



BILL NO. 43

Government Bill

*1st Session, 62nd General Assembly
Nova Scotia
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An Act to Amend Chapter 129 of the Revised Statutes, 1989, the Direct Sellers' Regulation Act

CHAPTER 12
ACTS OF 2014

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
MAY 1, 2014**

The Honourable Mark Furey
Minister of Service Nova Scotia

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 129
of the Revised Statutes, 1989,
the Direct Sellers' Regulation Act**

Be it enacted by the Governor and Assembly as follows:

1 Section 2 of Chapter 129 of the Revised Statutes, 1989, the *Direct Sellers' Regulation Act*, as amended by Chapter 8 of the Acts of 1999, is further amended by

(a) adding “(1)” immediately after the Section number;

(b) relettering clause (a) as (aa) and adding immediately before clause (aa) the following clause:

(a) “continuing-services contract” means a direct sales contract that provides for the performance of services, including the supply of any goods used in conjunction with such services, on a continuing basis;

(c) striking out clause (d) and substituting the following clause:

(d) “direct selling” means selling or offering for sale or soliciting orders for future delivery of goods or services

(i) if there is no prior request from a prospective purchaser and contact is made by or on behalf of the seller

(A) in person at a dwelling, or

(B) by telephone or other personal communication, and any resulting sale is negotiated or entered into at a place other than in person at the seller's usual place of business in the Province,

(ii) in response to a request made by a prospective purchaser, if the request was itself solicited by or on behalf of the seller and any resulting sale is negotiated or entered into at a place other than in person at the seller's usual place of business in the Province,

(iii) if the seller does not operate a retail outlet in the Province and solicits, advertises or otherwise requests prospective purchasers to present themselves at a dwelling, hotel, motel or temporary or short term establishment where the seller sells or offers for sale or solicits orders for future delivery of goods or services,

(iv) by a multi-level marketing wholesaler or a multi-level marketing distributor, or

(v) if the goods or services are hearing aids or hearing-aid services, regardless of the circumstances of the sale.

(d) striking out clause (g);

(e) striking out “Consumer Affairs” in the first and second lines of clause (h) and substituting “Service Nova Scotia”;

(f) striking out clause (j);

(g) striking out “a person” in the first line of clause (l) and substituting “an individual”; and

(h) adding the following subsection:

(2) For greater certainty, neither a listing of the name of a seller in a telephone, professional or trade directory, including a directory published electronically, nor a website maintained by or on behalf of a seller, is a solicitation for the purpose of subclause (ii) of clause (d) of subsection (1).

2 Section 5 of Chapter 129 is repealed and the following Section substituted:

5 (1) Subject to subsection (2), no person shall carry on the business of direct selling unless the person is

(a) the holder of a permit under this Act; or

(b) a salesperson authorized by the holder of a permit as a direct seller to act on the permit holder’s behalf.

(2) An individual engaged in the direct selling of hearing aids or hearing-aid services must hold a permit as a salesperson.

3 Subsection 6(1) of Chapter 129 is amended by

(a) striking out “a direct” in the first line and substituting “any”;

(b) striking out clause (a);

(c) striking out clause (g) and substituting the following clause:

(g) under which a person engaged in business for gain is the purchaser of goods or services intended to be used in or in respect of the person’s business but not for resale;

(d) striking out clause (h) and the “or” following clause (h);

(e) striking out the period at the end of clause (i) and substituting “; or”; and

(f) adding immediately after clause (i) the following clause:

(j) of a class of direct sales contracts that is prescribed by the regulations.

4 Section 7 of Chapter 129 is repealed.

5 Section 8 of Chapter 129, as amended by Chapter 8 of the Acts of 1998 and Chapter 8 of the Acts of 1999, is further amended by adding immediately after subsection (4) the following subsection:

(5) Subsection (4) does not apply to a salesperson unless the salesperson is engaged in the direct selling of hearing aids or hearing-aid services.

6 (1) Subsection 9(1) of Chapter 129, as amended by Chapter 8 of the Acts of 1998 and Chapter 8 of the Acts of 1999, is further amended by

(a) striking out “Upon” in the first line and substituting “Subject to subsection (1A), upon”; and

(b) adding “this Act and” immediately following “by” in the fourth line.

