



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **DIRECT SELLERS ACT**

## PLEASE NOTE

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If you find any errors or omissions in this consolidation, please contact:

*Legislative Counsel Office*

*Tel: (902) 368-4292*

*Email: [legislation@gov.pe.ca](mailto:legislation@gov.pe.ca)*



## DIRECT SELLERS ACT

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## DIRECT SELLERS ACT

### CHAPTER D-11

#### 1. Definitions

In this Act

- (a) “**direct sale**” means a sale by a vendor or salesman in the course of his business as such;
- (b) “**direct sales contract**” means an agreement for the direct sale of goods or services, whether for cash or on credit;
- (c) “**direct selling**” means selling, offering for sale or soliciting of orders for the sale of goods or services by
  - (i) going from house to house,
  - (ii) telephone communication, or
  - (iii) mail;
- (d) “**direct seller**” means a person who, whether at the request of the householder or not, direct sells;
- (e) “**goods**” includes any articles, commodities, substances or things and any agreement that entitles the holder thereof to purchase or obtain goods;
- (f) “**Minister**” means the Minister of Justice and Public Safety and Attorney General;
- (g) “**purchaser**” means a natural person who purchases goods or services for personal consumption from a direct seller;
- (h) “**Registrar**” means the Registrar of Direct Sellers;
- (i) “**regulations**” means regulations made under this Act;
- (j) “**salesman**” means a person engaged in direct selling either on his own behalf or that of a vendor;
- (k) “**services**” includes any agreement
  - (i) to install or supply goods whether or not the goods become part of any real property,
  - (ii) to perform work, labour or service of any kind, or
  - (iii) that entitles the holder thereof to purchase or obtain services;
- (l) “**vendor**” means a vendor under a direct sales contract. *R.S.P.E.I. 1974, Cap. D-10, s.2; 1980, c.2, s.3; 1983, c.1, s.6; 1983, c.11, s.1; 1985, c.3, s.1; 1993, c.29, s.4; 1997, c.20, s.3; 1997, c.12, s.1 [eff.] Apr. 1/98; 2000, c.5, s.3; 2010, c.14, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

#### 2. Administration of Act

The Minister is charged with the administration of this Act. *R.S.P.E.I. 1974, Cap. D-10, s.3.*

**3. Registrar of Direct Sellers**

The Minister may designate a public officer as the Registrar of Direct Sellers and the Registrar is responsible to the Minister for the administration of this Act. *R.S.P.E.I. 1974, Cap. D-10, s.4; 1980, c.2, s.3.*

**4. Persons subject to Act**

Any person who acts as a vendor or a salesman under a direct sales contract shall be deemed to be carrying on the business of direct selling and is subject to and shall comply with this Act. *R.S.P.E.I. 1974, Cap. D-10, s.5.*

**5. License**

- (1) A person shall not carry on the business of direct selling in this province unless he is the holder of a subsisting license issued under this Act.

**Exemptions**

- (2) A person is deemed not to be carrying on the business of direct selling if he is
- (a) a person selling newspapers;
  - (b) a person selling food or drink for human or animal consumption, or fuel, if he or his employer resides or has a place of business in the province;
  - (c) a person selling motor vehicles or farm supplies and services if he resides or has a place of business in the province;
  - (d) a person selling goods or services on behalf of a non-profit organization or corporation having objects of a character referred to in Part II of the *Companies Act* R.S.P.E.I. 1988, Cap. C-14;
  - (e) a person carrying on a business in respect of which he is licensed under the *Securities Act* R.S.P.E.I. 1988, Cap. S-3.1, the *Insurance Act* R.S.P.E.I. 1988, Cap. I-4, the *Trade Schools Act* R.S.P.E.I. 1988, Cap. T-4 or the *Real Estate Trading Act* R.S.P.E.I. 1988, Cap. R-2.

