

# Summary of The Consumer Protection and Business Practices Act

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## Summary of Parts

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## **Part I: Preliminary:**

*Includes the definitions for the Act.*

Many of the definitions were in the former Part II – Marketplace Practices and also in several of the other Parts of the Act. By having the definition apply to the entire Act, it avoids having to repeat it several times.

## **Part II: Marketplace Practices:**

*Copies the part for Marketplace Practices from the existing Act, but moves the administration and enforcement mechanisms to Part VIII.*

The Part includes the prohibition against unfair practices by suppliers. It defines unfair practices that mislead, deceive or take advantage of a consumer. Nineteen specific actions that constitute unfair practices are listed. It also details circumstances in which an unfair practice can occur.

## **Part III: Consumer Products Warranties:**

*Copies the part for Consumer Products Warranties from the existing Act.*

### **Interpretation and Application**

This Part contains specific definitions that apply only to consumer products warranties.

The Part makes it clear that it is not a self-contained code, and that any other rights and remedies that a consumer may have against a supplier are preserved.

Subsequent owners of the products receive the same warranties as original owners.

For products described as second-hand or substandard products, the description and purchase price are material facts in determining the qualities that a consumer should reasonably be able to expect.

Waivers of the benefits by consumers and purported exclusions by suppliers are expressly forbidden and are void.

### **Express Warranties**

Express warranties are the representations given by the retailer or manufacturer, orally, in writing or in advertising, as to the quality, durability or capability of a consumer product. An express warranty given by a retailer binds the retailer; an express warranty given by the manufacturer binds the manufacturer and the retailer. Evidence of verbal representations is admissible even if it contradicts any written representations. Anything found on the package

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or in advertising is binding on the manufacturer and retailer.

### **Statutory Warranties**

Statutory warranties are warranties as to the availability, salability and fitness of the product that apply regardless of any representations by the manufacturer or retailer.

Specifically, retailers and manufacturers warrant that they have a the right to sell the product; that it is free of liens; that the product is of acceptable quality (except where defects are specifically brought to the attention of the consumer or the consumer should have been aware of them); that the product is suitable for a particular purpose that the consumer brought to the attention of the retailer; that spare parts and repairs will be reasonably available.

There is a rebuttable presumption of breach of warranty where the consumer proves poor quality, malfunctioning or breakdown, regardless of whether the cause can be determined.

A retailer who is liable on a statutory warranty is entitled to compensation from the manufacturer.

### **Additional Written Warranties**

A retailer is bound by any additional written warranty found accompanying or attached to a consumer product, unless the retailer makes it clear to the consumer that he or she is not bound.

Additional written warranties are concurrent with statutory warranties.

### **Remedies**

Specific remedies are provided for breach of consumer products warranties. These remedies are in addition to any other recourse that a consumer might have.

If the breach is remediable, the party responsible must remedy it (e.g. repair the consumer product) and pay damages for any loss suffered by the consumer that was foreseeable. If that is not done, the consumer can have the product repaired elsewhere and the responsible party must pay for the repairs. If it is not capable of being remedied, the consumer may reject the product within a reasonable time and receive his or her money back.

Subsequent owners are also entitled to reject a consumer product and recover all his or her costs relating to acquisition of the product.

The consumer must return the consumer product to the place of business (or a repair facility) unless return is impractical due to size, weight, attachment or installation, in which case the responsible party must arrange to pick up the product, repair it and return it.

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Where there is an additional written warranty respecting repair or replacement, if the responsible party does not repair or replace the product, the consumer may have it repaired elsewhere and recover repair costs and damages for losses. If the additional written warranty does not cover all costs of disassembly if it is determined that there is no defect, the consumer must agree to pay those costs before the product is disassembled for diagnostics. Warrantors are also liable for personal injuries arising from the defective product. Consumers may also recover exemplary damages from the retailer or manufacturer if the breach was wilful.

Consumers will not be responsible for the other party's court costs regardless of the outcome.

### **Resolution of Disputes**

Options are provided for service of documents depending on whether the person being served is a corporation with or without a registered office in Saskatchewan or not a corporation. Courts in Saskatchewan have jurisdiction over claims for products purchased in Saskatchewan from a retailer or manufacturer that carries on business in Saskatchewan.

A breach of standards established by any federal or provincial legislation is considered a breach of statutory warranties.

