

FIRST REGULAR SESSION

[P E R F E C T E D]

# SENATE BILL NO. 211

93RD GENERAL ASSEMBLY

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INTRODUCED BY SENATOR LOUDON.

Read 1st time January 20, 2005, and ordered printed.

Read 2nd time January 24, 2005, and referred to the Committee on Small Business, Insurance and Industrial Relations.

Reported from the Committee February 21, 2005, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up February 28, 2005. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

0530S.02P

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## AN ACT

To repeal sections 407.911, 407.912, and 407.913, RSMo, and to enact in lieu thereof three new sections relating to certain merchandising practices.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 407.911, 407.912, and 407.913, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 407.911, 407.912, and 407.913, to read as follows:

407.911. As used in sections 407.911 to 407.915, the following terms mean:

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

(2) "Principal", a person, firm, corporation, partnership or other business entity, whether or not it has a permanent or fixed place of business in this state, and who:

(a) Manufactures, produces, imports, **provides**, or distributes a product [for wholesale] **or service for sale**;

(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;

(3) "Sales representative", a person, **firm, corporation, partnership, or other business entity** who contracts with a principal to solicit [wholesale] orders and who is compensated, in whole or in part, by commission, but shall not include [one] **a person, firm,**

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

**corporation, partnership, or other business entity** who places orders or purchases for [his] **its** own account for resale.

407.912. 1. When a commission becomes due shall be determined in the following manner:

(1) The written terms of the contract between the principal and sales representative shall control;

(2) If there is no written contract, or if the terms of the written contract do not provide when the commission becomes due, or the terms are ambiguous or unclear, the commission shall be paid when the [merchandise] **product or service** is delivered and accepted by the purchaser or the principal receives satisfaction in full;

(3) If neither subdivision (1) nor (2) of this subsection can be used to clearly ascertain when the commission becomes due, then the commission shall be due on the date the principal accepts the order and receives satisfaction in full, unless the custom and usage prevalent in this state for the parties' particular industry is different, in which event such custom and usage shall prevail.

2. Nothing in sections 407.911 to 407.915 shall be construed to impair a sales representative from collecting commissions on [merchandise or product] **products or services** ordered prior to the termination of the contract between the principal and the sales representative but delivered and accepted by the purchaser after such termination.

3. When the contract between a sales representative and a principal is terminated, all commissions then due shall be paid within thirty days of such termination. Any and all commissions which become due after the date of such termination shall be paid within thirty days of becoming due.

407.913. Any principal who fails to timely pay the sales representative commissions earned by such sales representative shall be liable to the sales representative in a civil action for the actual damages sustained by the sales representative[,] **and** an additional amount as if the sales representative were still earning commissions calculated on an annualized pro rata basis from the date of termination to the date of payment. In addition the court may award reasonable attorney's fees and costs to the prevailing party.

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