

[AS REPORTED FROM THE COMMERCE AND MINING
COMMITTEE]

House of Representatives, 17 October 1973

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

Hon. Mr Freer

DOOR TO DOOR SALES AMENDMENT (NO. 2)

ANALYSIS

- Title
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2. Provision of services
3. Requirements as to agreements

4. Existence of representations to be a question of fact
5. Offences
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A BILL INTITULED

An Act to amend the Door to Door Sales Act 1967

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 Amendment Act (No. 2) 1973, and shall be read together with and deemed part of the Door to Door Sales Act 1967* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of April 1974.

New

1A. Booksellers—(1) Section 2 of the principal Act is hereby amended by omitting paragraph (d) of the definition of the term “credit agreement”, and substituting the following paragraphs:

*1967, No. 126

No. 64—2

New

“(d) Any credit-sale agreement if the goods that are the subject of the agreement comprise mainly books or printed matter and the total purchase price does not exceed \$20; or

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“(e) Any credit-sale agreement (other than one of the kind described in paragraph (d) of this definition) under which the total purchase price does not exceed \$40; or

“(f) Any hire purchase agreement or hiring agreement under which the total purchase price does not exceed \$20.”

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(2) Section 3 of the principal Act is hereby amended by omitting from subsection (1) the words “paragraphs (a) to (d) of the definition of the term ‘credit agreement’”, and substituting the words “subsection (3) of this section”.

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(3) Section 3 of the principal Act is hereby further amended by adding the following subsection:

“(3) Subsection (1) of this section shall not apply to—

“(a) Any agreement of the kind described in paragraph (a) or paragraph (d) of subsection (3) of section 3A of this Act; or

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“(b) Any agreement under which the total purchase price does not exceed \$20.”

2. Provision of services—(1) The principal Act is hereby amended by inserting after section 3, the following section:

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“3A. (1) Every agreement whereby a person agrees in the ordinary course of a business carried on by him to provide services for any other person for valuable consideration, whether alone or together with goods, shall (subject to paragraphs (a) to (d) of the definition of the term ‘credit arrangement’ and to subsection (3) of this section) be deemed to be a credit agreement within the meaning of this Act, and the provisions of this Act shall, so far as applicable, apply accordingly, with all necessary modifications, as if the services were goods within the meaning of this Act.

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“(2) For the purposes of subsection (1) of this section (but without limiting the generality of that subsection), an agreement whereby a person agrees to do any thing which confers any right or benefit on any other person shall be deemed to be an agreement to provide services for that other person.

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Struck Out

“(3) Subsection (1) of this section shall not apply in respect of—

- 5 “(a) Any contract of service between master and servant;
or
- “(b) Any agreement which relates to the disposition of an estate or interest in land; or
- 10 “(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 services are of a type normally provided for the purposes of that business or the practice of that profession.”

New

“(3) Subsection (1) of this section shall not apply in respect of—

- 20 “(a) Any agreement under which the purchaser is a body corporate; or
- “(b) Any contract of service between master and servant;
or
- “(c) Any agreement which relates to the disposition of an estate or interest in land; or
- 25 “(d) 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 services are of a type normally provided for the purposes of that business or the practice of that profession; or
- 30 “(e) Any agreement to which section 3 of this Act applies;
or
- 35 “(f) Any contract which is primarily a contract of insurance; or
- “(g) Any contract to purchase or subscribe for shares in a building society within the meaning of the Building Societies Act 1965; or
- 40 “(h) Any agreement under which the total purchase price does not exceed \$40.”

(2) The principal Act is hereby consequentially amended in the manner indicated in the Schedule to this Act.

3. Requirements as to agreements—(1) Section 6 of the principal Act is hereby amended by adding to subsection (1) the following paragraph:

“(d) Where the vendor or any other person guarantees the goods or the services to which the agreement relates, that guarantee shall be in writing and a copy of it shall be given to the purchaser at the time at which the agreement is made.” 5

(2) The said section 6 is hereby further amended by adding to paragraph (c) of subsection (1) the word “; and”.

4. Existence of representations to be a question of fact— 10
The principal Act is hereby amended by inserting, after section 11, the following section:

“11A. In any proceedings it shall be a question of fact whether any representation, statement, or warranty was made or given to the purchaser or prospective purchaser, whether orally or in writing, by the vendor or any person acting on behalf of the vendor in connection with or in the course of negotiations leading to the entering into of a credit agreement made at a place other than appropriate trade premises and whether, if the statement, representation, or warranty was made, it constituted a term of the agreement or was relied on by the purchaser. The Court shall not be precluded from inquiring into and determining those questions by any provision in the agreement or in any other document unless the Court considers that in all the circumstances of the case, including the subject-matter and value of the transaction and the respective bargaining strengths of the parties, it is fair and reasonable that the provision should be conclusive between the parties.” 15
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5. Offences—(1) Section 14 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection: 30

