

LAYBY SALES BILL

EXPLANATORY NOTE

THIS Bill is based on the Report of the Contracts and Commercial Law Reform Committee on the law governing layby sales. The report was presented to the Minister of Justice in August 1969. In most respects the Bill follows the recommendations made in that report.

Clause 1 relates to the Short Title. The Act is to be read together with and deemed part of the Sale of Goods Act 1908.

Clause 2 defines the terms "buyer", "cancel", "purchase price", and "seller" for the purposes of the Act.

Clause 3 defines the term "layby sale" for the purposes of the Act. A layby sale must be at retail to come within the provisions of the Act.

Clause 4 excludes from the provisions of the Act layby sales in which—

- (a) The purchase price exceeds \$1,000; or
- (b) The goods sold or agreed to be sold are mainly or wholly vehicles that are motor vehicles for the purposes of the Motor Vehicle Dealers Act 1958 and the seller is a dealer licensed under that Act.

Provision for these exclusions was not made in the report of the Law Reform Committee.

Clause 5 provides that the Act shall bind the Crown.

Clause 6 provides that goods that are the subject of a layby sale remain at the seller's risk until the property therein is transferred to the buyer and the goods are delivered to him. This provision differs from the general rule contained in section 22 of the Sale of Goods Act 1908 under which risk prima facie passes with property, whether delivery has been made or not.

Clause 7 enables the buyer to obtain from the seller, but not more frequently than once a month, a formal statement of the buyer's financial position under the layby sale on payment of a sum of 25c. Where a seller cancels a layby sale he is, upon request, to give the statement to the buyer, free of charge. If the address of the buyer is known to the seller he must, whether the buyer requests it or not, give the statement to the buyer within 7 days after the date of cancellation. If the seller makes default under the clause he commits an offence and is liable on summary conviction to a fine not exceeding \$200. The provisions of this clause do not apply in respect of any layby sale under which the purchase price does not exceed \$10.

Clause 8 confers on the buyer a statutory right to cancel the layby sale by giving to the seller oral or written notice of his desire to cancel the sale.

Clause 9 deals with the rights of the seller and the buyer on the cancellation of a layby sale by the buyer under *clause 8* or by the seller in any manner. Generally, the seller is to be compensated for any reduction in the value of the goods and for his selling costs in respect of the goods but for nothing else. The selling costs must not exceed 15 percent of the purchase price (the Law Reform Committee proposed a limit of 20 percent). Any credit after allowing for these items is to belong to the buyer except that where the buyer cancels the sale (other than for a breach on the part of the seller) the buyer will be prevented by subclause (2) from getting back more than he has paid. Any debit after allowing for these items may be recovered from the buyer except where the buyer has paid an initial deposit but has made no other payments. In this case the amount that the seller may recover may not exceed the amount of the deposit.

Subclause (4) provides that where a layby sale of specific goods is cancelled within 1 month after the date of the sale or where any layby sale (not being a sale of specific goods) is cancelled at any time, the retail value of the goods at the time of cancellation shall, for the purposes of this Act, unless the contrary is proved, be deemed to be the retail value of the goods at the time when the layby sale was made; and any loss of value of such goods whether due to deterioration of the goods or otherwise shall be disregarded.

Clause 10 enables a buyer to complete a layby purchase if, on the winding up or bankruptcy of the seller or on the appointment of a person to act as the receiver or manager of the property of any seller that is a company, the assets of the seller include the goods, or goods of the kind, which the seller has agreed to sell to the buyer.

Clause 11 gives layby buyers preference over most other unsecured creditors and over creditors secured by a floating charge on the winding up, bankruptcy, or receivership of a layby seller. Any buyer who is an officer or employee of the seller or who is the spouse of such an officer or employee will not enjoy the right to complete conferred by *clause 10* or this preference. Neither will a buyer who, in breach of his agreement, has made no payment on account of the purchase price during the 3 months immediately preceding the bankruptcy, winding up, or appointment.

Clause 12 prescribes the manner in which written notices may be given for the purposes of the Act.

