

HOUSE OF REPRESENTATIVES

# Supplementary Order Paper

Thursday, 12 November 1992

HEALTH AND DISABILITY SERVICES BILL

*Proposed Amendments*

Hon. SIMON UPTON, in Committee, to move the following amendments:

*Clause 65:* To omit this clause (which appears on page 36), and substitute the following clause:

**65. Exemptions from Part II of the Commerce Act 1986**—(1) Nothing in Part II of the Commerce Act 1986 shall apply to—

- (a) Any arrangement entered into by any regional health authority or the Public Health Commission in relation to pharmaceuticals and associated medical devices; or
- (b) Any arrangement in relation to blood that—
  - (i) At the time it is entered into is, or is of a class that is, approved; or
  - (ii) Is entered into by a person who (at the time it is entered into) is, or is of a class that is, approved.

(2) In this section—

“Approved” means approved for the purposes of this section by the Governor-General by Order in Council:

“Blood” has the same meaning as in section 92A of the Health Act 1956.

*New clause 102A:* To insert on page 53, after *clause 102*, the following clause:

**102A. New Part IIIA substituted**—(1) The principal Act is hereby amended by repealing Part IIIA (as inserted by section 5 of the Health Amendment Act 1979), and substituting the following Part:

“PART IIIA

“TRADING IN HUMAN BLOOD

“92A. **Interpretation**—In this Part of this Act, unless the context otherwise requires, ‘blood’—

“(a) Includes—

“(i) Any substance derived from human blood; and

“(ii) Any human organ or human tissue, including the placenta, of a kind that is suitable as a source from which to derive a constituent of blood for therapeutic use or for the preparation of a substance for therapeutic use; but

“(b) Does not include—

“(i) Any substance derived from human blood that is intended for use in quality control or as a diagnostic product; or

“(ii) Any substance containing a fraction of human blood that the Minister of Health, by notice in the *Gazette*, declares not to be blood for the purposes of this Part of this Act.

“92B. **Trading in own blood prohibited**—(1) No person shall require or accept financial or other consideration for his or her own blood.

“(2) No person shall provide financial or other consideration for the taking of blood from the body of a person.

“(3) Every person commits an offence and is liable to a fine not exceeding \$1,000 who contravenes subsection (1) of this section.

“(4) Every person commits an offence and is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 who contravenes subsection (2) of this section.

“92C. **Collection of blood**—(1) Except as provided in subsection (2) of this section, no person shall take blood from the body of a person for the purpose of obtaining blood for administration to another person.

“(2) The Minister may, in his or her discretion and upon such terms and conditions (if any) as he or she thinks fit, by a permit in writing, permit any person or persons or class of persons to take blood for administration to another person, and may in like manner vary or revoke any such permit.

“(3) Every permit granted pursuant to subsection (2) of this section shall, in addition to any terms or conditions imposed by the Minister under that subsection, be subject to a condition requiring the person to whom it is granted to give due recognition to the fact that the blood taken under that permit has been donated.

“(4) Every person commits an offence and is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 who contravenes subsection (1) of this section.

“92D. **Charging for administered blood**—(1) Except as provided in subsection (2) of this section, no person shall require or accept financial or other consideration for any blood administered by that person.

“(2) A person may incorporate in a charge for services that includes the administration of blood an amount that does not exceed the costs of providing the blood.

“(3) Every person commits an offence and is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000 who contravenes subsection (1) of this section.

**“92E. Unauthorised advertising prohibited—(1) No person shall—**

“(a) Publish or otherwise disseminate, by newspaper, magazine, periodical, book, billboard, radio, television, cinematograph film, or any other means whatever; or

“(b) Exhibit to public view in any premises or place; or

“(c) Deposit in any area, yard, garden, or enclosure comprising part of or appurtenant to any premises,—

an advertisement relating to the purchase or sale in New Zealand of human blood.

“(2) Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,500 who contravenes subsection (1) of this section.

**“92F. Liability of principals and agents—(1) If an offence is committed against any of the provisions of this Part of this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act, in the same manner and to the same extent as if he or she had personally committed the offence, if it is proved that the act that constituted the offence took place with his or her authority, permission, or consent, or that he or she knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.**

“(2) Where any body corporate is convicted of an offence against this Act, every person, being a director or a person concerned in the management of the body corporate shall be guilty of the same offence if it is proved that the act that constituted the offence took place with that person’s authority, permission, or consent, or that that person knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

**“92G. Certain documents to be prima facie evidence—**  
A document purporting to be a permit granted by the Minister under section 92c(2) of this Act shall, in any proceedings, be prima facie evidence that the Minister has given his or her authority or, as the case may require, his or her approval in the terms stated in the document.”

(2) Section 5 of the Health Amendment Act 1979 is hereby consequentially repealed.

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## EXPLANATORY NOTE

*Clause 65:* Paragraph (b) is new. It ensures that arrangements made to co-ordinate blood transfusion services, donor availability, and regional access to blood and blood products are not invalidated by challenge under the Commerce Act 1986.

*Clause 102A* repeals Part IIIA of the Health Act 1956 (which relates to trading in human blood), and substitutes a new Part. The new Part provides that it is an offence for—

- (a) A person to accept payment for his or her own blood (*clause 92B (1)*);
- (b) A person to pay to take blood from the body of a person (*clause 92B (2)*);
- (c) A person to collect blood without the consent of the Minister of Health (*clause 92C*);
- (d) A person to charge for blood an amount that exceeds the costs of providing the blood (*clause 92D*);
- (e) Advertise the purchase or sale of human blood in New Zealand (*clause 92E*).