### **Part IV: Unsolicited Goods**

*Copies the part for Unsolicited Goods from the existing Act.*

Unsolicited goods are any that are provided to a consumer without the consumer requesting them. Consumers who receive unsolicited goods are not responsible to pay for them unless the consumer acknowledges the intention to keep the goods.

### **Part V: Consumer Contracts:**

*Establishes a framework so that all consumer contract provisions found in the existing Act will be put into regulations, and permits new consumer contracts to be regulated using the same framework.*

Existing consumer contracts that are found in the Act are:

- Internet contracts;
- Future performance contracts;
- Personal development services contracts;
- Travel club contracts; and
- Remote contracts.

The definition section includes common definitions that were found in all of Parts IV.1 to IV.5 (such as "consumer") as well as bringing together key definitions that were found in one

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or more of the Parts. The generic term “consumer contract” is defined to mean all of the types of contracts previously found in the five Parts as well as any new type of contract that needs to be added to be prescribed in regulation.

In the existing Parts, each applies only to contracts that exceed a certain amount. Some amounts are stated in the Act and some are found in regulations. In each case, the existing value is \$50. The new Part allows them all to be set in regulation, which means they can be the same or different depending on the need.

Exemptions to the application of the Part will be prescribed in the regulations, as it is now.

Personal development services contracts offered by non-profit corporations, cooperatives, private member-owned clubs, or charities or municipalities are exempt, as they are now.

All the rest of the details that are now found in Parts IV.1 through IV.5 will be found in the regulations. This includes details on when contracts can be cancelled, how to cancel, what the effect of cancellation is and relief against cancellation (several of which were identical or nearly identical); obligations for disclosure of information, for delivery of the contract, for the contract to be in writing, recovery of refunds and cancellation of pre-authorized payments.

All other individual provisions will be maintained in the regulations, and any new types of consumer contracts will be added through the regulations.

## **Part VI: Prepaid Purchase Cards:**

*Copies the part for Prepaid Purchase Cards from the existing Act, but moves administration and enforcement mechanisms to Part VIII.*

### **Interpretation and Application of Part**

The rules respecting prepaid purchase cards (such as gift cards and gift certificates) apply to all cards sold or issued on or after November 10, 2008. The regulations can exempt particular types of cards or persons. Current regulations exempt cards for which no value is given (e.g. prizes) and that are purchased for charitable purposes.

### **Regulation of Prepaid Purchase Cards**

No prepaid card may expire or have fees that are deducted from the value of the card after it is purchased, including inactivity or dormancy fees.

Any agreements purporting to waive the consumer’s rights under this Part are void.

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## **Part VII: Designated Activities and Licensing:**

*Establishes a completely new scheme that establishes framework provisions for designated activities, particularly licensing, and permits the regulations to specify the particulars respecting those designated businesses.*

### **Designated Activities**

Any business or activity that is designated in regulations made pursuant to this Part will be subject to all the requirements of this Part. It is intended that eventually the businesses of auctioneers, charitable fund-raising businesses, collection agents, direct seller and motor dealers will be designated.

The regulations will also designate businesses, activities and occupations that are not to be brought under this scheme. This will include, among other possibilities, professional associations that have their own statutory regulatory scheme.

### **Licensing**

All designated businesses will require a licence to do business. The regulations will be able to specify whether designated businesses will require separate licences for each location.

The director (appointed in Part VIII) will administer the licensing provisions.

The application for a license is a form provided by the director. The licensing fees will be prescribed in the regulations, along with the duration of the license, each of which may be different. For example, motor dealers' licences are currently five years in length while direct sellers' licences are for one year.

Either the regulations, or the director in the absence of regulations, may require a licensee to have financial security before a licence will be issued or renewed. If so, the security must remain in force or the licence is suspended.

Following a licence application, the director may issue the licence, issue it on terms and conditions, or refuse to issue one. The same actions may be taken on an application for renewal of a licence.

Once issued, a licence is automatically revoked if there is a change in ownership of the business. The licence may be revoked or suspended on the same grounds as for refusal to issue one in the first place. If there is a significant change of circumstances (to be outlined in the regulations), the business must notify the director of the change.

If the director decides to issue a licence on terms and conditions or to refuse to issue a licence, or to suspend or cancel a licence once issued, the action cannot be taken without giving notice to the applicant and giving the applicant the opportunity to be heard. The director must issue a decision in writing within a reasonable time.

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The director may also issue an order against others acting on behalf of the designated business.

Licenses are required to maintain complete and accurate business records for a period to be prescribed in regulations.