(2) Section 9 of Chapter 129, as amended by Chapter 8 of the Acts of 1998 and Chapter 8 of the Acts of 1999, is further amended by adding immediately after subsection (1) the following subsection:

(1A) The Registrar may refuse to issue a permit if the Registrar is satisfied that

(a) the applicant or any director, manager or officer of the applicant

(i) has been convicted of an offence under

(A) this Act or any other enactment of the Province, or

(B) an enactment of another province of Canada, of Canada or of a foreign jurisdiction,

for conduct that shows, in the Registrar’s opinion, that the applicant is unfit to hold a permit,

(ii) has contravened or failed to comply with this Act or the regulations,

(iii) has failed to comply with the requirements of any applicable enactment of the Province, of another province of Canada or of Canada,

(iv) has engaged in a pattern of conduct that shows, in the Registrar’s opinion, that the applicant is unfit to have a permit,

(v) has made a material misstatement in the application for a permit, or

(vi) is an undischarged bankrupt; or

(b) the circumstances are such that, in the Registrar’s opinion, it would not be in the public interest to issue a permit.

(3) Subsection 9(2) of Chapter 129, as enacted by Chapter 8 of the Acts of 1998, is amended by striking out “longer period as specified in” in the second line and substituting “other period prescribed by”.

(4) Subsection 9(5) of Chapter 129, as amended by Chapter 8 of the Acts of 1998, is further amended by adding “apply for” immediately after “to” in the second line.

7 Clause 13(b) of Chapter 129 is repealed.

8 Chapter 129 is further amended by adding immediately after Section 15 the following Section:

15A (1) A salesperson who is not required to hold a permit is deemed to be an agent of the direct seller on whose behalf the salesperson is acting.

(2) No salesperson shall sell or offer for sale or solicit orders for the future delivery of goods or services of any class or sort other than those specified in the permit of the direct seller on whose behalf the salesperson is acting.

9 Subsection 16(1) of Chapter 129, as amended by Chapter 8 of the Acts of 1998 and Chapter 8 of the Acts of 1999, is further amended by adding “who is the holder a permit under this Act” immediately after “salesperson” in the first line.

10 Section 17 of Chapter 129, as amended by Chapter 8 of the Acts of 1998, is further amended by adding immediately after subsection (2) the following subsection:

(2A) Notwithstanding subsection (2), a limited partnership is not eligible to apply for or obtain a permit under this Act.

11 Subsection 18(2) of Chapter 129 is repealed and the following subsection substituted:

(2) The Registrar may suspend or cancel a permit if satisfied of the existence of a ground on which the Registrar might have refused to issue the permit under subsection (1A) of Section 9 or if the Registrar is satisfied that the permit holder

(a) has failed to comply with any of the terms, conditions or restrictions to which the permit is subject;

(b) has made a material misstatement in any information or material submitted by the permit holder to the Registrar;

(c) has been found guilty of misrepresentation, fraud or dishonesty;

(d) has demonstrated the permit holder’s incompetency or untrustworthiness to carry on the business in respect of which the permit was issued;

(e) is not carrying on business in the Province; or

(f) being a corporation, has been dissolved or struck off the register of companies.

12 Subsection 19(2) of Chapter 129, as amended by Chapter 8 of the Acts of 1998 and Chapter 8 of the Acts of 1999, is further amended by adding “engaged in the direct selling of hearing aids or hearing-aid services” immediately after “salesperson” in the first line.

13 Chapter 129 is further amended by adding immediately after Section 20 the following Section:

20A (1) Subject to subsection (3), the term of a continuing-services contract, including the cumulative total of all options and rights to extend or renew the contract, must not exceed three years.

(2) Where a continuing-services contract is about to expire, the direct seller shall, between thirty and sixty days before the expiry date of the contract, provide written notice to the purchaser stating

(a) the date that the contract is set to expire, and that this notice is written notice that the contract will terminate on that date; or

(b) the date that the contract is set to expire, but that the contract will be automatically extended, on a monthly basis and on otherwise the same terms as at present, until either the purchaser or the direct seller gives notice to the other that the contract is not to be further extended.

(3) On the expiry date of a continuing-services contract, where

(a) notice has been given to the purchaser under subsection (2); and

(b) neither the direct seller nor the purchaser has given notice to the other that the contract is not to be extended,

the contract is automatically extended, on the same terms, for an additional one-month term, and the direct seller shall continue to automatically extend the contract, for additional one-month terms, until either the supplier or the customer gives notice to the other that the contract is not to be further extended.

