Article 27.

Sales Representative Commissions.

§ 66-190. Definitions.

The following definitions apply in this Article:

(1) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of orders, sales, or profits or as a specified amount per order or per sale.

(2) "Person" means an individual, corporation, limited liability company, partnership, unincorporated association, estate, trust, or other entity.

(3) "Principal" means a person who:

a. Manufactures, produces, imports, or distributes a product or service;

b. Contracts with a sales representative to solicit orders for the product or service; and

c. Compensates the sales representative, in whole or in part, by commission.

(4) "Sales representative" means a person who:

a. Contracts with a principal to solicit orders for products or services;

b. Is compensated, in whole or in part, by commission;

c. Is not a seller who complies with:

1. G.S. 25A-39 and G.S. 25A-40; or

2. Part 429 of 16 Code of Federal Regulations (January 1, 2003);

d. Repealed by Session Laws 2003-331, s. 1, effective October 1, 2003.

e. Is not an employee of the principal;

f. Does not sell or take orders for the sale of advertising services; and

g. Is not a person requiring a real estate broker's or sales agent's license under Chapter 93A of the General Statutes.

(5) "Terminate" and "termination" mean the end of the business relationship between the sales representative and the principal, whether by agreement, by expiration of time, or by exercise of a right of termination of either party. (1989, c. 506, s. 1; 2003-331, s. 1.)

§ 66-190.1. Written contracts.

The agreement or contract between a sales representative and a principal shall be in writing. The absence of a written agreement or contract shall not bar a cause of action by, or any remedy available to, a party. (2003-331, s. 1.)

§ 66-191. Payment of commissions; termination.

When a contract between a sales representative and a principal is terminated for any reason other than malfeasance on the part of the sales representative, the principal shall pay the sales representative all commissions due under the contract within 30 days after the effective date of the termination and all commissions that become due after the effective date of termination within 15 days after they become due. If the principal does not make payment as required by this section, the sales representative shall make a written demand upon the principal, sent by certified mail, for the commissions then due. The principal shall respond in writing to the demand within 15 days after the principal receives the written demand. (1989, c. 506, s. 1; 2003-331, s. 1.)

§ 66-192. Civil liability.

(a) A principal who fails to comply with the provisions of G.S. 66-191 or is shown to have wrongfully revoked an offer of commission under G.S. 66-192.1 is liable to the sales representative in a civil action for (i) all amounts due the sales representative plus exemplary damages in an amount not to exceed two times the amount of commissions due the sales representative, (ii) attorney's fees actually and reasonably incurred by the sales representative in the action, and (iii) court costs.

(b) Where the court determines that an action brought by a sales representative against a principal under this Article is frivolous, the sales representative is liable to the principal for court costs and for attorney's fees actually and reasonably incurred by the principal in defending the action.

(c) A principal who is not a resident of this State who contracts with a sales representative to solicit orders in this State shall be subject to personal jurisdiction as provided in G.S. 1-75.4.

(d) Nothing in this Article shall invalidate or restrict any other or additional right or remedy available to a sales representative or preclude a sales representative from seeking to recover in one action on all claims against a principal. (1989, c. 506, s. 1; 2003-331, s. 1.)

§ 66-192.1. Revocable offers of commission; entitlement.

If a principal makes a revocable offer of a commission to a sales representative, the sales representative is entitled to the commission agreed upon if:

(1) The principal revokes the offer of commission;

(2) The sales representative establishes that the revocation was for the purpose of avoiding payment of the commission;

(3) The revocation occurs after the principal has obtained a written order for the principal's product or service because of the efforts of the sales representative; and

(4) The principal's product or service that is the subject of the order is provided to and paid for by a customer. (2003-331, s. 1.)

§ 66-193. Contracts void.

A provision in any contract between a sales representative and a principal purporting to waive any provision of this Article, whether by expressed waiver or by a contract subject to the laws of another state, is void. (1989, c. 506, s. 1; 2003-331, s. 1.)

§§ 66-194 through 66-199. Reserved for future codification purposes.