

MOTOR-VEHICLE DEALERS AMENDMENT BILL

EXPLANATORY NOTE

IN addition to amending a number of provisions in the principal Act, this Bill provides for the establishment of a Motor-vehicle Dealers' Disciplinary Committee.

Clause 1 relates to the Short Title.

Clause 2 requires an applicant for a licence to serve notice and documents on the two trade associations in the field.

Clause 3 requires applicants for licences to provide affidavits in the manner set out in the Schedule.

Clause 4 requires the applicant to provide evidence of experience and fitness to hold a licence.

Clause 5 disqualifies applicants with a recent conviction under section 29 of the principal Act.

Clause 6 makes it mandatory to return an expired licence to the Court.

Clause 7 inserts a new section in the principal Act requiring dealers to advertise full details of motor vehicles which are for sale.

Clause 8 provides for the establishment of a motor-vehicle dealers' disciplinary committee. Provision is made for representation by both trade organisations currently established, and the public.

Clause 9 increases penalties for offences under the principal Act.

Clause 10 provides for the cancellation of licences in certain circumstances.

Clause 11 extends the provisions of the principal Act relating to the offence of holding out as a motor-vehicle dealer without a licence.

Clause 12 provides for increased penalties.

Clause 13 amends the Summary Proceedings Act 1957 to make offences under the Motor-Vehicle Dealers Act 1958 indictable offences.

Dr. Bassett

MOTOR-VEHICLE DEALERS AMENDMENT

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A BILL INTITULED

An Act to amend the Motor-Vehicle Dealers Act 1958

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

1. **Short Title**—This Act may be cited as the Motor-Vehicle Dealers Amendment Act 1973 and shall be read together with and deemed part of the Motor-Vehicle Dealers Act 1958 (hereinafter referred to as the principal Act).

2. Service of documents—Section 4 of the principal Act is hereby amended by adding the following subsections:

“(4) The applicant shall, not later than 21 clear days before the date fixed for the hearing of the application serve on the New Zealand Retail Motor Trade Association and on the New Zealand Licensed Motor Vehicle Dealers Association where a branch of either or both organisations is located in the city or town nearest to the applicant’s proposed place of business a copy of the application together with a copy of every document filed in connection therewith, and a representative of either or both of the associations shall be entitled to appear and be heard at the hearing of the application.”

“(5) At the hearing of the application the Magistrate shall satisfy himself that the applicant has served the documents as required by subsection (4) of this section.”

3. Applications to be supported by affidavit—(1) The principal Act is hereby amended by inserting after section 4 the following section:

“4A. **Applications to be supported by affidavit**—Every application for a licence or for approval of a transfer of a licence shall be supported:

“(a) In the case of an application by an individual (not being a person carrying on business in partnership) by an affidavit in the prescribed form sworn by the applicant:

“(b) In the case of an application by an individual carrying on business in partnership by an affidavit in the prescribed form sworn by the applicant and an affidavit in the prescribed form sworn by each of his partners:

“(c) In the case of an application by a company by an affidavit in the prescribed form sworn by a director or the general manager or other responsible officer of the company.”

(2) The principal Act is hereby further amended by adding to the Schedule the forms set out in the Schedule to this Act.

4. Provisions as to character and fitness—(1) Section 9 of the Act is hereby amended by inserting after subsection (3) the following subsections:

“(3A). In deciding under this section as to the fitness of any person, the Magistrate shall require to be satisfied that the applicant has had at least 2 years practical experience in the retail motor trade as an employee of the holder of a
5 motor-vehicle dealer’s licence during the period of 3 years immediately before the making of the application.

“(3B). The Magistrate may in his discretion dispense with any of the provisions of subsection 3A of this section if he is satisfied that the business experience in a field or fields related
10 to the retail motor trade, judgment and general knowledge of the person whose fitness is to be determined are such that dispensation is justifiable.”

(2) Section 9 of the principal Act is hereby further amended by adding to subsection (4) the following proviso:

15 “Provided that no licensee shall carry on his business or any part of his business under more than one name or description at any one time.”

5. Disqualification of applicants—Section 10 of the principal Act is hereby amended by inserting after subsection (2)
20 the following subsection:

“(2A) No motor-vehicle dealer’s licence shall be issued to any individual, partnership or company where the individual or the partner of the company applying or the person as the
25 case may be has been within the period of 12 months preceding the application convicted of an offence under section 29 of this Act.”

6. Cancellation or termination of licence—The principal Act is hereby amended by inserting after section 17 the following section:

30 “17A. **Cancellation or termination of licence**—Every motor-vehicle dealer shall within seven (7) days of the termination or cancellation of his licence return the licence to the Court by which it was issued.”

