

BILL

No. 55

An Act respecting Consumer Protection and Business Practices, to repeal certain Acts and to make consequential amendments to other Acts

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(Assented to _____)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

PART I
Preliminary Matters

Short title

1 This Act may be cited as *The Consumer Protection and Business Practices Act*.

Interpretation

2 In this Act:

- (a) **“business day”** means a day other than a Saturday, Sunday or a holiday;
- (b) **“consumer”**, subject to sections 10, 44 and 102 and other than in Part VII, means an individual who participates or may participate in a transaction involving goods or services;
- (c) **“court”**, unless the context otherwise requires, means the Court of Queen’s Bench;
- (d) **“director”** means the person appointed pursuant to section 77;
- (e) **“goods”**, subject to the regulations and other than in Part VII, means personal property, including fixtures, ordinarily used for personal, family or household purposes that has been or may be sold, leased or otherwise provided by a supplier to a consumer;
- (f) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (g) **“prescribed”** means prescribed in the regulations;
- (h) **“services”**, subject to section 44 and other than in Part VII, means services ordinarily provided for personal, family or household purposes that have been or may be sold, leased or otherwise provided by a supplier to a consumer;
- (i) **“supplier”** means a person who, as principal or agent, carries on the business of:
 - (i) selling, leasing or otherwise providing goods or services on a retail basis;
 - (ii) manufacturing, importing, producing or assembling goods; or
 - (iii) distributing goods or services;and includes a person who issues or sells a prepaid purchase card and a licensee as defined in Part VII;
- (j) **“supply”** includes, with respect to the supply of services to a consumer, a sale, lease or other arrangement.

Act binds Crown

3 This Act binds the Crown.

PART II
Marketplace Practices

DIVISION 1

Interpretation and Application of Part

Interpretation of Part

4 In this Part and in Part IX, “**unfair practice**” means an unfair practice within the meaning of section 6.

Application of Part

5 This Part applies to any transaction or proposed transaction involving goods or services other than a prescribed transaction or proposed transaction or prescribed type or kind of transaction or proposed transaction.

DIVISION 2

Unfair Practices

Unfair practices

6 It is an unfair practice for a supplier, in a transaction or proposed transaction involving goods or services, to:

- (a) do or say anything, or fail to do or say anything, if as a result a consumer might reasonably be deceived or misled;
- (b) make a false claim;
- (c) take advantage of a consumer if the person knows or should reasonably be expected to know that the consumer:
 - (i) is not in a position to protect his or her own interests; or
 - (ii) is not reasonably able to understand the nature of the transaction or proposed transaction; or
- (d) without limiting the generality of clauses (a) to (c), do anything mentioned in section 7.

Specific unfair practices

7 The following are unfair practices:

- (a) representing that goods or services have sponsorship, approval, performance characteristics, accessories, ingredients, components, qualities, uses or benefits that they do not have;
- (b) representing that the supplier has a sponsorship, approval, status, affiliation or connection that the supplier does not have;
- (c) representing that goods or services are of a particular standard, quality, grade, style, model, origin or method of manufacture if they are not;
- (d) representing that goods are new or unused if they are not or if they have deteriorated or been altered, reconditioned or reclaimed;
- (e) representing that goods have been used to an extent different from the fact or that they have a particular history or use if the supplier knows it is not so;

- (f) representing that goods or services are available if the supplier does not supply nor intend to supply or otherwise dispose of the goods or services as represented;
- (g) representing that goods or services are available or are available for a particular reason, for a particular price, in particular quantities or at a particular time if the supplier knows or can reasonably be expected to know it is not so, unless the representation clearly states any limitations;
- (h) representing that a service, part, repair or replacement is needed if that is not so, or that a service has been provided, a part has been installed, a repair has been made or a replacement has been provided if that is not so;
- (i) representing that a price benefit or advantage exists respecting goods or services if a price benefit or advantage does not exist;
- (j) charging a price for goods or services that is substantially higher than an estimate provided to the consumer, except where the consumer has expressly agreed to the higher price in advance;
- (k) representing that a transaction involving goods or services involves or does not involve rights, remedies or obligations if that representation is deceptive or misleading;
- (l) representing anything that gives a part of the price of specific goods or services but does not give reasonable prominence to the total price of the goods or services;
- (m) representing that a salesperson, representative, employee or agent has the authority to negotiate the final terms of a transaction involving goods or services if that is not so;
- (n) representing that the purpose or intent of a solicitation or communication with a consumer by a supplier is for a purpose or intent different from the fact;
- (o) using exaggeration, innuendo or ambiguity in representing a material fact, or failing to disclose a material fact, if the representation or failure is deceptive or misleading;
- (p) representing that goods or services have been made available in accordance with a previous representation if they have not;
- (q) taking advantage of a consumer by including in a consumer agreement terms or conditions that are harsh, oppressive or excessively one-sided;
- (r) taking advantage of a consumer by entering into an agreement if the price of the goods or services grossly exceeds the price at which similar goods or services are readily obtainable in a similar transaction by like consumers;
- (s) taking advantage of a consumer by exerting undue pressure or undue influence on the consumer to enter into a transaction involving goods or services.

Unfair practices prohibited

- 8(1) No supplier shall commit an unfair practice.
- (2) No employee, agent, salesperson or representative of the supplier shall commit an unfair practice.
- (3) A supplier and the supplier's employee, agent, salesperson or representative are liable for an unfair practice of the employee, agent, salesperson or representative.

(4) In determining whether or not a person has committed an unfair practice, the general impression given by the alleged unfair practice may be considered.

(5) In determining whether or not a person has committed an unfair practice, the reasonableness of the actions of that person in those circumstances is to be considered.

Circumstances surrounding unfair practice

9(1) An unfair practice may occur before, during or after a transaction involving goods or services or whether or not a transaction involving goods or services takes place.

(2) An unfair practice may consist of a single act or omission.

(3) An unfair practice is an unfair practice for the purposes of this Part notwithstanding that:

(a) it is not directed at a specific consumer and does not occur in the course of or for the purposes of a specific transaction involving goods or services but is directed to the public at large; and

(b) there is no privity of contract between the supplier and any specific consumer affected by the unfair practice.

PART III

Consumer Products Warranties

DIVISION 1

Interpretation and Application of Part

Interpretation of Part

10(1) In this Part and in section 102:

(a) **“acceptable quality”** means the characteristics and the quality of a consumer product that consumers can reasonably expect the product to have, having regard to all the relevant circumstances of the sale of the product, including:

(i) the description of the product;

(ii) its purchase price; and

(iii) the express warranties of the retail seller or manufacturer of the product;

and includes merchantable quality within the meaning of *The Sale of Goods Act*;

(b) **“additional written warranty”** means any undertaking in writing by a warrantor that the warrantor will repair, replace, make a refund or take other remedial action respecting a consumer product that breaks down, malfunctions or fails to meet the specifications in the undertaking, and includes a service contract, but does not include an express warranty:

(i) that is similar to an expression of general policy concerning customer satisfaction; and

(ii) that is not subject to any specific limitation;

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- (c) **“breach of a substantial character”** means:
- (i) that a consumer product, or the level of performance of the retail seller or manufacturer of a consumer product, departs substantially from what consumers can reasonably expect, having regard to all the relevant circumstances of the sale of the product, including:
 - (A) the description of the product;
 - (B) its purchase price;
 - (C) the statutory warranties and express warranties of the retail seller or the manufacturer of the product; or
 - (ii) that a consumer product is totally or substantially unfit for all the usual purposes of that product or for any particular purpose for which, to the knowledge of the retail seller, the product is being bought;
- (d) **“consumer”** means a person who acquires a consumer product from a retail seller and includes a non-profit organization, whether incorporated or not, that has objects of a benevolent, charitable, educational, cultural or recreational nature and that acquires a consumer product from a retail seller, but no person who:
- (i) acquires a consumer product for the purpose of resale is a consumer respecting that product; or
 - (ii) subject to subsection (2), intends to use a consumer product in a business or who intends to use the product predominantly for business purposes and also for personal, family or household purposes is a consumer respecting that product;
- (e) **“consumer product”**:
- (i) means any goods ordinarily used for personal, family or household purposes and, without restricting the generality of the foregoing, includes any goods ordinarily used for personal, family or household purposes that are designed to be attached to or installed in any real or personal property, whether or not they are so attached or installed; and
 - (ii) includes any goods bought for agricultural or fishing purposes by an individual or by a family farming corporation but does not include any implement the sale of which is governed by *The Agricultural Implements Act*;
- (f) **“express warranty”** means an express warranty as described in section 16;
- (g) **“family farming corporation”** means a corporation the principal object and business of which is farming or fishing and with respect to which:
- (i) at least 95% of the shares are owned wholly by individuals related to one another by blood, marriage or adoption; and
 - (ii) at least 51% of the shares are owned by a shareholder or shareholders principally occupied in the farming or fishing operations of the corporation;

(h) **“manufacturer”** means a person who carries on the business of assembling, processing or manufacturing consumer products and includes:

- (i) any person who attaches his or her brand name or causes or permits his or her brand name to be attached to consumer products;
- (ii) any person who describes himself or herself or holds himself or herself out to the public as the manufacturer of consumer products; and
- (iii) if consumer products are manufactured outside Canada and the foreign manufacturer of the products does not have a regular place of business in Canada, a person who imports or distributes those products;

(i) **“motor vehicle”** means any self-propelled vehicle designed for conveyance on public highways of persons or goods, and includes a snowmobile and an all terrain vehicle;

(j) **“purchase price”** means, subject to subsection 29(1), the total value of the consideration or any part of the consideration that has been paid by the consumer to the retail seller or the retail seller’s assignee for a consumer product, and includes those finance charges or other credit costs that the consumer has reasonably incurred respecting the product;

(k) **“retail seller”** means a person who sells consumer products to consumers in the ordinary course of the person’s business but, subject to subsection 21(1), does not include a trustee in bankruptcy, receiver, liquidator, sheriff, auctioneer or person acting under an order of a court;

(l) **“sale”** means a transaction in which the retail seller transfers or agrees to transfer the general property in a consumer product to a consumer for a valuable consideration and includes but is not restricted to:

- (i) a conditional sale;
- (ii) a contract of lease or hire;
- (iii) a transaction under which a consumer product is supplied to a consumer along with services;

and any reference in this Part to “buy”, “buying”, “bought”, “sell”, “sold” or “selling” is to be construed accordingly;

(m) **“sale by sample”** means a sale in which there is a term in the contract of sale, express or implied, to the effect that the sale is a sale by sample;

(n) **“second-hand dealer”** means a retail seller whose sales of second-hand consumer products constitute at least 85% of the retail seller’s total number of sales of consumer products, but does not include a retail seller who carries on, in whole or in part, the business of selling motor vehicles;

(o) **“service contract”** means a contract in writing for performance of services that:

- (i) is over a fixed period or for a specified duration determined by means other than time; and
- (ii) is related to the maintenance or repair of a consumer product, whether or not the contract provides for the furnishing of parts or materials to be supplied with or consumed in the performance of those services;

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- (p) **“statutory warranty”** means the warranties described in section 19;
- (q) **“warrantor”** means a manufacturer, retail seller or other person who offers an additional written warranty to a consumer.
- (2) For the purposes of clause (1)(d), a person is a consumer respecting goods that are consumer products if:
- (a) the goods are used by that person in a business, or are intended to be used by that person predominantly for business purposes, and also for personal, family or household purposes; and
 - (b) the goods are consumer products within the meaning of subclause (1)(e)(ii).

