

[AS REPORTED FROM THE COMMERCE COMMITTEE]

House of Representatives, 20 October 1966

Words struck out by the Commerce Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line of struck out matter; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line of new matter.

Right Hon. Mr Marshall

DOOR TO DOOR SALES

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A BILL INTITULED

An Act to regulate agreements for the sale of goods on credit, hire purchase agreements, and agreements for the hire of goods, entered into at places other than appropriate trade premises

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BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Door to Door Sales Act 1966.

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(2) This Act shall come into force on the first day of (*January*) April, nineteen hundred and sixty-seven.

2. **Interpretation**—(1) In this Act, unless the context otherwise requires,—

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“Action”, “delivery”, “property”, and “sale” have the meanings assigned to them by section 2 of the Sale of Goods Act 1908:

“Appropriate trade premises”, in relation to an agreement, means premises at which the vendor normally carries on a business or at which goods of the description to which the agreement relates, or goods of a similar description, are normally offered or exposed for sale in the course of a business carried on at those premises: 5

“Collateral agreement” means any agreement which is collateral, or ancillary, to a credit agreement and under which any person agrees to provide the purchaser with services or goods: 10

“Credit agreement” means any credit-sale agreement, hire purchase agreement, or hiring agreement under which the vendor sells, lets, hires, or bails the goods that are the subject of the agreement in the ordinary course of a business carried on by him; but does not include— 15

(a) Any agreement under which the purchaser is a body corporate; or

(b) Any agreement under which the purchaser is a person engaged in buying and selling goods of the same or a similar nature or description as the goods that are the subject of the agreement; or 20

(c) Any agreement under which the purchaser is a person who is carrying on any farming, agricultural, or manufacturing business, or any other business of any kind whatsoever or who is practising any profession if the goods that are the subject of the agreement are goods of a type that are normally used in the carrying on of the business or in the practice of the profession; or 25 30

(d) Any credit-sale agreement under which the total purchase price does not exceed twenty pounds or any other agreement under which the total purchase price does not exceed ten pounds: 35

“Credit-sale agreement” means an agreement for the sale of goods under which the total purchase price is not paid in full at, or before, the time at which the agreement is made; but does not include a hire purchase agreement: 40

“Goods” has the meaning assigned to that term by section 2 of the Sale of Goods Act 1908 except that it does not include—

(a) Any mammal or bird; or

- (b) Any thing of a perishable nature; or
- (c) Any thing for the time being named or described in an Order in Council made under section 3 of this Act:

- 5 “Hiring agreement” means any agreement for the bailment of goods under which instalments are payable by the purchaser during a specific or ascertainable period at the end of which the purchaser may continue the bailment without any payment or subject to the payment of a nominal rent only:
- 10 “Hire purchase agreement” means an agreement whereby goods are let or hired with an option to purchase, and includes an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise); but does not include any agreement under which the property in the goods comprised in the agreement passes absolutely at the time of the agreement to the person who agrees to purchase them:
- 15 “Purchaser” means the person to whom goods are let, hired, or agreed to be sold or bailed under a credit agreement, and, if the rights of that person are assigned or are transferred by operation of law, includes the person for the time being entitled to those rights:
- 20 “Total purchase price” means the total sum of money required to be paid by the purchaser under a credit agreement and the value of any other consideration provided or required to be provided by the purchaser to purchase the goods pursuant to the agreement, exclusive of any sum payable as a penalty or as compensation or damages for a breach of the agreement; but including any sum of money payable by the purchaser under any collateral agreement, and the value of any other consideration provided or required to be provided by the purchaser under any collateral agreement:
- 25 “Vendor” means the person letting, hiring, or agreeing to sell or bail goods under a credit agreement, and, if the rights of that person are assigned or are transferred by operation of law, includes the person for the time being entitled to those rights.
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(2) For the purposes of this Act every credit agreement and every collateral agreement shall be deemed to have resulted from the acceptance by the purchaser of an offer made by the vendor and every such agreement that is in writing shall be deemed to have been made at the time and at the place at which the document is signed by the purchaser. 5