**Idem**

- (3) This Act does not apply to a direct sales contract
- (a) solicited, negotiated and concluded without any dealings in person between the purchaser and the direct seller or between the purchaser and the vendor or salesman;
  - (b) where the consideration to be provided by the purchaser is of a value of \$100 or less;
  - (c) where the direct seller
    - (i) has not initiated the dealing with the purchaser other than through advertising to the public, and
    - (ii) has resided or has had business premises in the province for a period of one year immediately prior to entering into the contract, or, if the direct seller is a corporation or partnership that has not had business premises in the province for the required period, all its shareholders or partners have resided in the province for a period of one year immediately prior to the contract; or
  - (d) solicited, negotiated and concluded at the direct seller's, vendor's or salesman's normal business premises. *1983, c.11, s.2; 1997, c.12, s.2 {eff.} Apr. 1/98; 2007, c.17, s.187.*



**6. Salesman's license, effect of on vendor**

A salesman who is the holder of a license shall be deemed to be authorized by the vendor specified in the license to act for or on behalf of that vendor. *R.S.P.E.I. 1974, Cap. D-10, s.7.*

**7. Notice in writing to Registrar**

Where a salesman ceases to represent a vendor, that vendor shall, within ten days after the salesman has ceased to represent him, give notice in writing thereof to the Registrar and the receipt of such notice by the Registrar shall operate as a cancellation of the license of the salesman. *R.S.P.E.I. 1974, Cap. D-10, s.8.*

**8. License not transferable**

- (1) A vendor shall not transfer the license of a salesman to another vendor.

**Salesman, where license is cancelled**

- (2) Where a salesman whose license is cancelled is appointed by another vendor, or is reappointed by the vendor with whom he was previously licensed, such salesman shall make a new application to the Registrar for a license. *R.S.P.E.I. 1974, Cap. D-10, s.9.*

**8.1 Application for license**

An application for a license as a vendor or salesman shall be in such form as may be approved by the Minister. *1994, c.48, s.9.*

**8.2 Licenses**

- (1) The Registrar may refuse, cancel or suspend any license when he feels such action is in the public interest.

**Appeal**

- (2) The decision of the Registrar regarding refusal, cancellation or suspension may be appealed to the Minister by giving to him notice in writing within thirty days.

**Return of suspended license**

- (3) When a license has been suspended or cancelled by or under this Act, the holder of the license shall forthwith return the license to the Registrar.

**Expiration and renewal**

- (4) Every license shall remain in force for a period not exceeding two years, shall expire on such date as may be specified therein, and may be renewed by the Registrar on application therefor. *1994, c.48, s.9.*

**8.3 Surety bond**

- (1) The Registrar, before issuing a license, may require a surety bond as follows, issued by a recognized surety company:
  - (a) in respect of a vendor carrying on business in this province, \$5,000 each;
  - (b) in respect of a salesman carrying on business in this province, \$1,000 each.

**Factors considered**

- (2) In determining whether to require a surety bond under subsection (1), the Registrar shall assess the following factors:
- (a) the amount of consideration under the terms of the direct sales contract;
  - (b) the terms of payment and the time for delivery of the goods or services;
  - (c) the location of the assets of the vendor or salesman; and
  - (d) the past conduct of the vendor or salesman. *1994, c.48, s.9.*

**8.4 Forfeiture of bond**

Any bond delivered under this Act shall be forfeited upon the demand of the Registrar where

- (a) the person in respect of whose conduct the bond is conditioned or any representative, agent or salesman of that person has been convicted of
  - (i) an offence under this Act,
  - (ii) an offence involving fraud, theft or conspiracy to commit an offence involving fraud, theft or conspiracy under the *Criminal Code* (Canada) R.S.C. 1985, Chap. C-46;
- (b) judgment in respect of a claim arising out of a direct sales contract has been given against the person in respect of whose conduct the bond is conditioned or against any representative, agent or salesman of that person;
- (c) the person in respect of whose conduct the bond is conditioned commits an act of bankruptcy, whether or not proceedings have been taken under the *Bankruptcy and Insolvency Act* (Canada) R.S.C. 1985, Chap. B-3; or
- (d) a decision has been rendered by the Registrar in writing stating in effect that after consideration and investigation of a complaint, he is satisfied that the person in respect of whose conduct the bond is conditioned or any representative, agent or salesman or that person
  - (i) has violated any provision of this Act or has failed to comply with any of the terms, conditions or restrictions to which his license is subject or is in breach of contract, and
  - (ii) has departed from the province or been out of the province, remains out of the province or departs from his normal place of abode or otherwise absents himself or, in the case of a corporation, the name thereof has been struck off the register of companies,

and such conviction or judgment, order or decision has become final by reason of lapse of time or having been confirmed by the highest court to which any appeal may be taken. *1994, c.48, s.9.*

