HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4023 Sales Representative Contracts Involving Commissions
SPONSOR(S): Plakon
TIED BILLS: **IDEN./SIM. BILLS:** SB 474

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee		Morton	Creamer
2) Economic Affairs Committee			

SUMMARY ANALYSIS

House Bill 4023 repeals s. 686.201, F.S, removing the statutory requirements on sales representative contracts involving commissions and the provisions relating to a private cause of action.

The bill does not have a fiscal impact on state funds.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

A sales representative contract is an agreement between a principal and a sales representative for the sales representative to solicit orders for the principal's product or service.

Sales representatives include persons or companies soliciting orders for a principal who are compensated, in whole or in part, by commission. Employees of the sales representative and resellers are not sales representatives.

Florida statute places the following restrictions on certain sales representative contracts involving commissions:

- Contracts must be in writing;
- Contracts must set forth the method by which commissions are computed and paid; and
- Sales representatives must be given a signed copy of the contract

If a sales representative contract is not in writing, all commissions due must be paid within 30 days of the contract's termination. If the commissions are not paid, the sales representative has a cause of action for damages equal to three times the unpaid commissions. Attorney fees and court costs are awarded to the prevailing party.

Real estate professionals regulated under chapter 475, F.S., are exempt from the statute.

The statute was enacted in 1984. "It appears that the Florida legislature sought to address the inherent problem of the disparity in bargaining power between a sales representative and a manufacturer or importer."[1] Originally, the statute applied only to out-of-state principals, a classification ultimately found to be an unconstitutional burden on interstate commerce.[2] A federal court explained the premise for the statute as follows:

> Upon termination of the employment relationship, sales representatives apparently encountered difficulties in recovering the commissions they had earned from out-of-state companies. According to [the State], the out-of-state principals were aware of the fact that the expense of litigation would deter sales representatives from filing a law suit. As a result, out-of-state corporations would allegedly withhold commissions, thereby forcing sales representatives to negotiate a distress settlement. Based on [the State's evidence], it appears that the purpose of the double damages provision of the bill was to neutralize the alleged unfair advantage of the principal and place the principal and sales representative on a parity for settlement.[3]

In 2004, the Legislature applied the statute to both in-state and out-of-state principals, curing the constitutionality problem.

Proposed Changes

The bill would repeal the requirements on sales representative contracts involving commissions and the provisions relating to a private cause of action.

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[1] Rosenfeld v. Lu, 766 F.Supp. 1131, 1140 (S.D.Fla. 1991).

[2] *Id.*

[3] *Id.* at 1139. The original statute contained a cause of action for double the unpaid commissions. This was amended to provide for triple the unpaid commissions in 2004.

B. SECTION DIRECTORY:

Section 1 Repeals s. 686.201, F.S., relating to sales representative contracts involving commissions.

Section 2 Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Principals who use sales representatives could see a reduction in costs as they will no longer be required to provide written contracts.

Sales representatives could see an increase in costs associated with recovering unpaid commissions after termination as principals would no longer be subject to treble damages for unpaid commissions.

These impacts could be negated by contract.

D. FISCAL COMMENTS:

The bill does not have a fiscal impact on state funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES