

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

*House of Representatives, 14 November 1967.*

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 with double rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

*House of Representatives, 17 November 1967.*

Words inserted are shown in roman underlined with a triple rule, or with triple rule before first line and after last line.

*Right Hon. Mr Marshall*

## DOOR TO DOOR SALES

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### ANALYSIS

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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 1967.

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

No. 105—3

*Price 10c*

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

“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 20

(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 25

(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 30

(d) Any credit-sale agreement under which the total purchase price does not exceed forty dollars or any other agreement under which the total purchase price does not exceed twenty dollars: 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— 45

(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 4 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

10 to the payment of a nominal rent only:  
“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

15 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:

20 “Property” means the general property in goods, and not merely a special property:  
“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

25 assigned or are transferred by operation of law, includes the person for the time being entitled to those rights:  
“Sale” includes a bargain and sale, as well as a sale and delivery:

30 “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

35 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

40 required to be provided by the purchaser under any collateral agreement:  
“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

45 or are transferred by operation of law, includes the person for the time being entitled to those rights.

(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

**3. 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, or agreed to sell, supply, or give, books in the ordinary course of his business shall (subject to paragraphs (a) to (d) of the definition of the term “credit agreement”) 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) Without limiting the generality of the provisions of subsection (1) of this section, it is hereby declared that for the purposes of that subsection a bookseller which is a company shall be deemed to sell, supply, or give, or to agree to sell, supply, or give, books to a person if they are sold, supplied, or given, or agreed to be 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

**4. 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

**5. Enforcement conditional on compliance with certain requirements—**(1) Subject to section 7A and to section 10 of this Act, where a 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 6 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— 40

- (a) He shall not be entitled to enforce any contract of guarantee relating to that agreement or any collateral agreement;
- 5 (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.

15 **6. 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
- 20 (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
- 25 (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.

30 (2) If in any proceedings before any Court 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 those proceedings.

40 **7. Right of cancellation—**(1) Subject to section 10 of this Act and to subsection (3) of this section, where a 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 paragraph (b) of subsection

(1) of section 6 of this Act a notice in the form set out in the Second Schedule to this 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.

(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 paragraph (b) of subsection (1) of section 6 of this Act or by properly addressing, pre-paying, and posting a letter containing the notice to the person specified in the statement at that address.

(3) Where by virtue of subsection (1) of section 5 of this Act the vendor is not entitled to enforce a credit agreement the purchaser may cancel the agreement at any time before the end of the period of one month beginning with the day after the date of the making of the agreement by giving the required notice in accordance with subsections (1) and (2) of this section. Those subsections shall apply accordingly with such modifications as are necessary and if paragraph (b) of subsection (1) of section 6 of this Act has not been complied with the notice may be delivered personally at, or posted to, the last known address of the vendor.

(4) 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.

(5) 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.

*New*

**7A. Agreement may become enforceable**—(1) This section shall apply to any agreement made at a place other than appropriate trade premises if—

- (a) There has been a failure to comply with the requirements of subsection (1) of section 6 of this Act; and
- (b) The failure has not been dispensed with under subsection (2) of that section; and
- (c) The purchaser has not cancelled the agreement under section 7 of this Act; and
- (d) The period mentioned in subsection (3) of section 7 of this Act has expired.

(2) The vendor under any agreement to which this section applies may give to the purchaser, either personally or in a letter sent by registered post,—

*New*

- (a) A copy of the agreement if the agreement is in writing or, if it is not in writing, a memorandum in writing setting out full particulars of the agreement including the date on, and the place at which, it was made; and
- (b) A statement (modified in accordance with subsection (4) of this section) 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 in accordance with the instructions contained in that Schedule, and which shall be attached to the copy of the agreement or to the memorandum referred to in paragraph (a) of this subsection; and
- (c) A copy (modified in accordance with subsection (5) of this section) of the form set out in the Second Schedule to this Act,—

and if the vendor does so the purchaser may cancel the agreement before the end of the period specified in the statement given under paragraph (b) of this subsection by giving a notice in accordance with subsections (1) and (2) of section 7 of this Act and those subsections and the other provisions of this Act shall apply accordingly with such modifications as are necessary.

(3) If the purchaser does not cancel the agreement before the end of the period so specified section 5 of this Act shall cease to apply to that agreement.