**8.5 Continuation of bond**

In respect of every act and omission occurring during the term of a license, every bond shall continue in force for a period of two years after the license or renewal thereof to which it relates, expires or is cancelled. *1994, c.48, s.9.*

**8.6 Assignment**

The Minister may, upon such terms and conditions as he may determine, assign any bond forfeited under this Act or may pay over any moneys recovered under any such bond to



- (a) any person who may become, in respect of a claim arising out of a direct sale, a judgment creditor of the person so bonded;
- (b) the Registrar of the Supreme Court in trust for a person referred to in clause (a); or
- (c) any trustee, custodian, interim receiver, receiver or liquidator of a person referred to in clause (a). *1994, c.48, s.9.*

### 8.7 Proceeds of bond

- (1) Whenever Her Majesty becomes a creditor of any person under this Act, the debt may be recovered by action or other proceeding in any court of competent jurisdiction as a debt due Her Majesty. *1994, c.48, s.9.*

#### *Idem*

- (2) When a bond has been forfeited under this Act by reason of a conviction or judgment referred to in clause 8.4(a) or (b) and two years have elapsed since
  - (a) such conviction or judgment; or
  - (b) the vendor or salesman in respect of whom the bond was furnished ceased to carry on business,

and the Minister has not received notice in writing of any claim against the proceeds of the bond or of such portion thereof as remains in the possession of the Minister, the Minister may pay to any person who, upon forfeiture of the bond made any payments thereunder, such proceeds or portion thereof, less the amount of any expenses which have been incurred in connection with any investigation or otherwise relating to such vendor or salesman. *1994, c.48, s.9.*

### 8.8 Inquiries and investigations

- (1) The Registrar, or person appointed by him, if he has reasonable and probable grounds to believe that
  - (a) there has been a violation or contravention of this Act or the regulations by a vendor or salesman;
  - (b) the vendor or salesman may have committed an offence under the *Criminal Code* (Canada) in connection with a transaction relating to direct selling; or
  - (c) it is in the public interest,

may conduct an inquiry or investigation into the operation of the business by inspecting all the vendor's books and records and by obtaining any additional information he may require from whatever sources in order to complete the inquiry or investigation.

#### **Powers**

- (2) The person conducting the investigation or inquiry shall have any or all of the powers that are and may be conferred upon a commissioner under the Public Inquiries Act R.S.P.E.I. 1988, Cap. P-31 including the power to take evidence under oath. *1994, c.48, s.9.*

### 9. Form of contract

A direct sales contract to which this Act applies shall be in writing and shall

- (a) be signed by the vendor or a salesman of the vendor and by the purchaser;
- (b) be in such format and shall contain such information as may be required by the regulations;

- (c) include a statement of cancellation rights in accordance with the regulations; and
- (d) meet such other requirements as may be specified in the regulations. *1997,c.12,s.3 {eff.} Apr. 1/98.*

## 10. Copy to purchaser

A person direct selling to a purchaser shall provide to the purchaser a copy of the direct sales contract in accordance with section 9 and the regulations at the time the contract is made. *1997,c.12,s.3 {eff.} Apr. 1/98.*

### 10.1 Absolute right to cancel

- (1) A purchaser may cancel a direct sales contract at any time within ten days after the purchaser is provided with a copy of the direct sales contract under section 10.

