



ANALYSIS

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1964, No. 39

An Act to amend the Motor-Vehicle Dealers Act 1958

[11 November 1964]

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 Motor-Vehicle Dealers Amendment Act 1964, and shall be read together with and deemed part of the Motor-Vehicle Dealers Act 1958 (hereinafter referred to as the principal Act).

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

2. Meaning of "motor vehicle"—(1) Section 2 of the principal Act is hereby amended by omitting from the definition of the term "motor vehicle" in subsection (1) the words "and includes a trailer forming part or intended to form part of an articulated vehicle".

(2) Section 2 of the principal Act is hereby further amended by repealing paragraph (f) of the same definition, and substituting the following paragraph:

“(f) A trailer; or”.

3. Motor vehicles purchased for wrecking—Section 2 of the principal Act is hereby further amended by inserting, after subsection (3), the following subsection:

“(3A) Notwithstanding the foregoing provisions of this section, a person licensed under the Secondhand Dealers Act 1963 shall be deemed not to be a motor-vehicle dealer for the purposes of this Act in respect of the purchase, in the course of his business as a secondhand dealer, of motor vehicles that are wrecked or dismantled by him.”

4. Dealers carrying on business in partnership—(1) Section 2 of the principal Act is hereby further amended by repealing subsection (3), and substituting the following subsection:

“(3) Where two or more persons carry on business in partnership as motor-vehicle dealers, each of those persons shall be deemed to be a motor-vehicle dealer, and shall be required to hold a licence accordingly.”

(2) Section 34 of the principal Act is hereby amended by adding to subsection (3) the following paragraph:

“(e) Reduced fees in respect of licences issued to two or more persons carrying on business in partnership.”

5. Sales of motor vehicles by auction—The principal Act is hereby further amended by inserting, after section 2, the following section:

“2A. An auctioneer licensed under the Auctioneers Act 1928 shall not be deemed to be a motor-vehicle dealer for the purposes of this Act by reason merely of the fact that he sells or offers for sale by auction any motor vehicle—

“(a) Under instructions from a Sheriff of the Supreme Court in the execution of a writ of sale of that Court or from a bailiff of a Magistrate’s Court or a constable in the execution of a warrant of distress under the Magistrates’ Courts Act 1947 or the Summary Proceedings Act 1957; or

- “(b) Under instructions from the personal representative of the estate of a deceased person, if the motor vehicle forms part of the assets of the estate and the sale or offering for sale forms part of the general realisation by auction of chattels forming part of the assets of the estate; or
- “(c) Under instructions from the Official Assignee, if the motor vehicle forms part of the assets of a bankrupt and the sale or offering for sale forms part of the general realisation by auction of the chattels of the bankrupt; or
- “(d) Under instructions from the liquidator of a company, if the motor vehicle forms part of the assets of the company and the sale or offering for sale forms part of the general realisation by auction of the chattels of the company; or
- “(e) Under instructions from the receiver appointed on behalf of the holder of a debenture issued by a company, if the motor vehicle forms part of the assets on which the debenture is secured and the sale or offering for sale forms part of the general realisation by auction of the chattels on which the debenture is secured; or
- “(f) Under instructions from a person who has left or is about to leave New Zealand, if the motor vehicle belongs to that person and the sale or offering for sale forms part of the general realisation by auction of the chattels of that person which are in New Zealand.”

6. Amount of fidelity bonds—Section 5 of the principal Act is hereby amended by omitting from subsection (1) and also from subsection (6) the words “two thousand pounds” wherever they occur, and substituting in each case the words “five thousand pounds”.

7. Claims against money recovered under fidelity bonds—(1) Section 5 of the principal Act is hereby further amended by repealing subsections (3) and (4), and substituting the following subsections:

“(3) Every sum so recovered shall be paid into the Public Account to the credit of the Trust Account established by section 38 of the Public Revenues Act 1953 (as substituted by section 3 of the Public Revenues Amendment Act 1963), and the residue, after the deduction of costs and other

expenses, may, with the approval of the Minister of Finance and without further appropriation than this Act, be applied—

“(a) In compensating any person (whether or not a principal or customer of the motor-vehicle dealer) for any loss sustained by reason of—

“(i) The defaults or omissions, during the currency of the bond, of the dealer, his servant or agent, and any person with whom he is carrying on in partnership the business of a motor-vehicle dealer, in complying with the provisions of section 19 of this Act (which relates to the duties of a dealer as to accounting for money received as an agent in the course of his business):

“(ii) The breach, during the currency of the bond, by the dealer of the warranty as to title and encumbrances implied by section 27 of this Act; and

“(b) In compensating any person from whom the motor-vehicle dealer has purchased a motor vehicle (whether as principal or agent) for any loss sustained by reason of any cheque given, during the currency of the bond, by the dealer, or by any person with whom he is carrying on in partnership the business of a motor-vehicle dealer, in payment or part payment of the purchase price having been dishonoured on presentation; and

“(c) In refunding to the surety or sureties any balance left after payment of that compensation and any interest payable thereon under subsection (4F) of this section.

“(4) Where—

“(a) During the currency of any bond under this section the motor-vehicle dealer has been instructed by any person to sell a motor vehicle on his behalf or any person has sold a motor vehicle to the dealer; and

“(b) That person has suffered any loss by reason of any default or omission occurring, or by reason of the dishonouring of any cheque given, after the bond has ceased to be current; and

“(c) That person would be entitled to compensation under subsection (3) of this section if the default or omission had occurred or, as the case may be, the cheque had been given during the currency of the bond; and

“(d) No other bond under this section is current in respect of the dealer at the time of the default or omission or breach or giving of the cheque,—
the provisions of subsection (3) of this section shall apply as if the default or omission had occurred or, as the case may be, the cheque had been given during the currency of the bond.