New

2A. Sale of services by booksellers—(1) Every agreement whereby a person (in this section hereinafter referred to as a bookseller) agrees for valuable consideration to perform services for, or to supply information or printed matter to, a person to whom he has sold, supplied, or given books in the ordinary course of his business shall be deemed to be a credit agreement within the meaning of this Act, and the provisions of this Act shall apply accordingly with all necessary modifications, and as if the services, information, or matter were goods within the meaning of this Act. 10 15

(2) For the purposes of subsection (1) of this section a bookseller which is a company shall be deemed to sell, supply, or give books to a person if they are sold, supplied, or given to that person by a subsidiary or the holding company or a subsidiary of the holding company of the bookseller. In this subsection the terms "subsidiary" and "holding company" have the same meaning as in section 158 of the Companies Act 1955. 20 25

3. Power to exempt goods—The Governor-General may from time to time, by Order in Council, prescribe things, or classes of things, which shall not be goods for the purposes of this Act. 30

4. Enforcement conditional on compliance with certain requirements—(1) Subject to section 8A of this Act, where any credit agreement is made at a place other than appropriate trade premises the vendor shall not be entitled to enforce the agreement unless the requirements of section 5 of this Act are complied with. 35

(2) Where by virtue of subsection (1) of this section the vendor is not entitled to enforce an agreement—

(a) He shall not be entitled to enforce any contract of guarantee relating to that agreement or any collateral agreement; 40

(b) No security given by the purchaser in respect of money payable under the agreement or any collateral agreement, or given by a guarantor in respect of money payable under the agreement or any collateral agreement, or given by a guarantor in respect of money payable under a contract of guarantee relating to that agreement or any collateral agreement, shall be enforceable against the purchaser, or against the guarantor, as the case may be, by the holder of such a security; and

Struck Out

(c) The vendor shall not be entitled to enforce any right to recover the goods from the purchaser.

5. Requirements as to agreements—(1) The requirements of this section, in relation to an agreement, are that—

(a) The agreement shall be in writing and shall be signed by the purchaser and by or on behalf of all other parties to the agreement; and

(b) The agreement shall contain a statement in the form set out in Part I of the First Schedule to this Act which statement shall comply with Part II of that Schedule and shall be duly completed by the vendor in accordance with the instructions contained in that Schedule; and

(c) A copy of the agreement and a copy of the form set out in the Second Schedule to this Act shall be given to the purchaser at the time at which the agreement is made.

New

(2) If in any action the Court is satisfied that a failure to comply with any of the requirements of subsection (1) of this section is a minor failure which has not prejudiced the purchaser, and that it would be just and equitable to dispense with the requirement, the Court may, subject to such conditions as it thinks fit to impose, dispense with that requirement for the purposes of the action.

6. Right of cancellation—(1) Subject to section 8A of this Act, where any credit agreement is made at a place other than appropriate trade premises the purchaser may cancel that agreement at any time before the end of the period of

seven days beginning with the day after the date of the making of the agreement by giving to the person named as vendor in the statement required under section 5 (b) of this Act a notice in the form set out in the Second Schedule to this **(Act. Any other form of notice shall have the same effect as a notice in the form set out in the Second Schedule to this Act)** Act or any other written form of notice if, however expressed, it indicates the intention of the purchaser to cancel or withdraw from the agreement. 5

(2) Notice pursuant to subsection (1) of this section may be given by delivering it personally at the address specified in the statement required under section 5 (b) of this Act or by properly addressing, prepaying, and posting a letter containing the notice to the person specified in the statement at that address. 10 15

(3) If the notice is posted in accordance with subsection (2) of this section the notice shall be deemed to have been given to the vendor at the time when it is posted.