7. Details of motor vehicle to be displayed—The principal
35 Act is hereby amended by inserting after section 23 the following section:

“23A. Every licensed motor-vehicle dealer shall display in a prominent position on each and every motor vehicle which is the subject of a dealing a sign stating the following details:

40 “(a) The brand of the motor vehicle:

“(b) The year in which the vehicle was manufactured:

- “(c) The words “full price” followed by the total cash price of the vehicle either in words or figures:
- “(d) Where the motor vehicle is available for hire purchase the word “deposit” followed by the amount of the deposit either in words or figures: 5
- “(e) Where the vehicle is for lease the words “for lease” and “advance rental and bond” followed by details of the cash price, the advance payment, the periodic rental, and the term of hire:
- “(f) Every such sign shall be clear and legible and of a size which is capable for being read at a fair and reasonable distance: 10
- “(g) It shall be permissible under this section to make such abbreviations to the details required to be given as do not interfere unduly with the clarity of the sign.” 15

8. Discipline within the motor retail trade—The principal Act is hereby amended by inserting after section 23A (as inserted by section 7 of this Act) the following heading and sections: 20

“Discipline within the Motor Retail Trade

“23B. Constitution of Motor-vehicle Dealers’ Disciplinary Committee—(1) There shall be a Committee (to be known as the Motor-vehicle Dealers’ Disciplinary Committee) appointed in accordance with this section to exercise the powers and functions by this Act conferred on it. 25

“(2) The Disciplinary Committee shall be appointed as follows:

- “(a) One member to be appointed by the New Zealand Licensed Motor Vehicle Dealers’ Association: 30
- “(b) One member to be appointed by the New Zealand Retail Motor Trade Association:
- “(c) A chairman to be appointed by the Governor-General in Council:
- “(d) One member to represent the public to be appointed by the Governor-General in Council. 35
- “(3) Every member of the Committee shall be appointed for a term of 3 years, but may be reappointed.

“(4) Except as otherwise provided in this Act 3 members of the Disciplinary Committee shall form a quorum. 40

“(5) Except as otherwise provided by this Act the Disciplinary Committee shall regulate its own procedure.

“23c. **Disciplinary Committee Fund**—(1) There is hereby established a fund to be known as the Motor-vehicle Dealers’ Disciplinary Committee Fund.

5 “(2) The Fund shall be the property of the Disciplinary Committee and shall be held in trust for the purposes specified in this part of the Act.

“(3) Where there is a sufficient reserve in the Fund the Disciplinary Committee may apply the surplus as it thinks fit for the benefit of the retail motor trade.

10 “23d. **Functions of Disciplinary Committee**—(1) The Disciplinary Committee will have power where it is alleged by any person (or his partner or his responsible employee) on the payment of a fee of \$2, that a licensed motor-vehicle dealer has done any act or omitted to do any act which is in breach
15 of his legal or ethical duties as a member of the trade and that such breach of duty has brought or is likely to bring the trade into disrepute, to inquire into the charge.

“(2) If after inquiring into any charge the Disciplinary Committee is of the opinion that the licensed motor-vehicle
20 dealer or his partner or his responsible employee as the case may be has been guilty of a breach of duties as set forth in subsection (1) of this section, it may, if it thinks fit, but subject to the following provision of this part of the Act, do one or more of the following things:

25 “(a) Apply under section 25 of this Act for an order cancelling the motor-vehicle dealer’s licence or, as the case may be, the licence of his partner or apply under section 40 of this Act for an order for the interim suspension of the licence:

30 “(b) Order payment of any sum of compensation to the complainant that it considers appropriate plus any sum in costs from either the defendant or the complainant to the Disciplinary Committee Fund:

35 “(c) Censure the motor-vehicle dealer or his partner or his responsible employee as the case may be.

“(3) No decision shall be made by the Disciplinary Committee under this section unless a majority of the members present vote in favour of the decision. Where a vote is tied the Chairman shall have a casting vote.

“23E. **Recovery of penalties and costs**—Any sum ordered by the Disciplinary Committee to be paid by way of penalty or costs or expenses under this part of this Act shall be deemed to be a debt due by the person ordered to pay it to the person to whom it is ordered to be paid, and shall be recoverable accordingly. 5

“23F. **Right of Motor-vehicle dealer to be heard**—The Disciplinary Committee shall not exercise with respect to any motor-vehicle dealer or his partner or his employee any of the disciplinary functions conferred on it by this part of the Act without giving the motor-vehicle dealer or the person concerned a reasonable opportunity of being heard in his own defence. 10

