

State of Arizona  
Senate  
Forty-seventh Legislature  
Second Regular Session  
2006

# SENATE BILL 1402

## AN ACT

AMENDING SECTIONS 44-1798, 44-1798.01 AND 44-1798.02, ARIZONA REVISED STATUTES; REPEALING SECTION 44-1798.03, ARIZONA REVISED STATUTES; AMENDING TITLE 44, CHAPTER 11, ARTICLE 15, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 44-1798.03 AND SECTIONS 44-1798.04 AND 44-1798.05; RELATING TO SALES REPRESENTATIVE CONTRACTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 44-1798, Arizona Revised Statutes, is amended to  
3 read:

4 44-1798. Definitions; exemption

5 In this article, unless the context otherwise requires:

6 1. "Commission" means:

7 (a) Compensation accruing to a sales representative for payment by a  
8 principal, ~~which was earned through the last day on which services were~~  
9 ~~performed by the sales representative,~~ the rate of which is expressed as a  
10 percentage of the dollar amount of orders or sales.

11 (b) ANY OTHER METHOD OF COMPENSATION AGREED TO BETWEEN A SALES  
12 REPRESENTATIVE AND A PRINCIPAL, INCLUDING FEES FOR SERVICES AND RETAINERS.

13 2. "Principal" means a person who ~~does not have a permanent or fixed~~  
14 ~~place of business in this state and who~~ does all of the following:

15 (a) Engages in the business of manufacturing, producing, importing,  
16 SELLING or distributing a product, ~~OR SERVICE.~~

17 (b) Uses sales representatives to solicit orders for the product OR  
18 SERVICE.

19 (c) Compensates the sales representative in whole or part by  
20 commission.

21 3. "Sales representative":

22 (a) Means a person who ~~contracts~~ DOES BOTH OF THE FOLLOWING:

23 (i) ESTABLISHES A BUSINESS RELATIONSHIP with a principal to solicit  
24 ~~wholesale orders from retailers rather than consumers and who is~~ ORDERS FOR  
25 PRODUCTS OR SERVICES.

26 (ii) IS compensated, IN WHOLE OR IN PART, by commission ~~only~~.

27 (b) ~~Sales representative does not include~~ IS NOT AN EMPLOYEE OR a  
28 person who places orders or purchases ~~for his~~ ON THE PERSON'S own account or  
29 for resale ~~or a person who is an employee of a principal~~.

30 4. "Termination" means the end of ~~services performed by~~ THE BUSINESS  
31 RELATIONSHIP BETWEEN the sales representative ~~for the principal, including~~  
32 ~~any action that concludes the relationship of the parties~~ AND THE PRINCIPAL,  
33 WHETHER BY AGREEMENT, BY EXPIRATION OF TIME OR BY EXERCISE OF A RIGHT OF  
34 TERMINATION BY EITHER PARTY.

35 Sec. 2. Section 44-1798.01, Arizona Revised Statutes, is amended to  
36 read:

37 44-1798.01. Sales representative contract

38 A. ~~At the request of either party,~~ The sales representative and the  
39 principal shall enter into a written contract. THE CONTRACT SHALL SET FORTH  
40 THE METHOD BY WHICH THE SALES REPRESENTATIVE'S COMMISSION IS TO BE COMPUTED  
41 AND PAID.

1 B. The principal shall provide each sales representative with a signed  
2 copy of the contract. The principal shall obtain a signed receipt for the  
3 contract from each sales representative.

4 Sec. 3. Section 44-1798.02, Arizona Revised Statutes, is amended to  
5 read:

6 44-1798.02. Termination of sales representative contract;  
7 payment of earned commissions

8 A. If an agreement of services is terminated for any reason BOTH OF  
9 THE FOLLOWING APPLY: ~~—~~

10 1. All the commissions ~~and wages earned and unpaid~~ DUE through the  
11 time of termination ~~are due~~ SHALL BE PAID TO THE SALES REPRESENTATIVE within  
12 a period of not to exceed thirty days after termination.

13 2. ALL THE COMMISSIONS THAT BECOME DUE AFTER THE EFFECTIVE DATE OF  
14 TERMINATION SHALL BE PAID TO THE SALES REPRESENTATIVE WITHIN FOURTEEN DAYS  
15 AFTER THEY BECOME DUE.

16 B. THE PRINCIPAL SHALL PAY THE SALES REPRESENTATIVE ALL COMMISSIONS  
17 DUE WHILE THE BUSINESS RELATIONSHIP IS IN EFFECT IN ACCORDANCE WITH THE  
18 AGREEMENT BETWEEN THE PARTIES.

19 ~~B.~~ C. A principal who fails to comply with ~~subsection~~ SUBSECTIONS A  
20 AND B of this section is liable to the sales representative for damages  
21 ~~sustained by~~ IN THE AMOUNT OF THREE TIMES THE SUM OF THE UNPAID COMMISSIONS  
22 OWED TO the sales representative ~~and the cost of suit, including reasonable~~  
23 ~~attorney fees.~~

24 ~~C. This section does not invalidate or restrict any other right or~~  
25 ~~remedy available to a sales representative or preclude a sales representative~~  
26 ~~from seeking to recover in one action on all claims against a principal.~~

27 D. THE PREVAILING PARTY IN AN ACTION BROUGHT UNDER THIS SECTION IS  
28 ENTITLED TO THE COST OF THE SUIT, INCLUDING REASONABLE ATTORNEY FEES.