(4) Any person who conducted any antecedent negotiations which promoted the transaction to which the agreement relates, but who is not the vendor, shall be deemed to be an agent of the vendor for the purpose of receiving any notice given by the purchaser under this section. 20

7. Effect of cancellation—(1) Where a notice of cancellation is given pursuant to section 6 of this Act: 25

- (a) The agreement to which it relates shall be deemed to have been rescinded by mutual consent and never to have had effect:
- (b) Any collateral agreement and any contract of guarantee relating to the agreement shall be deemed never to have had effect: 30
- (c) Any security given by the purchaser in respect of money payable under the agreement, or given by a guarantor in respect of money payable under such a contract of guarantee, shall be deemed never to have been enforceable: 35
- (d) Any money paid under the agreement or any collateral agreement shall be repaid forthwith by the vendor or other person to whom the money has been paid, and if the purchaser is in possession of the goods he shall have a lien on them for any sum which he is entitled to be repaid: 40

- (e) Where the purchaser has supplied other goods in part-exchange for the goods that are the subject of the agreement or any collateral agreement the vendor shall forthwith re-deliver the goods so supplied to the purchaser.
- 5 (2) Unless before the end of the period of ten days beginning with the date of the giving of the notice under section 6 of this Act, the goods supplied by the purchaser in part-exchange for the goods that are the subject of the agreement
10 are re-delivered to the purchaser, the purchaser shall be entitled to receive from the vendor an amount equal to the value of the goods at the time at which they were supplied by the purchaser or to the sum (if any) which was agreed to be allowed by the vendor in respect of the goods whichever is the
15 greater.
- (3) The vendor shall be liable to pay compensation to the purchaser for any damage done to the goods supplied by the purchaser in part-exchange, while these goods have been in the custody of the vendor, other than damage arising from the
20 normal use of the goods or damage arising from circumstances beyond the vendor's control.
- (4) During the period of ten days referred to in subsection (2) of this section the purchaser, if he is in possession of the goods that are the subject of the agreement, shall be
25 entitled to retain possession of them until either—
- (a) The goods agreed to be taken in part-exchange are re-delivered to him; or
- (b) A sum equal to their value or the part-exchange value, as the case may require, has been paid to him; or
30 (c) Compensation in terms of subsection (3) of this section has been paid to him;
- and if, immediately before the end of that period, he continues by virtue of this subsection to be entitled to retain possession of the goods to which the agreement relates, he
35 shall have a lien on those goods for any sum which he is entitled to recover by virtue of subsection (2) or subsection (3) of this section.
- (5) Any sum payable under any of the provisions of subsections (1) to (3) of this section shall be recoverable as a
40 simple contract debt in any court of competent jurisdiction. In any action for the recovery of any such sum the purchaser shall, if successful, be entitled to recover from the vendor his full costs, fees, and other reasonable expenses, including *(all)* reasonable costs incurred between solicitor and
45 client.

8. Re-delivery and care of goods comprised in the notice of cancellation—

Struck Out

(1) Where a notice of cancellation is given pursuant to section 6 of this Act and any goods that are the subject of the agreement are in the possession of the purchaser he shall not be under any obligation to re-deliver them except at his own premises and in pursuance of a request (whether oral or in writing) from the vendor, and any such obligation shall be subject to any lien or other right to retain the goods which he may have under subsection (1) or subsection (4) of section 7 of this Act.

New

(1) Where a notice of cancellation is given pursuant to section 6 of this Act the purchaser shall deliver to the vendor any goods that have been delivered to the purchaser pursuant to, or in anticipation of, the agreement.

(1A) The purchaser shall not be under any obligation to deliver any such goods except at his own premises and in pursuance of a request (whether oral or in writing) from the vendor, and any such obligation shall be subject to any lien or other right to retain the goods which he may have under subsection (1) or subsection (4) of section 7 of this Act.

(2) Subject to the following provisions of this section, the purchaser shall be under an obligation to take reasonable care of any such goods, if they have come into his possession in consequence, or in anticipation, of the making of the agreement, until the end of the period of twenty-one days beginning with the date of the giving of the notice of cancellation.

New

(2A) The purchaser may send any such goods at his own expense to the vendor and, if the purchaser does so, he shall be under an obligation to take reasonable care to see that they are received by the vendor and are not damaged in transit to him, but in other respects his obligation to take care of the goods shall cease on his sending the goods to the vendor.

