

Sec. 32. **REPEALER.**

Minnesota Statutes 1988, sections 62D.02, subdivision 2; 62D.12, subdivision 16; and 62D.18, subdivisions 2, 3, and 5, are repealed.

Presented to the governor April 24, 1990

Signed by the governor April 26, 1990, 10:43 p.m.

CHAPTER 539—S.F.No. 2282

An act relating to contracts; providing for enforcement of certain contracts; proposing coding for new law in Minnesota Statutes, chapter 325E; proposing coding for new law as Minnesota Statutes, chapter 338.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [325E.37] TERMINATION OF SALES REPRESENTATIVES.

Subdivision 1. DEFINITIONS. (a) As used in this section, the following terms have the meaning given them.

(b) "Good cause" means failure by the sales representative to substantially comply with the material and reasonable requirements imposed by the manufacturer, wholesaler, assembler, or importer, including, but not limited to:

(1) the bankruptcy or insolvency of the sales representative;

(2) assignment for the benefit of creditors or similar disposition of the assets of the sales representative's business;

(3) voluntary abandonment of the business by the sales representative;

(4) conviction or a plea of guilty or no contest to a charge of violating any law relating to the sales representative's business; or

(5) any act by or conduct of the sales representative which materially impairs the good will associated with the manufacturer's, wholesaler's, assembler's, or importer's trademark, trade name, service mark, logotype, or other commercial symbol.

(c) "Sales representative" means a person, other than an employee, who contracts with a principal to solicit wholesale orders and who is compensated, in whole or in part, by commission, but does not include a person who places orders or purchases exclusively for the person's own account for resale.

(d) "Sales representative agreement" means a contract or agreement, either express or implied, whether oral or written, for a definite or indefinite period, between a sales representative and another person or persons, whereby a sales

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representative is granted the right to distribute, represent, sell, or offer for sale a manufacturer's, wholesaler's, assembler's, or importer's goods by use of the latter's trade name, trademark, service mark, logotype, advertising, or other commercial symbol or related characteristics, and in which there exists a community of interest between the parties in the marketing of the goods or services at wholesale, retail, by lease, agreement, or otherwise.

Subd. 2. TERMINATION OF AGREEMENT. (a) A manufacturer, wholesaler, assembler, or importer may not terminate a sales representative agreement unless the person has good cause and:

(1) that person has given written notice setting forth all the reasons for the termination at least 90 days in advance of termination; and

(2) the recipient of the notice fails to correct the reasons stated for termination in the notice within 60 days of receipt of the notice.

(b) A notice of termination is effective immediately upon receipt where the alleged grounds for termination are:

(1) voluntary abandonment of the relationship by the sales representative;

(2) the conviction of the sales representative of an offense directly related to the business conducted pursuant to the sales representative agreement; or

(3) material impairment of the good will associated with the manufacturer's, assembler's, or importer's trade name, trademark, service mark, logotype, or other commercial symbol.

Subd. 3. RENEWAL OF AGREEMENTS. Unless the failure to renew a sales representative agreement is for good cause, and the sales representative has failed to correct reasons for termination as required by subdivision 2, no person may fail to renew a sales representative agreement unless the sales representative has been given written notice of the intention not to renew at least 90 days in advance of the expiration of the agreement.

Subd. 4. RIGHTS UPON TERMINATION. If a sales representative is paid by commission under a sales representative agreement and the agreement is terminated, the representative is entitled to be paid for all sales made and orders to creditworthy customers made in the representative's territory prior to the date of termination of the agreement or the end of the notification period, whichever is later, regardless of whether the goods or services have actually been delivered to the purchaser. The payments of commissions are due when the goods or services are delivered or at the date of termination, whichever occurs first.

Subd. 5. ARBITRATION. (a) The sole remedy for a sales representative against a manufacturer, wholesaler, assembler, or importer who has allegedly violated any provision of this section is to submit the matter to arbitration. At the employee's option, the employee may bring the employee's common law claims in a court of law. In the event the parties do not agree to an arbitrator

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within 30 days, either party may request the appointment of an arbitrator from the American Arbitration Association. Each party to a sales representative agreement shall be bound by the arbitration. The cost of an arbitration hearing must be borne equally by both parties. The arbitration proceeding is to be governed by the uniform arbitration act, sections 572.08 to 572.30.

