

## Chapter 5.16

(Editorially amended during 2001 codification; prior code § 12.07(2))

### DIRECT SELLERS

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#### **5.16.010 Registration required.**

No direct seller shall engage in direct sales within the town for that purpose as provided in this chapter. (Prior code § 12.07(1))

#### **5.16.020 Definitions.**

For the purposes of this chapter, the following words and phrases shall be defined as:

“Charitable organization” includes any benevolent, philanthropic, patriotic or eleemosynary person, partnership, association or corporation or one purporting to be such.

“Clerk” means the town clerk.

“Direct seller” means any individual who, for himself or for a partnership, association or corporation, sells goods or takes sales orders for the later delivery of goods at any location other than the permanent business place or residence of such individual, partnership, association or corporation, and shall include, but not be limited to, peddlers, solicitors and transient merchants. The sale of goods includes donations required by the direct seller for the retention of goods by a donor or prospective customer.

“Goods” includes personal property of any kind and shall include goods provided incidental to services offered or sold.

#### **5.16.030 Exemptions.**

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

A. Any person delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes;

B. Any person selling goods at wholesale to dealers in such goods;

C. Any person selling agricultural products which such person has grown;

D. Any person who has an established place of business where the goods being sold are offered for sale on a regular basis, and in which the buyer has initiated contact with and specifically requested a home visit by such person;

E. Any person who has had, or one who represents a company which has had, a prior business transaction, such as a prior sale or credit arrangement, with the prospective customer;

F. Any person selling or offering for sale a service unconnected with the sale or offering for sale of goods;

G. Any person holding a sale required by statute or by order of any court and any person conducting a bona fide auction sale pursuant to law;

H. Any employee, officer or agent of a charitable organization who engages in direct sales for or on behalf of such organization; provided, that there is submitted to the clerk proof that such charitable organization is registered under Section 440.42, Wis. Stats. Any charitable organization not registered under Section 440.42, Wis. Stats., or which is exempt from that statute’s registration requirements, shall be required to register under this chapter.

I. Any person who claims to be a permanent merchant, but against whom complaint has been made to the clerk that such person is a transient merchant;

provided, that there is submitted to the clerk proof that such person has leased for at least one year, or purchased, the premises from which he is conducting business, or proof that such person has conducted such business in the town for at least one year prior to the date complaint was made. (Editorially amended during 2001 codification; prior code § 12.07(3))

#### **5.16.040 Registration.**

A. Applicants for registration shall complete and return to the clerk a registration form furnished by the clerk which shall require the following information:

1. Name, permanent address, telephone number and temporary address, if any;
2. Age, height, weight, color of hair and eyes;
3. Name, address and telephone number of the person, firm, association or corporation that the direct seller represents or is employed by, or whose merchandise is being sold;
4. Temporary address and telephone number from which business shall be conducted, if any;
5. Nature of business to be conducted and a brief description of the goods offered and any services offered;
6. Proposed method of delivery of goods, if applicable;
7. Make, model and license number of any vehicle to be used by applicant in the conduct of his business;
8. Last cities, villages, towns, not to exceed three, where applicant conducted similar business;
9. Place where applicant can be contacted for at least seven days after leaving the town;
10. Statement as to whether applicant has been convicted of any crime or ordinance violation related to applicant's transient merchant business within the last five years;

the nature of the offense and the place of conviction.

B. Applicants shall present to the clerk for examination:

1. A driver's license or some other proof of identity as may be reasonably required;
2. A state certificate of examination and approval from the sealer of weights and measures where applicant's business requires use of weighing and measuring devices approved by state authorities;
3. A state health officer's certificate where applicant's business involves the handling of food or clothing and is required to be certified under state law. Such certificate shall state that applicant is apparently free from any contagious or infectious disease, dated not more than ninety (90) days prior to the date the application for license is made.

C. At the time the registration is returned, a fee of twenty-five dollars (\$25.00) shall be paid to the clerk to cover the cost of processing such registration.

D. The applicant shall sign a statement appointing the clerk his agent to accept service of process in any civil action brought against the applicant arising out of any sale or service performed by the applicant in connection with the direct sales activities of the applicant, if the applicant cannot, after reasonable effort, be served personally.

