

The Direct Sellers Act: A Discussion Paper of Issues and Possible Amendments for Saskatchewan

Introduction – Background and Purpose of Discussion Paper	2
The Direct Sellers Act – Summary of Select Provisions of Current Act.....	3
Definitions.....	3
Licences	4
Contracts	4
Obligations on cancellation.....	4
Copy of contract to be delivered to purchaser	4
Unlicensed Activity	4
Issues for discussion	5
Definitions.....	5
Exemptions from Licensing	5
Gas Retailers	7
Limits on length of direct sales contract	8
Automatically renewed direct sales contracts	8
Limitation on goods returnable	9
Including rental and leasing solicitation as direct selling	9
Contract for services and installation of products.....	10
Licensing processes	10
Responses.....	11
Summary of Discussion Questions	12

Saskatchewan Ministry of Justice
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The Direct Sellers Act: A Discussion Paper of Issues and Possible Amendments in Saskatchewan

Introduction – Background and Purpose of Discussion Paper

[*The Consumer Protection and Business Practices Act*](#) was passed in Saskatchewan in spring 2013. Part VII of the legislation permits regulations dealing with a variety of aspects of licensing of businesses in Saskatchewan. One of those business types is direct sellers. The government proposes to pass regulations that replace *The Direct Sellers Act*, which will be repealed.

Saskatchewan has regulated individuals who solicit the purchase of goods and/or services door to door or by telephone since 1958 and has had infrequent amendments to legislation since that date.¹ The legislation provides the consumer with an absolute right to cancel a contract within 10 days of receiving the contract or of receiving a notice of the right to cancel.

As part of its review of consumer protection legislation, the Saskatchewan Ministry of Justice wants to determine whether there are issues that need to be addressed regarding direct sellers and whether the legislation is suitable for current practices.

A number of internal issues have been identified, which will be resolved when the regulations are addressed. They include the following:

- The need for a mandatory criminal record check for a sole proprietor, any partner in a partnership, or any officer of the corporation that is a direct seller;
- A move to a continuous licensing regime;
- The requirement that a licensee file an annual report to outline whether there has been a change in circumstances from the previous year;
- Giving the registrar the authority to attach conditions to a licence on reinstatement, imposed at the time that the licence is suspended.

Once regulations relating to direct sellers are passed, penalties for offences will become uniform for every person to whom consumer protection legislation applies. Also, a review is being carried out to ensure that direct seller provisions comply with existing internal trade agreements entered into by the Government of Saskatchewan.

The purpose of this Discussion Paper is to raise other issues, make proposals, and ask for feedback from a wide variety of individuals and groups that have an interest in the

¹ Prior to 1965 the legislation was referred to as *The Commercial Agents Act, 1958*. In 1965 the legislation was renamed *The Direct Sellers Act*; it was amended in 1983 to add northern municipalities; in 1984-85-84 to make housekeeping amendments; in 1986 to set requirements for applicants, make exemptions to the Act, define terms and make housekeeping amendments; and in 1996 to define terms, require identification cards for salespeople, provide a 10 day cooling off period for consumers, set requirements where credit is extended in a contract as well as housekeeping amendments.

operation of the regulations. If, as a result of feedback, it is determined that there are issues that should be addressed, the government will consider them in its regulations.

Some key issues are:

- who should be considered a direct seller;
- whether the current exemptions from licensing should be maintained;
- whether there should be specific provisions relating to gas retailers who direct sell to consumers;
- whether there should be limits on the length of a direct sales contract;
- whether after the expiration of a direct sales contract, a direct seller should be able to automatically renew on the same terms of the previous contract;
- whether there should be restrictions on the types of items that a consumer may return during the cancellation period; and
- what activities should be included as direct selling.

<i>The Direct Sellers Act – Summary of Select Provisions of Current Act</i>
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Definitions

2(a.1) “direct sale” means a sale by a direct seller acting in the course of his or her business as a direct seller;

(b) “direct sales contract” means an agreement, whether verbal or in writing, for the direct sale of goods or services;

(b.1) “direct sales contractor” means a vendor who sells, offers for sale or solicits orders for:

(i) constructing, altering, renovating, maintaining, repairing, adding to or improving a building that is used or is to be used as a house by the owner, occupier or person in control of it; or

(ii) altering, maintaining or improving real property to be used in connection with a house;

(c) “direct seller” means a person who:

(i) goes from house to house selling or offering for sale, or soliciting orders for the future delivery of, goods or services;

(ii) by telephone offers for sale or solicits orders for the future delivery of goods or services; or

(iii) does both of the things mentioned in subclauses (i) and (ii);

Licences

Sections 3 and 4 require direct sellers to be licensed, and prohibit anyone from holding him or herself out as a direct seller without a licence.

Licences for vendors and salesperson –section 5 states that a licensed vendor may not be a salesperson for another vendor, and a salesperson may only work for the vendor specified in the licence.