Part not self-contained code

- 11(1)** The rights and remedies provided in this Part are in addition to any other rights or remedies under any other law in force in Saskatchewan unless a right or remedy under that law is expressly or impliedly contradicted by this Part.
- (2) No provisions of this Part are to be construed as repealing, invalidating or superseding the provisions of any other law in force in Saskatchewan unless this Part by express provision or by necessary implication clearly intends those provisions to be so construed.

Subsequent owners

- 12(1)** Subject to subsection (2), persons who derive their property or interest in a consumer product from or through the consumer, whether by purchase, gift, operation of law or otherwise, are, regardless of their place in the sequence of dealings respecting the consumer product, deemed:
- (a) to be given by the retail seller or manufacturer the same statutory warranties that the consumer was deemed to have been given pursuant to sections 19 and 21; and
 - (b) to receive from the warrantor the same additional written warranties that the consumer received and, for the purposes of any provision of this Part, unless otherwise provided in this Part:
 - (i) to have rights and remedies against the retail seller, manufacturer or warrantor equal to but not greater than the rights and remedies the consumer has pursuant to this Part; and
 - (ii) to be subject to any defences or rights of set-off that could be raised against the consumer pursuant to this Part.
- (2) No retail seller who acquires a consumer product from or through a consumer for the purposes of resale or for use predominantly in a business has any rights pursuant to subsection (1) respecting that consumer product.

Second-hand or substandard consumer products

- 13** Subject to section 14, this Part applies to sales of second-hand, substandard or otherwise inferior consumer products and, if a consumer product is described as being second-hand, substandard or otherwise inferior, the description and the purchase price are material facts in determining the characteristics and qualities that consumers can reasonably expect that consumer product to have.

Second-hand dealers

14(1) A second-hand dealer is entitled to rely on a provision in a contract for the sale of a second-hand consumer product that excludes or modifies any or all of the statutory warranties mentioned in clauses 19(d), (e) and (g) if the second-hand dealer proves that, before he or she entered into the contract, the provision was:

- (a) brought to the notice of the consumer; and
- (b) made clear to the consumer respecting its effect.

(2) An exclusion or modification mentioned in subsection (1) does not, in any way, limit or affect a manufacturer's liability pursuant to subsection 21(2) respecting that consumer product.

Waiver of benefits ineffective; inclusion of certain clauses forbidden

15(1) Subject to subsection 14(1), every agreement or bargain, verbal or written, express or implied that states or implies any of the following is void:

- (a) that the provisions of this Part or the regulations made pursuant to this Part do not apply;
- (b) that any right or remedy provided by this Part or the regulations made pursuant to this Part does not apply;
- (c) that any right or remedy provided by this Part or the regulations made pursuant to this Part is in any way limited, modified or abrogated.

(2) Notwithstanding subsection (1), if the parties to a dispute pursuant to this Part are able to resolve their dispute through mediation, arbitration or another process, the parties' rights pursuant to this Part are extinguished respecting that dispute.

DIVISION 2**Express Warranties****Express warranties**

16(1) Any promise, representation, affirmation of fact or expression of opinion or any action that reasonably can be interpreted by a consumer as a promise or affirmation relating to the sale or to the quality, quantity, condition, performance or efficacy of a consumer product or relating to its use or maintenance is deemed to be an express warranty if it would usually induce a reasonable consumer to buy the consumer product, whether or not the consumer actually relies on the warranty.

(2) Subsection (1) applies to a promise, representation, affirmation of fact or expression of opinion made verbally or in writing directly to a consumer or through advertising by:

- (a) a retail seller or manufacturer; or
- (b) an agent or employee of a retail seller or manufacturer who has actual, apparent or usual authority to act on his or her behalf.

(3) No express warranty is to disclaim, exclude or limit a statutory warranty set out in section 19.

Parol evidence rule abolished

17 Parol or extrinsic evidence establishing the existence of an express warranty is admissible in any action between a consumer and a retail seller or manufacturer even though it adds to, varies or contradicts a written contract.

Express warranties in labels or packages, in advertising, deemed part of description

18(1) A retail seller is a party to express warranties contained on labels or packages accompanying or attached to a consumer product sold by the retail seller to a consumer unless the retail seller has made it clear to the consumer before the sale that the retail seller does not adopt the express warranties.

(2) Subject to subsection (3), no retail seller is a party to any express warranties contained in any advertisement originating from or carried out by a manufacturer unless the retail seller expressly or impliedly adopts those warranties.

(3) Notwithstanding that a retail seller does not adopt the express warranties mentioned in subsections (1) and (2), any descriptive statements that appear on the label or container or otherwise accompany the consumer product are deemed, for the purposes of clause 19(c), to be part of the description of the consumer product.

DIVISION 3

Statutory Warranties**Statutory warranties**

19 If a consumer product is sold by a retail seller, the following warranties are deemed to be given by the retail seller to the consumer:

- (a) that the retail seller has a right to sell the consumer product;
- (b) that:
 - (i) at the time of delivery to the consumer, the consumer product is and will remain free from any security interest, lien, charge or encumbrance not expressly disclosed or actually known to the consumer before the sale is made; and
 - (ii) the consumer will enjoy quiet possession of the consumer product except to the extent that it may be disturbed by any person entitled to any security interest, lien, charge or encumbrance disclosed or actually known to the consumer before the sale is made;
- (c) if the sale of the consumer product is a sale by description, that the consumer product corresponds with the description;
- (d) that the consumer product supplied under the contract is of acceptable quality, except that this warranty is deemed not to be given:
 - (i) respecting defects specifically drawn to the consumer's attention before the contract is made; or
 - (ii) if the consumer examines the consumer product before the contract is made, respecting defects that the examination ought to have revealed;
- (e) if the consumer expressly or by implication makes known to the retail seller any particular purpose for which the consumer product is being bought, that the consumer product supplied under the contract is reasonably fit for that purpose, whether or not that is a purpose for which the consumer product is commonly supplied, except that this warranty is deemed not to be given if the circumstances show that:
 - (i) the consumer does not rely on the retail seller's skill or judgment; or
 - (ii) it is unreasonable for the consumer to rely on the retail seller's skill or judgment;

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- (f) if the sale of the consumer product is a sale by sample:
 - (i) that the bulk of the consumer product corresponds in quality with the sample;
 - (ii) that the consumer is to have a reasonable opportunity to compare the bulk of the consumer product with the sample;
 - (iii) that the consumer product is free from any defect that renders it not of acceptable quality and that would not be apparent on reasonable examination of the sample;
 - (g) that the consumer product and all its components are to be durable for a reasonable period, having regard to all the relevant circumstances of the sale, including:
 - (i) the description and nature of the consumer product;
 - (ii) the purchase price;
 - (iii) the express warranties of the retail seller or manufacturer; and
 - (iv) the necessary maintenance the consumer product normally requires and the manner in which it has been used;
 - (h) if the consumer product normally requires repairs, that spare parts and repair facilities will be reasonably available for a reasonable period after the date of sale of the consumer product.

Sale by description

20 No sale of consumer products is precluded from being a sale by description by reason only that it is a sale of specific consumer products or that the consumer products being exposed for sale are selected by the consumer.

Manufacturers deemed to give statutory warranties

21(1) For the purposes of subsection (2), “**retail seller**” includes those persons who are excluded from the definition of retail seller in clause 10(1)(k).

(2) Subject to subsection (3), the manufacturer of consumer products is deemed to give to consumers of those consumer products the same statutory warranties respecting those consumer products as the retail seller is deemed to have given pursuant to clauses 19(b) to (h).

(3) A manufacturer of consumer products is liable only for the manufacturer’s own breach of the statutory warranties or of any express or additional written warranties that the manufacturer has given to consumers and, without limiting the generality of the foregoing, the application of subsection (2) is subject to the following:

- (a) no provision of clause 19(b) applies respecting any security interest that is not created by the manufacturer or any lien, charge or encumbrance not arising as the result of any act or default on the manufacturer’s part;
- (b) no manufacturer is bound by any description applied by the retail seller to the consumer products without the authority or consent of the manufacturer;
- (c) for the purposes of clause 19(d), the consumer is deemed to have notice of a defect if disclosure of the defect was made directly or indirectly to the retail seller and was intended by the manufacturer to reach the consumer and in the normal course of events could reasonably be expected by the manufacturer to reach the consumer;

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- (d) no provision of clause 19(e) applies if, without the consent of the manufacturer, any consumer product:
- (i) is sold by a retail seller to a consumer as being fit for a purpose that is not the ordinary purpose of the product; or
 - (ii) at the time of sale, is in a state, age or condition that makes it unreasonable for the consumer to conclude that the consumer product is fit for the purpose for which it is commonly supplied.

Onus of proof

22(1) There is a presumption of breach of warranties by a manufacturer if:

- (a) a consumer, a person mentioned in subsection 12(1) who derives his or her property or interest in a consumer product from or through a consumer or a person mentioned in section 35 brings an action against a manufacturer for breach of one or more statutory warranties set out in clauses 19(d) and (e);
 - (b) the consumer or person mentioned in clause (a) proves the poor quality, malfunctioning or breakdown of the consumer product but cannot prove the exact cause of the poor quality, malfunctioning or breakdown; and
 - (c) the facts of the case make it reasonable to draw an inference of a breach by the manufacturer of those statutory warranties.
- (2) The presumption in subsection (1) can be rebutted by proof that:
- (a) the poor quality, malfunctioning or breakdown of the consumer product was due to a cause not attributable to the manufacturer; or
 - (b) the consumer product was acceptable or fit for the purpose for which it was bought when it went out of the manufacturer's control.

Retail seller's rights against manufacturer

23(1) If a retail seller is sued for a breach of a statutory warranty by a consumer, by a person mentioned in subsection 12(1) or by a person mentioned in section 35, and the manufacturer of the consumer product is in breach of the same statutory warranty to the consumer or person, the retail seller is entitled, whether or not the retail seller bought the consumer product directly from the manufacturer, to recover from the manufacturer, in the manner described in subsection (2), any losses that:

- (a) the retail seller may suffer as a result of the action; and
 - (b) are the responsibility of the manufacturer pursuant to this Part.
- (2) A retail seller who intends to recover losses from a manufacturer in accordance with subsection (1), on being served with the documents initiating an action against the retail seller, shall immediately:
- (a) advise the manufacturer that an action has been commenced and that the retail seller intends to recover losses from the manufacturer; and
 - (b) forward to the manufacturer, by registered mail, a copy of the documents initiating the action.

DIVISION 4

Additional Written Warranties**Retail seller deemed warrantor**

24(1) If an additional written warranty accompanies or is attached to a consumer product sold by a retail seller, the retail seller is deemed to be a warrantor respecting the additional written warranty regardless of whether or not the additional written warranty is given by another warrantor.

(2) Subsection (1) does not apply if the retail seller has, in writing before the sale, made it clear to the consumer that the retail seller does not adopt the additional written warranty as the retail seller's own.

(3) In any action brought to enforce the terms of an additional written warranty, the fact that at the time of the sale of the consumer product the consumer was or was not aware of the existence of the additional written warranty or the consumer did or did not rely on the additional written warranty is irrelevant.

Additional written warranty concurrent with statutory warranty

25 No provision of this Part is to be construed as requiring that the terms of an additional written warranty be consecutive to or added to the terms of a statutory warranty.