29 E. COMMISSIONS SHALL BE PAID AT THE USUAL PLACE OF PAYMENT UNLESS THE  
30 SALES REPRESENTATIVE REQUESTS THAT THE COMMISSIONS BE SENT BY REGISTERED  
31 MAIL. IF, IN ACCORDANCE WITH A REQUEST BY THE SALES REPRESENTATIVE, THE  
32 SALES REPRESENTATIVE'S COMMISSIONS ARE SENT BY MAIL, THE COMMISSIONS ARE  
33 DEEMED TO HAVE BEEN PAID AS OF THE DATE OF THE REGISTERED POSTMARK ON THE  
34 ENVELOPE.

35 F. UNLESS PAYMENT IS MADE PURSUANT TO A BINDING AND FINAL WRITTEN  
36 SETTLEMENT AGREEMENT AND RELEASE, THE ACCEPTANCE BY A SALES REPRESENTATIVE OF  
37 A COMMISSION PAYMENT FROM THE PRINCIPAL DOES NOT CONSTITUTE A RELEASE AS TO  
38 THE BALANCE OF ANY COMMISSIONS CLAIMED DUE. A FULL RELEASE OF ALL COMMISSION  
39 CLAIMS THAT IS REQUIRED BY A PRINCIPAL AS A CONDITION TO A PARTIAL COMMISSION  
40 PAYMENT IS NULL AND VOID.

41 Sec. 4. Repeal

42 Section 44-1798.03, Arizona Revised Statutes, is repealed.

1           Sec. 5. Title 44, chapter 11, article 15, Arizona Revised Statutes, is  
2 amended by adding a new section 44-1798.03 and sections 44-1798.04 and  
3 44-1798.05, to read:

4           44-1798.03. Revocable offers of commission

5           IF A PRINCIPAL MAKES A REVOCABLE OFFER OF A COMMISSION TO A SALES  
6 REPRESENTATIVE, THE SALES REPRESENTATIVE IS ENTITLED TO THE COMMISSION AGREED  
7 ON IF ALL OF THE FOLLOWING APPLY:

8           1. THE PRINCIPAL REVOKES THE OFFER OF COMMISSION AND THE SALES  
9 REPRESENTATIVE ESTABLISHES THAT THE REVOCATION WAS FOR A PURPOSE OF AVOIDING  
10 PAYMENT OF THE COMMISSION.

11           2. THE REVOCATION OCCURS AFTER THE PRINCIPAL HAS OBTAINED AN ORDER FOR  
12 THE PRINCIPAL'S PRODUCT OR SERVICE THROUGH THE EFFORTS OF THE SALES  
13 REPRESENTATIVE.

14           3. THE PRINCIPAL'S PRODUCT OR SERVICE THAT IS THE SUBJECT OF THE ORDER  
15 IS PROVIDED TO AND PAID FOR BY A CUSTOMER.

16           44-1798.04. Jurisdiction; no waiver; election of remedies

17           A PRINCIPAL WHO ESTABLISHES A BUSINESS RELATIONSHIP WITH A SALES  
18 REPRESENTATIVE TO SOLICIT ORDERS FOR PRODUCTS OR SERVICES IN THIS STATE IS  
19 DOING BUSINESS IN THIS STATE FOR PURPOSES OF JURISDICTION. A PROVISION IN A  
20 CONTRACT BETWEEN A SALES REPRESENTATIVE AND A PRINCIPAL THAT PURPORTS TO  
21 WAIVE A PROVISION OF THIS ARTICLE BY AN EXPRESS WAIVER OR A CONTRACT SUBJECT  
22 TO THE LAWS OF ANOTHER STATE IS VOID. THIS SECTION DOES NOT INVALIDATE OR  
23 RESTRICT ANY OTHER RIGHT OR REMEDY AVAILABLE TO A SALES REPRESENTATIVE OR  
24 PRECLUDE A SALES REPRESENTATIVE FROM SEEKING TO RECOVER IN ONE ACTION ON ALL  
25 CLAIMS AGAINST A PRINCIPAL.

26           44-1798.05. Applicability

27           THIS ARTICLE DOES NOT APPLY TO ANY OF THE FOLLOWING:

28           1. AN INDIVIDUAL OR BUSINESS ENTITY ENGAGED IN PROVIDING INSURANCE  
29 PURSUANT TO TITLE 20.

30           2. A BANK, TRUST COMPANY, SAVINGS AND LOAN ASSOCIATION, CREDIT UNION,  
31 CONSUMER LENDER OR FINANCIAL INSTITUTION ORGANIZED, CHARTERED OR HOLDING A  
32 LICENSE OR AUTHORIZATION CERTIFICATE UNDER THE LAW OF THIS STATE, ANY OTHER  
33 STATE, THE UNITED STATES OR THE PARENT, SUBSIDIARY OR AFFILIATE OF SUCH  
34 ENTITY.

35           3. A PERSON WHO HOLDS A REAL ESTATE SALESPERSON'S LICENSE PURSUANT TO  
36 TITLE 32, CHAPTER 20 AND WHO HAS A CLAIM FOR PAYMENT OF A REAL ESTATE  
37 COMMISSION OR COMPENSATION AGAINST THE REAL ESTATE BROKER WITH WHOM SUCH REAL  
38 ESTATE SALESPERSON IS AFFILIATED.