“(4A) Where—

“(a) During the currency of any bond under this section the motor-vehicle dealer has been instructed by any person to sell a motor vehicle on his behalf; and

“(b) Any person has suffered any loss by reason of any breach by the dealer, after the bond has ceased to be current, of the warranty as to title and encumbrances implied by section 27 of this Act; and

“(c) That last-mentioned person would be entitled to compensation under subsection (3) of this section if the breach had occurred during the currency of the bond; and

“(d) No other bond under this section is current in respect of the dealer at the time of the breach,—
the provisions of subsection (3) of this section shall apply as if the breach had occurred during the currency of the bond.

“(4B) Except as provided in subsection (4F) of this section, no person shall be entitled under this section to claim out of any sum recovered under any bond any interest on the amount of any loss sustained by him.

“(4c) Notwithstanding anything in subsection (3) of this section, no body corporate which is engaged in financing transactions in relation to the purchase of motor vehicles on hire-purchase terms or conditional sale (in this section referred to as a finance corporation) shall be entitled, in relation to any transaction so financed, to claim compensation out of any sum recovered under a bond under this section.

“(4D) Where—

“(a) Any motor vehicle in respect of which any compensation is payable out of any sum recovered under a bond under this section was, at the date of the default or omission or breach in respect of which the claim for compensation arose, subject to a hire-purchase agreement (as defined in the Hire Purchase Agreements Act 1939) in respect of which a finance corporation was at that date the vendor (as defined in that Act); and

“(b) The finance corporation gives notice in writing thereof to the Secretary for Justice before the expiration of the time within which claims for compensation out of the sum so recovered must be established pursuant to subsection (4E) of this section,—

the Secretary for Justice shall not make any payment to any claimant out of the sum so recovered, except with the consent of the finance corporation or pursuant to an order of a Magistrate’s Court. On an application for any such order, the Court may make such order as it thinks fit for the protection of the rights of the finance corporation against the claimant arising under the hire-purchase agreement.

“(4E) Where any claim is received by the Secretary for Justice from any person claiming compensation out of any sum recovered under a bond under this section, the Secretary shall cause a notice to be published in such one or more newspapers as he deems sufficient calling upon all persons desiring to claim compensation for any loss sustained by reason of any of the matters specified in paragraph (a) or paragraph (b) of subsection (3) of this section to establish their claims to the satisfaction of the Secretary (whether by judgment against the dealer or otherwise) within six months after the date of the first advertisement of the notice; and the Secretary shall not apply any sum so recovered in compensating any person until the expiration of the said period of six months.

“(4F) Where any such claim is established to the satisfaction of the Secretary for Justice, there shall be payable to the claimant out of the money recovered under the bond interest on the amount of the claim so established from the date on which the claim is received by the Secretary for Justice until the expiration of the period of six months specified in subsection (4E) of this section at the rate for the time being payable in respect of judgments entered in the Supreme Court.”

(2) The principal Act is hereby further amended—

(a) By inserting in subsection (5) of section 5, after the words “claims in full”, the words “and any interest payable thereon under subsection (4F) of this section”:

(b) By inserting in subsection (2) of section 6, before the words “If a bond,” the words “Subject to the provisions of subsections (4) and (4A) of section 5 of this Act”:

(c) By adding to paragraph (c) of the form of bond in the Schedule the word "and":

(d) By inserting in the same form, after paragraph (c), the following paragraph:

"(d) Always when purchasing a motor vehicle (whether as principal or agent), in any case where payment of the purchase price or any part thereof is made by cheque drawn by the licensee or any partner of the licensee, makes that payment by cheque which is duly honoured on presentation,—".

(3) Every fidelity bond in existence at the date of the commencement of this Act shall have effect as if there had been inserted therein, after paragraph (c), a paragraph in the form of paragraph (d) as set out in paragraph (d) of subsection (2) of this section.

(4) The Motor-Vehicle Dealers Amendment Act 1959 is hereby repealed.

8. Disqualification of officers and employees of motor-vehicle dealers—Section 10 of the principal Act is hereby amended by omitting from subsection (4) the words "or who, if he held a motor-vehicle dealer's licence, would be liable to have his licence cancelled on any of the grounds specified in subsection one of section twenty-five of this Act".

9. Notice of change of principal place of business—Section 12 of the principal Act is hereby amended by adding, as subsections (2) and (3), the following subsections:

"(2) A licensed motor-vehicle dealer may, by notice in writing filed in the Magistrate's Court in which his licence was granted accompanied by such fee (if any) in respect of that notice as may be prescribed, change his principal place of business.

"(3) Nothing in this Act or in any licence shall limit or affect any obligation to comply with the Town and Country Planning Act 1953 or any district scheme thereunder."

10. Duties of dealer where trade-in accepted—Section 19 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

"(2) Where any motor-vehicle dealer, in his capacity as a dealer and as an agent for any person, sells any motor vehicle and the purchase price or part thereof is satisfied by the trading-in of another motor vehicle, the purchase price or, as

the case may be, so much of the purchase price as is satisfied by the trading-in of that other motor vehicle shall for the purposes of subsection (1) of this section be deemed to have been received in money by the dealer.”

11. Notice by dealers on place of business, etc.—Section 23 of the principal Act is hereby amended by adding the following subsection:

“(3) It shall be deemed a sufficient compliance with the provisions of this section requiring the holder of a licence to exhibit on any place or show on any document the fact that he is licensed as a motor-vehicle dealer if he exhibits on that place or shows on that document the letters ‘L.M.V.D.’”

This Act is administered in the Department of Justice.