“23G. **Interim suspension pending investigation of charge**—
 (1) Where a charge has been made under section 38 (1) of this Act an application by or on behalf of the Disciplinary Committee may be filed in the Magistrate’s Court nearest by the most convenient route to the place of business or principal place of business of the motor-vehicle dealer for an order that the motor-vehicle dealer be suspended from carrying on business as such until the charge has been heard and disposed of and any Magistrate exercising jurisdiction in that Court may, without the necessity of giving notice to the motor-vehicle dealer, make an order accordingly. 15 20

“(2) Where an order of interim suspension is made under this section the motor-vehicle dealer or the Disciplinary Committee may at any time by application filed in the Magistrate’s Court in which the order was made apply for the revocation of the order and any Magistrate may grant or refuse the application as he thinks fit. 25 30

“(3) While an order under this section continues in force the licence of the motor-vehicle dealer or as the case may be, the licence of his partner, shall cease to have effect, and the licence shall not be renewed and a new licence shall not be granted to the motor-vehicle dealer. 35

“23H. **Disciplinary Committee may order payment of costs**—After hearing by the Disciplinary Committee of any application or inquiry under this part of this Act, the Committee may make such order as to the payment of costs as it thinks fit. 40

“23I. **Witnesses’ expenses**—Every witness giving evidence or attending to give evidence at the hearing of any application or inquiry by the Disciplinary Committee under this part of this Act shall be entitled to such sum for his expenses and loss
5 of time as he would be entitled to if he were a witness in criminal proceedings in the Magistrate’s Court.

“23J. **Rules of procedure**—The Disciplinary Committee may from time to time make rules in respect of the making, hearing, and determination of applications and inquiries
10 required to be heard by the Committee under this part of this Act.”

9. Indictable offences by dealers—Section 24 of the principal Act is hereby amended by omitting from subsection (1) the words “one thousand dollars” and substituting the ex-
15 pression “\$2,000”.

10. Cancellation of licence—(1) Paragraph (a) of subsection (1) of section 25 of the principal Act is hereby amended by inserting after the expression “section 21” the expression “section 23A”.

(2) Subsection (1) of section 25 of the principal Act is hereby further amended by repealing paragraph (i) and substituting the following paragraph:

“(i) If the licensee or any partner of the licensee or, where
25 the licensee is a company, any director or the general manager or other principal officer of the company has been guilty of misconduct in the conduct of the licensed business and by reason thereof the motor-vehicle dealer is, in the opinion of the Court or Magistrate, not a proper person to
30 carry on business as a motor-vehicle dealer.”

(3) Subsection (1) of section 25 of the principal Act is hereby further amended by adding after paragraph (i) the following paragraph:

“(j) If the licensee or any partner of the licensee or,
35 where the licensee is a company, any director or general manager or any other principal officer of the company is convicted, whether summarily or on indictment, of any offence involving moral turpitude or has otherwise been guilty of grave
40 impropriety or infamous conduct and by reason thereof the motor-vehicle dealer is, in the opinion of the Court or Magistrate, not a proper person to carry on business as a motor-vehicle dealer.”

11. Holding out as a motor-vehicle dealer without licence—
 Subsection (1) of section 29 of the principal Act is hereby amended by inserting after the word “writing” the words “or who acts”.

(2) Section 29 of the principal Act is hereby further amended by inserting after subsection (1) the following subsection: 5

“(1A). For the purposes of subsection (1) of this section a person who purports to carry on the business as a motor-vehicle dealer in the same premises or place of business of a licensee shall be deemed to hold himself out as a motor-vehicle dealer.” 10

(3) Section 29 of the principal Act is hereby further amended by adding the following subsection: 15

“(3) Every person being the holder of a motor-vehicle dealer’s licence who knowingly permits or allows any person to commit an offence under subsection (1) of this section shall be deemed to be a party to that offence.” 20

12. Penalties—(1) Section 29 of the principal Act is hereby amended by inserting after the words “and is liable” the words “to a term of imprisonment not exceeding 1 year” and by replacing the words “Four hundred dollars” with the expression “\$1,000”. 20

(2) Section 31 of the principal Act is hereby amended by omitting from subsection (1) the words “One hundred dollars” and substituting the expression “\$750”. 25

13. Indictable offences by dealers—The First Schedule to the Summary Proceedings Act 1957 is hereby amended by adding in Part II under the reference to the Motor-Vehicle Dealers Act 1958 the following: 30

“29 Holding out as a Motor-Vehicle Dealer without licence
 “30 General offences”

SCHEDULE

Section 3 (2)

FORM OF AFFIDAVIT

Affidavit in Support of Application by an Individual for a Motor-vehicle Dealer's Licence