DIVISION 5

Remedies**No privity of contract required**

26 In any action brought pursuant to this Part against a manufacturer, retail seller or warrantor for breach of a statutory, express or additional written warranty, lack of privity of contract between the person bringing the action and the retail seller, manufacturer or warrantor is not a defence, and the retail seller, manufacturer or warrantor is conclusively presumed to have received consideration.

Remedies are additional

27 Sections 28 to 34:

(a) apply in addition to any other remedies to which a consumer may be entitled under the terms of an additional written warranty; and

(b) except respecting any reference to express warranties, apply with any necessary modification to any person mentioned in subsection 12(1) who derives his or her property or interest in a consumer product from or through the consumer.

Remedies for breach of statutory or express warranties

28(1) If there is a breach by a manufacturer or retail seller of a statutory warranty mentioned in section 19 or of an express warranty mentioned in section 16 and if:

(a) the breach is remediable and not of a substantial character:

(i) the party in breach shall, within a reasonable period, make good the breach free of charge to the consumer but, if the breach has not been remedied within a reasonable period, the consumer is entitled to have the breach remedied elsewhere and to recover from the party in breach all reasonable costs incurred in having the breach remedied; and

(ii) the consumer is entitled to recover damages for losses that he or she has suffered and that were reasonably foreseeable as liable to result from the breach regardless of whether the breach is remedied;

(b) the breach is of a substantial character or is not remediable, the consumer, at his or her option, may exercise the remedies pursuant to clause (a) or, subject to subsections (2) and (3), the consumer may:

- (i) reject the consumer product; and
- (ii) if he or she exercises his or her right to reject, he or she is entitled to recover the purchase price from the party in breach and to recover damages for any other losses that he or she has suffered and that were reasonably foreseeable as liable to result from the breach.

(2) The consumer shall exercise his or her right to reject the consumer product pursuant to clause (1)(b) within a reasonable period pursuant to subsection (3), except where the consumer delays the exercise of his or her right to reject because he or she has relied on assurances made by the party in breach or the party's agent that the breach would be remedied and the breach was not remedied.

(3) For the purposes of subsection (2), regardless of whether the right to reject is being exercised by the consumer or a person mentioned in subsection 12(1), a reasonable period:

- (a) runs from the time of delivery of the consumer product to the consumer; and
- (b) consists of a period sufficient to permit any testing, trial or examination of the consumer product that may be normally required by consumers of that consumer product and as may be appropriate considering the nature of the consumer product, for the purpose of determining the conformity of the consumer product to the obligations imposed pursuant to this Part on the party in breach.

If subsequent owner claims purchase price

29(1) Subject to subsection (2), if a person mentioned in subsection 12(1) rejects a consumer product pursuant to clause 28(1)(b), the purchase price he or she is entitled to claim:

- (a) is the total value of the consideration or the part that has been paid by him or her for the consumer product; and
- (b) includes those finance charges or other credit costs that he or she has reasonably incurred respecting the consumer product.

(2) A person mentioned in subsection 12(1) is not entitled in any case to claim a purchase price greater than the purchase price paid by the consumer to the retail seller or his or her assignee.

If party in breach must repair consumer product

30(1) If subsection 28(1) applies so that the party in breach is required to repair the consumer product, the consumer shall return the product to the place of business of, or to any repair facility or service outlet operated by:

- (a) the retail seller, if the retail seller is the party in breach;
- (b) the manufacturer, if the manufacturer is the party in breach; or
- (c) either of them, if both are in breach.

(2) No consumer is obliged to return the consumer product pursuant to subsection (1) to the party in breach if, by reason of the nature of the breach or the size, weight or method of attachment or installation of the consumer product, it cannot be removed or transported without significant cost to the consumer.

(3) In the circumstances mentioned in subsection (2), the party in breach shall collect and arrange for the transportation and return of the consumer product at his or her own expense or shall cause the repair to be made at the site where the consumer product is located.

(4) For the purposes of subclause 28(1)(a)(i), the reasonable period runs from the time when the party in breach receives the consumer product but, if subsection (2) applies, the reasonable period runs from the time when the consumer advises the party in breach of the defect in the consumer product.

If consumer rejects consumer product

31 If a consumer rejects a consumer product pursuant to clause 28(1)(b):

(a) in the case where the party in breach is the manufacturer, the manufacturer is liable to refund the purchase price of the consumer product to the consumer even though the purchase price was paid or is payable to the retail seller or any other person;

(b) the consumer has no responsibility to deliver the consumer product to the party in breach and it is sufficient if the consumer informs the party in breach that he or she rejects it;

(c) the party in breach is entitled to recover from the consumer, or set off against the refund of the purchase price of the consumer product, an amount that is equitable for the use of the consumer product and, in determining that amount, no regard is to be taken of the depreciation of the consumer product unless it is otherwise provided for by the regulations;

(d) the consumer is entitled to retain possession of the rejected consumer product as against:

(i) the manufacturer and retail seller until he or she recovers the purchase price he or she paid; and

(ii) an assignee until he or she recovers the amount he or she paid to the assignee; and

(e) in the case where the party in breach pays the purchase price to the consumer as provided by this section, the consumer shall ensure that the consumer product is free of any encumbrances for which he or she is responsible.

Remedy for breach of additional written warranty to repair or replace

32 If a consumer makes a valid claim under an additional written warranty for repair or replacement of a consumer product and the warrantor does not, within a reasonable period after the claim is made, perform the repair or replacement in accordance with the terms of the additional written warranty, the consumer is entitled:

(a) to have the defect remedied elsewhere; and

(b) to recover reasonable repair costs from the warrantor as well as damages for losses that the consumer suffered and that were reasonably foreseeable as liable to result from the failure of the warrantor to honour the warranty.

Additional repair costs

33 If an additional written warranty covers only a certain part or certain parts of a consumer product or if an additional written warranty specifies that it covers only certain repair costs that may arise with respect to the consumer product, no consumer of the consumer product is obliged to pay any additional repair costs unless the consumer has agreed in writing to pay for the additional repair costs not covered by the warranty.

DIVISION 6

Damages, Costs and Limitation of Actions**Costs of disassembly and damages for claim of lien or failure to assemble**

34(1) If a manufacturer, retail seller or warrantor disassembles or dismantles a consumer product in order to repair the consumer product to fulfil the requirements of subclause 28(1)(a)(i) or the requirements of an additional written warranty for which the manufacturer, retail seller or warrantor is responsible and it is found that the part or parts that were going to be repaired or replaced are not defective, the consumer shall pay the reasonable costs of disassembling or dismantling the consumer product if:

- (a) he or she agreed in writing to pay those costs; and
- (b) his or her attention was specifically drawn to the clause or clauses of the agreement in which he or she agreed to pay those costs.

(2) If a manufacturer, retail seller or warrantor is not entitled to recover the cost of disassembling or dismantling a consumer product pursuant to subsection (1), the manufacturer, retail seller or warrantor shall reassemble the consumer product at its own expense and put it at the disposal of the consumer within the shortest possible time.

(3) If a manufacturer, retail seller or warrantor fails to comply with subsection (2), or if the manufacturer, retail seller or warrantor is not entitled to payment for repairs to a consumer product but claims a lien and refuses to give up possession of the consumer product, the consumer is entitled to recover damages that:

- (a) are for losses that he or she suffered; and
- (b) were reasonably foreseeable as liable to result from the breach of the duty imposed by subsection (2) or from the refusal to give up possession.

User may recover damages

35 A person who may reasonably be expected to use, consume or be affected by a consumer product and who suffers a personal injury as a result of a breach, by a retail seller or manufacturer, of a statutory warranty mentioned in clauses 19(c) to (f) is entitled, as against the retail seller or manufacturer, to recover damages arising from the personal injury that he or she has suffered and that was reasonably foreseeable as liable to result from the breach.

Exemplary damages

36(1) In addition to any other remedy provided by this Part or any other law, a consumer or a person mentioned in subsection 12(1) or in section 35 may recover exemplary damages from any manufacturer, retail seller or warrantor who has committed a wilful contravention of this Part.

(2) In an action in which exemplary damages are claimed, evidence respecting the existence of similar conduct in transactions between the manufacturer, retail seller or warrantor and other consumers is admissible for the purposes of proving that the contravention of this Part was wilful or of proving the degree of wilfulness of the contravention.

Party-party costs

37(1) No costs shall be awarded against a consumer, a person mentioned in subsection 12(1) or a person mentioned in section 35 who:

- (a) brings an action against a manufacturer, retail seller or warrantor for breach of a warranty pursuant to this Part; or
- (b) in an action brought by a manufacturer, retail seller or warrantor, defends or counterclaims on the grounds that the manufacturer, retail seller or warrantor has been guilty of a breach of warranty pursuant to this Part.

(2) Subsection (1) applies regardless of whether the consumer or other person is successful in his or her action, defence or counterclaim unless, in the opinion of the court, the action, defence or counterclaim was frivolous or vexatious.

DIVISION 7

Resolution of Disputes

Service of documents

38 In disputes arising pursuant to this Part, any notice, document or legal process may be served on a manufacturer, retail seller or warrantor:

- (a) if the manufacturer, retail seller or warrantor is a corporation:
 - (i) and has no registered office in Saskatchewan, by sending it by registered mail to the address of the corporation as shown on the receipt or other printed matter given to the consumer before or at the time of sale and, in the case of a manufacturer whose address is not shown on any receipt or printed matter given to the consumer, by sending it by registered mail to the retail seller whose place of business is deemed to be the registered office of the manufacturer;
 - (ii) by leaving it at, or sending it by registered mail to, the registered office of the corporation;
 - (iii) by personally serving any director, officer, receiver-manager or liquidator of the corporation; or
 - (iv) by personally serving any attorney required to be appointed by an extra-provincial corporation registered in Saskatchewan pursuant to *The Business Corporations Act*;
- (b) if the manufacturer, retail seller or warrantor is not a corporation:
 - (i) by leaving it at, or sending it by registered mail to, the manufacturer's, retail seller's or warrantor's place of business and, if the manufacturer, retail seller or warrantor carries on business at more than one place of business, by leaving it at, or sending it by registered mail to, any of those places of business; or
 - (ii) by personally serving any employer or employee at the manufacturer's, retail seller's or warrantor's place of business.

Effect of breach of standards

39(1) In any action arising pursuant to this Part, proof that a consumer product does not comply with mandatory health or safety standards set pursuant to an Act or an Act of the Parliament of Canada or with quality standards set by regulation is evidence that the consumer product is not of acceptable quality or fit for the purpose for which it was bought.

(2) Proof that a consumer product complies with the standards mentioned in subsection (1) is not evidence that the consumer product is of acceptable quality or fit for the purpose for which it was bought.

(3) Subsection (1) does not apply if non-compliance with the mandatory health or safety standards described in that subsection is not in any way related to or otherwise connected with the quality or fitness of the consumer product.

