



## ANALYSIS

Title	2. Protection for purchaser at retail
1. Short Title and commencement	3. Instrument over stock-in-trade

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1974, No. 70

**An Act to amend the Chattels Transfer Act 1924**

[8 November 1974

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 Chattels Transfer Amendment Act 1974, and shall be read together with and deemed part of the Chattels Transfer Act 1924 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of January 1975.

**2. Protection for purchaser at retail**—The principal Act is hereby amended by inserting, after section 18, the following heading and section:

*“Protection of Retail Customers*

“18A. (1) Notwithstanding anything in section 4 of this Act, where any person acquires possession of chattels in good faith and for valuable consideration under a contract of bailment from a person whose business is or includes the letting out on hire of chattels of that description and—

“(a) The chattels so acquired are chattels to which an instrument or a security agreement given or entered into by the bailor relates; and

“(b) The contract of bailment is not one which confers or imposes on the bailee a right or obligation to purchase the chattels,—

any person who would be entitled by virtue of the instrument or security agreement to take possession of the chattels and sell and dispose of the same or the bailor’s interest in them shall, notwithstanding any provision set forth or implied in the instrument or security agreement, be bound by the terms of such contract of bailment, but shall be entitled to demand and give receipts for money payable under such contract of bailment and to enforce such contract of bailment and to exercise all other rights, powers, and remedies of the bailor as if the bailor’s rights under that contract had been assigned to that person.

“(2) Notwithstanding anything in section 4 of this Act, any person who acquires from a dealer any chattels to which an instrument or a security agreement given or entered into by that dealer relates, or any interest in any such chattels, in good faith and for valuable consideration at retail the person acquiring the chattels or an interest in them shall take the chattels or interest free from any security interest that any such instrument or agreement is intended to secure; but nothing in this subsection shall apply in any case where subsection (1) of this section applies.

“(3) For the purposes of this section—

“‘Dealer’ means any person who is engaged in the trade or business of selling chattels or of disposing of them pursuant to hire purchase agreements:

“‘Hire purchase agreement’ has the meaning ascribed to it in the Hire Purchase Act 1971:

“‘Security agreement’ means an agreement that creates or provides for a security interest; and includes any security granted wholly or partly upon chattels by a company registered under the Companies Act 1955 or by a society registered under the Industrial and Provident Societies Act 1908:

“‘Security interest’ means an interest in chattels which secures the payment of money or the performance of some obligation; and includes—

“(a) The interest of the seller under a conditional contract for the sale of chattels:

“(b) The interest of the owner of chattels comprised in a hire purchase agreement:

“(c) The interest of the owner of chattels that are subject to an instrument by way of bailment if the purpose of the instrument is to secure the payment of money or the performance of some obligation.”

**3. Instrument over stock-in-trade—**(1) Section 26 of the principal Act is hereby amended by adding the following paragraph:

“(d) Any chattels which the grantor under an instrument by way of security is required by the instrument to hold, until sold or while not leased or hired, on land or premises specified in the instrument if—

“(i) The chattels are of such a nature or are so described, whether by brand or trade name or otherwise howsoever, as to be reasonably capable of identification; and

“(ii) The grantor is engaged in the trade or business of selling or of letting out on hire chattels of the same nature or description or of disposing of such chattels pursuant to hire purchase agreements.”

(2) Section 26 of the principal Act is hereby further amended by adding, as subsection (2), the following subsection:

“(2) Where any chattels are subject to an instrument by way of security which, but for the provisions of paragraph (d) of subsection (1) of this section, would be rendered void in respect of those chattels by section 23 or section 24 of this Act to the extent and as against the persons mentioned in sections 18 and 19 of this Act, the proceeds of any sale, bailment, or exchange of those chattels which are received by the grantor shall form part of the grantee’s security under that instrument only—

“(a) To the extent that such proceeds are expressly stated in the instrument to form part of the grantee’s security; and

“(b) To the extent that and so long as any such proceeds being money are kept by or on behalf of the grantor in a separate and identifiable fund.”

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This Act is administered in the Department of Justice.