(4) For the purposes of paragraph (b) of subsection (2) of this section the statement set out in Part I of the First Schedule to this Act shall be modified by omitting the words “you signed the agreement, the notice of cancellation handed to you on that day”, and substituting the words “you were given this statement, the notice of cancellation that accompanied it”.

(5) For the purposes of paragraph (c) of subsection (2) of this section the Note on the form set out in the Second Schedule to this Act shall be modified by omitting the words “signed the agreement”, and substituting the words “were given the statement that accompanied this notice”.

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

- (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:
- (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: 5
- (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: 10
- (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 redeliver the goods so supplied to the purchaser. 15
- (2) Unless before the end of the period of ten days beginning with the date of the giving of the notice under section 7 of this Act, the goods supplied by the purchaser in part-exchange for the goods that are the subject of the agreement are redelivered 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 greater. 25
- (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 normal use of the goods or damage arising from circumstances beyond the vendor's control. 30 35
- (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 entitled to retain possession of them until either—
- (a) The goods agreed to be taken in part-exchange are redelivered to him; or 40
- (b) A sum equal to their value or the part-exchange value, as the case may require, has been paid to him; or
- (c) Compensation in terms of subsection (3) of this section has been paid to him; 45



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 shall have a lien on those goods for any sum which he is  
5 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 simple contract debt in any court of competent jurisdiction.

10 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 reasonable costs incurred between solicitor and client.

15 **9. Redelivery and care of goods comprised in the notice of cancellation—**(1) Where a notice of cancellation is given pursuant to section 7 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.

20 (2) 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  
25 under subsection (1) or subsection (4) of section 8 of this Act.

(3) 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  
30 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.

(4) The purchaser may send any such goods at his own expense to the vendor and, if the purchaser does so, he shall  
35 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.

40 (5) Where at any time during the period of twenty-one days the purchaser receives such a request as is mentioned in subsection (2) 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  
45 request.

(6) 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.

(7) 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.

(8) 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 (5) of this section.

(9) The liability of the purchaser to pay compensation under subsection (8) of this section also applies in respect of any loss occasioned by any breach of his duty under subsection (6) 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.

(10) Except as provided for in subsections (3) to (9) 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.

(11) 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.

(12) 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 (2) 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 7 of this Act and subsections (2) and (3) of that section shall apply accordingly with all necessary modifications.

10. Agreements initiated at the request of the purchaser excluded—

*Struck Out*

5 (1) Sections 5 and 7 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—

10 (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

15 (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.

20 (2) For the purposes of this section an inquiry or request made by the purchaser as the result of an advertisement shall be deemed to be unsolicited if—

(a) The advertisement is addressed to the public at large and clearly indicates that goods are for sale or hire:

(b) The inquiry or request has not been solicited in any other way.

*New*

30 (1) Sections 5 and 7 of this Act shall not apply to a credit agreement made at a place other than appropriate trade premises if the first inquiry specifically relating to the sale and purchase of the goods that are the subject of the agreement is made by the purchaser.

35 (2) In determining for the purposes of subsection (1) of this section whether a first inquiry has been made by the purchaser the soliciting of a sale by the vendor by way of an advertisement addressed to the public at large or to a section of the public shall be disregarded.

40 (3) If in any proceedings before any Court any person claims that sections 5 and 7 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) or subsection (2) of this section it shall be for that person to prove (*beyond a reasonable doubt*) that the requirements of the subsection have been satisfied.

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

(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.

**12. 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 5 and 7 of this Act apply to that agreement.

**13. Offences**—(1) Any vendor who knowingly fails, after a notice of cancellation has been given pursuant to section 7 of this Act, to repay any money paid by a purchaser, or to redeliver any goods supplied in part-exchange shall be guilty 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 two hundred dollars.

(2) A purchaser who knowingly fails in terms of section 9 of this Act to redeliver 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 of competent jurisdiction) shall be liable on summary conviction to a fine not exceeding two hundred dollars.

(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 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 8 (3) of this Act.

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

5   **14. Time for laying information**—Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against this Act may be laid at any time within two years after the time when the matter of the information arose.

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

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## SCHEDULES

Section 6 (1) (b)

## FIRST SCHEDULE

## 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.

\*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 three inches; and the thickness of the outlining shall be not less than twenty-five thousandths of an inch.

3. 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.

4. 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.

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

6. 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  
NOTICE OF CANCELLATION

Section 6 (1) (c)

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,  
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.