DIVISION 8

Regulations for Part**Regulations for Part**

40 For the purposes of this Part, the Lieutenant Governor in Council may make regulations:

- (a) declaring that this Part or any provisions of this Part do not apply to a consumer product or a class or classes of consumer products, or to a manufacturer, retail seller or warrantor or a class or classes of manufacturers, retail sellers or warrantors;
- (b) providing for filing and approval of additional written warranty documents, retail sale agreements or any other documents to be used by manufacturers, retail sellers or warrantors;
- (c) regulating, for the purposes of clause 19(h), the availability of spare parts and reasonable repair facilities for consumer products that normally require repairs, including:
 - (i) declaring what constitutes reasonable repair facilities for different manufacturers or retail sellers or classes of manufacturers or retail sellers or for different consumer products or classes of consumer products;
 - (ii) declaring different consumer products or classes of consumer products to be consumer products that normally require repairs;
 - (iii) declaring that all or any part of clause 19(h) does not apply to specified repair facilities or spare parts for specified consumer products or classes of consumer products; and
 - (iv) declaring what is a reasonable period for availability of reasonable repair facilities or spare parts for different consumer products or classes of consumer products;
- (d) regulating the advertising by manufacturers, retail sellers or warrantors of any of the warranties covered by this Part;
- (e) prescribing, for the purposes of subsection 30(4), the periods with respect to different manufacturers or retail sellers or classes of manufacturers or retail sellers and with respect to different consumer products or classes of consumer products;

(f) prescribing the manner in which the amount to be recovered or set off for use of a consumer product or class of consumer products is to be determined for the purposes of clause 31(c);

(g) for the purposes of section 39, prescribing the quality standards for consumer products.

PART IV Unsolicited Goods

Interpretation of Part

41 In this Part and in section 102, “**unsolicited goods**” means personal property, the receipt of which has not been requested by the recipient, but does not include personal property delivered to a person who knows or ought to know that the goods are intended for delivery to another person.

Legal obligations of recipients

42 If unsolicited goods are received, the recipient has no legal obligation to the sender unless and until the recipient acknowledges to the sender in writing his or her intention to accept the unsolicited goods.

No action for loss, etc., in absence of acknowledgment

43 In the absence of an acknowledgement mentioned in section 42, no action lies in the event of loss, misuse, damage, misappropriation, use or theft of the unsolicited goods.

PART V Consumer Contracts

Interpretation of Part

44 In this Part and in section 102:

(a) “**consumer**” means an individual who participates in a consumer contract and includes an individual who receives or has the right to receive goods or services from a supplier as a result of a purchase, lease or other arrangement;

(b) “**consumer contract**” means a contract for goods or services between a consumer and a supplier governed by this Part, and includes:

- (i) a future performance contract;
- (ii) an internet sales contract;
- (iii) a personal development services contract;
- (iv) a remote contract;
- (v) a travel club contract; and
- (vi) any other prescribed contract;

(c) “**consumer transaction**” means the supply of goods or services by a supplier to a consumer;

(d) “**credit card**” means a card, document or similar instrument by which goods or services may be purchased on deferred payment or by means of which cash may be obtained;

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- (e) **“future performance contract”** means a contract between a supplier and a consumer for the supply of goods or services for which the delivery, performance or payment in full is not made at the time the contract is made or partly executed;
- (f) **“internet sales contract”** means a consumer transaction that is a contract in which the contract is formed over the internet;
- (g) **“personal development services”** means:
- (i) services related to any of the following:
 - (A) health, fitness, dieting or matters of a similar nature;
 - (B) modelling and talent, including photo shoots relating to modelling and talent, or matters of a similar nature;
 - (C) martial arts, sports, dancing or similar activities;
 - (D) any other prescribed services; and
 - (ii) facilities provided for:
 - (A) instruction, training or assistance with respect to any of the services mentioned in subclause (i); and
 - (B) the use by a consumer of any of the services mentioned in subclause (i);
- (h) **“personal development services contract”** means a contract for personal development services for which payment is required in advance of those services being provided;
- (i) **“remote contract”** means a consumer contract that is entered into when the consumer and the supplier are not physically together;
- (j) **“services”** includes a membership in a club or organization;
- (k) **“travel club contract”** means a contract between a supplier and a consumer for a travel club membership;
- (l) **“travel club membership”** means a membership in a travel club or vacation club by which the consumer acquires the right to discounts or other benefits on the purchase of transportation, accommodation or other services related to travel, and includes any other prescribed means by which a consumer may acquire these rights.

Application of Part

45(1) Subject to subsection (2) and the regulations, this Part applies to consumer contracts.

- (2) This Part does not apply to:
- (a) any goods, services or businesses or category of goods, services or businesses exempted by the regulations;
 - (b) any consumer contract or category of consumer contract exempted by the regulations;

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- (c) any of the following contracts in existence on or before October 15, 2007, unless that contract was extended or renewed after October 15, 2007 and remains in existence on the day on which this section comes into force:
- (i) a future performance contract;
 - (ii) a personal development services contract;
 - (iii) a remote contract;
 - (iv) a travel club contract;
- (d) any personal development services contract if the supplier is:
- (i) a non-profit corporation or a co-operative;
 - (ii) a private club that is primarily owned by its members; or
 - (iii) funded or run by a charitable or municipal organization or by the Government of Saskatchewan or any of its agencies; or
- (e) any consumer contract for which the total consideration paid by a consumer to enter into the contract does not exceed the prescribed amount.

Regulations for Part

46 For the purposes of this Part, the Lieutenant Governor in Council may make regulations:

- (a) for the purposes of subclause 44(b)(vi), prescribing any other contract or class of contracts as consumer contracts;
- (b) for the purposes of paragraph 44(g)(i)(D), prescribing any other services to be personal development services;
- (c) for the purposes of clause 44(1), prescribing any other means by which a consumer may acquire the right to discounts or other benefits on the purchase of transportation, accommodation or other services related to travel;
- (d) prescribing an amount for the purposes of clause 45(2)(e);
- (e) prescribing requirements for consumer contracts, including whether the contract must be in writing and the information to be contained in the consumer contract;
- (f) prescribing information that must be disclosed to a consumer before a consumer contract is entered into, including the manner of disclosing the information;
- (g) prescribing requirements to provide a copy of a consumer contract to the consumer, including the manner of providing a copy of the consumer contract to the consumer;
- (h) prescribing rules for the cancellation of consumer contracts, including:
 - (i) the reasons for which cancellation is permitted, including:
 - (A) cancellation for no reason;
 - (B) cancellation for non-provision of contract;
 - (C) cancellation for non-disclosure of information required by this Act or the regulations to be disclosed;

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- (D) cancellation for a change in circumstances, including defining a change in circumstances for which a consumer contract may be cancelled;
 - (E) cancellation for non-acceptance of the contract by the consumer; and
 - (F) cancellation for non-delivery of goods or services pursuant to the consumer contract;
- (ii) the period within which a consumer contract may be cancelled;
 - (iii) defining rules respecting what constitutes delivery and non-delivery;
 - (iv) the effect of cancellation of a consumer contract;
 - (v) the notice of cancellation required;
 - (vi) responsibilities of the consumer and the supplier on cancellation of a consumer contract; and
 - (vii) relief against cancellation;
- (i) prescribing the means by which a consumer may recover a refund owed after cancellation of a consumer contract;
 - (j) prescribing a consumer's recourse respecting credit card charges in the case of cancellation of an internet sales contract or a remote contract;
 - (k) prescribing rules respecting payments for consumer contracts, including rules for when payment is not required;
 - (l) prescribing the term of consumer contracts;
 - (m) prescribing rules for the renewal or extension of a consumer contract;
 - (n) prescribing the number of consumer contracts that may be entered into between a supplier and a consumer;
 - (o) prescribing rules for instalment plan payments for a consumer contract;
 - (p) prescribing rules for cancellation of pre-authorized payments;
 - (q) prescribing the requirement for trustees for payments under consumer contracts.

PART VI

Prepaid Purchase Cards

DIVISION 1

Interpretation and Application of Part

Interpretation of Part

47 In this Part and in section 102, “**prepaid purchase card**” means, subject to the regulations, an electronic card, written certificate or other voucher or device with a monetary value, that is issued or sold in exchange for the future purchase or delivery of goods or services, and includes a gift card and gift certificate.

Application of Part

48(1) Subject to subsection (2), this Part applies to every prepaid purchase card issued or sold on or after November 10, 2008.

(2) All or any prescribed portion of any prescribed provision of this Part does not apply:

- (a) to any prescribed prepaid purchase card or any prescribed class of prepaid purchase cards;
- (b) to any prescribed person or any prescribed class of persons; or
- (c) in any prescribed circumstance.

DIVISION 2

Regulation of Prepaid Purchase Cards

No expiry date

49(1) No person shall issue or sell a prepaid purchase card that has an expiry date, except as may be provided in the regulations made pursuant to this Part.

(2) A prepaid purchase card that is issued or sold with an expiry date is effective as if it had no expiry date if the prepaid purchase card is otherwise valid.

Information to be provided

50 A person who issues or sells a prepaid purchase card must provide the consumer with the prescribed information.

Fees

51 No person who issues or sells a prepaid purchase card shall:

- (a) charge an inactivity or dormancy fee in relation to the prepaid purchase card; or
- (b) except in accordance with the regulations made pursuant to this Part, charge any other fee to the holder of the prepaid purchase card for anything in relation to the card.

Agreements waiving provisions of Act null and void

52(1) Every agreement or bargain, verbal or written, express or implied, that any of the provisions of this Part or the regulations made pursuant to this Part shall not apply or that any benefit or remedy provided by those provisions shall not be available or that in any way limits, modifies or abrogates or in effect limits, modifies or abrogates any benefit or remedy is void.

(2) Any moneys paid under or by reason of any agreement or bargain mentioned in subsection (1) are recoverable in any court of competent jurisdiction.

Regulations for Part

53 For the purposes of this Part, the Lieutenant Governor in Council may make regulations:

- (a) enlarging or restricting the meaning of “**prepaid purchase card**” for the purposes of this Part;

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- (b) for the purposes of section 48:
- (i) exempting any prepaid purchase card or any class of prepaid purchase cards from all or any portion of any provision of this Part and, as a condition of the exemption, requiring the issuer or seller of any exempted prepaid purchase card or any class of prepaid purchase cards to comply with any term or condition;
 - (ii) exempting any person or any class of persons from all or any portion of any provision of this Part and, as a condition of the exemption, requiring any exempted person or class of exempted persons to comply with any term or condition; and
 - (iii) prescribing any circumstance in which all or any portion of any provision of this Part does not apply;
- (c) governing the use of expiry dates for prepaid purchase cards that are exempt from subsection 49(1);
- (d) respecting the information that must be provided in relation to prepaid purchase cards, and the form, timing and manner of providing that information;
- (e) prescribing the fees that the issuer or seller of a prepaid purchase card may charge in relation to a prepaid purchase card, including the amount of a fee or a method of determining the amount of a fee.

PART VII

Designated Activities and Licensing

DIVISION 1

Preliminary

Interpretation of Part

54 In this Part and in section 102:

- (a) **“application”** means an application for a licence and includes an application for a renewal of a licence;
- (b) **“designated business”** means a trade, business, industry, employment or occupation to which this Part is made applicable by the regulations pursuant to section 55;
- (c) **“issued”** includes renewed or reinstated pursuant to this Part;
- (d) **“licensee”** means a person who is licensed pursuant to this Part.

Designated businesses

55 The Lieutenant Governor in Council may, by regulation, provide that this Part applies to the whole or a part of a trade, business, industry, employment or occupation designated in the regulations.

DIVISION 2

Licensing**Licence required—designated businesses**

56 No person may engage in a designated business unless the person holds a licence pursuant to this Act that authorizes the person to engage in that business.

Licence required for each location

57 If required to do so by the regulations, a person who engages in a designated business at more than one location must hold a separate licence issued pursuant to this Act for each location that authorizes the person to engage in that business.

