

## CALIFORNIA

### CIVIL CODE - CIV

#### DIVISION 3. OBLIGATIONS [1427 - 3272.9]

( *Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*  )

#### PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273]

( *Part 4 enacted 1872.*  )

#### TITLE 1A. INDEPENDENT WHOLESALE SALES REPRESENTATIVES [1738.10 - 1738.17]

( *Title 1A added by Stats. 1990, Ch. 964, Sec. 1.*  )

##### 1738.10.

The Legislature finds and declares that independent wholesale sales representatives are a key ingredient to the California economy. The Legislature further finds and declares the wholesale sales representatives spend many hours developing their territory in order to properly market their products, and therefore should be provided unique protection from unjust termination of the territorial market areas. Therefore, it is the intent of the Legislature, in enacting this act to provide security and clarify the contractual relations between manufacturers and their nonemployee sales representatives.

(*Added by Stats. 1990, Ch. 964, Sec. 1.*)

##### 1738.11.

This chapter shall be known and cited as the Independent Wholesale Sales Representatives Contractual Relations Act of 1990.

(*Added by Stats. 1990, Ch. 964, Sec. 1.*)

##### 1738.12.

For purposes of this chapter the following terms have the following meaning:

(a) "Manufacturer" means any organization engaged in the business of producing, assembling, mining, weaving, importing or by any other method of fabrication, a product tangible or intangible, intended for resale to, or use by the consumers of this state.

(b) "Jobber" means any business organization engaged in the business of purchasing products intended for resale and invoicing to purchasers for resale to, or use by, the consumers of this state.

(c) "Distributor" means any business organization engaged in offering for sale products which are shipped from its inventory, or from goods in transit to its inventory, to purchasers and intended for resale to, or use by the consumers of this state.

(d) "Chargeback" means any deduction taken against the commissions earned by the sales representative which are not required by state or federal law.

(e) "Wholesale sales representative" means any person who contracts with a manufacturer, jobber, or distributor for the purpose of soliciting wholesale orders, is compensated, in whole or part, by commission, but shall not include one who places orders or purchases exclusively for his own

account for resale and shall not include one who sells or takes orders for the direct sale of products to the ultimate consumer.

*(Added by Stats. 1990, Ch. 964, Sec. 1.)*

### **1738.13.**

(a) Whenever a manufacturer, jobber, or distributor is engaged in business within this state and uses the services of a wholesale sales representative, who is not an employee of the manufacturer, jobber, or distributor, to solicit wholesale orders at least partially within this state, and the contemplated method of payment involves commissions, the manufacturer, jobber, or distributor shall enter into a written contract with the sales representative.

(b) The written contract shall include all of the following:

(1) The rate and method by which the commission is computed.

(2) The time when commissions will be paid.

(3) The territory assigned to the sales representative.

(4) All exceptions to the assigned territory and customers therein.

(5) What chargebacks will be made against the commissions, if any.

(c) The sales representative and the manufacturer, jobber, or distributor shall each be provided with a signed copy of the written contract and the sales representative shall sign a receipt acknowledging receipt of the signed contract.

(d) The sales representative shall be provided with the following written information and documentation with payment of the commission:

(1) An accounting of the orders for which payment is made, including the customer's name and invoice number.

(2) The rate of commission on each order.

(3) Information relating to any chargebacks included in the accounting.

(e) No contract shall contain any provision which waives any rights established pursuant to this chapter. Any such waiver is deemed contrary to public policy and void.

*(Added by Stats. 1990, Ch. 964, Sec. 1.)*

### **1738.14.**

A manufacturer, jobber, or distributor who is not a resident of this state, and who enters into a contract regulated by this chapter is deemed to be doing business in this state for purposes of personal jurisdiction.

*(Added by Stats. 1990, Ch. 964, Sec. 1.)*

### **1738.15.**

A manufacturer, jobber, or distributor who willfully fails to enter into a written contract as required by this chapter or willfully fails to pay commissions as provided in the written contract shall be liable to the sales representative in a civil action for treble the damages proved at trial.

*(Added by Stats. 1990, Ch. 964, Sec. 1.)*

**1738.16.**

In a civil action brought by the sales representative pursuant to this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other recovery.

*(Added by Stats. 1990, Ch. 964, Sec. 1.)*

**1738.17.**

This chapter shall not apply to any person licensed pursuant to Division 9 (commencing with Section 23000) of the Business and Professions Code.

*(Added by Stats. 1990, Ch. 964, Sec. 1.)*

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