E. Upon payment of the fee and the signing of the statement, the clerk shall register the applicant as a direct seller and date the entry. Such registration shall be valid for a period of one year from the date of entry, subject to subsequent refusal as provided in Section 5.16.050(B). (Ord. dated 8/14/03; prior code § 12.07(4))

#### **5.16.050 Investigation.**

A. Upon receipt of each application, the clerk shall refer it immediately to the town

police department who shall investigate the information contained in the application.

B. The clerk shall refuse to register the applicant if it is determined, pursuant to the investigation above that the application contains any material omission or materially inaccurate statement; complaints of a material nature have been received against the applicant by authorities in the last cities, villages and towns, not exceeding three, in which the applicant conducted similar business; the applicant was convicted of a crime, statutory violation or ordinance violation within the last five years, the nature of which is directly related to the applicant's fitness to engage in direct selling; or the applicant failed to comply with any applicable provision of Section 5.16.040(B). (Editorially amended during 2001 codification; prior code § 12.07(5))

#### **5.16.060 Appeal.**

Any person denied registration may appeal the denial through the appeal procedure provided by Chapter 2.40 of this code. (Prior code § 12.07(6))

#### **5.16.070 Regulation of direct sellers.**

##### **A. Prohibited Practices.**

1. A direct seller shall be prohibited from calling at any dwelling or other place between the hours of nine p.m. and nine a.m., except by appointment; calling at any dwelling or other place where a sign is displayed bearing the words "No Peddlers," "No Solicitors" or words of similar meaning; calling at the rear door of any dwelling place or remaining on any premises after being asked to leave by the owner, occupant or other person having authority over such premises.

2. A direct seller shall not misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods offered for sale, the purpose of his visit, his identity or the

identity of the organization he represents. A charitable organization direct seller shall specifically disclose what portion of the sale price of goods being offered shall actually be used for the charitable purpose for which the organization is soliciting. Such portion shall be expressed as a percentage of the sale price of the goods.

3. No direct seller shall impede the free use of sidewalks and streets by pedestrians and vehicles. Where sales are made from vehicles, all traffic and parking regulations shall be observed.

4. No direct seller shall make any loud noises or use any sound amplifying device to attract customers if the noise produced is capable of being plainly heard outside a one hundred (100) foot radius of the source.

5. No direct seller shall allow rubbish or litter to accumulate in or around the area in which he is conducting business.

##### **B. Disclosure Requirements.**

1. After the initial greeting and before any other statement is made to a prospective customer, a direct seller shall expressly disclose his name, the name of the company or organization he is affiliated with, if any, and the identity of goods or services he offers to sell.

2. If any sale of goods is made by a direct seller, or any sales order for the later delivery of goods is taken by the seller, the buyer shall have the right to cancel the transaction if it involves the extension of credit or is a cash transaction of more than twenty-five dollars (\$25.00), in accordance with the procedure as set forth in Section 423.203, Wis. Stats., the seller shall give the buyer two copies of a typed or printed notice of that fact. Such notice shall conform to the requirements of Sections 423.203(1)(a), (b) and (c), (2) and (3), Wis. Stats.

3. If the direct seller takes a sales order for the later delivery of goods, he shall, at the time the order is taken, provide the buyer with a written statement containing the

terms of the agreement, the amount paid in advance whether full, partial or no advance payment is made, the name, address and telephone number of the seller, the delivery or performance date and whether a guarantee or warranty is provided and, if so, the terms thereof. (Prior code § 12.07(7))

**5.16.080 Records.**

The town police department shall report to the clerk all convictions for violation of this chapter and the clerk shall note any such violation on the record of the registrant convicted. (Prior code § 12.07(8))

**5.16.090 Revocation of registration.**

A. Registration may be revoked by the town board after notice and hearing, if the registrant made any material omission or materially inaccurate statement in the application of registration, made any fraudulent, false, deceptive or misleading statement or representation in the course of engaging in direct sales, violated any provision of this chapter or was convicted of any crime or ordinance or statutory violation which is directly related to the registrant's fitness to engage in direct selling.

B. Written notice of the hearing shall be served personally on the registrant at least seventy-two (72) hours prior to the time set for the hearing; such notice shall contain the time and place of hearing and a statement of the facts upon which the hearing will be based. (Prior code § 12.07(9))