Application for licence

58(1) Every applicant for a licence shall:

- (a) apply to the director in the form provided by the director;
 - (b) provide the director with:
 - (i) an address for service in Saskatchewan; and
 - (ii) any other information or material that the director may reasonably require;
 - (c) if financial security is required pursuant to section 59, file financial security with the director in accordance with that section;
 - (d) comply with any prescribed capital or net worth requirements;
 - (e) submit to the director any prescribed fees; and
 - (f) comply with any other prescribed requirements and satisfy any other prescribed criteria.
- (2) If required to do so by the regulations, a person who intends to carry on a designated business from more than one location shall submit a separate application for each location.
- (3) The director may require an applicant to verify, by affidavit or otherwise, any information or material submitted to the director pursuant to this section.

Financial security may be required

59(1) Subject to the regulations, the director may require:

- (a) an applicant to file financial security with the director as part of the application;
 - (b) a licensee whose licence has been suspended to file financial security with the director before the licence is reinstated; or
 - (c) a licensee to file financial security or additional financial security with the director at any time during the term of a licence.
- (2) A person required to file financial security with the director pursuant to this section must, at all times, maintain that financial security.
- (3) Financial security filed pursuant to this section:
- (a) must be in the amount and in the form that the director considers appropriate; and
 - (b) may be forfeited in the manner set out in the regulations.

Financial security not in force

60(1) Subject to the regulations, if financial security filed by a licensee is no longer in force, the licence is suspended for 30 days unless, within the 30-day period, the licensee files with the director new financial security that the director considers appropriate.

(2) If the director increases the amount of financial security that is to be filed by a licensee during the term of the licence and the licensee does not file financial security in the increased amount by the date specified by the director, the licence is suspended for 30 days after that date unless, within the 30-day period, the licensee files with the director the increased amount of financial security.

(3) After the expiry of a 30-day period mentioned in subsection (1) or (2), the licence is cancelled if the licensee has not filed the new financial security or increased amount of financial security, as the case may be, before the end of the 30-day period.

Issuance

61 The director may:

- (a) issue a licence to an applicant if the director:
 - (i) receives an application pursuant to section 58;
 - (ii) is satisfied that the applicant meets the requirements and satisfies the criteria for the licence set out in this Act and the regulations and has otherwise complied with this Act and the regulations; and
 - (iii) is satisfied that the applicant is suitable to be licensed and the proposed licensing is not for any reason objectionable; or
- (b) subject to section 71, refuse to issue a licence if the requirements set out in clause (a) are not met.

Effect of licence

62 Subject to the regulations, a licence authorizes the licensee to carry on business at a location specified in the licence.

Terms and conditions

63(1) Subject to section 71, at the time a licence is issued, the director may establish any terms and conditions for the licence that the director considers necessary.

(2) Subject to section 71, at any time after a licence is issued, the director may do all or any of the following:

- (a) amend, modify or vary terms and conditions established for the licence;
- (b) establish new terms and conditions for the licence;
- (c) repeal terms and conditions established for the licence and substitute new terms and conditions in their place.

Compliance with terms and conditions required

64 No licensee shall fail to comply with the terms and conditions established for the person's licence.

Suspension or cancellation of licence

65(1) Subject to section 71, the director may suspend or cancel a licence:

- (a) for the same reasons that the director might have refused to issue the licence pursuant to section 61;
- (b) if the licensee has failed to comply with this Act or the regulations; or
- (c) if there has been a prescribed change in the licensee's circumstances.

(2) If the director considers it appropriate to do so, and on receipt of any prescribed reinstatement fee, the director may reinstate a licence that has been suspended.

Automatic cancellation of licence

66(1) Subject to the regulations, a licence issued to a designated business is automatically cancelled if there is a change in ownership of the designated business.

(2) In the event of a change in ownership of a designated business, the person acquiring ownership of the designated business must apply for a new licence for each location where a licence is required pursuant to section 57.

Licence not transferable

67 Subject to the regulations, a licence issued pursuant to this Part is not transferable or assignable.

Expiry of licence

68 Every licence expires at the time designated in the regulations, unless the licence has been renewed.

Further information or material

69(1) At any time, the director may:

- (a) require an applicant or a licensee to submit to the director any further information or material that the director may reasonably require; and
- (b) require verification, by affidavit or otherwise, of any information or material submitted to the director pursuant to clause (a).

(2) No applicant or licensee who receives a request from the director pursuant to subsection (1) shall fail to comply with that request within the period specified by the director.

Licensee to notify director if circumstances change

70 Within five business days after a prescribed change in circumstances, an applicant or licensee shall notify the director in writing.

Opportunity to be heard

71(1) In this section, "**action**" means an action that the director may take to refuse to issue a licence, to establish terms and conditions for a licence or to suspend or cancel a licence.

(2) Before taking an action, the director shall give the person who is the subject of the proposed action a written notice:

- (a) setting out the action proposed to be taken by the director and the grounds that, in the director's opinion, justify the action; and
- (b) informing the person of the person's right to make representations to the director as to why the action should not be taken.

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- (3) A person to whom a notice is sent pursuant to subsection (2) may, within 10 business days after receiving that notice, advise the director that:
- (a) the person requests an oral hearing; or
 - (b) the person wishes to make written representations to the director respecting why the action should not be taken.
- (4) Nothing in this section requires the director to give an oral hearing to any person who has given notice pursuant to clause (3)(b).
- (5) A person who requests an oral hearing pursuant to clause (3)(a) must, within five business days after requesting the hearing, contact the director and arrange a date, time and place for the hearing.
- (6) Written representations pursuant to clause (3)(b) must be received by the director within 20 business days after the person receives the notice pursuant to subsection (2).
- (7) The director may take the action stated in the notice without considering any representations of the person if the person fails to:
- (a) advise the director in accordance with subsection (3);
 - (b) meet the requirements of subsection (5) or (6) within the required time; or
 - (c) appear on the date and at the time and place arranged for the hearing without the prior approval of the director.
- (8) The director may extend the periods mentioned in subsection (3), (5) or (6) if, in the director's opinion, it is appropriate to do so.
- (9) Notwithstanding subsection (2), if the director considers that it is necessary and in the public interest to take immediate action, the director may immediately take any action without giving the person an opportunity to be heard, but the director shall give the person an opportunity to make written representations or attend a hearing before the director within 10 business days after the date on which the director takes the action.
- (10) On holding a hearing or receiving a person's written representations pursuant to this section, the director shall, within a reasonable period:
- (a) consider the submissions and make a decision;
 - (b) notify the person, in writing, of the director's decision;
 - (c) provide written reasons for the director's decision; and
 - (d) provide the person with information respecting the right of appeal pursuant to section 85.
- (11) Subsection (12) applies if:
- (a) a licensee holds more than one licence; and
 - (b) the director is satisfied that the same grounds for taking action apply to more than one of the licensee's licences.

(12) In the circumstances mentioned in subsection (11), the director may provide the licensee:

- (a) with one written notice pursuant to subsection (2) that references all of the licensee's licences that are to be the subject of the action; and
- (b) with one oral hearing pursuant to this section that deals with all of the licensee's licences that are to be the subject of the action.

Order against others

72 If the director cancels or suspends the licence of a person:

- (a) the director may by order prohibit any salesperson or anyone else who is acting on behalf of that person from engaging in the business or carrying out an activity that was authorized by the licence; and
- (b) the order mentioned in clause (a) may contain any terms or conditions that the director considers appropriate.

Duty to maintain records

73(1) A licensee shall ensure that the following records are kept:

- (a) complete and accurate records of the licensee's operations that include the prescribed information;
- (b) complete and accurate records respecting all transactions that the licensee has offered, arranged, provided or entered into;
- (c) any other prescribed records.

(2) A licensee or former licensee shall retain the records mentioned in this section for the prescribed period.

Regulations for Part

74 For the purposes of this Part, the Lieutenant Governor in Council may make regulations:

- (a) defining "consumer", "goods" and "services";
- (b) specifying activities that constitute engaging in a designated business;
- (c) requiring financial security to be maintained by a designated business or a class of designated businesses;
- (d) respecting the duties and obligations of persons engaged or employed in a designated business or a class of designated businesses;
- (e) prescribing or adopting, with or without modification and as amended from time to time or otherwise, codes, standards or rules governing:
 - (i) the manner of carrying on a designated business or class of designated businesses;
 - (ii) experience and education requirements and requirements as to financial responsibility of persons carrying on or intending to carry on a designated business;
 - (iii) the type and condition of premises and equipment used in a designated business; and
 - (iv) the conduct of persons engaged in carrying on a designated business;

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- (f) respecting the manner of informing members of the public of:
 - (i) any sale of or dealing with goods or services of a designated business; and
 - (ii) contraventions of this Part;
 - (g) respecting terms and conditions that must be complied with by a designated business or class of designated businesses that has contravened this Part or the regulations made pursuant to this Part in order to continue operating as a designated business;
 - (h) prescribing with respect to any designated business or class of designated businesses that the approval of any authority specified by the regulations is required for the obtaining of a licence or the establishment of that business or class of business;
 - (i) prescribing as to any designated business or class of designated businesses the information to be contained in agreements used by persons carrying on or engaged in that business in their dealings with the public;
 - (j) establishing different classes of licences;
 - (k) establishing standard conditions that will apply to all licences;
 - (l) respecting the classes of licences for which an applicant is required to file financial security;
 - (m) respecting the circumstances in which a licensee is required to file financial security;
 - (n) for the purposes of section 59:
 - (i) prescribing the grounds on which the director is to exercise his or her discretion; and
 - (ii) prescribing circumstances where financial security will not be required;
 - (o) respecting the form, amount and terms and conditions of financial security;
 - (p) respecting the terms and conditions under which financial security is forfeited, the persons who are entitled to the proceeds under the financial security and the procedures to be followed for claiming on financial security;
 - (q) for the purposes of section 60, prescribing the circumstances when a licence is not suspended when financial security is not in force;
 - (r) respecting a system of resolving disputes involving claims against financial security that claimants and licensees or former licensees are required to participate in and providing that decisions under the system are binding;
 - (s) respecting conditions and requirements that must be met before a licence is issued or that apply during the term of the licence;
 - (t) respecting fees for licences;
 - (u) respecting the length of terms of licences;
 - (v) respecting the transfer of licences;
 - (w) respecting the refund of fees;

(x) respecting the records to be maintained by licensees and former licensees, including where the records are to be maintained and the period for which they must be maintained;

(y) for the purposes of section 66, prescribing circumstances when a licence is not automatically cancelled if there is a change in ownership of the designated business.

Registration

75(1) The Lieutenant Governor in Council may make regulations:

(a) requiring that salespersons or other classes of persons be registered before they act on behalf of a licensee;

(b) establishing a registration scheme for those classes of persons required to be registered;

(c) adopting with or without modification the provisions of this Act relating to licensing for the purposes of the registration scheme;

(d) dealing with any matter on which the Lieutenant Governor in Council may make regulations pursuant to section 74 for the purposes of the registration scheme.

(2) If the Lieutenant Governor in Council requires that a person in a specified class be registered before acting on behalf of a licensee:

(a) a person in that class may not act on behalf of the licensee unless the person is registered; and

(b) the licensee may not authorize a person in that class to act on the licensee's behalf unless the person is registered.

PART VIII

Administration and Appeals of Director's Orders and Decisions

DIVISION 1

Director and Administration

Interpretation of Part

76 In this Part:

(a) **“imposed requirements”** means the requirements imposed or established pursuant to this Act, the regulations, an order or judgment made pursuant to this Act or a voluntary compliance agreement entered into pursuant to section 80;

(b) **“property”** includes computer software;

(c) **“record”** includes any information that is recorded or stored in any medium or by means of any device, including a computer or electronic media.