Clause 13 protects the rights of the buyer by providing that the provisions of this Act in favour of the buyer are to have effect notwithstanding any provision to the contrary in any agreement.

Clause 14 provides that *clauses 6* to *9* are not to apply to layby sales made or entered into before the commencement of the Act.

Clause 15 ensures that nothing in the Act derogates from the provisions of the Door to Door Sales Act 1967 and the Hire Purchase Agreements Act 1939.

Hon. Mr Riddiford

LAYBY SALES

ANALYSIS

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A BILL INTITULED

An Act to reform the law relating to layby sales of certain goods

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

1. **Short Title**—This Act may be cited as the Layby Sales Act 1971, and shall be read together with and deemed part of the Sale of Goods Act 1908.

10 2. **Interpretation**—In this Act, unless the context otherwise requires,—

15 "Buyer" means a person who buys or agrees to buy goods by a layby sale, and, if the rights of that person are assigned or are transferred by operation of law, includes the person for the time being entitled to those rights:

“Cancel”, in relation to a layby sale, means cancel, rescind, or terminate by any means whatsoever except by performance; and “cancellation” has a corresponding meaning:

“Purchase price” means the total sum of money required to be paid by the buyer under a layby sale plus the value of any other consideration provided or required to be provided by the buyer to purchase the goods to which the sale relates: 5

“Seller” means a person who sells or agrees to sell goods by a layby sale, and, if the rights of that person are assigned or are transferred by operation of law, includes the person for the time being entitled to those rights. 10

3. “Layby sale” defined—(1) For the purposes of this Act a layby sale is a contract of sale of goods at retail under terms, express or implied, which provide that— 15

(a) The goods are not to be delivered to the buyer until the purchase price or a specified part or proportion thereof is paid, whether or not any charge is expressed to be payable for storage or delivery of the goods; and 20

(b) The whole or part of the purchase price—

(i) Is to be paid by instalments (whether the number of instalments or the amount of all or any of them is fixed by the contract or left at the option of the buyer) payable over a fixed or ascertainable period; or 25

(ii) Is to be paid at the expiration of a fixed or ascertainable period with the option, express or implied, for the buyer to make payments in respect of the purchase price during that period. 30

(2) Where, by virtue of two or more agreements, none of which by itself constitutes a layby sale, there is a transaction which is in substance or effect a layby sale, the agreements shall be treated for the purposes of this Act as a layby sale made at the time when the last of those agreements was made. 35

Cf. *Lay-by Sales Act, 1943, s. 2 (1) (New South Wales)*

4. Act not to apply to certain layby sales—This Act does not apply to any layby sale in which— 40

(a) The purchase price exceeds \$1,000; or

- (b) The goods sold or agreed to be sold are mainly or wholly vehicles that are motor vehicles for the purposes of the Motor Vehicle Dealers Act 1958 and the seller is a dealer licensed under that Act.

5 **5. Act to bind the Crown**—This Act shall bind the Crown.

10 **6. Risk not to pass until goods delivered**—Notwithstanding the provisions of section 22 of the Sale of Goods Act 1908, goods that are the subject of a layby sale remain at the seller's risk until the property therein is transferred to the buyer and the goods are delivered to him:

 Provided that where delivery has been delayed through the fault of the buyer, the goods are at the risk of the buyer as regards any loss which might not have occurred but for such fault.

15 **7. Buyer to be entitled to a statement of his present position**—(1) The seller shall, within 7 days after he has received a request in writing from the buyer and the buyer has tendered to the seller the sum of 25 cents for expenses, give to the buyer a statement in writing signed by the seller or his agent showing—

- 20 (a) The purchase price; and
- (b) The total amount of the money paid and the value of any other consideration provided by the buyer in respect of the layby sale; and
- 25 (c) The amount which the seller estimates to be the retail value of the goods at the time of the notice or of the cancellation of the layby sale, whichever is the sooner, indicating whether or not such value is the same as at the date of the sale; and
- 30 (d) The amount (not exceeding 15 percent of the purchase price) which the seller estimates is sufficient to recoup him for selling costs in respect of the layby sale; and
- (e) The balance estimated to be due to the seller or the buyer as the case may be; and
- 35 (f) If there is a balance due to the seller, particulars of the time and manner within which that balance is required to be paid.