#### Cancellation within one year in certain circumstances

- (2) A purchaser may cancel a direct sales contract within one year after entering into the contract where
  - (a) the vendor or the salesman of the vendor was not licensed under this Act at the time the purchaser entered into the direct sales contract;
  - (b) the vendor or the salesman of the vendor has in respect of the direct sales contract failed to comply with any terms, conditions or restrictions to which his license is subject;
  - (c) the vendor or the salesman of the vendor does not provide to the purchaser a direct sales contract and statement of cancellation rights that are in accordance with section 9 and the regulations; or
  - (d) the vendor or the salesman of the vendor fails to
    - (i) deliver the goods within thirty days after
      - (A) the delivery date specified in the direct sales contract or such amended delivery date as may be specified in a subsequent written agreement, or
      - (B) if the delivery date is not specified in the direct sales contract or a subsequent written agreement, the date the direct sales contract is made, or
    - (ii) begin to provide the services within thirty days after
      - (A) the commencement date specified in the direct sales contract or such amended commencement date as may be specified in a subsequent written agreement, or
      - (B) if the commencement date is not specified in the direct sales contract or a subsequent written agreement, the date the direct sales contract is made.

#### Acceptance of goods after 30 days

- (3) A purchaser who accepts delivery of goods or the provision of services under a direct sales contract after the thirty-day period referred to in clause (2)(d) is not entitled to cancel the direct sales contract under that clause.

#### Court discretion *re* delivery

- (4) Where in the opinion of a court it is inequitable that clause (2)(d) should apply, the court may make such order as it considers appropriate.



**Effect on other legal rights**

- (5) The cancellation rights under this section in respect of a direct sales contract are in addition to and do not affect any other rights or remedy the purchaser has under or in respect of the direct sales contract or at law in the province in which the purchaser resides.

**Ancillary credit agreements**

- (6) Where credit is extended or arranged by a vendor or a salesman of the vendor in connection with a direct sales contract and the credit agreement is conditional on the direct sales contract, a cancellation of the direct sales contract under this section has the effect of cancelling the credit agreement. *1997, c.12, s.3 {eff.} Apr. 1/98.*

**10.2 Notice of cancellation**

- (1) A direct sales contract is cancelled under section 10.1 when the purchaser gives a notice of cancellation in accordance with this section.

**Methods of giving notice**

- (2) A purchaser may give a notice of cancellation to the direct seller, vendor or a salesman of the vendor by
- (a) delivering it personally to the direct seller, vendor or salesman of the vendor; or
  - (b) sending it to the direct seller, vendor or salesman of the vendor by registered mail, prepaid courier, telephone transmission producing a facsimile or any other method that permits the purchaser to provide evidence of the cancellation.

**Delivery of notice**

- (3) A notice of cancellation shall be deemed to be given to the direct seller, vendor or a salesman of the vendor if it is delivered or sent to the address for notice specified for that purpose in the direct sales contract.

**When notice effective**

- (4) A notice of cancellation that is given in accordance with clause (2)(b) shall be deemed to be given when it is sent.

**Indication of intention**

- (5) Subject to subsections (2), (3) and (4), a notice of cancellation is adequate if it indicates the intention of the purchaser to cancel the direct sales contract. *1997, c.12, s.3 {eff.} Apr. 1/98.*

**10.3 Responsibilities upon cancellation**

- (1) Where a direct sales contract is cancelled under section 10.1
- (a) the direct seller or vendor shall, within fifteen days after the notice of cancellation has been delivered or sent,
    - (i) refund the money received under the direct sales contract to the purchaser, and
    - (ii) if goods were taken by the direct seller or vendor as a trade-in, return them to the purchaser in as good a condition as they were when they were taken in trade, or if the direct seller or vendor is not able to do that, pay to the purchaser the greater of
      - (A) the market value of the goods at the time they were taken in trade, and

- (B) the price or value of the goods specified in the direct sales contract;  
and
- (b) in the case of a direct sales contract respecting goods, on receiving everything to be refunded, returned or paid to the purchaser under clause (a), the purchaser shall deliver up the goods to the direct seller or vendor in as good a condition as they were when they were delivered.