(b) The arbitrator may provide any of the following remedies:

(1) sustainment of the termination of the sales representative agreement;

(2) reinstatement of the sales representative agreement;

(3) payment of commissions due under subdivision 4;

(4) reasonable attorneys' fees and costs to a prevailing sales representative;

(5) reasonable attorneys' fees and costs to a prevailing manufacturer, wholesaler, assembler, or importer, if the arbitrator finds the complaint was frivolous, unreasonable, or without foundation; or

(6) the full amount of the arbitrator's fees and expenses if the arbitrator finds that the sales representative's resort to arbitration or the manufacturer's, wholesaler's, assembler's, or importer's defense in arbitration was vexatious and lacking in good faith.

(c) Notwithstanding any provision of the uniform arbitration act, the decision of any arbitration hearing under this subdivision is final and binding on the sales representative and the manufacturer, wholesaler, assembler, or importer.

Sec. 2. [338.01] EMPLOYMENT CONTRACTS; FINDINGS.

The legislature finds that a basic tenet of contract law is mutually enforceable promises. The legislature further finds that contracts respecting employment are important and desirable. The legislature's purpose in enacting sections 3 and 4 is to assist in ensuring that the mutual promises in employment contracts are honored and enforced.

Sec. 3. [338.02] NEW EMPLOYERS; CONTRACT OBLIGATION.

Subdivision 1. DEFINITION. As used in this section, "new employer" means any purchaser, assignee, or transferee of a business the employees of which are subject to a collective bargaining agreement, if the purchaser, assignee, or transferee conducts or will conduct substantially the same business operation, or offer the same service, and use the same physical facilities, as the contracting employer.

Subd. 2. NEW EMPLOYER OBLIGATION. Where a collective bargaining agreement between an employer and a labor organization contains a clause regulating the rights and obligations of a new employer, that clause shall be binding upon and enforceable against any new employer until the expiration date of the agreement. That clause shall not be binding upon or enforceable against any new employer for more than three years from the effective date of the collective bargaining agreement between the contracting employer and the labor organization.

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Subd. 3. DISCLOSURE. An employer who is a party to a collective bargaining agreement containing a clause regulating the rights and obligations of a new employer has the affirmative duty to disclose the existence of the agreement and clause to a new employer. The disclosure requirement is satisfied by including in any contract of sale, agreement to purchase, or any similar instrument of conveyance, a statement that the new employer is bound by that clause as provided for in the collective bargaining agreement. Failure of an employer to disclose the existence of a collective bargaining agreement containing that clause does not affect the enforceability of the collective bargaining agreement against a new employer.

Subd. 4. EXCEPTION. This section does not apply to a receiver or trustee in bankruptcy of any contracting employer who has gone into receivership or bankruptcy, or to any employer who acquires a business from a receiver or trustee in bankruptcy.

Sec. 4. [338.03] ENFORCEMENT; COURT JURISDICTION.

The rights and duties under section 3 may be enforced in a civil action in a district court of appropriate jurisdiction.

Sec. 5. EFFECTIVE DATE.

Sections 2 to 4 are effective the day following final enactment. Section 1 is effective August 1, 1990, and applies to any sale representative agreements entered into or renewed on or after that date.

Presented to the governor April 24, 1990

Signed by the governor April 26, 1990, 4:08 p.m.

CHAPTER 540—S.F.No. 443

An act relating to health; establishing standards for the use of nitrous oxide in the practice of podiatric medicine; amending Minnesota Statutes 1988, section 153.01, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 153.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1988, section 153.01, subdivision 2, is amended to read:

Subd. 2. **PODIATRIC MEDICINE.** "Podiatric medicine" means the diagnosis or medical, mechanical, or surgical treatment of the ailments of the human hand, foot, ankle, and the soft tissue of the lower leg distal to the tibial tuberosity, including amputation of the toe, but not including amputation of the foot,

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