Director appointed

77(1) The minister may appoint a person as director and may appoint one or more other persons as deputy directors.

(2) The director is responsible to the minister for the administration of this Act and the regulations.

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- (3) The director may appoint any person to carry out any responsibility imposed on the director or to exercise any of the powers conferred on the director that the director believes may be more conveniently carried out or exercised by that person.
- (4) The director may establish any limitations or terms and conditions that the director considers appropriate on an appointment pursuant to subsection (3).
- (5) The exercise of any of the director's powers or the carrying out of any of the director's responsibilities by a person who is appointed pursuant to subsection (3) is deemed to be the exercise or the carrying out by the director.
- (6) The director shall:
- (a) inform consumers and suppliers of the provisions of this Act and the regulations, and of their rights and duties; and
 - (b) maintain a public record of:
 - (i) enforcement proceedings taken pursuant to this Act or the regulations;
 - (ii) orders and judgments rendered pursuant to this Act; and
 - (iii) voluntary compliance agreements entered into pursuant to section 80.
- (7) A record certified by the director to be a copy made pursuant to this Part:
- (a) is admissible in evidence without proof of the office or signature of the director; and
 - (b) has the same probative force as the original record.

Inspections, audits and examinations

- 78(1)** The director may make inquiries and conduct inspections, audits or examinations of the business and activities of each supplier to ensure that the supplier is complying with the imposed requirements.
- (2) In an inspection, audit or examination conducted pursuant to this section, the director may inquire into:
- (a) whether the supplier has complied with the imposed requirements; and
 - (b) if the imposed requirements have not been met, any explanation for the differences between the results and the imposed requirements.
- (3) In an inspection, examination or audit, the director may:
- (a) at any reasonable time, enter any place, including the business premises of the supplier, any vehicle or any place containing any records or property required to be kept pursuant to this Act or the regulations or related to the administration of this Act or the regulations;
 - (b) inspect the vehicle or place mentioned in clause (a) or examine any record or property found in the vehicle or place that may be relevant to the administration of this Act or the regulations;
 - (c) require the supplier and any agent, representative, partner, director, officer or employee of the supplier to:
 - (i) answer any questions that may be relevant to the inspection, examination or audit; and
 - (ii) provide the director with all reasonable assistance, including using any computer hardware or software or any other data storage, processing or retrieval device or system to produce information;

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- (d) in order to produce information, use any computer hardware or software or any other data storage, processing or retrieval device or system that is used in connection with the business or activities of the supplier;
 - (e) after giving a receipt, remove for examination and copying anything that may be relevant to the inspection, audit or examination, including removing any computer hardware or software or any other data storage, processing or retrieval device or system in order to produce information;
 - (f) make copies of any record or property examined;
 - (g) retain any record or property examined that may be relevant to the administration of this Act or the regulations; and
 - (h) inquire into:
 - (i) any negotiations, transactions, loans or borrowing made by or on behalf of or in relation to the supplier that may be relevant to the administration of this Act or the regulations; and
 - (ii) any assets, property or things owned, acquired or disposed of in whole or in part by the supplier, or by any other person acting on the supplier's behalf, that may be relevant to the administration of this Act or the regulations.
- (4) If, pursuant to this section, the director removes any computer hardware or software or any other data storage, processing or retrieval device required to produce a readable record, the director shall:
- (a) produce that record with reasonable dispatch; and
 - (b) promptly return the computer hardware or software or any other data storage, processing or retrieval device to:
 - (i) the place from which it was removed; or
 - (ii) any other place that may be agreed to by the director and the person from whom it was taken.

Written demand to produce records or property

- 79(1)** For the purpose of administering and enforcing the imposed requirements, the director may serve a written demand on any supplier requiring the production, including the production on oath or affirmation, of any record or property that relates or may relate to an imposed requirement.
- (2) The director may specify a reasonable time within which the written demand is to be complied with, and every person on whom a demand is served shall comply within the specified time.
- (3) No person on whom a written demand is served pursuant to this section shall fail to produce the records or property mentioned in the written demand within the time specified in the written demand.
- (4) If the director demands any records or property pursuant to this section, the director may examine the records or property and make copies of the records.

- (5) The director shall:
- (a) give a receipt for anything that the director removes for examination and copying;
 - (b) promptly return anything removed pursuant to this section to the place from which it was removed or any other place agreed to by the director and the person from whom it was taken; and
 - (c) take all reasonable steps to ensure that, if a record is taken, a copy of the record is left at the premises to allow business to be carried on.

Voluntary compliance

80(1) If the director is of the opinion that there are reasonable grounds to believe that a supplier has not complied, is not complying or is about to stop complying with this Act or the regulations, the director may invite the supplier to enter into a voluntary compliance agreement.

- (2) A voluntary compliance agreement:
- (a) must be in writing; and
 - (b) must include an undertaking that the person will not engage in the prohibited activity.
- (3) A voluntary compliance agreement may include an undertaking to:
- (a) pay damages to any consumer who suffered loss as a result of any non-compliance, as specified in the agreement;
 - (b) reimburse the director for the director's costs, as specified in the agreement;
 - (c) create and maintain trust accounts and to pay money received from consumers into those trust accounts, as specified in the agreement; and
 - (d) give to the director a copy of any contract, advertisement or other document, as specified in the agreement.
- (4) The director may require that the voluntary compliance agreement contain any terms or conditions that the director considers appropriate, including a term that a supplier file with the director and maintain collateral for an undertaking in a form and amount acceptable to the director.

Power of director to order compliance

81(1) The director may issue an order pursuant to subsection (2) if the director is satisfied that a person is not complying with this Act, the regulations or a voluntary compliance agreement entered into pursuant to section 80.

- (2) In the circumstances mentioned in subsection (1), the director may order a person to do all or any of the following:
- (a) cease doing an act or cease failing or neglecting to do an act;
 - (b) comply with this Act, the regulations or the voluntary compliance agreement;
 - (c) do or refrain from doing any other thing that the director considers necessary.

Power of court to order compliance

82(1) If the director is of the opinion that a person has failed to comply with the imposed requirements, the director may apply to the court for all or any of the following:

- (a) an order:
 - (i) directing the person to comply with the imposed requirements; or
 - (ii) restraining that person from contravening the imposed requirements;
- (b) an order:
 - (i) directing the directors and officers of a corporation or the partners of a partnership to comply with the imposed requirements; or
 - (ii) restraining those directors and officers or partners from contravening the imposed requirements;
- (c) any other order, relief or remedy that the director may request or that the court may consider necessary.

(2) On an application pursuant to subsection (1), the court may make any order that the court considers necessary.

Investigations

83(1) If a justice of the peace or provincial court judge is satisfied by information under oath that there are reasonable grounds to believe that an offence against this Act or the regulations has occurred and that evidence of that offence is likely to be found, the justice of the peace or provincial court judge may issue a warrant to do all or any of the following:

- (a) enter at any time and search any place, including any premises or vehicle, named or described in the warrant;
- (b) open and examine anything that the director finds in the place, premises or vehicle;
- (c) require the production of and examine any records or other property that the director has reasonable grounds to believe may constitute evidence of an offence against this Act or the regulations;
- (d) seize and remove from any place, premises or vehicle searched anything that may be evidence of an offence against this Act or the regulations.

(2) Subject to subsection (3), the director may exercise all or any of the powers mentioned in subsection (1) without a warrant issued pursuant to this section if:

- (a) the conditions for obtaining a warrant exist; and
- (b) the director has reasonable grounds to believe that the delay necessary to obtain a warrant would result:
 - (i) in danger to human life or safety; or
 - (ii) in the loss, removal or destruction of evidence.

(3) The director shall not enter premises that are ordinarily occupied as a private residence without a warrant issued pursuant to this section unless the occupant of those premises consents to the entry.

(4) If, pursuant to this section, the director removes any computer hardware or software or any other data storage, processing or retrieval device required to produce a readable record, the director shall:

- (a) produce that record with reasonable dispatch; and
- (b) promptly return the computer hardware or software or other data storage, processing or retrieval device to:
 - (i) the place from which it was removed; or
 - (ii) any other place that may be agreed to by the director and the person from whom it was taken.

Costs

84(1) Subject to section 71, after conducting a proceeding respecting a person, including an inspection, examination, audit or investigation pursuant to this Act, the director may order the person to pay the costs of or related to the proceeding if the director is satisfied that the person whose affairs were the subject of the proceeding has not complied with an imposed requirement.

(2) For the purposes of subsection (1), the costs that the director may order the person to pay include all or any of the following:

- (a) costs incurred with respect to services provided by a person engaged, appointed or retained by the director for the purposes of the proceeding;
- (b) costs of obtaining a warrant;
- (c) costs of matters preliminary to the proceeding;
- (d) costs for time spent by the director, by any person employed in the administration of this Act or the regulations or by any person engaged, appointed or retained by the director;
- (e) fees paid to a witness;
- (f) costs of legal services provided to the director.

(3) If a person is convicted of an offence pursuant to this Act, the director may, subject to section 71 and in addition to the costs mentioned in subsection (1), order the person to pay the costs of any investigation carried out with respect to that offence, including any costs incurred with respect to either or both of the following:

- (a) the provision of services by persons engaged, appointed or retained by the director;
- (b) the appearance of any witnesses.

(4) The director may file a certificate with the court certifying the amount of the costs that a person is required to pay pursuant to this section.

(5) A certificate filed pursuant to subsection (4) with the court has the same force and effect as if it were a judgment of that court for the recovery of a debt in the amount specified in the certificate, together with the costs of filing.

(6) *The Queen's Bench Rules* respecting costs and the taxation of costs do not apply to costs mentioned in this section.

(7) No provision of this Act is to be interpreted as precluding the court from ordering costs payable to the director.

(8) If costs are awarded to the director in any proceeding, the costs of the director are not to be disallowed or reduced because the lawyer representing the director was a member of the public service of Saskatchewan or an employee of a Crown corporation.

(9) If the director or any person engaged, appointed or retained by the director for the purpose of assisting the director in carrying out an inspection, examination, audit or investigation was required to travel outside Saskatchewan to conduct an inspection, examination, audit or investigation of a person:

(a) the director may direct the person who is the subject of the inspection, examination, audit or investigation to pay all of the reasonable travel costs associated with the inspection, examination, audit or investigation; and

(b) a person to whom a direction is given pursuant to clause (a) shall pay the amount directed within the time and in the manner set out in the direction.

DIVISION 2

Appeals of Director's Orders and Decisions

Appeal to court

85(1) Any person who is directly affected by an order or decision of the director pursuant to this Act may appeal the order or decision to the court.

(2) An appeal must be made within 20 business days after a decision or order of the director.

(3) An appellant shall serve a notice of appeal on the director and any other person that the court may order.

Documents to be filed with the court for purposes of appeal

86 On receipt of a notice of an appeal pursuant to section 85, the director shall file with the court true copies of:

(a) all documents and materials that were before the director when the director made his or her decision or order;

(b) the director's decision or order; and

(c) the director's written reasons for the decision or order.

Decision by court

87(1) On hearing an appeal pursuant to section 85, the court may:

(a) dismiss the appeal;

(b) allow the appeal;

(c) allow the appeal subject to terms and conditions;

(d) vary the decision or order of the director;

(e) refer the matter back to the director for:

(i) further consideration; and

(ii) a decision or order; or

(f) make any other order that the court considers appropriate.

