

[AS REPORTED FROM THE COMMERCE COMMITTEE]

House of Representatives, 22 October 1963

Words struck out by the Commerce Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line of struck out matter; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line of new matter.

Hon. Mr Marshall

MOTOR SPIRITS DISTRIBUTION AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Motor Spirits Distribution Act 1953

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 Spirits Distribution Amendment Act 1963, and shall be read together with and deemed part of the Motor Spirits Distribution Act 1953* (hereinafter referred to as the principal Act).

*1957 Reprint, Vol. 10, p. 341
Amendment: 1958, No. 36

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “Department”, the following definition:

“‘Estate or interest’ includes ownership, whether complete or partial, and any mortgage, charge, loan, guarantee, agreement for sale and purchase of real property or an interest in real property, lien, option, indemnity, licence, tenancy, right to possession or to ownership and, where the business, land, or asset concerned is owned by a company, also includes any share, stock, debenture, or debenture stock issued or given by the company or any right, title, or claim to any such share, stock, debenture, or debenture stock:”.

Struck Out

(2) Section 2 of the principal Act is hereby further amended by inserting, after the definition of the term “motor spirits”, the following definition:

“‘Nominee’, in relation to a wholesaler, means a person or company acting, whether alone or in concert with any other person or company, as subsidiary, agent, trustee, or representative or subject to the direction, control, or influence, whether generally, specifically, directly, or indirectly, of the wholesaler or of the nominee of a wholesaler:”.

New

(2) Section 2 of the principal Act is hereby further amended by inserting, after the definition of the term “motor spirits”, the following definitions:

“‘Nominee’, in relation to a wholesaler, means—

“(a) Any company directly or indirectly controlled by the wholesaler or by any company that is the nominee of the wholesaler; or

“(b) Any company that directly or indirectly controls or is interested in, beneficially or otherwise, any shares in the capital of the wholesaler or of a nominee of the wholesaler or that is entitled, directly or indirectly, to any part of the profits of the wholesaler or a nominee of the wholesaler; or

“(c) Any person subject to the direction or control, whether direct, indirect, general, or specific, of any company that is a wholesaler or the nominee of a wholesaler, whether or not the direction or control is legally enforceable; or

New

5 “(d) Any person who, in any transaction, acts as agent, trustee, representative, or in any way on behalf of the wholesaler or a nominee of the wholesaler or is in any way subject to the direction, control, or influence of the wholesaler or a nominee of the wholesaler, whether or not, in respect of the transaction, the relationship between that person and the wholesaler or nominee is such as to confer legally enforceable rights on either party:
10 “‘Person’ includes a company and ‘company’ includes any combination of companies:”

15 (3) Subsection (6) of section 18 of the principal Act (as substituted by section 3 of the Motor Spirits Distribution Amendment Act 1958) is hereby amended by repealing paragraphs (a) and (b).

3. Functions of Licensing Authority—Section 9 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

20 “(2A) In the exercise of its functions the Licensing Authority shall also have regard to the necessity in the public interest of ensuring that the businesses of retailers shall be carried on by them as independent traders free to obtain adequate supplies of motor spirits from any wholesaler and
25 free to change at will the source of their supply of motor spirits.”

New

30 **3A. Powers of Authority**—Section 10 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) The Licensing Authority shall, within the scope of its jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to this Act, the provisions of that Act shall apply accordingly.”

35 **4. Conditions in licences**—Section 18 of the principal Act (as substituted by section 3 of the Motor Spirits Licensing Amendment Act 1958) is hereby amended as follows:

40 (a) By adding to the proviso to paragraph (b) of subsection (1) the words “or to such other items or services as may from time to time be prescribed by regulations under this Act”:

- (b) By omitting from paragraph (d) of subsection (1) the words “any enactment”, and substituting the words “this Act or any enactment”:
- (c) By adding to the proviso to subparagraph (iii) of paragraph (b) of subsection (2) the words “or to such other items or services as may from time to time be prescribed by regulations under this Act.”: 5
- (d) By omitting from paragraph (d) of subsection (2) the words “any enactment”, and substituting the words “this Act or any enactment”. 10