(3) Where at any time during the period of twenty-one days the purchaser receives such a request as is mentioned in (subsection (1)) subsection (1A) of this section, and unreasonably refuses or fails to comply with it, his obligation to

take reasonable care of the goods shall continue until he has complied with the request.

(4) The purchaser shall take reasonable care to see that the goods are received by the vendor or a person for the time being entitled to the possession of the goods.

(5) Where goods are of a kind that are consumed or depleted in quantity in normal use the purchaser shall be liable to pay compensation to the vendor for the consumption of the goods or their depletion in quantity in normal use while they are in the custody of the purchaser.

(6) The purchaser shall also be liable to pay compensation to the vendor for any damage done to the goods or for the loss or destruction thereof while the goods have been in the custody of the purchaser, other than damage arising from the normal use of the goods or loss or damage arising from circumstances beyond his control:

Provided that no compensation shall be payable under this subsection in respect of any damage done to the goods or of their loss or destruction if it occurs more than twenty-one days after the day on which the notice of cancellation was given unless the purchaser is still under an obligation to take reasonable care of them pursuant to subsection (3) of this section.

(7) The liability of the purchaser to pay compensation under subsection (6) of this section also applies in respect of any loss occasioned by any breach of his duty under subsection (4) of this section or by the performance by him of any act in relation to the goods (other than an act involved in the normal use of them) which is inconsistent with ownership of them by the vendor.

(8) Except as provided for in subsections (2) to (7) of this section the purchaser shall not be under any obligation to take care of the goods by reason of their having come into his possession.

(9) Any obligation under this section shall be owed to the vendor and any breach of that obligation shall be actionable, at the suit of that person, as a breach of a statutory duty.

New

(10) Any reference in this section to the premises of the purchaser is a reference to the premises which in the agreement are specified as his address, and any written request under subsection (1A) of this section may be made to the purchaser at that address in the same manner as a notice may be given pursuant to subsection (1) of section 6 of this Act and subsections (2) and (3) of that section shall apply accordingly with all necessary modifications.

New

8A. Agreements initiated at the request of the purchaser excluded—(1) Sections 4 and 6 of this Act shall not apply to a credit agreement made at a place other than the appropriate trade premises if the agreement is a result of— 5

- (a) An unsolicited inquiry about the goods, or goods of the type, that are the subject of the agreement, made by the purchaser to the vendor, and communicated to the vendor or an agent of the vendor at appropriate trade premises; or 10
- (b) An unsolicited request made by the purchaser to the vendor, and communicated to the vendor or an agent of the vendor at appropriate trade premises, to attend at a place other than appropriate trade premises for the express purpose of negotiating the sale and purchase of specified goods. 15

(2) If in any proceedings before any Court any person claims that sections 4 and 6 of this Act do not apply to any credit agreement made at a place other than appropriate trade premises by reason of the provisions of subsection (1) 20 of this section it shall be for that person to prove beyond a reasonable doubt that the requirements of that subsection have been satisfied.

9. No contracting out—(1) The provisions of this Act shall have effect notwithstanding any provision to the contrary in any agreement. 25

New

(2) Any transaction entered into or any contract or arrangement made, whether orally or in writing for the purpose of or having the effect of, in any way, whether directly or indirectly, defeating, evading, avoiding, or preventing the operation of this Act in any respect shall be unenforceable except that any money paid as part of any such transaction or under any such contract or arrangement may be recovered by the person who paid it from the person to whom it was paid. 30 35

9A. Application of section 44 of the Mercantile Law Act 1908—Section 44 of the Mercantile Law Act 1908 shall not apply to any credit agreement that is made at a place other than appropriate trade premises if sections 4 and 6 of this Act apply to that agreement. 40

10 **10. Offences**—(1) Any vendor who knowingly fails, after a notice of cancellation has been given pursuant to section 6 of this Act, to repay any money paid by a purchaser, or to re-deliver any goods supplied in part-exchange shall be guilty
5 of an offence against this Act and (without prejudice to the rights of the purchaser to recover such money or goods by action in a Court of competent jurisdiction) shall be liable on summary conviction to a fine not exceeding one hundred pounds.

