

MASSACHUSETTS GENERAL LAWS
PART 1 – ADMINISTRATION OF THE GOVERNMENT
TITLE XV – REGULATION OF TRADE
CHAPTER 104 – AGENTS, CONSIGNEES AND FACTORS

Section 1

Sales by consignees.

A factor or other agent intrusted with the possession of merchandise or of a bill of lading consigning merchandise to him with authority to sell the same shall be deemed the true owner of such merchandise, so far as to give validity to any bona fide contract of sale made by him.

Section 2

Lien of consignee.

A shipper in lawful possession of merchandise at the time of shipment and in whose name it is shipped for sale shall be deemed the true owner thereof so far as to entitle the consignee to a lien thereon for money advanced or for securities given to the shipper for or on account of such consignment, unless the consignee, at or before the time when he made the advances or gave the securities, had notice by the bill of lading or otherwise that the shipper was not the actual and bona fide owner.

Section 3

Lien on consignment.

If a person intrusted with merchandise has authority to sell or consign the same, a consignee to whom he consigns it shall have a lien thereon for any money or merchandise advanced or for any negotiable security given by him on the faith of such consignment, to or for the use of the person in whose name the consignment or delivery was made, and for any money, negotiable security or merchandise received for the use of such consignee by the person in whose name the consignment or delivery was made, if such consignee had, at the time of such advance or receipt, probable cause to believe that the person in whose name the merchandise was shipped, transmitted or delivered was the actual owner thereof or had a legal interest therein to the amount of said lien.

Section 4

Lien for advances to consignee.

If a consignee or factor, having possession of merchandise, or a bill of lading, permit, certificate or order for the delivery thereof, with authority to sell said merchandise, deposits or pledges such merchandise or a part thereof or such document with any other person as security for money or merchandise advanced or for a negotiable instrument given by him on the credit thereof, such other person, if he makes such loan, advance or exchange in good faith and with probable cause to believe that the agent making the deposit or pledge had authority so to do and was not acting fraudulently against the owner of such merchandise, shall, notwithstanding he has notice of such agency, acquire the same interest in and authority over such merchandise and documents as he would have acquired if the agent had been the actual owner thereof. In the event of conflict between the provisions of this section and provisions of article nine of chapter one hundred and six, the provisions of said article nine govern.

Section 5

Pledge by consignee to secure antecedent debt.

If such merchandise or document is accepted in deposit or pledge for an antecedent debt due from such consignee or factor, the person receiving the same shall thereby acquire no other or further right or interest in or authority over or lien upon the same than the consignee or factor might have enforced against the actual owner.

Section 6

Effect of Secs. 1 to 5 on lien of consignee.

The three preceding sections shall not affect the lien of a consignee or factor for expenses and charges attending the shipment, transportation and care of merchandise intrusted to him; nor prevent the actual owner of merchandise from recovering it, previous to any pledge thereof, from the consignee or factor or from his assignee in case of his insolvency; nor prevent such owner from recovering any merchandise or document so deposited or pledged, on tender of the money and restoration of the negotiable security or property so advanced to such consignee or factor, and on tender of such further amount of money and restoration of such negotiable instrument or property advanced or given by the consignee or factor to the owner, or upon tender of an amount of money equal to the amount or value of such merchandise; nor prevent him from recovering from a person with whom such merchandise has been so deposited or pledged any balance of money remaining in his hands as the proceeds of the sales thereof, after deducting the amount or value of the money or negotiable security so advanced thereon.

Section 7

Definitions.

The following terms as used in sections eight and nine, unless the context otherwise requires, shall have the following meanings:

"Commission", compensation accruing to a sales representative for payment by a principal, earned through the last day on which services were performed by the sales representative, the rate of which is expressed as a percentage of the dollar amount of orders or sales.

"Principal", a person who manufactures, produces, imports or distributes a product for wholesale; contracts to solicit orders for such product, and compensates individuals who solicit wholesale orders in whole or in part, by commission.

"Sales representative", a person other than an employee, who contracts with a principal to solicit wholesale orders in the commonwealth and who is compensated, in whole or in part, by commission but shall not include one who places orders or purchases exclusively for his own account for resale.

"Day", any calendar day, including Saturdays, Sundays and legal holidays.

"Termination", the end of services performed by the sales representative for the principal whether by expiration of a contract, discharge or resignation.

Section 8

Contract for services; payment of commissions.

The terms of the contract between a principal and a sales representative shall determine when a commission shall be due. If the time when such commission shall be due is not specified in a contract, the past practices between the parties shall control or, if there are no such past practices, the custom and usage prevalent in the commonwealth for the business that is the subject of the relationship between the parties shall control. All commissions that are due at the time of termination of a contract between a sales representative and principal shall be paid within fourteen days after the date of termination. Commissions that become due after the termination date shall be paid within fourteen days after the date on which the commissions became due.

Section 9

Liability for failure to pay commissions; jurisdiction; waiver of statutory provisions.

A principal who wilfully or knowingly fails to comply with provisions relating to the prompt payment of commissions set forth in section eight shall be liable to the sales representative in a civil action for the principal amount of the commissions owed and for an additional sum up to three times the amount of commissions and for reasonable attorney's fees and court costs. A principal who is not a resident of the commonwealth and who enters into a contract subject to the provisions of sections seven to nine shall be deemed to be doing business in the commonwealth for purposes of the exercise of personal jurisdiction over such principal. No provision of sections seven to nine may be waived, whether by express waiver or by an attempt to make a contract or agreement subject to the laws of another jurisdiction. A waiver of any provision of sections seven to nine shall be void.

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