(2) The court may make any order as to costs on an appeal that the court considers appropriate.

Stay

88 The commencement of an appeal pursuant to section 85 does not stay the effect of the decision or order appealed from, unless a judge of the court orders otherwise.

Appeal to Court of Appeal

89 With leave of a judge of the Court of Appeal, an appeal from any order of the court made pursuant to this Act may be made to the Court of Appeal on a question of law within 20 business days after the date of the order unless otherwise provided in this Act.

PART IX

General Matters, Offences and Regulations

DIVISION 1

General Matters**Mediation**

90(1) If the director considers it to be appropriate, the director shall make every attempt to direct disputes between consumers and suppliers pursuant to this Act to mediation.

(2) If the parties agree to mediate their dispute, the director shall not take any further action pursuant to this Act during the period of mediation.

(3) Subject to the consent of the parties to a dispute, a mediator shall hold all information received by him or her during a mediation session in confidence.

Consumer may commence action

91(1) In this section and sections 92 and 93, “**court**” includes the Provincial Court of Saskatchewan, but only if the action or relief sought is within the jurisdiction of that court pursuant to *The Small Claims Act, 1997*.

(2) A consumer who has suffered a loss as a result of a contravention of this Act or the regulations may commence an action in the court against a supplier.

(3) A consumer shall not commence an action if the director has applied to the court on the consumer’s behalf pursuant to section 92 respecting the same supplier and transaction.

Action by director for consumer

92(1) If the director believes it is in the public interest, and with the written approval of the minister, the director may, on behalf of any consumer affected by an unfair practice or activity that is contrary to this Act, the regulations, a voluntary compliance agreement entered into pursuant to section 80 or a compliance order issued pursuant to section 81:

(a) commence any court action against the supplier that the consumer would be entitled to bring pursuant to section 91;

(b) maintain any court action that the consumer has already commenced against the supplier pursuant to section 91;

(c) defend any court action brought by the supplier against the consumer for any transaction respecting goods or services.

(2) In a court action pursuant to this section, the court may make any order and grant any relief that it may make or grant pursuant to section 93 in an action by a consumer.

(3) The director, the affected consumer and supplier, and any other persons that the court may direct are parties to any court action commenced, maintained or defended by the director pursuant to this section.

Court order

93(1) If the court finds that a supplier has committed an unfair practice or contravened this Act, the regulations, a voluntary compliance agreement entered into pursuant to section 80 or a compliance order issued pursuant to section 81, the court may:

- (a) order restitution of any money, property or other consideration given or furnished by the consumer;
- (b) award the consumer damages in the amount of any loss suffered because of the unfair practice or the contravention of this Act, the regulations, the voluntary compliance agreement or the compliance order, including punitive or exemplary damages;
- (c) grant an injunction restraining the supplier from continuing the unfair practice or from continuing to contravene this Act, the regulations, the voluntary compliance agreement or the compliance order;
- (d) make an order of specific performance against the supplier;
- (e) order the supplier to comply with the voluntary compliance agreement or the compliance order; or
- (f) make any other order the court considers appropriate.

(2) An order pursuant to clause (1)(b) for exemplary or punitive damages may not be made against the supplier if the supplier took reasonable precautions and exercised due diligence to avoid the unfair practice or contravention.

(3) If the court finds that an unfair practice or that a contravention of this Act, the regulations, the voluntary compliance agreement or the compliance order has occurred, for the purposes of making an order pursuant to this section, the court shall consider whether or not the consumer made a reasonable effort:

- (a) to minimize any loss resulting from the unfair practice or the contravention of this Act, the regulations, the voluntary compliance agreement or the compliance order; and
- (b) to resolve the dispute with the supplier before commencing the action.

Order to refrain from dealing with property

94(1) The director may apply to the court *ex parte* for an order if the director is of the opinion that there are reasonable grounds to believe that it is necessary for the protection of the public and that:

- (a) a supplier has committed, is about to commit or is committing an unfair practice or contravention of this Act, the regulations, a voluntary compliance agreement entered into pursuant to section 80 or a compliance order issued pursuant to section 81; and
- (b) the supplier has received money or security from the consumer in relation to a transaction.

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- (2) An order made pursuant to subsection (1) may:
- (a) prohibit any person who is holding funds of the supplier, who has possession or control over any property of the supplier or who has a debt to pay to the supplier from disposing of or otherwise dealing with the funds, property or debt except as approved by the court;
 - (b) direct the supplier not to disburse any funds or otherwise deal with any funds or property of the supplier, or debts owing to the supplier, except as approved by the court; or
 - (c) contain any other terms or conditions the court considers appropriate.
- (3) The amount or value of any funds, property or debt affected by an order made pursuant to subsection (1) is to bear a reasonable relationship to the amount or value of the money or security paid or given to the supplier by the consumer.
- (4) An order made pursuant to subsection (1) ceases to have any effect 10 business days after the order is made unless it is renewed by the court before the expiry date on the application of the director, and the court may renew the order for any period and on any terms that it considers appropriate.

Variation of order

- 95(1)** On notice to the director, a supplier or any other person affected by an order made pursuant to section 94 may apply, within 10 business days after the order is made, to the court to have the order varied or set aside.
- (2) If a supplier or other person against whom an order pursuant to section 94 is made is in doubt as to the application of the order to any funds, property or debt, or another person not named in the order claims a right, title or interest in the funds, property or debt, the supplier or other person may pay or deliver the funds or property or the amount of the debt into the court.

Bond in lieu of order

- 96(1)** A supplier who has received money or security from a consumer for a transaction involving goods or services may file or deposit with the director a bond or other security, in a form and an amount and containing terms acceptable to the director, in the name of and for the benefit of the director.
- (2) The director may accept the bond or security if, in his or her opinion, there are reasonable grounds to believe that it is not contrary to the public interest to accept the bond or security.
- (3) If the director accepts a bond or security, the director may not apply to the court for an order respecting the transaction for which the bond or security is filed or deposited.
- (4) In the event of a breach of any term of a bond or security filed or deposited by a supplier, the director, on notice to the supplier, shall apply to the court for direction as to the forfeiture of the bond or security and the realization and disposition of the proceeds.

Injunction

97(1) If the director believes, on reasonable grounds, that it is necessary for the protection of the public, the director may apply to the court *ex parte* for an interim or permanent injunction restraining a supplier from committing or attempting to commit an unfair practice or a contravention of this Act, the regulations, a voluntary compliance agreement entered into pursuant to section 80 or a compliance order issued pursuant to section 81.

(2) In the application for the injunction:

(a) the court shall give greater weight, importance and the balance of convenience to the protection of consumers than to the carrying on of the business of a supplier;

(b) the director shall not be required to post a bond or give an undertaking as to damages; and

(c) the director is not required to establish that irreparable harm will be done to a consumer or any class of consumers if the interim injunction is not granted.

(3) In an appeal of an interim or permanent injunction, the director, the supplier and any other persons that the court may direct are parties to proceedings before the court.

(4) In an appeal of an interim or permanent injunction, the director has the burden of establishing that the supplier was committing or attempting to commit the unfair practice or contravention that gave rise to the injunction.

Practice or activity outside Saskatchewan

98 The director may take any action authorized by this Act that the director considers necessary against a supplier in Saskatchewan on behalf of a consumer if the practice or activity occurred outside Saskatchewan.

Confidentiality

99 Subject to the regulations, every person employed in the administration of this Act or the regulations and every person engaged, appointed or retained by the director:

(a) shall preserve secrecy respecting all matters that come to his or her knowledge in the course of his or her employment or duties; and

(b) shall not communicate those matters to any person except:

(i) as required or permitted in connection with the administration of this Act or the regulations or proceedings pursuant to this Act or the regulations;

(ii) to his or her counsel or to the court in a proceeding pursuant to this Act or the regulations;

(iii) to a ministry or agency of a government that administers statutes, measures or rulings similar to this Act or an Act for the general protection of consumers; or

(iv) with the consent of the person to whom the information relates.

Director and others not compellable to give evidence

100 Except in the case of a prosecution respecting a contravention of this Act or the regulations, the director, any person employed in the administration of this Act or the regulations and any person engaged, appointed or retained by the director are not compellable to give evidence in any court or in a proceeding of a judicial nature to which the director is not a party concerning any information obtained by them or that came to their attention in the exercise of the powers, carrying out of the responsibilities or carrying out of the functions of the director pursuant to this Act.

Resolving disputes

101(1) In this section, “**any agreement to the contrary**” includes:

- (a) any agreement to submit a dispute to arbitration; and
 - (b) any agreement or any term or acknowledgment in an agreement or a related agreement that purports to prevent or has the effect of preventing the consumer from commencing a class action pursuant to *The Class Actions Act* or similar legislation of another jurisdiction inside or outside Canada or becoming a member of a class that is the subject of a class action pursuant to *The Class Actions Act* or similar legislation of another jurisdiction inside or outside Canada.
- (2) Subject to subsection (3), the provisions of this Act apply notwithstanding any agreement to the contrary, and any waiver or release given of the rights, benefits or protection provided pursuant to this Act is void.
- (3) After a dispute arises between a consumer and a supplier, the consumer, the supplier and any other person involved in the dispute may agree to resolve the dispute using any procedure that is available in law.

Jurisdiction

102(1) In this section and in sections 103 to 105:

- (a) “**business organization**” means:
 - (i) a supplier;
 - (ii) a retail seller or manufacturer;
 - (iii) a second-hand dealer;
 - (iv) a warrantor;
 - (v) a vendor of unsolicited goods;
 - (vi) a party to a consumer contract;
 - (vii) an issuer or vendor of a prepaid purchase card;
 - (viii) a licensee;
 - (b) “**consumer**” means a person who is defined as a consumer pursuant to any provision of this Act or in the regulations.
- (2) Subject to the regulations, consumers, persons who may recover damages pursuant to this Act or the regulations and business organizations that carry on business in Saskatchewan are subject to the provisions of this Act and to the jurisdiction of the courts of Saskatchewan.

(3) For the purposes of this Act, a business organization is deemed to carry on business in Saskatchewan if it:

- (a) holds title to land in Saskatchewan or any interest in land in Saskatchewan for the purposes of carrying on business in Saskatchewan;
- (b) maintains an office, warehouse or place of business in Saskatchewan;
- (c) is licensed or registered pursuant to any Act entitling the business organization to do business or to sell securities of the business organization's own issue;
- (d) has its name and telephone number listed in a current telephone directory and the telephone is located at a place in Saskatchewan for the purposes of carrying on business in Saskatchewan;
- (e) has an agent, salesperson, representative or other person conducting business in Saskatchewan on the business organization's behalf;
- (f) directly or indirectly markets consumer products in Saskatchewan; or
- (g) otherwise carries on business in Saskatchewan.

Rights transferred—heirs, assignees

103 If, other than in the course of business, an individual, as heir or assignee, receives from a consumer goods or services, that individual has the same rights as the consumer to seek and obtain redress from the business organization pursuant to this Act.

Other remedies

104 Nothing in this Act restricts, limits or derogates from any remedy that a consumer may have pursuant to any other law.

Advertising

105 If a person, on behalf of a business organization, produces or publishes an advertisement in good faith and in the ordinary course of business, that person is not responsible, for the purposes of this Act, for the truth or accuracy of any representation in that advertisement.