Struck Out

“(2A) Every person commits an offence against this Act who, being the vendor under any agreement to which sub- 35
section (1) of section 3A of this Act applies which is made at a place other than appropriate trade premises, stipulates for or demands or accepts, before the end of the period within which the agreement may be cancelled under this Act, the whole or any part of the consideration to be provided by or on behalf of the purchaser under the agreement.” 40

New

“**(2A)** Every person commits an offence against this Act who, being the vendor under any agreement that the purchaser may cancel under this Act, stipulates for or demands or
5 accepts, before the end of the period within which the agreement may be so cancelled, the whole or any part of the consideration to be provided by or on behalf of the purchaser under the agreement if—

- 10 “(a) The goods that are the subject of the agreement
comprise mainly books or printed matter; or
“(b) The agreement is one to which section 3 or subsection
(1) of section 3A of this Act applies.”

Struck Out

15 **6. Metric conversions**—(1) Part II of the First Schedule to the principal Act is hereby amended by repealing clause 2, and substituting the following clause:

20 “2. The width of the outlined area shall be not less than 150 millimetres and its height shall be not less than 75 millimetres; and the thickness of the outlining shall be not less than 0.6 of a millimetre.”

(2) The said Part II is hereby further amended—

- 25 (a) By omitting from clause 3 the words “sixty-seven thousandths of an inch”, and substituting the expression “1.5 millimetres”.
(b) By omitting from clause 4 the words “one eighth of an inch”, and substituting the expression “3 millimetres”.

New

30 **6. Statutory statement**—Part II of the First Schedule to the principal Act is hereby amended by repealing clauses 1 to 6, and substituting the following clauses:

35 “1. The statement set out in Part I of this Schedule shall appear in the agreement, close to the signature of the purchaser, on the page which contains particulars of the goods or services. The statement, the signature, and the particulars shall all appear on the same side of that page.

40 “2. The width of the outlined area shall be not less than 150 millimetres and its height shall be not less than 75 millimetres; and the thickness of the outlining shall be not less than 0.6 of a millimetre.”

New

“3. The lettering in the statement shall be roman or upright sanserif and the height of the smallest letter shall be not less than 1.5 millimetres:

“Provided that these requirements shall not apply to any part of the statement which consists of handwriting. 5

“4. The words **‘NOTICE TO CUSTOMER: RIGHT OF CANCELLATION’** shall be in bold capital letters at least 3 millimetres 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. 10

“5. The statement, which shall be legible and shall be capable of being read easily by a person with normal vision, shall be within the plain view of any such person reading the agreement. 15

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

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SCHEDULE

Section 2 (2)

CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT

Section Affected	Amendment
Title	By inserting, after the words "sale of goods", the words "and the provision of services".
Section 2	<p>By repealing the definition of the term "appropriate trade premises" in subsection (1), and substituting the following definition:</p> <p style="padding-left: 40px;">"Appropriate trade premises' means—</p> <p style="padding-left: 80px;">(a) In relation to an agreement for the sale, letting, hiring, or bailment of goods, 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:</p> <p style="padding-left: 80px;">(b) In relation to an agreement for the provision of services (whether alone or together with goods), premises <i>of the vendor</i>" <u>(not being premises belonging to or occupied by the purchaser) at which the vendor or any bank, solicitor, or chartered accountant normally carries on business."</u></p> <p>By inserting in the definition of the term "purchaser" in subsection (1), after the word "bailed", the words "or for whom services are to be provided".</p> <p>By inserting in the definition of the term "total purchase price" in subsection (1), after the word "goods", the words "or to have the services provided".</p> <p>By inserting in the definition of the term "vendor" in subsection (1), after the word "goods", the words "or to provide services".</p>

SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT—*continued*

Section Affected	Amendment
Section 4 	<p>By repealing this section and substituting the following section:</p> <p>“4. Power to exempt goods and services—The Governor-General may, from time to time, by Order in Council, prescribe things or classes of things or services or classes of services, which shall not be goods or services for the purposes of this Act.”</p>
Section 9 	<p>By adding the following subsection:</p> <p>“(6) If the vendor has provided any services under the agreement before it is cancelled, he shall not be entitled to any compensation for those services. If the vendor’s services have resulted in the alteration of property of the purchaser, the vendor shall restore the property to substantially as good a condition as it was at the time the services were rendered.”</p> <p style="text-align: center;"><i>New</i></p>
Section 11 	<p>By inserting in subsection (1) after the words “the agreement”, the words “or to the provision of the services to which the agreement relates”.</p> <p>By omitting from subsection (2) the words “soliciting of a sale”, and substituting the words “advertising of goods or services”.</p>
Second Schedule 	<p>By inserting after the words “or hire” in the Notice of Cancellation, the words “or be provided with”.</p> <p>By inserting, after the words “description of goods” in the second footnote to the Notice of Cancellation, the words “or services”.</p>