

HOUSE BILL REPORT

SSB 6120

*As Reported By House Committee on:
Commerce & Labor*

Title: An act relating to the relationship between a sales representative and the representative's principal.

Brief Description: Regulating the relationship between a sales representative and the representative's principal.

Sponsor(s): Senate Committee on Financial Institutions & Insurance (originally sponsored by Senators A. Smith and von Reichbauer).

Brief History:

Reported by House Committee on:
Commerce & Labor, February 26, 1992, DPA.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *Do pass as amended.* Signed by 10 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Fuhrman, Ranking Minority Member; Lisk, Assistant Ranking Minority Member; Franklin; Jones; R. King; O'Brien; Prentice; and Vance.

Staff: Jim Hickman (786-7623) or Jim Kelley (786-7166).

Background: Labor laws in Washington regulate the payment of wages by employers to their employees. Among the requirements are a minimum wage and a provision that ensures that employees who cease work are paid all wages due at the end of the established pay period (with certain exceptions). However, some commissioned sales representatives are not protected by these provisions. For example, the minimum wage does not apply to outside salespersons, and the provision mandating the payment of wages when an employee ceases work does not apply to commissioned sales representatives who do not have established pay periods.

In cases where sales representatives are not paid the commission due to them, or are not paid in a timely fashion, they may bring a civil lawsuit against the principal for breach of contract. Proving breach of contract in court can be expensive and time-consuming. Additionally, if the

contract was not written, it is often difficult for the sales representative to meet the burden of proof.

For these reasons, sales representatives in some cases may not be paid in a timely fashion, or may not be paid at all.

Summary of Amended Bill: Agreements between sales representatives and the principals for whom they work are regulated.

Sales representatives are defined as persons who solicit orders for wholesale purchases. Exempted from this definition are persons who place orders for their own account for resale, or who purchase for their own account for resale, or who sell or take orders for the direct sale of products to the ultimate consumer.

Contracts between principals and sales representatives must be in writing. The writing must set forth the method for computing and paying the sales representative's commission, and a copy of the writing must be given to the sales representative. The writing may not provide a court venue for litigating any action arising under the contract that is outside of Washington.

All agreements between sales representatives and principals under which the sales representative is to solicit wholesale orders within Washington must comply with certain requirements, whether the agreement is in written contract form or not. Among the requirements is a provision requiring the payment of all commission earned by the sales representative no later than 30 days after the receipt of payment by the principal for the products that the sales representative sold. There is also a requirement that the principal pay commissions at the usual place of payment, unless the sales representative requests that the wages be sent through registered mail. Additionally, all principals who enter into contracts under which the sales representative is to solicit wholesale orders within Washington are subject to the personal jurisdiction of Washington courts.

These requirements are mandatory and may not be waived, either by express waiver or by attempting to make the contract or agreement subject to the laws of another state.

Amended Bill Compared to Substitute Bill: The amended bill contains a new definition of "sales representative." The new definition was drafted to clarify the meaning of the term.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill covers sales representatives. These people sometimes have trouble collecting the commissions that are owed to them by their principal. The bill puts a 30-day time limit on the principal to pay the commissions due, as measured from the time the retailer pays the manufacturer. The bill is intended to apply to the wholesale situation, not to those selling to ultimate consumers. The clarified definition of "sales representative" in the amended substitute bill is language that has been agreed to by various parties.

Testimony Against: None.

Witnesses: Senator Adam Smith, Prime Sponsor; and John Woodring, Pacific Northwest Apparel Association (in favor).