10 (2) A purchaser who knowingly fails in terms of section 8 of this Act to re-deliver at his own premises any goods delivered to him pursuant to an agreement, shall be guilty of an offence against this Act and (without prejudice to the rights of the vendor to recover the goods by action in a Court
15 of competent jurisdiction) shall be liable on summary conviction to a fine not exceeding one hundred pounds.

(3) On conviction of any person of an offence under subsection (1) of this section the Court may make an order for the payment by that person of an amount equal to the money
20 paid by the purchaser under an agreement which has been cancelled under this Act or for the return of goods given by the purchaser in part-exchange or for the payment of money in terms of section 7 (3) of this Act.

25 (4) On conviction of any person of an offence under subsection (2) of this section the court may make an order for the re-delivery by the person of the goods to which the agreement relates.

30 **11. Application**—This Act shall not have any effect in relation to any credit agreement made before the date of the commencement of this Act.

SCHEDULES**FIRST SCHEDULE**Section 5 (b)**PART I****NOTICE TO CUSTOMER:
RIGHT OF CANCELLATION**

You have for a short time a legal right to cancel this Agreement.

You can do this by completing and giving to * before the end of the period of seven days beginning with the day after the day on which you signed the agreement, the notice of cancellation handed to you on that day. You can give the notice by posting it in a prepaid letter, or by delivering it, to the above-named vendor at the address shown in this statement.

If you cancel this agreement any money you have already paid must be refunded to you. If you have given any goods in part-exchange (trade-in) these goods, or their value, must also be returned to you. If you have received the goods purchased by you, you need take no action to return them but can wait for them to be collected. You need not hand them over unless you have received a request to do so and have had your money and goods (trade-in) returned to you.

Struck Out

Under the Door to Door Sales Act 1966, penalties are provided for the vendor who does not refund your money or return your goods (trade-in) and also for a purchaser who fails to hand over the goods purchased by him if a request for their return has been made.

*Insert name and address of vendor

PART II**REQUIREMENTS AS TO STATUTORY STATEMENT**

1. The statement set out in Part I of this Schedule shall appear in the agreement on the page which contains particulars of the goods that are the subject of the agreement.

2. The width of the outlined area shall be not less than six inches and its height shall be not less than *(four and a half)* three inches; and the thickness of the outlining shall be not less than twenty-five thousandths of an inch.

3. The colour of the outlining shall be red.

4. The lettering in the statement shall be roman or upright sanserif and the height of the smallest letter shall be not less than sixty-seven thousandths of an inch :

Provided that these requirements shall not apply to any part of the statement which consists of handwriting.

5. The words "**NOTICE TO CUSTOMER: RIGHT OF CANCELLATION**" shall be in bold capital letters at least one eighth of an inch in height; but except for these words, the initial letters of other words, and any part of the statement which consists of handwriting, lettering in the statement shall not be in capital letters.

6. The statement shall be legible and shall be capable of being read easily by a person with normal vision.

7. Except for the name and address of the vendor, the contents of the statement shall not consist of handwriting or a reproduction thereof.

SECOND SCHEDULE

Section 5 (c)

NOTICE OF CANCELLATION

To*

I hereby cancel the agreement made by me on the _____ day of _____ 19 _____ to purchase or hire † and require you to repay all money paid by me under or with respect to the agreement and to return to me all goods given to you by me pursuant to the agreement.

Dated this _____ day of _____ 19 _____ .

(Signed).....

(Address).....

.....

NOTE: This notice may be given by posting it in a prepaid letter to, or by delivering it personally, to the vendor at the address shown on the agreement before the end of the period of seven days beginning with the day after the day on which you signed the agreement. If you post this notice you are recommended to send it by registered mail so that you obtain proof of the giving of the notice.

*Insert name and address of vendor

†Insert concise description of the goods.