5. Advances to retailers—The principal Act is hereby further amended by inserting, after section 18A (as inserted by section 4 of the Motor Spirits Distribution Amendment Act 1958) the following section:

Struck Out

“18B. (1) Notwithstanding the provisions of this Act, a wholesaler or his nominee may, in accordance with regulations under this Act, make advances to a retailer or guarantee advances made to a retailer. 15

“(2) Except as otherwise provided by regulations under this Act, a wholesaler or his nominee shall not, without the approval of the Licensing Authority and subject to such terms and conditions as the Authority may impose, make advances to a retailer or guarantee advances made to a retailer. 20

“(3) Application for approval under this section shall be made to the Licensing Authority in accordance with regulations under this Act by the wholesaler, nominee, or retailer concerned. 25

New

“18B. (1) Notwithstanding the provisions of this Act, a wholesaler or his nominee may, with the approval of the Licensing Authority and subject to such terms and conditions as the Authority may impose, make advances, whether secured or unsecured, to a retailer or guarantee advances made to a retailer. 30 35

“(2) Application for approval under this section, accompanied by such information and written evidence as the Authority may require, shall be made to the Licensing Authority by the wholesaler, nominee, or retailer concerned.

“(3) The provisions of section 24B of this Act shall, with the necessary modifications, apply to any application for an approval under this section. 40

“(4) Any advance made or guarantee given otherwise than in accordance with this section shall be unlawful and, as the case may require, the amount of the advance shall be irrecoverable or the guarantee shall have no force or effect.”

5 **6. Licensing Authority may require information and give directions**—The principal Act is hereby further amended by inserting, after section 21, the following section :

“21A. (1) *(The Licensing)* Without limiting the powers otherwise conferred on the Licensing Authority by this Act,

10 the Authority may from time to time require any wholesaler, any nominee of a wholesaler, or any retailer, who in its opinion is able to supply information relating to—

“(a) Advances made by a wholesaler or his nominee to a retailer; or

15 “(b) Guarantees given by a wholesaler or his nominee in respect of advances to a retailer; or

“(c) Any debt (other than a debt referred to in paragraph (a) or paragraph (b) of this subsection) owing by a retailer to a wholesaler or his nominee; or

20 “(d) Any estate or interest owned by a wholesaler or his nominee in the business of a retailer or by a retailer in the business of a wholesaler; or

25 “(e) Any arrangement or agreement affected by the provisions of this Act made between any wholesaler or his nominee and a retailer affecting their trading relationships—

to furnish such information and to produce such documents or papers as may be in the possession or control of any such person as may be required by the Licensing Authority in order to enable it to carry out its functions and to give due consideration as to whether or not any undue influence is likely to be exerted on the retailer contrary to the provisions of this Act.

35 “(2) All information obtained by the Licensing Authority under this section shall be treated as confidential except for the purposes of this Act.

“(3) Every person shall have the same privileges in relation to the giving of information and the production of documents and papers as witnesses have in any Court.

40 “(4) The Licensing Authority may from time to time if it is of opinion that any transaction (whether entered into before or after the commencement of this section) of which it is aware and which it has not approved under this Act is likely

to permit any wholesaler or the nominee of any wholesaler to exert undue influence on a retailer contrary to the provisions of this Act, give directions—

