.08 to 572.30.

(b) The arbitrator may provide any of the following remedies:

- (1) sustainment of the termination of the sales representative agreement;
- (2) reinstatement of the sales representative agreement, or damages;
- (3) payment of commissions due under subdivision 4;
- (4) reasonable attorneys' fees and costs to a prevailing sales representative;

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(5) reasonable attorneys' fees and costs to a prevailing manufacturer, wholesaler, assembler, or importer, if the arbitrator finds the complaint was frivolous, unreasonable, or without foundation; or

(6) the full amount of the arbitrator's fees and expenses if the arbitrator finds that the sales representative's resort to arbitration or the manufacturer's, wholesaler's, assembler's, or importer's defense in arbitration was vexatious and lacking in good faith.

(c) ~~Notwithstanding any provision of the uniform arbitration act,~~ The decision of any arbitration hearing under this subdivision is final and binding on the sales representative and the manufacturer, wholesaler, assembler, or importer. The district court shall, upon application of a party, issue an order confirming the decision.

Subd. 6. SCOPE; LIMITATIONS. (a) This section applies to a sales representative who, during some part of the period of the sales representative agreement:

(1) is a resident of Minnesota or maintains that person's principal place of business in Minnesota; or

(2) whose geographical territory specified in the sales representative agreement includes part or all of Minnesota.

(b) To be effective, any demand for arbitration under subdivision 5 must be made in writing and delivered to the principal on or before one year after the effective date of the termination of the agreement.

## Sec. 2. APPLICATION.

(a) Except as provided in paragraph (b), section 1 applies to a sales representative agreement entered into or renewed on or after the effective date of this act. A sales representative agreement is renewed on or after the effective date of section 1 if:

(1) the period specified in the agreement has expired or expires, but the relationship has continued or continues, either for a new specified period or for an indefinite period; or

(2) the agreement is for an indefinite period, and with the principal's consent or acquiescence, the sales representative solicits orders on or after the effective date of section 1.

(b) Section 1, subdivision 5, is effective the day following final enactment and applies to proceedings pending on or commenced on or after that date.

Presented to the governor May 23, 1991

Signed by the governor May 27, 1991, 10:14 p.m.

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