Contracts

Section 6 requires that all contracts be in writing if the direct sale exceeds \$100. A copy of the direct sales contract is to be provided to the purchaser at the time the contract is being made and the contract must include a statement of cancellation rights, detailed description of the quality and type of materials to be used under the contract, the services and work to be carried out under the contract as well as any other requirements under the Act. The regulations require basic information concerning the parties, price, timing and goods and services sold to be included in the contract.

Purchasers have an unconditional right to cancel a contract within 10 days of entering into the contract.

A direct seller selling home renovation services (see definition of “direct sales contractor”) must not require the purchaser to pay more than 15% of the total amount of the contract before the 10-day cancellation period expires.

Except in home party sales plans, a direct seller must not provide to or offer a gift or any other benefit to a purchaser effective only if another person makes a purchase.

Obligations on cancellation

Sections 23 states that where a direct sales contract is cancelled the direct seller shall refund the purchaser all money received, and return any trade-in or the agreed upon amount for the trade-in within 15 days of cancellation. The purchaser must return the goods to the direct seller upon receipt of the refund. The contract cannot be cancelled if a good cannot be returned in the form that it was provided because of an act or fault of the purchaser. The direct seller is entitled to reasonable compensation for goods that cannot be returned by the consumer.

Copy of contract to be delivered to purchaser

Section 26 requires that immediately upon execution by the purchaser, a true copy of the contract be delivered to the purchaser.

Unlicensed Activity

Section 28 states that no person shall engage, employ, appoint, authorize or permit any other person to do anything for which a licence is required unless such other person holds a licence.

Issues for discussion

Definitions

The current Act applies to people who go door to door to sell products or services, or to people who telephone a consumer to sell products or services. It has been interpreted to apply to multi-level distributors, such as those who sell through home parties. It does not include solicitation through electronic means, such as internet or text messages, or sales at places other than the consumer's residence.

The proposal is for the new regulations to apply to the same sellers, with a goal of protection of consumers from high-pressure sales made directly in person or by telephone.

In addition, it is proposed that businesses with which the consumer has or has had an existing relationship be exempt if a new contract is entered into for the same or similar services as those provided within the previous 18 months.

Discussion Questions

1. Should the regulations apply to other methods of selling, such as trade shows, displays in malls, others? If so, what and why?
2. Is the exemption for previous business relationships reasonable?

Exemptions from Licensing

Under the current Act there are a number of persons that are excluded from the requirement to license as a direct seller. These persons are:

- a person selling newspapers, water, propane gas or fuel petroleum products;
- a person selling food or food products that, at the time of delivery, are in an unfrozen and perishable state;
- a person selling lumber or firewood if the person or the person's employer has a place of business in the municipality in which the direct sale takes place;
- a person selling feed grain, feed supplements, fertilizer or weed spray if he resides or has a place of business in Saskatchewan;
- a person selling the following services:
 - (i) the treatment of feed, seed grain or growing crops;
 - (ii) the breeding, care or treatment of live stock; or
 - (iii) custom tilling, seeding or harvesting;

- a person selling nursery stock grown in Saskatchewan;
- a farmer selling products raised in Saskatchewan on the person's own farm;
- a merchant having a recognized retail store in Saskatchewan and selling goods or services of a sort or class ordinarily sold at that store;
- a bona fide servant or employee of:
 - (i) the farmer mentioned in clause (f);
 - (ii) the person mentioned in clause (g); or
 - (iii) the merchant mentioned in clause (h);

who has the written authority of that farmer, person or merchant, as the case may be, to sell;

- an individual selling goods or services on behalf of an organization or corporation having objects of a benevolent, religious, charitable, philanthropic, educational, agricultural, scientific, artistic, social, political, professional, fraternal, sporting, athletic or other useful nature and not formed for gain;

Some of these exemptions have been reviewed for implications under Saskatchewan's trade obligations, and will be modified to make them compliant.

It is proposed to remove the exemption for a person having a recognized retail store.

Discussion Questions

3. Should the existing exemptions continue?
4. What potential issues, if any, arises if the above exemptions continue?

Gas Retailers

A gas retailer who solicits consumers either door to door or by telephone to supply natural gas to their households is required to have a direct seller's license. However, due to the necessity for home heating and the uniqueness of natural gas delivery services some have questioned whether specific provisions should be added to ensure that the consumer is clearly informed of who is the supplier with the goal to minimize any confusion or misunderstanding.

Discussion Questions

5. If Saskatchewan legislates the minimum elements of a gas retail contract for the sale of natural gas, which of the following elements should be required in addition to the requirement as set out in section 6:
 - the price and terms of payment including interest payment required by the consumer;
 - provisions relating to the requirement of payment of a deposit by the consumer if applicable;
 - the consequence of nonpayment by the consumer;
 - the applicable taxes and surcharges;
 - the allocation of cost savings and/or services;
 - the nature and amount of any additional charges;
 - the price for the volume of gas to be delivered in Canadian dollars per cubic metre;
 - a statement relating to the quantities of the natural gas to be purchased;
 - the intended start-up and delivery dates for the natural gas;
 - where applicable, a statement that indicates whether the price or any other contractual term is subject to redetermination;
 - a statement that the gas retailer's obligation to deliver gas is firm, subject only to the events beyond its control;
 - a Gas Retailer Disclosure statement that makes it clear that the provider is not SaskEnergy;
 - the point of delivery relating to the natural gas or natural gas products;
 - the point of receipt relating to the natural gas or natural gas products;
 - the respective obligations, liabilities and risks of the gas retailer and the consumer.

