

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

*House of Representatives, 5 May 1982.*

Words struck out 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 McLay*

## CREDIT CONTRACTS AMENDMENT

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### ANALYSIS

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### A BILL INTITULED

#### **An Act to amend the Credit Contracts Act 1981**

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 Credit Contracts Amendment Act 1982, and shall be read together with and deemed part of the Credit Contracts Act 1981\* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of June 1982.

**2. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term "credit", and substituting the following definition:

\*1981, No. 27

No. 20—2

“ ‘Credit’ means—

“(a) In relation to a credit contract of the kind specified in section 3 (1) (a) of this Act (other than a contract to which paragraph (c) of this definition applies), the money or money’s worth provided or agreed to be provided: 5

“(b) In relation to a credit contract of the kind specified in section 3 (1) (b) of this Act, the money, payment of which is forborne or agreed to be forborne: 10

“(c) In relation to a credit contract of the kind specified in paragraph (d) or paragraph (e) of section 3 (1) of this Act, the cash price of the property, services, or goods, less the following amounts: 15

“(i) The amount of any deposit paid at or before the time of the making of the contract:

“(ii) The amount of any trade-in allowance agreed on;

and ‘amount of credit’ includes any amount 20  
*((coming within section 3 (3) (b) of this Act) which is not provided directly to the debtor but which is disbursed or deducted by the creditor)* which is provided to the debtor to meet any of the expenses coming within section 3 (3) (b) of this Act or which is disbursed or 25  
deducted by the creditor to meet any of those expenses.”.

(2) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term “holding company”, the following definition: 30

“ ‘Incidental services’, in relation to a contract, means benefits (not being benefits that consist of the provision of credit) such as, in the case of a contract providing for the security of money or money’s worth by a mortgage, benefits that consist of the 35  
provision, by the mortgagee or any other person,

of—

“(a) Mortgage repayment insurance paid for by the mortgagor (not being insurance under which the insurer has recourse against the mortgagor): 40

“(b) Life insurance:

“(c) Fire insurance:

“(d) Insurance allowed or required under section 39 of the Unit Titles Act 1972:

5 “(e) Services that would be undertaken for the protection, preservation, or maintenance of the property subject to the mortgage by a prudent owner of that property:”.

(3) Section 5 (1) of the principal Act is hereby consequentially amended by inserting, after paragraph (a), the following paragraph:

10 “(aa) Any amounts referred to in subparagraphs (i) and (ii) of paragraph (c) of the definition of the term ‘credit’ in section 2 (1) of this Act:”.

*New*

(4) Section 5 (1) (b) of the principal Act is hereby  
15 consequentially amended by inserting, after the word “Act”, the words “to the extent that they are not included within the amount of credit provided pursuant to the contract”.

**3. Definition of “finance rate”**—Section 6 of the principal Act is hereby amended by inserting, after subsection  
20 (1), the following subsection:

“(1A) Without limiting subsection (2) of this section, it is hereby declared that where the creditor under a credit contract stands ready to provide the whole or part of the credit to the debtor, subject only to the debtor first satisfying  
25 all security and other requirements of the credit contract, the finance rate may be calculated, in relation to the credit that the creditor stands ready to (advance) provide,—

“(a) As if that credit had been provided to the debtor on the date on which the creditor, with the agreement  
30 of the debtor or at the request of the debtor, so stands ready; and

“(b) Where, after the time when the creditor so stands ready, that credit earns interest or any other benefit for the debtor, without crediting that  
35 interest or benefit against the total cost of credit.”

*New*

**3A. Debtor may cancel credit contract in certain circumstances**—Section 22 (2) (a) of the principal Act is hereby amended by omitting the words “and taken possession  
40 of the goods”.

## New

**3b. Restrictions on advertising interest rates**—The principal Act is hereby amended by repealing section 36, and substituting the following section:

“36. (1) Where a credit advertisement states a rate of interest or charges at which credit may be provided under a credit contract, that advertisement—

“(a) If, at the time of the communication of the advertisement to the public, the finance rate can be calculated,—

“(i) Shall state that rate; and

“(ii) Shall describe that rate as the finance rate; and

“(iii) Shall give that rate prominence equal to that given to the rate of interest or to the charges which credit may be provided under the contract:

“(b) In any other case, shall state the amounts or rates of all components of the cost of credit.

“(2) Where, for the purposes of subsection (1) (b) of this section, a credit advertisement states a rate of interest, that rate of interest shall be calculated on the same basis as the finance rate but as if the interest were the only component of the cost of credit.”

**4. Penalty rates**—Section 40 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Notwithstanding any other enactment or rule of law, a credit contract may contain a term to the effect that, if a debtor fails to comply with any specified term of the contract by a specified time, the finance rate or interest rate payable under the contract in respect of any specified period may be increased to a specified rate:

“Provided that—

“(a) The specified time shall be not earlier than 14 days after the date compliance was due; and

“(b) The specified period shall be a period beginning—

“(i) Where the debtor has paid no instalment under the contract, not earlier than the date on which the creditor provided or stood ready to provide the credit; and

“(ii) In any other case, not earlier than the due date of the last instalment that, at the time the rate is increased, has been paid by the debtor.”

*New*

**4A. Continuing disclosure of revolving credit contract**—(1) Part III of the Second Schedule to the principal Act is hereby amended by repealing clause 2, and substituting  
5 the following clause:

“**2. Opening balance**—The total amount of credit outstanding at the beginning of the billing period or the total amount owing by the debtor to the creditor in respect of the contract at the beginning of the billing period.”

10 (2) Part III of the Second Schedule to the principal Act is hereby further amended by repealing clause 8, and substituting the following clause:

15 “**8. Closing balance**—The total amount of credit outstanding at the end of the billing period or the total amount owing by the debtor to the creditor in respect of the contract at the end of the billing period.”

*Struck Out*

**5. Repeal**—The Hire Purchase Amendment Act 1972 is hereby repealed.

*New*

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**5. Repeals**—The following enactments are hereby repealed—

(a) Subsection (4) of section 2 of the Hire Purchase Act 1971:

25 (b) The Hire Purchase Amendment Act 1972.