

KANSAS STATUTES
CHAPTER 44 – LABOR AND INDUSTRIES
ARTICLE 3 – PAYMENT OF COMPENSATION
SECTIONS 44-341 TO 44-347 – COMMISSION SALESPERSONS

Section 44-341

Payment of commissions; definitions.

As used in this act:

- (a) "Commission salesperson" means a person who contracts with and is authorized by a principal to solicit within this state wholesale orders for that principal for merchandise to be shipped into this state or services to be performed within this state and who is compensated therefor by commission. Commission salesperson does not include a person who: (1) Places orders or purchases for the person's own account for resale; (2) is an employee subject to the provisions of K.S.A. [44-313](#) et seq., and amendments thereto; (3) is a person licensed under the real estate brokers' and salespersons' license act; or (4) is engaged in door-to-door sales regulated by K.S.A. [50-640](#), and amendments thereto.
- (b) "Commissions earned through the last day of the contractual relationship" or "earned commissions" means commissions with respect to services or merchandise which actually has been delivered or furnished to, accepted by and paid for by the customer by the last day of the commission salesperson's contractual relationship.
- (c) "Contractual relationship" means the relationship between a principal and a commission salesperson based on a contract between them providing for the commission salesperson to solicit and make sales within this state of merchandise to be shipped into or services to be performed within this state.
- (d) "Principal" means any individual, partnership, association, joint stock company, trust, corporation or administrator or executor of the estate of a deceased individual, or the receiver, trustee or successor thereof, contracting with a commission salesperson to solicit and make sales within this state for merchandise to be shipped into this state or services to be performed within this state.

History: L. 1987, ch. 185, § 1; July 1.

CASE ANNOTATIONS

1. The term commission salespersons as used in section includes corporations. *Fusion, Inc. v. Nebraska Aluminum Castings, Inc.*, 934 F. Supp. 1270, 1272 (1996).

Section 44-342

Same; termination of contractual relationship; penalty and interest for nonpayment, when.

- (a) Subject to the provisions of subsection (d), whenever a principal discharges a commission salesperson or whenever a commission salesperson quits or resigns, the principal shall pay, at the usual place of payment, the commission salesperson's commissions earned through the last day of the contractual relationship not later than 30 days after the last day of the contractual relationship or by mail postmarked within that period.
- (b) If a principal knowingly fails to pay a commission salesperson any earned commission as required by subsection (a), such principal shall be liable therefor and shall be additionally liable for damages in the fixed amount of 1% of the unpaid earned commissions for each day, except Sunday and legal holidays, upon which such failure continues after the day upon which payment is required by subsection (a) or in an amount equal to the unpaid earned commissions, whichever is less. For the purpose of such additional damages, the failure to pay shall not be deemed to continue after the date of the filing of a petition in bankruptcy with respect to the principal if such principal is adjudicated bankrupt upon such petition.
- (c) If a principal fails to pay a commission salesperson any earned commission as required by subsection (a), such principal may be assessed interest as provided under K.S.A. [16-201](#), and amendments thereto, on such commissions from the date such commissions are required to be paid pursuant to subsection (a).
- (d) Notwithstanding the provisions of subsection (a), if the terminated or resigning commission salesperson was entrusted with the collection, disbursement or handling of money or property during the contractual relationship, such person has 10 days after the termination of the contractual relationship to audit and adjust the accounts of such commission salesperson before the 30-day period required for payment of commissions earned through the last day of the contractual relationship begins. In such cases, the penalty provided in subsection (b) shall apply only after the expiration of the 10-day audit period and the 30-day period required under this subsection.

History: L. 1987, ch. 185, § 2; July 1.

CASE ANNOTATIONS

1. The term commission salespersons as used in section includes corporations. *Fusion, Inc. v. Nebraska Aluminum Castings, Inc.*, 934 F. Supp. 1270, 1272 (1996).
2. Settlement agreement for commissions due is an executory accord suspending original claim; by suing to enforce provisions of settlement agreement plaintiff may not benefit from penalty provision of statute for unpaid commissions. *Gillick v. Brite Voice Systems, Inc.*, 267 Kan. 420, 425, 981 P.2d 1165 (1999).
3. Plaintiff failed to prove he was entitled to damages for employer's failure to pay earned commissions. *Clayton v. Computer Associates Intern, Inc.*, 262 F. Supp. 2d 1188, 1194 (2002).
4. Post-termination commissions not earned at time of termination not subject to Kansas commission salesperson act. *LD Circuit LLC v. Sprint Communications Co., L.P.*, 364 F. Supp. 2d 1246, 1259 (2005).

Section 44-343

Same; payment of undisputed commissions; effect of acceptance.

- (a) In case of a dispute over the amount of earned commissions due, the principal shall pay, without conditions and within the 30-day period provided by K.S.A. [44-342](#), all earned commissions, or parts thereof, believed in good faith by the principal to be due, leaving to the salesperson all remedies that the salesperson might otherwise be entitled to, including those provided under this act, as to any balance claimed.
- (b) Unless payment is made by binding settlement agreement, the acceptance by a commission salesperson of a payment under this section shall not constitute a release as to the balance of the salesperson's claim and any release required by a principal as a condition to payment shall be in violation of this act and shall be null and void.

History: L. 1987, ch. 185, § 3; July 1.

Section 44-344

Same; deceased salesperson.

In the absence of actual notice of probate proceedings, the principal may pay, upon proper demand, wages due a deceased commission salesperson. Any such payment or payments shall be in the following order of preference: Spouse, children 18 years of age and over in equal shares, father, mother, sisters and brothers in equal shares, or the person to whom funeral expenses are due.

History: L. 1987, ch. 185, § 4; July 1.

Section 44-345

Same; corporate employees; liability for violation.

In case of violation of K.S.A. 44-342 by a corporate employer, either the corporation or any officer thereof or any agent having the management of the corporation who knowingly permits the corporation to engage in such violation shall be deemed the principal for purposes of this act.

History: L. 1987, ch. 185, § 5; July 1.

Section 44-346

Same; proceedings to enforce act.

Any proceeding by one or more commission salespersons to assert any claim arising under or pursuant to this act may be brought in any court of competent jurisdiction.

History: L. 1987, ch. 185, § 6; July 1.

Section 44-347

Same; collection of commissions not covered by act.

Nothing in this act shall be construed to prevent a commission salesperson from collecting commissions on merchandise ordered prior to the last day of the contractual relationship but delivered, accepted or paid for after termination of the contractual relationship but the penalty prescribed in K.S.A. 44-342 shall apply only with respect to the payment of commissions earned through the last day of the contractual relationship.

History: L. 1987, ch. 185, § 7; July 1.

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