

Labor and Industrial Relations: Poncy, Chair; Hummel and Running.

Amend (3409) & Do Pass 3/22/85
JAN 31 1985

LABOR & INDUSTRIAL RELATIONS

HOUSE FILE 164

BY MUHLBAUER

Passed House, Date 4-8-85 (p. 1395) Passed Senate, Date _____

Vote: Ayes 96 Nays 0 Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the payment of commissions to commission
2 salespersons and providing a penalty.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HOUSE FILE 164

H-3409

1 Amend House File 164 as follows:
2 1. By striking everything after the enacting
3 clause and inserting the following:
4 "Section 1. Section 91A.2, subsection 3,
5 unnumbered paragraph 1, Code 1985, is amended to read
6 as follows:
7 "Employee" means a natural person who is employed
8 in this state for wages by an employer. Employee also
9 includes a commission salesperson who takes orders or
10 performs services on behalf of a principal and who is
11 paid on the basis of commissions but does not include
12 persons who purchase for their own account for resale.
13 For the purposes of this chapter, the following
14 persons engaged in agriculture are not employees:".

HF 164

H-3409 FILED MARCH 22, 1985

Adopted 4/8/85 (p. 1395)

BY COMMITTEE ON LABOR AND INDUSTRIAL RELATIONS

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1 Section 1. NEW SECTION. 91A.18 PROMPT PAYMENT OF
2 COMMISSIONS TO COMMISSION SALESPERSONS.

3 1. For the purposes of this section, "commission sales-
4 person" means a person who is paid on the basis of commissions
5 for sales and who is not covered by section 91A.2, subsection
6 3. For the purposes of this section, the phrase "commissions
7 earned through the last day of employment" means commissions
8 due for services or merchandise which have actually been
9 delivered to and accepted by the customer by the final day of
10 the salesperson's employment.

11 2. a. When a person employing a commission salesperson in
12 this state terminates the salesperson's employment, or when
13 the salesperson resigns the position, the employer shall
14 promptly pay the salesperson, at the usual place of payment,
15 the salesperson's commissions earned through the last day of
16 employment or be liable to the salesperson for the penalty
17 provided under section 3 in addition to any earned commissions
18 unless the salesperson requests that the commissions be sent
19 to the salesperson through the mails. If, in accordance with
20 a request by the salesperson, the salesperson's commissions
21 are sent to the salesperson through the mail, the commissions
22 shall be deemed to have been paid as of the date of their
23 postmark for the purposes of this section.

24 b. If the employer terminates the salesperson or if the
25 salesperson resigns giving at least five days written notice,
26 the employer shall pay the salesperson's commissions earned
27 through the last day of employment on demand no later than
28 three working days after the salesperson's last day of work.

29 c. If the salesperson resigns without giving at least five
30 days written notice, the employer shall pay the salesperson's
31 commissions earned through the last day of employment on
32 demand no later than six working days after the salesperson's
33 last day of work.

34 d. Notwithstanding paragraphs "b" and "c", if the
35 terminated or resigning salesperson was, during that

1 employment, entrusted with the collection, disbursement, or
2 handling of money or property, the employer has ten working
3 days after the termination of employment to audit and adjust
4 the accounts of the salesperson before the salesperson can
5 demand the commissions earned through the last day of
6 employment. In such cases, the penalty provided in subsection
7 3 applies only from the date of demand made after the
8 expiration of the ten-working-day audit period.

9 3. If the employer fails to pay the salesperson's com-
10 missions earned through the last day of employment on demand
11 within the applicable period as provided under subsection 2,
12 the employer is liable to the salesperson, in addition to the
13 salesperson's earned commissions, for a penalty for each day,
14 not exceeding fifteen days, which the employer is late in
15 making full payment or satisfactory settlement to the
16 salesperson for the commissions earned through the last day of
17 employment. The daily penalty is an amount equal to one-
18 fifteenth of the salesperson's commissions earned through the
19 last day of employment which are still unpaid at the time that
20 the penalty is assessed.

21 4. a. If there is a dispute concerning the amount of the
22 salesperson's commissions earned through the last day of
23 employment or whether the employer has properly audited and
24 adjusted the salesperson's account, the penalty provided in
25 subsection 3 does not apply if the employer pays the amount it
26 in good faith believes is owed the salesperson for commissions
27 earned through the last day of employment within the
28 applicable period as provided under subsection 2. However, if
29 the dispute is later adjudicated and it is determined that the
30 salesperson's commissions earned through the last day of
31 employment were greater than the amount paid by the employer,
32 the penalty provided in subsection 3 applies.

33 b. If a dispute under this subsection is later adjudicated
34 and it is determined that the salesperson was not promptly
35 paid commissions earned through the last day of employment as

1 provided under subsection 2, the employer shall pay reasonable
2 attorney's fees incurred by the salesperson.

3 5. This section does not prevent a commission salesperson
4 from collecting commissions on merchandise ordered prior to
5 the last day of employment but delivered and accepted after
6 termination of employment. However, the penalties prescribed
7 in subsection 3 apply only with respect to the payment of
8 commissions earned through the last day of employment.

9 EXPLANATION

10 This bill provides requirements for the prompt payment of
11 commission salespersons who are not otherwise included in the
12 definition of employee under the wage collection law. The
13 bill provides civil penalties for the failure to make prompt
14 payment as required.

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Sen Lahn 4/9/85 Do Pass 4/12 (p. 1249)

HOUSE FILE 164

BY MUHLBAUER

(As Amended and Passed by the House April 8, 1985)

Passed House, Date 4-8-85 (p. 1375) Passed Senate, Date 4-18-85 (p. 1476)

Vote: Ayes 96 Nays 0 Vote: Ayes 39 Nays 4

Approved May 15, 1985

A BILL FOR

1 An Act relating to the payment of commissions to commission
2 salespersons and providing a penalty.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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House Amendments _____

1 Section 1. Section 91A.2, subsection 3, unnumbered
2 paragraph 1, Code 1985, is amended to read as follows:

3 "Employee" means a natural person who is employed in this
4 state for wages by an employer. Employee also includes a
5 commission salesperson who takes orders or performs services
6 on behalf of a principal and who is paid on the basis of
7 commissions but does not include persons who purchase for
8 their own account for resale. For the purposes of this
9 chapter, the following persons engaged in agriculture are not
10 employees:

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chapter, the following persons engaged in agriculture are not employees:

DONALD D. AVENSON
Speaker of the House

ROBERT T. ANDERSON
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 164, Seventy-first General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 15, 1985

TERRY E. BRANSTAD
Governor

HOUSE FILE 164

AN ACT

RELATING TO THE PAYMENT OF COMMISSIONS TO COMMISSION SALESPERSONS AND PROVIDING A PENALTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 91A.2, subsection 3, unnumbered paragraph 1, Code 1985, is amended to read as follows:

"Employee" means a natural person who is employed in this state for wages by an employer. Employee also includes a commission salesperson who takes orders or performs services on behalf of a principal and who is paid on the basis of commissions but does not include persons who purchase for their own account for resale. For the purposes of this