(4) No direct seller shall charge a purchaser a fee for the extension of a continuing-services contract or any other fee, charge, penalty, interest or other amount or consideration for the extension of a contract under this Section.

(5) For the purpose of subsection (1), all continuing-services contracts, except a contract extended under subsection (3), that

(a) are in effect between the same direct seller and the same purchaser at the same time; and

(b) provide for the performance of the same or similar services,

are deemed to be a single contract, regardless of whether services are being supplied concurrently under two or more of the contracts.

(6) Where a continuing-services contract does not comply with subsection (1),

(a) the contract is not binding on the purchaser in respect of the period in excess of three years;

(b) the direct seller shall refund to the purchaser, within fifteen days after receiving a request from the purchaser, all money paid under the contract for the period in excess of three years; and

(c) where the direct seller does not comply with clause (b), the purchaser may recover as a debt due all money paid under the contract for the period in excess of three years.

14 Chapter 129 is further amended by adding immediately after Section 21 the following Sections:

21A (1) In addition to the cancellation rights provided for in Section 21, a continuing-services contract may be cancelled by the purchaser at any time for any reason by giving written notice to the direct seller.

(2) A notice given pursuant to subsection (1) may be served on the direct seller in any manner that permits the purchaser to produce evidence that the purchaser cancelled the contract, including registered mail or personal delivery to the direct seller's last known address.

(3) Where a method of sending or delivering the cancellation notice other than personal delivery is used, a notice of cancellation is deemed to be given when sent.

(4) For greater certainty, where a purchaser cancels a continuing-services contract under subsection (1), Sections 22 and 23 apply.

21B (1) In addition to the cancellation rights provided for by Section 21, a contract between a multi-level marketing distributor and a multi-level marketing wholesaler in relation to a multi-level marketing plan may be cancelled by the multi-level marketing distributor at any time for any reason by giving written notice to the multi-level marketing wholesaler.

(2) A notice given pursuant to subsection (1) may be served on the multi-level marketing wholesaler in any manner that permits the multi-level marketing distributor to produce evidence that the multi-level marketing distributor cancelled the contract, including registered mail or personal delivery to the multi-level marketing wholesaler's last known address.

(3) Where a method of sending or delivering the cancellation notice other than personal delivery is used, a notice of cancellation is deemed to be given when sent.

(4) Where a multi-level marketing distributor cancels a contract under subsection (1), Sections 22 and 23 apply *mutatis mutandis*.

15 Clause 22(b) of Chapter 129, as enacted by Chapter 8 of the Acts of 1999, is amended by adding “, 21A or 21B” immediately after “21” in the second line.

16 Subsection 23(5) of Chapter 129, as enacted by Chapter 8 of the Acts of 1999, is amended by

(a) striking out “A” in the first line and substituting “Notwithstanding subsection (1), a”; and

(b) adding “or retain” immediately after “recover” in the first line.

17 Section 25 of Chapter 129 is repealed and the following Section substituted:

25 Sections 20 to 23 apply to all sales that are solicited, negotiated or entered into in any dwelling, motel, hotel or motor vehicle or at any exhibition, trade show, fair, parking lot or similar temporary or short term establishment by a person who is

not carrying on the business of direct selling and is not required to be issued a permit pursuant to this Act.

18 Section 26 of Chapter 129, as amended by Chapter 8 of the Acts of 1998 and Chapter 8 of the Acts of 1999, is further amended by

- (a) striking out the semicolon at the end of subclause (a)(ii) and substituting “, or”;**
- (b) adding immediately after subclause (a)(ii) the following subclause:**
 - (iii) an offence in relation to competition or deceptive marketing practices under the *Competition Act* (Canada) or any other Act of the Parliament of Canada;
- (c) striking out “violated” in the first line of subclause (d)(i) and substituting “contravened”; and**
- (d) adding “or the regulations” immediately after “Act” in the first line of subclause (d)(i).**

19 Chapter 129 is further amended by adding immediately after Section 29 the following Sections:

29A (1) After giving a person an opportunity to be heard, the Registrar may issue a compliance order requiring the person to comply with this Act and the regulations if satisfied that the person is contravening, is about to contravene or has contravened this Act or the regulations.