Immunity

106 No action or other proceeding lies or shall be commenced against the minister, the director, any person employed in the administration of this Act or the regulations, any person engaged, appointed or retained by the director, the Crown in right of Saskatchewan or officers and employees of the Crown in right of Saskatchewan for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by any one or more of them, pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any function or duty imposed by this Act or the regulations.

Restrictions on access to records

107(1) Any information submitted or provided to the director or obtained by the director as a result of an inspection, examination, audit or investigation pursuant to this Act is not open to inspection or available for access except by:

- (a) those persons employed in the administration of this Act or the regulations whose responsibilities require them to inspect, examine, audit or investigate or allow them to have access to the information; and
 - (b) those persons who are authorized in writing by the director to inspect or to have access to the information.
- (2) Unless authorized by this Act or by any other law or with the consent of the person to whom any information relates, no person employed in the administration of this Act or the regulations and no person authorized by the director to inspect or have access to the information shall:
- (a) communicate or allow to be communicated any information obtained pursuant to this Act to any person who is not legally entitled to the information; or
 - (b) allow any person who is not legally entitled to the information obtained pursuant to this Act to inspect or have access to it.
- (3) Notwithstanding subsections (1) and (2), the director may authorize the release of, inspection of or access to the information mentioned in those subsections to or by any person employed by a government, regulatory authority, law enforcement agency or investigative body inside or outside Canada if:
- (a) the information will be used solely for the purpose of administering or enforcing an Act or law of Saskatchewan or Canada or of another jurisdiction inside or outside Canada; or
 - (b) the director believes that it is in the public interest to allow the release, inspection or access.
- (4) No person to whom information is provided pursuant to this section is compellable to give evidence concerning that information unless:
- (a) the person to whom the information relates consents; or
 - (b) a court orders the evidence to be given.
- (5) On an application for an order pursuant to clause (4)(b):
- (a) the director and the person to whom the information relates are entitled to appear before the court and to make submissions; and
 - (b) the person seeking the order compelling the evidence has the onus of showing why it is in the public interest that the order be made.

DIVISION 2
Offences and Penalties

Offences and penalties

108(1) No person shall:

- (a) contravene any provision of this Act, the regulations or an order of the director pursuant to this Act;
- (b) refuse or fail to furnish information as required by this Act or the regulations, or furnish false information to a person acting pursuant to this Act;
- (c) fail to comply with an order of the court; or
- (d) fail to comply with a voluntary compliance agreement entered into pursuant to section 80 unless the agreement has been rescinded by written consent of the director or by the court.

(2) Any individual who contravenes subsection (1) is guilty of an offence and liable on summary conviction:

- (a) for a first offence, to a fine of not more than \$5,000, to imprisonment for a term of not more than one year or to both; and
- (b) for a second or subsequent offence, to a fine of not more than \$10,000, to imprisonment for a term of not more than one year or to both.

(3) Any corporation that contravenes any provision of this Act or the regulations is guilty of an offence and liable on summary conviction:

- (a) for a first offence, to a fine of not more than \$100,000; and
- (b) for a second or subsequent offence, to a fine of not more than \$500,000.

Offences by officers, directors or agents

109 Every director, officer or agent of a corporation who directed, authorized, assented to or acquiesced in or participated in an act or omission of the corporation that would constitute an offence by the corporation is guilty of that offence and is liable on summary conviction to the penalties provided for that offence whether or not the corporation has been prosecuted or convicted.

Compliance orders and restitution

110(1) If the court convicts a person of an offence, the court may, in addition to any penalty it may impose, do all or any of the following:

- (a) order that person to comply with the provision of this Act or the regulations with respect to which that person was convicted;
- (b) if the court is satisfied that the convicted person has acquired any monetary benefits or that monetary benefits have accrued to the convicted person or to another person associated with or related to the convicted person:
 - (i) order the convicted person to pay an additional fine in an amount equal to the amount of the monetary benefits;
 - (ii) order the convicted person to pay compensation or make restitution to any person to whom the monetary benefits should be paid.

(2) If the person who is convicted does not pay the amount ordered pursuant to subclause (1)(b)(ii) within the time specified by the court or, if no time is specified, within 20 business days, the order may be enforced by the consumer in the same manner as an order of the Court of Queen's Bench.

Limitation on prosecution

111 No prosecution for a contravention of this Act or the regulations is to be commenced more than three years after the facts on which the alleged contravention is based first came to the knowledge of the director.

Defence

112(1) It is a defence for the person charged with an offence to prove that:

- (a) the commission of the offence was due to:
 - (i) a mistake;
 - (ii) reliance on information supplied to him or her; or
 - (iii) the act or default of another person, or to an accident or some other cause beyond his or her control; and
- (b) he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or herself or any person under his or her control.

(2) If the defence involves the allegation that the commission of the offence was due to the act or default of another person or reliance on information supplied by another person, the person charged shall not, without leave of the court, rely on that defence unless he or she served a written notice on the prosecutor, at least seven clear days before the trial, giving the information then in his or her possession identifying or assisting in the identification of that person.

DIVISION 3
Regulations

Regulations

113 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) exempting any supplier or class of supplier of goods or services, any goods or services or any class of goods or services or any transactions involving goods or services from the application of this Act or any provision of this Act and fixing conditions for that exemption;
- (c) respecting the mediation of disputes;
- (d) prescribing information that must be part of a representation made by a supplier or class of suppliers respecting any transaction or class of transactions involving goods or services;
- (e) respecting the form and manner of service of any document required or authorized to be served pursuant to this Act;
- (f) prescribing any other matter or thing that is required or authorized by this Act to be prescribed in the regulations;
- (g) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

PART X

**Repeal, Transitional, Consequential
and Coming into Force****R.S.S. 1978, c.A-34 repealed**

114 *The Auctioneers Act* is repealed.

S.S. 2002, c.C-6.2 repealed

115 *The Charitable Fund-raising Businesses Act* is repealed.

R.S.S. 1978, c.C-15 repealed

116 *The Collection Agents Act* is repealed.

S.S. 1996, c.C-30.1 repealed

117 *The Consumer Protection Act* is repealed.

S.S. 2004, c.C-43.2 repealed

118 *The Credit Reporting Act* is repealed.

R.S.S. 1978, c.D-28 repealed

119 *The Direct Sellers Act* is repealed.

R.S.S. 1978, c.M-22 repealed

120 *The Motor Dealers Act* is repealed.

S.S. 1999, c.C-4.01 amended

121(1) *The Cemeteries Act, 1999* is amended in the manner set forth in this section.

(2) **Parts III and IV are repealed.**

(3) **Section 60 is amended by striking out “Part II of *The Consumer Protection Act*” and substituting “Part II of *The Consumer Protection and Business Practices Act*”.**

S.S. 2012, c.F-13.5, section 2 amended

122(1) *The Financial and Consumer Affairs Authority of Saskatchewan Act* is amended in the manner set forth in this section.

(2) **Clauses 2(d) and (e) are repealed and the following substituted:**

“(d) **‘consumer protection legislation’** means:

- (i) *The Auctioneers Act*;
- (ii) *The Cemeteries Act, 1999*;
- (iii) *The Charitable Fund-raising Businesses Act*;
- (iv) *The Collection Agents Act*;
- (v) *The Consumer and Commercial Affairs Act*;
- (vi) *The Consumer Protection and Business Practices Act*;
- (vii) *The Consumer Protection Act*;
- (viii) *The Cost of Credit Disclosure Act, 2002*;

- (ix) *The Credit Reporting Act*;
- (x) *The Direct Sellers Act*;
- (xi) *The Film and Video Classification Act*;
- (xii) *The Funeral and Cremation Services Act*;
- (xiii) *The Motor Dealers Act*;
- (xiv) *The Sale of Goods Act*;
- (xv) *The Ticket Sales Act*;
- (xvi) any other Act or part of any other Act relating to consumer protection that is designated in the regulations; or
- (xvii) any regulations made pursuant to the Acts mentioned in subclauses (i) to (xvi), unless any part of those regulations is, by regulation, excluded from this definition;

“(e) **‘consumer protection regulator’** means:

- (i) the registrar designated pursuant to *The Auctioneers Act*;
- (ii) the registrar appointed pursuant to *The Cemeteries Act, 1999*;
- (iii) the registrar of charities appointed pursuant to *The Charitable Fund-raising Businesses Act*;
- (iv) the registrar designated pursuant to *The Collection Agents Act*;
- (v) the director appointed pursuant to *The Consumer Protection Act*;
- (vi) the director appointed pursuant to *The Consumer Protection and Business Practices Act*;
- (vii) the registrar appointed pursuant to *The Credit Reporting Act*;
- (viii) the registrar appointed pursuant to *The Direct Sellers Act*;
- (ix) the Saskatchewan Film Classification Board;
- (x) the appeal committee appointed pursuant to *The Film and Video Classification Act*;
- (xi) the Superintendent of Funeral and Cremation Services;
- (xii) the registrar designated pursuant to *The Motor Dealers Act*; or
- (xiii) any other person who or authority or body that:
 - (A) is given responsibilities or powers pursuant to consumer protection legislation; and
 - (B) is designated in the regulations”.

(3) Subclauses 2(d)(i) and (e)(i) are repealed.

(4) Subclauses 2(d)(iii) and (e)(iii) are repealed.

(5) Subclauses 2(d)(iv) and (e)(iv) are repealed.

(6) Subclauses 2(d)(vii) and (e)(v) are repealed.

- (7) **Subclauses 2(d)(ix) and (e)(vii) are repealed.**
- (8) **Subclauses 2(d)(x) and (e)(viii) are repealed.**
- (9) **Subclauses 2(d)(xiii) and (e)(xii) are repealed.**

Transitional

123(1) In this section, “**former Acts**” means:

- (a) the Acts mentioned in sections 114 to 120 as they existed before the coming into force of each of those sections; and
 - (b) Parts III and IV of *The Cemeteries Act, 1999* as those Parts existed before the coming into force of subsection 121(2).
- (2) Every investigation and action commenced pursuant to any of the former Acts is continued and is to be conducted in conformity with this Act as far as is consistent with this Act.
- (3) Every requirement or obligation pursuant to any of the former Acts respecting any practice or activity, and every right, remedy or warranty given or implied, pursuant to any of the former Acts that must be done, exercised or fulfilled over a period:
- (a) remains in effect and is continued; and
 - (b) may be enforced and otherwise dealt with pursuant to this Act as if the requirement or obligation or right, remedy or warranty had been imposed, acquired, accrued, incurred, undertaken or made pursuant to this Act.
- (4) On the repeal of a former Act pursuant to sections 114 to 120 or subsection 121(2), every voluntary compliance agreement, director’s order or decision or court order made pursuant to the former Act that is in force on the day on which the former Act is repealed is continued and may be enforced or otherwise dealt with as if made pursuant to this Act.
- (5) On the repeal of a former Act pursuant to sections 114 to 120 or subsection 121(2), every licence issued pursuant to the former Act that is in force on the day on which the former Act is repealed:
- (a) is continued subject to the same terms and conditions, if any, pursuant to which it was issued until it expires or is amended, cancelled or renewed pursuant to this Act; and
 - (b) may be dealt with as if made pursuant to this Act.

Coming into force

124 This Act comes into force on proclamation.

SECOND SESSION

**Twenty-seventh
Legislature**

SASKATCHEWAN

B I L L

No. 55

An Act respecting Consumer Protection and Business Practices, to repeal certain Acts and to make consequential amendments to other Acts

Received and read the

First time

Second time

Third time

And passed

Honourable Gordon Wyant