- “(a) Requiring the amount of any advance made by a wholesaler or his nominee to a retailer to be reduced; or 5
- “(b) Requiring the amount of any advance made to a retailer in respect of which a guarantee has been given by a wholesaler or his nominee to be reduced; or 10
- “(c) Requiring any debt, other than a debt referred to in paragraph (a) or paragraph (b) of this subsection, owing by a retailer to a wholesaler or his nominee to be discharged or reduced; or
- “(d) Varying or revoking any direction under this subsection previously given by it. 15
- “(5) Any direction under this section shall specify a time within which it shall be complied with and may contain such other terms and conditions as the Licensing Authority thinks fit. 20
- “(6) Before giving any direction under this section, the Licensing Authority shall have regard to the economic situation of the retailer and to his ability to repay any advance or debt in respect of which the direction may be given.
- “(7) Notwithstanding any enactment or rule of law and notwithstanding any arrangement or agreement between the parties, any retailer shall have the right— 25
- “(a) To repay the whole or any part of any money owing by him to a wholesaler or his nominee on giving one month’s notice of his intention to do so; and 30
- “(b) To repay the whole or any part of any money owing by him the repayment of which has been guaranteed by a wholesaler or his nominee; and
- “(c) Subject to the provisions of section 24 and section 24A of this Act, to sell the business or any shares in the business in respect of which his licence under this Act was granted; and 35
- “(d) To purchase motor spirits from any wholesaler other than a wholesaler to whom or to whose nominee the retailer owes money. 40
- “(8) Any person who without lawful excuse fails to comply with any requirement or direction under this section or who knowingly furnishes any false or misleading information pursuant to any such requirement commits an offence against

this Act and, if he is a licensee under this Act, he shall be deemed to have committed a breach of the conditions of his licence.”

5 **7. Transfer of shares—**~~(1)~~ The principal Act is hereby amended by inserting, after section 24, the following section:

“24A. (1) Where a company is the holder of a retailer’s licence, no shares in the company shall be transferred, and no change in the beneficial ownership of any such shares shall take place, except with the approval of the Licensing
10 Authority given pursuant to an application by the licensee.

“(2) Nothing in subsection (1) of this section shall apply—

“(a) To shares in any company, which, at the thirtieth day of September, nineteen hundred and sixty-three, was a public company; or

15 *Struck Out*

“(b) To the transfer of shares in a company the business of which, at the time of the transfer, is substantially other than that of a retailer of motor spirits; or

20 “(c) To the transfer of any shares forming part of the estate of a deceased person and transferred as the result of his death.

“(3) The Licensing Authority shall compile and keep a register of all companies exempted pursuant to paragraph (b) of subsection (2) of this section.

25 “(4) The Licensing Authority shall approve the transfer of any shares in respect of which an application is made under this section if it is satisfied that as a result of the transfer no wholesaler or his nominee will be enabled to exert an undue influence on a retailer contrary to the provisions of this
30 Act.”

(2) This section shall come into force on the first day of January, nineteen hundred and sixty-four.

New

35 “(b) To any shares of a class prescribed from time to time by regulations under this Act; or

“(c) To the transfer of any shares pursuant to the will or devolving upon the intestacy of any person.”

8. Consideration of application for transfer—(1) The principal Act is hereby further amended by inserting, after section
40 24A (as inserted by section 7 of this Act) the following section:

Struck Out

“24B. In considering any application for the transfer of a licence under section 24 of this Act or for an approval under section 24A of this Act, the Licensing Authority shall, in addition to any other matter it is required to consider, have regard to any association or connection, whether direct or indirect and to any financial interest, whether by way of shareholding or otherwise, which the proposed transferee may have with any wholesaler or the nominee of any wholesaler and, if it is of the opinion that the wholesaler or nominee as a result of the transaction may exert an undue influence on the retailer concerned, contrary to the provisions of this Act, refuse its consent to the transfer of a licence under the said section 24 or its approval under the said section 24A.”

New

“24B. (1) In considering any application for a retailer’s licence, or for the transfer of a licence under section 24 of this Act, or for an approval of the transfer of shares under section 24A of this Act, the Licensing Authority shall, in addition to any other matter it is required to consider, have regard to any association or connection, whether direct or indirect, and to any financial interest, whether by way of shareholding or otherwise, which the applicant for the licence or the proposed transferee may have with or in any wholesaler or any nominee of the wholesaler and, without limiting the powers otherwise conferred on the Authority by this Act, if it is of the opinion that the transaction, by reason of any such association, connection, or financial interest, is or could reasonably be regarded as inconsistent with the provisions of subsection (2A) of section 9 of this Act and the purposes of this Act, it may refuse its consent to the application.