(2) A compliance order shall

- (a) name the person in respect of whom the order is issued;
- (b) describe the person’s act or practice that is contravening, is about to contravene or has contravened this Act or the regulations;
- (c) identify the provision of this Act or the regulations that is being contravened, is about to be contravened or has been contravened; and
- (d) be dated and signed by the Registrar.

(3) In a compliance order, the Registrar may order a person to stop engaging in or to not engage in a specified act or practice and to comply with this Act and the regulations.

(4) The Registrar shall serve a copy of the compliance order on the person named in the order.

29B (1) Where the Registrar is satisfied that a person in respect of whose conduct a compliance order has been issued is not complying with the order, the Registrar may apply to the Supreme Court of Nova Scotia for an order directing the person to comply with the compliance order.

(2) Upon hearing an application of the Registrar made under subsection (1), the Supreme Court may make any order that the Court considers necessary, in addition to the order directing the person to comply with the compliance order.

29C (1) The Registrar may publish any of the following information, including personal information as defined in the *Freedom of Information and Protection of Privacy Act*:

- (a) the name and business address of a permit holder;
- (b) any information appearing on a permit;
- (c) any information relating to the status of a permit issued under this Act, including the suspension or cancellation of a permit;
- (d) details of any compliance order issued under Section 29A;
- (e) details of any court order made under this Act;
- (f) details of any conviction for an offence under this Act;
- (g) any other information prescribed by the regulations.

(2) The Registrar may publish the information referred to in subsection (1) in whatever form and manner the Registrar considers appropriate.

20 Chapter 129 is further amended by adding immediately after Section 31 the following Section:

31A No person shall falsely hold himself or herself out as being engaged, employed or appointed by or authorized to act on behalf of a direct seller.

21 Chapter 129 is further amended by adding immediately after Section 32 the following Section:

32A (1) In this Section, “scheme of pyramid selling” has the same meaning as in subsection (1) of section 55.1 of the *Competition Act* (Canada).

(2) No direct seller or salesperson shall establish, operate, advertise or promote a scheme of pyramid selling.

22 Chapter 129 is further amended by adding immediately after Section 34 the following Sections:

34A (1) Notwithstanding any other enactment or law but subject to this Act, the assignee of any rights of a direct seller in any direct sale has no greater rights than, and is subject to the same obligations, liabilities and duties as, the direct seller, and this Act applies equally to such an assignee.

(2) The liability of the assignee is limited to the total amount owing to the direct seller at the date of assignment under the direct sales contract.

34B No action or other proceeding may be brought against Her Majesty in right of the Province, the Minister, the Registrar, any person acting under the authority of the Registrar or any other employee or agent of Her Majesty in right of the Province for anything done or not done, or for any neglect,

- (a) in the performance or intended performance of a duty under this Act or the regulations; or

(b) in the exercise or intended exercise of a power under this Act or the regulations,

if the person was acting in good faith.

23 Section 35 of Chapter 129, as amended by Chapter 8 of the Acts of 1998 and Chapter 8 of the Acts of 1999, is further amended by

(a) adding “(1)” immediately after the Section number;

(b) relettering clause (a) as (af) and adding immediately before clause (af) the following clauses:

(a) respecting what constitutes the usual place of business of a seller for the purpose of the definition of “direct selling”;

(aa) prescribing classes of direct sales contracts to which this Act does not apply;

(ab) prescribing categories of persons exempted from the application of this Act;

(ac) prescribing categories of sales exempted from the application of this Act;

(ad) prescribing the period during which a permit is valid;

(ae) respecting the qualifications, education and training that a salesperson or an applicant for a permit as a salesperson must possess, and the testing and other requirements that a salesperson or an applicant for a permit as a salesperson must pass or satisfy, including authorizing the Registrar to determine or approve the qualifications, education and training that a salesperson or an applicant for a permit as a salesperson must possess and the testing and other requirements that a salesperson or an applicant for a permit as a salesperson must pass or satisfy;

(c) adding immediately after clause (e) the following clauses:

(ea) authorizing the Registrar, at any time, to alter the amount of the bond posted by an applicant for or a holder of a permit as a direct seller;

(eb) prescribing information that may be published by the Registrar for the purpose of Section 29C;

(d) adding immediately after clause (he) the following clauses:

(hea) respecting the manner of giving notice that a continuing-services contract is not to be extended or further extended, which may include oral notice and, where notice is provided by the purchaser, how it must be acknowledged by the direct seller;