(2) The seller need not comply with a request under subsection (1) of this section if—

- (a) The layby sale has been completed by performance; or
- (b) He has given the buyer a statement complying with that subsection within the 30 days immediately preceding the receipt of the request; or
- (c) The layby sale has been cancelled by the buyer and more than 30 days have elapsed since the date of cancellation.

(3) Where the seller cancels a layby sale he shall, upon request, give to the buyer free of charge a statement complying with subsection (1) of this section and, if the address of the buyer is known to the seller, he shall, whether the buyer requests it or not, give to the buyer, free of charge, such a statement within 7 days after the date of cancellation.

(4) Every seller who makes default in complying with subsection (1) or subsection (3) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$200.

(5) Nothing in this section shall apply in respect of any layby sale under which the purchase price does not exceed \$10.

Cf. Lay-by Sales Act, 1943, s. 9 (2) (New South Wales)

8. Right of buyer to cancel layby sale—(1) The buyer may, at any time before the purchase price has been paid, cancel the layby sale by giving to the seller oral or written notice of his desire to cancel the sale.

(2) Where a layby sale is cancelled under subsection (1) of this section the date of cancellation shall be the date on which the notice is given.

(3) Nothing in this section shall prejudice any right of the buyer to cancel a layby sale otherwise than by virtue of this section.

(4) The right of cancellation conferred on the buyer by subsection (1) of this section may be exercised notwithstanding the winding up or bankruptcy of the seller or the appointment of any person to act as the receiver or manager of the property of the seller.

Cf. Lay-by Sales Act, 1943, s. 9 (1), (3) (New South Wales)

9. Rights of seller and buyer on cancellation of layby sale—

(1) Where a layby sale is cancelled by the buyer under section 8 of this Act or is cancelled by the seller, the following provisions shall apply:

- 5 (a) If the total amount of money paid plus the value
of any other consideration provided by the buyer
in respect of the layby sale, together with the retail
value of the goods at the time when the layby
10 sale is cancelled, exceeds the purchase price
and an amount (not exceeding 15 percent of the
purchase price) sufficient to recoup the seller for
his selling costs in respect of the layby sale, the
buyer shall be entitled, subject to subsection (2) of
this section, to recover the excess from the seller as
15 a debt due and payable by him to the buyer:
- (b) If the purchase price and an amount (not
exceeding 15 percent of the purchase price)
sufficient to recoup the seller for his selling costs
in respect of the layby sale exceeds the total amount
20 of money paid plus the value of any other considera-
tion provided by the buyer in respect of the layby
sale, together with the retail value of the goods at
the time when the sale is cancelled, the seller shall
be entitled, subject to subsection (3) of this section,
25 to recover the excess from the buyer as a debt due
and payable by him to the seller, but shall not be
entitled to recover any additional sum, whether as
penalty or compensation or otherwise in consequence
of the cancellation of the layby sale.
- 30 (2) Where a layby sale is cancelled by the buyer, other
than by reason of a breach by the seller which entitles the
buyer to cancel the sale, the buyer shall not in any case
be entitled to a refund exceeding the total amount of money
paid plus the value of any other consideration provided by
35 him.
- (3) Where the buyer under a layby sale has paid an initial
deposit but has made no other payments at the time when the
sale is cancelled the amount that the seller shall be entitled to
recover under paragraph (b) of subsection (1) of this section
40 shall not exceed the amount of the deposit.