6. Are there other elements that should be included?

Limits on length of direct sales contract

There is currently no restriction on the length of a direct sales contract. In some cases, direct sales contracts for goods and services have been observed to be as long as 7 to 10 years. In certain cases, the consumer is required to finance the good or service for the extended period and does not have the option of accepting a shorter contract. The result is that the consumer is “locked in” to the contract for what may be considered a lengthy period of time depending on the good and/or service being offered.

It is proposed that a contract for ongoing delivery of goods be limited to three years, and a contract for ongoing delivery of services be limited to five years. Thereafter, the consumer can renegotiate or continue the previous contract on a month to month basis.

Discussion Questions:

7. Should there be a limit with respect to the length of a direct sales contract? If so, what should it be?

Automatically renewed direct sales contracts

Some direct sales contracts contain provisions that automatically renew a contract after the expiry of the initial term. In some cases, the direct sales contract is renewed for the same term as the initial contract. In some circumstances, the direct seller specifies as a term of contract that if the consumer wishes to cancel after the initial contract has expired, the consumer must provide written notice up to 120 days prior to the expiration of the initial contract. If the consumer does not provide notice within the time required, the contract is automatically renewed for the stated length.

It is proposed that if a contract term automatically renews a contract, at the end of the term the contract is converted to a month to month contract unless the parties enter into a new contract or end the contractual relationship.

Discussion Questions:

8. Should the direct seller be able to automatically renew a contract?
9. Should there be limitations on the length of time that a direct sales contract can be renewed for?
10. Should the direct sales contract automatically go to a month to month contract upon the expiration of the initial contract, unless the parties sign a new contract?
11. If a consumer is entitled to cancel a contract, should there be a time limit in which notice of cancellation must be given by the consumer? If so, what should it be?

Limitation on goods returnable

Section 23 places obligations on a direct seller in the event that a consumer cancels a direct sales contract. The section contains provisions relating to a vendors ability to recover reasonable compensation for goods that cannot be returned or for services already provided. Goods such as food already or partially consumed are examples of goods that cannot be returned. Other goods such as personal use items can be returned but perhaps should not be returned.

It is proposed that consumables and personal use items which have been opened cannot be returned.

Discussion Questions:

12. What types of goods should not be returnable?
13. What potential issues, if any, arise if it is found that certain items should not be returnable?

Including rental and leasing solicitation as direct selling

Under the current definition a direct seller is a person who goes from house to house selling or offering for sale, or soliciting orders for the future delivery of goods or services. There are, however, individuals who solicit rental and lease agreements in this same manner. In some instances the rental and lease contracts could be for terms of up to 10 years.

It is proposed that rental and leasing solicitation be specifically included in the definition of direct selling.

Discussion Questions:

14. Should rental and lease contracts be covered by direct selling legislation?
15. What potential issues, if any, arise if rental and lease contracts are covered by direct selling legislation?

Contract for services and installation of products

The Act provides a consumer with the absolute right to cancel a contract within 10 days of receiving a copy of the contract or a statement of cancellation rights. This leads to issues where a contract is for services that are performed immediately, or the installation of products which the products are installed before the 10-day period is up. If the consumer cancels, the products may be difficult or impossible to remove and the service has already been received.

It is proposed that a contract for services and the installation of products, for products or services exceeding \$200 in value, may not be performed within the cancellation period, unless the seller is prepared to abandon any right to recover its services or product if the consumer cancels.

Discussion Question:

16. Should performance of contracts for services and installation be delayed until the conclusion of the cancellation period? Is there a better way to resolve this issue?

Licensing processes

The new licensing process will require an application to the Director of Consumer Protection, accompanied by:

To obtain a licence the direct seller must:

- Register a business name;
- Submit an application to the Director;
- Submit a copy of the sales contract to be used (these must be accepted for use by the Director);
- Submit a copy of any identification card with photo identification to be used by sales persons;
- Obtain a bond and submit the original from a bonding company or insurance agent;
- For multi-level marketing sellers, obtain an opinion letter from Industry Canada;
- Provide to a criminal record check.

The difference will be that the licence is continuous provided that an annual return is supplied to the Director.

Discussion Question:

17. Do you have any suggestions or concerns about the licensing process?

Responses

Please submit your responses to the discussion questions by November 15, 2017 to Mary Ellen Wellsch by email to Maryellen.Wellsch@gov.sk.ca or by mail or fax to:

Mary Ellen Wellsch
Senior Crown Counsel
Legislative Services Branch
Ministry of Justice
800 - 1874 Scarth Street
Regina, SK S4P 4B3
Fax: (306)787-9111

The Direct Sellers Act can be accessed at:

<http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/D28.pdf>

All comments received will be subject to the provisions of *The Freedom of Information and Protection of Privacy Act* (Saskatchewan).

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