“(2) The provisions of subsection (1) of this section shall apply to any application notwithstanding that the applicant or the proposed transferee may not be a wholesaler or the nominee of a wholesaler within the meaning of this Act.”

(2) Subsection (1) of section 24 of the principal Act is hereby amended by omitting the words “this section”, and substituting the words “this Act”.

9. Divesting orders—The principal Act is hereby further amended by inserting, after section 24B (as inserted by section 8 of this Act) the following section:

Struck Out

“24c. (1) Where after full inquiry and investigation the Licensing Authority is of the opinion that a wholesaler or his nominee has acquired, after the commencement of this section, any estate or interest in contravention of this Act, the authority may direct that the wholesaler or his nominee shall divest himself of the estate or interest.

New

“24c. (1) Where after full inquiry and investigation the Licensing Authority is of the opinion that a wholesaler or his nominee or any other person has, after the commencement of this section, acquired any estate or interest contrary to the provisions of this Act, the Authority may direct that the wholesaler, nominee, or other person shall divest himself of the estate or interest.

“(2) On receipt of a direction under subsection (1) of this section, the wholesaler or nominee shall, within such time as may be specified in the direction, dispose of the estate or interest to which the direction relates.

“(3) Every agreement relating to the disposal of any estate or interest pursuant to a direction under this section shall be in writing signed by the parties thereto and shall have no force or effect until approved by the Licensing Authority.

“(4) If no agreement approved as aforesaid is made within the time limited in that behalf by the Licensing Authority, the authority may give a further direction that the estate or interest be offered for sale by public auction on such terms and conditions as may be specified by the Authority, and the wholesaler or his nominee shall comply with the direction.

“(5) Any wholesaler or nominee who fails to comply with any direction under this section commits an offence against this Act, and if he is a licensee he shall be deemed to have committed a breach of the conditions of his licence.”

10. Appeals—(1) Section 33 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) There shall be a right of appeal from the whole or any part of any decision (including any requirement or direction) of the Licensing Authority under this Act.”

(2) Paragraph (d) of subsection (2) of section 33 of the principal Act (as amended by section 6 of the Motor Spirits Distribution Amendment Act 1958) is hereby further amended by adding the following subparagraph:

“(iii) Is the nominee of a wholesaler or who, for the purposes of the decision appealed against, was deemed by the Licensing Authority to be the nominee of a wholesaler.”

11. Notification of application—The principal Act is hereby further amended by inserting, after section 39, the following section: 5

“39A. (1) Notification of every application under this Act for a licence, or the transfer of a licence, or the transfer of shares in a company which is a retailer shall be given, in addition to any other notification required under this Act, to— 10

“(a) Each holder of a wholesale licence under this Act; and

“(b) To any body or organisation considered by the Licensing Authority to represent retailers. 15

“(2) Notice given in accordance with paragraph (b) of subsection (1) of this section shall be deemed to be notice to each retailer belonging to the body or organisation.”

12. Penalties—The principal Act is hereby further amended by inserting, after section 40, the following section: 20

“40A. Every person who commits an offence against this Act for which no penalty is specifically prescribed in this Act shall be liable on summary conviction to a fine not exceeding five hundred pounds if the offender is a wholesaler or the nominee of a wholesaler and to a fine not exceeding one hundred pounds in any other case.” 25

13. Expenditure from Motor Spirits Industry Account—The principal Act is hereby further amended by inserting, after section 41, the following section— 30

“41A. (1) Any money in the Motor Spirits Industry Account not immediately required for the purposes of this Act may be invested in accordance with the provisions of the Trustee Act 1956 as to the investment of trust funds.

“(2) Members of the Licensing Authority may from time to time be insured against loss from personal accident arising out of and in the course of the exercise of their powers or duties as members and any premiums payable in respect of any contract of insurance under this subsection shall be paid out of the Motor Spirits Industry Account.” 35 40

New

14. Existing transactions—Nothing in this Act shall apply to any estate or interest lawfully created or acquired by any person nor to any transfer or assignment of any real or
5 personal property made pursuant to any contract lawfully entered into before the thirtieth day of September, nineteen hundred and sixty-three.