

## Chapter 192

### DIRECT SELLERS

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**[HISTORY: Adopted by the Town Board of the Town of Washington 6-19-1986 as Ch. 8, Subch. II of the 1986 Code. Amendments noted where applicable.]**

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#### § 192-1. Registration.

It shall be unlawful for any direct seller to engage in direct sales within the Town without being registered and obtaining a license for that purpose as provided herein.

#### § 192-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

**CHARITABLE ORGANIZATION** — Includes any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation, or one purporting to such.

**DIRECT SELLER** — Any individual who, for him/herself, or for another person, a partnership, association or corporation, sells goods, or takes sales orders for the later delivery of goods, at any location other than the permanent business place or residence of said individual, partnership, association or corporation, and shall include, but not be limited to, hawkers, peddlers, solicitors and transient merchants. The sale of goods includes donations required by the direct seller for the retention of goods by a donor or prospective customer.

**GOODS** — Include personal property of any kind, and shall include goods provided incidental to services offered or sold.

**PERMANENT MERCHANT** — A direct seller who, prior to the consideration of the application of this chapter to said merchant, has continuously operated an established permanent place of business in this Town, or has established a permanent residence in this Town and now does business from his or her residence.

**TRANSIENT MERCHANT** — One who engages in the vending or sale of merchandise within the Town, temporarily, and who does not intend to become and does not become a permanent merchant of this Town.

**§ 192-3. Exemptions.**

The following shall be exempt from all provisions of this chapter:

- A. Any person delivering newspapers, fuel, dairy products, bakery goods, or other items to regular customers on established routes;
- B. Any person selling goods at wholesale to dealers in such goods;
- C. Any person selling agricultural products which such person has grown;
- D. Any permanent merchant or employee thereof who takes orders away from the established place of business for goods regularly offered for sale by such merchant within this county and who delivers such goods in their regular course of business;
- E. Any person who has an established place of business where the goods being sold are offered for sale on a regular basis, and in which the buyer has initiated contact with, and specifically requested a home visit by, said person;
- F. Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer;
- G. Any person selling or offering for sale a service unconnected with the sale or offering for sale of goods;
- H. Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law;
- I. Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of that organization, provided that there is submitted to the Clerk/Treasurer proof that such charitable organization is registered under § 440.41, Wis. Stats. Any charitable organization not registered under § 440.41, Wis. Stats., or which is exempt from that statute's registration requirements, shall be required to register under this chapter.

**§ 192-4. Registration form; requirements.**

- A. Applicants for registration must complete and return to the Clerk/Treasurer a registration form furnished by the Clerk/Treasurer which shall require the following information:
  - (1) Name, permanent address and telephone number, and temporary address, if any;
  - (2) Age, height, weight, color of hair and eyes;
  - (3) Name, address and telephone number of the person, firm, association or corporation that the direct seller represents or is employed by, or whose merchandise is being sold;
  - (4) Temporary address and telephone number from which business will be conducted, if any;

- (5) Nature of business to be conducted and a brief description of the goods offered, and any services offered;
  - (6) Proposed method of delivery of goods, if applicable;
  - (7) Make, model and license number of any vehicle to be used by applicant in the conduct of his or her business;
  - (8) Last cities, villages, towns, not to exceed three, where applicant conducted similar business;
  - (9) Place where applicant can be contacted for at least seven days after leaving this Town; and
  - (10) Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's transient merchant business within the last five years; the nature of the offense and the place of conviction.
- B. Applicants shall present to the Clerk/Treasurer for examination:
- (1) A driver's license or some other proof of identity as may be reasonably required;
  - (2) A state certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by state authorities; and
  - (3) A state health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under state law, such certificate to state that applicant is apparently free from any contagious or infectious disease, dated not more than 90 days prior to the date the application for license is made.
- C. At the time the registration is returned, a fee of \$5 per day shall be paid to the Clerk/Treasurer to cover the cost of processing the registration.
- D. The applicant shall sign a statement appointing the Clerk/Treasurer his or her agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, in the event the applicant cannot, after reasonable effort, be served personally.
- E. Upon payment of the fee and the signing of the statement, the Clerk/Treasurer shall register the applicant as a direct seller and date the entry. The registration shall be valid for a period of one year from the date of entry, subject to subsequent refusal as provided in § 192-5 below.