Detailed regulation-making powers allow detailed rules to be passed respecting different kinds of designated businesses and their respective activities.

Regulations are also permitted to require some businesses to be registered instead of licensed.

## **Part VIII: Administration:**

*Establishes the administration and enforcement mechanisms for the entire Act, instead of Part by Part as is found in the existing Act.*

A director is appointed to administer the Act, along with a deputy director and staff of the Consumer Protection Division.

They may conduct inspections and investigations into suppliers' activities. In the course of the inspection or investigation, staff has the power to enter premises, seize and copy records, retain evidence, and inquire into transactions and activities. If out-of-province travel is necessary, the supplier may be required to compensate for the reasonable costs of the travel.

The Consumer Protection Division may demand records, which demand must be complied with. If it is not, the director may obtain a warrant to enter and search premises and seize records.

As an enforcement tool, the director may enter into a voluntary compliance agreement with a supplier, who agrees to comply with the legislation. The agreement can provide details of the necessary activities by the supplier.

If the supplier does not abide by the voluntary compliance agreement, or there is no voluntary compliance agreement, the director may issue a compliance order.

If the supplier fails to comply with the legislation, a voluntary compliance order or a director's compliance order, the director may apply to the court for a compliance order.

Any person who is directly affected by an order or decision of the director may appeal to the court on within 30 days of the order or decision. The court will have access to all documents that the director had in making the decision along with the director's written reasons. The court may do a variety of things, from dismissing the appeal and modifying the order to allowing the appeal.

A court order may be appealed to the Court of Appeal with leave of a Court of Appeal judge within 30 days of the court order, on a question of law only.

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## **Part IX: General Matters, Offences and Regulations:**

*Establishes a variety of general rules for the Act.*

### **General Matters**

Mediation is to be attempted where possible to resolve disputes. No enforcement action can be taken by the director pending the completion of mediation.

A consumer is given the right to take a supplier to court for a breach of the fair practice requirement. In addition, the director may take an action on behalf of a consumer where it is in the public interest.

The court has a variety of options if it finds an unfair practice, including ordering the breach to be remedied, restitution of money or other property, an injunction, specific performance or any other order. No order for exemplary or punitive damages is to be awarded if the supplier proves due diligence. As well, the consumer must have made reasonable efforts to minimize losses and resolve the dispute.

The director can apply to the court for an order for the supplier to refrain from dealing with assets pending the results of an investigation.

Any court order can be varied on application to the court.

The court may also order a bond to be posted in lieu of any other order.

The director may apply for an injunction to prevent a supplier from committing an unfair practice.

Unfair practices committed within Saskatchewan by a supplier outside Saskatchewan can be pursued as well.

The director and staff must keep all information acquired as a result of an investigation confidential. Records are not accessible by anyone except staff. They are not compellable to give evidence in court in any other proceeding respecting anything learned as a result of the investigation. They may not be sued for actions taken in good faith.

An important change affects class actions. The existing Act says plainly that consumers and suppliers cannot contract out of the protections of the Act, which includes the right to go to court. A recent Supreme Court case respecting British Columbia's statute has said that an agreement to arbitrate instead of going to court is valid. The proposal is to make it clear that an agreement to arbitrate cannot override the right of the consumer to go to court, which would permit individual and class actions.

A consumer's rights under the Act can be transferred to others, if not transferred as a business transaction. All other remedies are preserved.



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Advertisers who publish supplier's advertisements are not liable for the contents of the advertisement if done in good faith.

### **Offences and Penalties**

It is an offence to contravene any provision of the legislation. The penalties have not changed, and are:

- A fine of not more than \$5,000 for an individual for a first offence;
- A fine of not more than \$10,000 for an individual for a subsequent offence;
- In both cases, a jail term of up to one year;
- A fine of not more than \$100,000 for a corporation for a first offence;
- A fine of not more than \$500,000 for a corporation for a subsequent offence;
- Equal punishment for a director, officer or agent of a corporation who participated in the offence.

Prosecutions must be commenced within three years of the facts becoming known to the director.

Mistake and due diligence are defences to a prosecution.

### **Regulations**

Regulations are enabled that apply generally to the Act as a whole.

### **Part X: Transition and Coming into force.**

*Provides the rules respecting transition from the former legislation to the new legislation, for the coming into force of the legislation and the consequential amendments or repeal of a variety of Acts that are affected by this Act.*

The Act comes into force on Sept 1 2014.