

1                   **SALES REPRESENTATIVE COMMISSION PAYMENT ACT**

2                                   **AMENDMENTS**

3   2019 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Kirk A. Cullimore**

6                                   House Sponsor: Brady Brammer

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8   **LONG TITLE**

9   **General Description:**

10           This bill amends the Sales Representative Commission Payment Act.

11   **Highlighted Provisions:**

12           This bill:

- 13           ▶ defines terms;
- 14           ▶ excludes a participant in a direct sales company from the definition of "sales
- 15   representative"; and
- 16           ▶ makes technical and conforming changes.

17   **Money Appropriated in this Bill:**

18           None

19   **Other Special Clauses:**

20           None

21   **Utah Code Sections Affected:**

22   AMENDS:

23           **34-44-102**, as last amended by Laws of Utah 2010, Chapter 379

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25   *Be it enacted by the Legislature of the state of Utah:*

26           Section 1. Section **34-44-102** is amended to read:

27           **34-44-102. Definitions.**

28           As used in this chapter:

29           (1) "Business relationship" means an agreement that governs the relationship of

30 principal and sales representative.

31 (2) "Commission" means:

32 (a) compensation:

33 (i) that accrues to a sales representative;

34 (ii) for payment by a principal; and

35 (iii) at a rate expressed as a percentage of the dollar amount of sales, orders, or profits;

36 or

37 (b) any other method of compensation agreed to between a sales representative and a

38 principal including:

39 (i) fees for services; and

40 (ii) a retainer.

41 (3) (a) "Direct sales company" means a person that:

42 (i) sells, distributes, or supplies for consideration a good or service through

43 participants:

44 (A) at different levels of distribution; or

45 (B) in accordance with a formula for compensating participants in whole or in part

46 based on:

47 (I) the sale of a good or service; and

48 (II) the recruitment of or the performance or action of another participant; and

49 (ii) (A) permits participants to recruit other participants to sell, distribute, or supply for

50 consideration the person's good or service; or

51 (B) provides for commission, cross-commissions, override commissions, bonuses,

52 refunds, dividends, or other consideration that is or may be paid as a result of:

53 (I) the sale of a good or service; or

54 (II) the recruitment of or the performance or action of another participant.

55 (b) As used in this Subsection (3), "participant" means an independent agent,

56 contractor, or distributor.

57 [~~3~~] (4) "Principal" means a person who:

58 (a) engages in any of the following activities with regard to a product or service:

59 (i) manufactures;

60 (ii) produces;

61 (iii) imports;

62 (iv) sells; or

63 (v) distributes;

64 (b) establishes a business relationship with a sales representative to solicit orders for a  
65 product or a service described in Subsection [~~(3)~~] (4)(a); and

66 (c) agrees to compensate a sales representative, in whole or in part, by commission.

67 [~~(4)~~] (5) (a) Except as provided in Subsection [~~(4)~~] (5)(b), "sales representative" means  
68 a person who enters into a business relationship with a principal:

69 (i) to solicit orders for a product or a service described in Subsection [~~(3)~~] (4)(a); and

70 (ii) under which the person is compensated, in whole or in part, by commission.

71 (b) "Sales representative" does not include:

72 (i) an employee of a principal;

73 (ii) a person licensed under Title 31A, Insurance Code;

74 (iii) a person licensed under Title 41, Chapter 3, Part 2, Licensing;

75 (iv) a person licensed under Title 61, Chapter 2f, Real Estate Licensing and Practices  
76 Act;

77 (v) a person who provides a product or service under a business relationship with a  
78 principal that is incident to the purchase or sale of real property; [~~or~~]

79 (vi) a person who places an order or purchases a product or service for that person's  
80 own account for resale[-]; or

81 (vii) an independent agent, contractor, or distributor through whom a direct sales  
82 company supplies for consideration a good or service.

83 [~~(5)~~] (6) "Terminates" or "termination" means the end of a business relationship  
84 between a sales representative and a principal, whether by:

85 (a) agreement;

86 (b) expiration of a time period; or

87 (c) exercise of a right of termination by either the principal or the sales representative.