(4) Where a layby sale of specific goods is cancelled within 1 month after the date of the sale or where any layby sale (not being a sale of specific goods) is cancelled at any time, the retail value of the goods at the time of cancellation shall, for the purposes of this Act, unless the contrary is proved, be deemed to be the retail value of the goods at the time when the layby sale was made; and any loss of value of such goods whether due to deterioration of the goods or otherwise shall be disregarded. 5

Cf. Lay-by Sales Act, 1943, s. 10 (New South Wales) 10

10. Completion on winding up, bankruptcy, or receivership of seller—(1) If on the winding up or bankruptcy of the seller or on the appointment of any person to act as the receiver or manager of the property of any seller that is a company, the assets of the seller include the goods, or goods of the kind, which the seller has agreed to sell to the buyer, whether those goods have been appropriated to the sale or not, the buyer shall be entitled, on payment of the balance (if any) of the purchase price in the manner and at the times prescribed by the contract, to complete the purchase and obtain the property in, and delivery of, the goods. 15 20

(2) If there are not enough goods to satisfy all buyers, priority shall be governed by the date of the sale so that goods shall be available to earlier buyers in preference to later buyers. Where two or more buyers agreed to purchase on the same day priority between them shall be determined by lot. 25

(3) No buyer shall be entitled to exercise the right conferred by subsection (1) of this section if—

(a) In breach of his agreement with the seller, he has made no payment to the seller on account of the purchase price during the 3 months immediately preceding the bankruptcy, winding up, or appointment; or 30

(b) He is an officer or employee of the seller or the spouse of such an officer or employee. 35

(4) If any buyer makes any payment on account of the purchase price after the winding up, bankruptcy, or appointment he shall be entitled to have that payment refunded in full unless the purchase is completed in accordance with subsection (1) of this section. 40

11. Preference on winding up, bankruptcy, or receivership of seller—(1) If, on the winding up or bankruptcy of any seller or on the appointment of any person to act as the receiver or manager of the property of any seller that is a
5 company, there are no goods or not enough goods to enable the layby sale to be completed, or if any buyer is or becomes entitled under section 9 of this Act to recover any sum of money, then the buyer shall be a creditor in the liquidation, bankruptcy, or receivership to the extent of the payments that
10 he has made to the seller on account of the purchase price of the goods or to the extent of the sum that he is entitled to recover, as the case may require, with priority, subject to subsection (2) of this section, over all other unsecured creditors and over creditors secured by a floating charge.

15 (2) Debts to which priority is given by subsection (1) of this section shall—

- (a) For the purposes of sections 101 and 308 of the Companies Act 1955, be debts which are to be paid in priority to all other debts in a winding up; and
- 20 (b) Enjoy a priority second to any other debts which have priority under subsection (1) of section 308 of the Companies Act 1955; and
- (c) For the purposes of section 104 of the Insolvency Act 1967, rank after debts which are to be paid in the
25 fifth priority but ahead of debts which are to be paid in the sixth priority.

(3) The rights conferred by subsection (1) of this section shall not be available to any buyer of the kind described in paragraph (a) or paragraph (b) of subsection (3) of section
30 10 of this Act.

12. Service of notices—(1) Any written notice or other document required or authorised by this Act to be given to any person shall be sufficiently given if it is delivered to that person or if it is left at his usual or last known place of abode
35 or business or at an address specified for the purposes of the layby sale, or if it is posted in a letter addressed to him by name at that place of abode or business or address.

(2) If the person is absent from New Zealand, the notice or other document may be given to his agent in New Zealand.
40 If the person is deceased, it may be given to his personal representatives.

(3) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the notice or other document shall be given in such manner as may be directed by an order of a Magistrate's Court. 5

(4) If any such notice or other document is sent to any person by registered letter it shall be deemed to have been delivered to him on the fourth day after the day on which it was posted, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted. 10

(5) Notwithstanding anything in the foregoing provisions of this section, a Magistrate's Court may in any case make an order directing the manner in which any notice or other document is to be served or given, or dispensing with the service or giving thereof. 15

(6) This section does not apply to notices or other documents served in any proceedings in any Court.

13. Buyer's rights protected—(1) The provisions of this Act shall have effect in favour of the buyer notwithstanding any provision to the contrary in any agreement. 20

(2) Section 56 of the Sale of Goods Act 1908 shall be read subject to the provisions of this section.

14. Application—Sections 6 to 9 of this Act shall not apply to layby sales made or entered into before the commencement of this Act. 25

15. Savings—Nothing in this Act shall derogate from the provisions of the Door to Door Sales Act 1967 and the Hire Purchase Agreements Act 1939.