### Compensation

- (2) Where a direct sales contract is cancelled under section 10.1, the direct seller or vendor is entitled to reasonable compensation for the portion of the goods consumed by the purchaser and for the services partially performed by the direct seller or vendor but the direct seller's or vendor's rights do not arise under this subsection until he complies with subsection (1). *1997,c.12,s.3 {eff.} Apr. 1/98.*

### 11. Limitation of action

An action shall not be brought by a vendor against a purchaser for the endorsement of a direct sales contract unless the vendor and salesman were licensed under this Act at the time that the purchaser entered into the contract, or if the contract does not comply with the requirements of the *Consumer Protection Act* R.S.P.E.I. 1988, Cap. C-19. *R.S.P.E.I. 1974, Cap. D-10, s.12.*

### 12. Inspection of license

A person licensed under this Act shall produce his license for inspection when requested to do so by any person whom he is soliciting or has solicited. *R.S.P.E.I. 1974, Cap. D-10, s.13.*

### 13. Certificate of Registrar, effect of

A certificate under the hand of the Registrar stating that on a specified day

- (a) a vendor, salesman or any other person named in the certificate was or was not licensed under this Act;
- (b) a license was issued to a vendor or salesman; or
- (c) the license of a vendor or salesman was suspended, cancelled or reinstated,

shall be *prima facie* evidence of the facts stated in the certificate. *R.S.P.E.I. 1974, Cap. D-10, s.14.*

### 14. Agreement limiting operation of Act, effect of

Every agreement or bargain, verbal or written, expressed or implied, that any of the provisions of this Act or the regulations shall not apply is null, void, and of no effect, and money paid under or by reason of any such agreement or bargain is recoverable in any court of competent jurisdiction. *R.S.P.E.I. 1974, Cap. D-10, s.15.*

### 15. Regulations

The Lieutenant Governor in Council may make such regulations, not inconsistent with this Act, as he considers necessary or advisable for the more effective carrying out of the purposes and provisions of this Act according to its true spirit, intent and meaning and for dealing with any matters for which no express provision has been made, or in respect of which only partial or imperfect provision has been made, and, without prejudice to the generality of the foregoing, may make regulations



- (a) prescribing terms, conditions and restrictions to which licenses and renewals of licenses are to be subject;
- (b) prescribing the fees payable upon application for a license and the renewal of a license and any other fees in connection with this Act and the regulations;
- (c) prescribing the forms which shall be used under this Act and the regulations;
- (c.1) respecting direct sales contracts including the format and content of direct sales contracts, the information to be included in direct sales contracts, the statement of cancellation rights to be included in direct sales contracts and any other requirements in relation to direct sales contracts and statements of cancellation rights;
- (d) providing for the holding of inquiries into the operation of this Act and into any charge or complaint that any person has contravened any provision of this Act or the regulations;
- (e) prescribing the returns and statements to be made by licensees;
- (f) providing for the examination of applicants for licenses and renewals of licenses;
- (g) providing for the regulation of direct sales;
- (h) prescribing what books, accounts and records are to be kept and maintained by vendors and salesmen;
- (i) providing for the bonding of vendors and salesmen and the disposal of money recovered under any bond;
- (j) providing for appeals of decisions of the Registrar to the Minister; and
- (k) respecting any matter, whether of the foregoing kind or not, necessary or advisable to carry out effectively the intent and purpose of this Act. *R.S.P.E.I. 1974, Cap. D-10, s.16; 1997, c.12, s.4 {eff.} Apr. 1/98.*

#### **16. Offences, penalties**

Every person who fails to comply with or otherwise contravenes any of the provisions of this Act or the regulations, or makes a false statement in any application, form, return, account, record, statement or other document completed or made under this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000 for a first offence and not more than \$2,000 for each subsequent offence, and, for a first offence in addition to such fine, to imprisonment for a period not exceeding six months, and for a second or subsequent offence, in addition to such fine, to imprisonment for a period not exceeding twelve months. *R.S.P.E.I. 1974, Cap. D-10, s.17; 1994, c.58, s.6.*

#### **17. Evidence required in prosecution**

Where, in a prosecution under this Act, it is alleged that the accused carried on the business of direct selling without being the holder of a subsisting license under this Act, evidence of one transaction is *prima facie* evidence that the accused carried on such business. *R.S.P.E.I. 1974, Cap. D-10, s.18.*

#### **18. Limitation of action**

Every prosecution under this Act or the regulations shall be commenced within two years from the date on which the offence is alleged to have been committed. *R.S.P.E.I. 1974, Cap. D-10, s.19.*

**19. Act to prevail**

Whenever any other Act of the province is in conflict with this Act, this Act will prevail.  
*R.S.P.E.I. 1974, Cap. D-10, s.20.*