#### § 192-5. Investigation.

- A. Upon receipt of each application, the Clerk/Treasurer may refer it immediately to an appropriate law enforcement official who may make and complete an investigation of the statements made in such registration.

B. The Clerk/Treasurer shall refuse to register the applicant if it is determined, pursuant to the investigation above, that:

- (1) The application contains any material omission or materially inaccurate statement;
- (2) Complaints of a material nature have been received against the applicant by authorities in the last cities, villages and towns, not exceeding three, in which the applicant conducted similar business;
- (3) The applicant was convicted of a crime, statutory violation or ordinance violation within the last five years, the nature of which is directly related to the applicant's fitness to engage in direct selling; or
- (4) The applicant failed to comply with any applicable provision of § 192-4 above.

#### § 192-6. Appeal.

Any person denied registration may appeal the denial through the appeal procedure provided by ordinance or resolution of the Town Board, or, if none has been adopted, under the provision of §§ 68.07 through 68.16, Wis. Stats.

#### § 192-7. Prohibited practices; disclosure requirements.

A. Prohibited practices.

- (1) A direct seller shall be prohibited from:
  - (a) Calling at any dwelling or other place between the hours of 9:00 p.m. and 9:00 a.m. except by appointment;
  - (b) Calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning;
  - (c) Calling at the rear door of any dwelling place; or
  - (d) Remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.
- (2) A direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods offered for sale, the purpose of his or her visit, his or her identity or the identity of the organization he or she represents. A charitable organization direct seller shall specifically disclose what portion of the sale price of goods being offered will actually be used for the charitable purpose for which the organization is soliciting. Said portion shall be expressed as a percentage of the sale price of the goods.
- (3) No direct seller shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.

- (4) No direct seller shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one-hundred-foot radius of the source.
- (5) No direct seller shall allow rubbish or litter to accumulate in or around the area in which he or she is conducting business.

B. Disclosure requirements.

- (1) After the initial greeting and before any other statement is made to a prospective customer, a direct seller shall expressly disclose his or her name, the name of the company or organization he or she is affiliated with, if any, and the identity of goods or services he or she offers to sell.
- (2) If any sale of goods is made by a direct seller, or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel the transaction if it involves the extension of credit or is a cash transaction of more than \$25, in accordance with the procedure as set forth in §§ 423.202 and 423.203, Wis. Stats.; the seller shall give the buyer two copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of § 423.203(1)(a), (b) and (c), (2) and (3), Wis. Stats. The provisions of Ch. 423, Wis. Stats., are incorporated herein by reference.
- (3) If the direct seller takes a sales order for the later delivery of goods, he or she shall, at the time the order is taken, provide the buyer with a written statement containing the terms of the agreement, the amount paid in advance whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof.

**§ 192-8. Records.**

The local law enforcement authority shall report to the Clerk/Treasurer all convictions for violation of this chapter and the Clerk/Treasurer shall note any such violation on the record of the registrant convicted.

**§ 192-9. Revocation of registration.**

- A. Registration may be revoked by the Town Board after notice and hearing, if the registrant made any material omission or materially inaccurate statement in the application for registration, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales, violated any provision of this chapter or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling.
- B. Written notice of the hearing shall be served personally on the registrant or if registrant cannot be located, sent to the address furnished on the registration at least 72 hours prior to the time set for the hearing; such notice shall contain the time and place of hearing and a statement of the acts upon which the hearing will be based.

**§ 192-10. Violations and penalties.**

Any person found guilty of violating any provisions of this chapter shall forfeit not less than \$10 nor more than \$100 for each violation plus costs of prosecution. The penalty for second and subsequent offenses and continuing violations shall be as provided in § 1-5 of this Code. In addition, if the violation involves a violation of Ch. 423, Wis. Stats., the person shall be liable for any additional penalty provided by that chapter.