IN THE MAGISTRATE'S COURT HELD AT

IN THE MATTER of the Motor-Vehicle Dealers Act 1958

AND

IN THE MATTER of an application for a Licence under the said Act by
A. B. of (Address), (Occupation)

I, (full name) of (address), (occupation) make oath and say as follows—

- 1. THAT I am an applicant for a licence under the said Act.
- 2. THAT on the day 19 and on the
day of 19 I published in the prescribed form notice of my appli-
cation for such a licence, copies of which are annexed hereto and marked
with the letters "A" and "B" respectively.
- 3. THAT after the payment of all my just and lawful debts I am
worth not less than \$ as shown by the attached statement of
my assets and liabilities marked "C" which I hereby declare to be true
and correct in every particular.
- 4. THAT there are no unsatisfied judgments against me in any Court
(or judgments obtained against me and still unsatisfied are as per the
list attached and marked with the letter "D").
- 5. THAT there is no statutory bar to my obtaining a motor-vehicle
dealer's licence.
- 6. THAT I am not an undischarged bankrupt.
- 7. THAT I have attained the age of 20 years.

SWORN at this }
 day of 1973 }
 before me: }

A Solicitor of the Supreme Court of New Zealand (or a Justice of
the Peace) (or a (Deputy) Registrar of the Magistrate's Court
at)

*Affidavit in Support of Application by an Individual in Partnership for
a Motor-vehicle Dealer's Licence*

IN THE MAGISTRATE'S COURT, etc.

IN THE MATTER, etc.

AND

IN THE MATTER of an application for a licence under the said Act by
A. B. on behalf of the firm of (Name).

I, (full name) of (address), (occupation) make oath and say:

- 1. THAT I am an applicant for a licence under the said Act on behalf
of the firm of (name).

2. THAT I am a member of the said firm.

3. THAT on the day of 19 and on the day of 19 I published in the prescribed form notice of my application for such a licence, copies of which are hereunto annexed and marked "A" and "B" respectively.

4. THAT after the payment of all just and lawful debts the said firm is worth not less than the sum of \$ as shown by the attached statement of assets and liabilities marked "C" which I hereby declare to be true and correct in every particular.

5. THAT the full names and addresses of the other members of the said firm are as follows:

(Full name) of (address), (occupation)
(Full name) of (address), (occupation)

6. THAT attached hereto and marked "D" is a balance sheet disclosing my financial position.

7. THAT there are no unsatisfied judgments against the said firm in any Court (or judgments obtained against the firm and still unsatisfied are as per list attached marked "E").

8. THAT there are no unsatisfied judgments against me in any Court (or judgments obtained against me and still unsatisfied are as per list attached marked "F").

9. THAT there is no statutory bar to the grant of the application abovementioned.

10. THAT I am not an undischarged bankrupt.

11. THAT I have attained the age of 20 years.

SWORN etc.

Affidavit by partner (Other than Applicant) in Support of Application for Motor-vehicle Dealer's Licence

IN THE MAGISTRATE'S COURT, etc.

IN THE MATTER, etc.

AND

IN THE MATTER, etc.

I, (full name) of (address), (occupation) make oath and say:

1. THAT I am a partner in the (firm).

2. THAT after the payment of all my just and lawful debts I am worth not less than the sum of \$ as shown by the attached statement of my assets and liabilities which I hereby declare to be true and correct in every particular.

3. THAT there are no unsatisfied judgments against me in any Court (or judgments obtained against me and still unsatisfied are as per list attached and marked "A").

4. THAT there is no statutory bar to the grant of the abovementioned application.

5. THAT I am not an undischarged bankrupt.

6. THAT I have attained the age of 20 years.

SWORN, etc.

Affidavit in Support of Application by a Company for a Motor-vehicle Dealer's Licence

IN THE MAGISTRATE'S COURT, etc.

IN THE MATTER, etc.

AND

IN THE MATTER, etc.

I, (full name) of (address), (occupation) make oath and say:

1. THAT I am a director (or the general manager) (or state position held) of the (company).

2. THAT the said Company is an applicant for a licence under the said Act.

3. THAT on the day of 19 and on the day of 19 I caused to be published in the prescribed form notice of the application for such a licence, copies of which are hereunto annexed and marked "A" and "B" respectively.

4. THAT after the payment of all just and lawful debts the Company is worth not less than the sum of \$ as shown by the attached statement of assets and liabilities marked "C" which I hereby declare to be true and correct in every particular.

5. THAT there are no unsatisfied judgments against the said Company in any Court (or judgments obtained against the Company and still unsatisfied are as per list attached and marked "D").

6. THAT there is no statutory bar to the grant of the abovementioned application.

7. THAT the Company is not in liquidation.

SWORN, etc.