(heb) respecting the content and form of notices required under Section 20A;

(e) striking out clause (hh) and substituting the following clauses:

(hh) respecting reasonable compensation for the purpose of Section 23, including, without limiting the generality of the foregoing, prescribing the

reasonable compensation that a direct seller is entitled to recover in respect of goods that cannot be returned or services already provided under a cancelled direct sales contract, including different amounts of or standards for determining reasonable compensation in respect of different classes of direct sales contracts;

(hha) respecting the return of goods to a direct seller by the purchaser upon the cancellation of a direct sales contract, including

- (i) the location at which, and method by which, goods are to be returned to the direct seller, and
- (ii) the condition of goods being returned to the direct seller;

and

(f) adding the following subsections:

(2) A regulation made under subsection (1) may adopt or incorporate by reference, in whole, in part or with modifications, a written standard, rule, regulation, guideline, designation, code or document relating to any matter in respect of which a regulation may be made under subsection (1).

(3) A standard, rule, regulation, guideline, designation, code or document that is adopted or incorporated by reference under subsection (2) may be adopted or incorporated as it reads on a prescribed day or as it is amended from time to time.

(4) Where a standard, rule, regulation, guideline, designation, code or document is adopted or incorporated by reference under subsection (2), the Minister shall ensure that a copy of the standard, rule, regulation, guideline, designation, code or document is made publicly available.

24 Section 36 of Chapter 129 is repealed and the following Section substituted:

- 36 (1) A person is guilty of an offence who
- (a) contravenes this Act or the regulations;
 - (b) fails to comply with a compliance order or fails to do anything required by the Registrar under this Act or the regulations;
 - (c) knowingly furnishes false information in any application, statement, information or material required to be provided or submitted under this Act or the regulations; or
 - (d) fails to comply with a term, condition or restriction to which the person's permit is subject.

(2) Subject to subsections (3) and (4), every person who is guilty of an offence under this Act is liable on summary conviction to a fine of not less than five hundred dollars and not more than twenty-five thousand dollars or to imprisonment for a period of up to two years, or to both a fine and imprisonment.

(3) Subject to subsection (4), where a corporation is convicted of an offence under this Act, the corporation is liable to a fine of not less than one thousand dollars and not more than three hundred thousand dollars.

(4) Where a person is guilty of an offence for having contravened Section 5 or having failed to comply with a compliance order, the minimum fine that may be imposed upon the person is

- (a) for a first offence
 - (i) in the case of an individual, seven hundred and fifty dollars, and
 - (ii) in the case of a corporation, two thousand dollars;
- (b) for a second offence
 - (i) in the case of an individual, one thousand dollars, and
 - (ii) in the case of a corporation, five thousand dollars; and
- (c) for a third or subsequent offence
 - (i) in the case of an individual, two thousand dollars, and
 - (ii) in the case of a corporation, ten thousand dollars.

(5) Where a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, a monetary benefit has accrued to the offender, the court may order the offender to pay, in addition to a fine imposed under this Section, a fine in an amount equal to the estimation by the court of the amount of the monetary benefit.

(6) Where an offence under this Act is committed or continued on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

(7) Where a corporation is guilty of an offence under this Act, a director, officer, manager or agent of the corporation who directed, authorized, permitted, acquiesced in or participated in the contravention is also guilty of an offence and is liable on summary conviction to the penalties set out in subsections (2) and (4), whether or not the corporation has been prosecuted or convicted.

25 Section 38 of Chapter 129 is amended by striking out “two” in the second line and substituting “three”.

26 (1) Subsection 39(1) of Chapter 129 is amended by

- (a) striking out “county court” in the third line and substituting “Supreme Court of Nova Scotia”; and**
- (b) striking out “accordance with the *Summary Proceedings Act*” in the fifth line.**

(2) Subsection 39(4) of Chapter 129 is amended by

- (a) striking out “Appeal Division of the Supreme Court” in the first and second lines and substituting “Nova Scotia Court of Appeal”;**
- (b) striking out “county court” in the second line and substituting “Supreme Court of Nova Scotia”; and**

(c) striking out “Appeal Division” in the fourth line and substituting “Court of Appeal”.

27 (1) This Act, except Section 24, comes into force on such day as the Governor in Council orders and declares by proclamation.

(2) Section 24 has effect on and after July 1, 2014.
