

# MOTOR SPIRITS DISTRIBUTION AMENDMENT BILL

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## EXPLANATORY NOTE

THIS Bill amends the Motor Spirits Distribution Act 1953, and gives effect either wholly or in a modified way to certain recommendations of the Commission of Inquiry into the Distribution of Motor Spirits and Ancillary Products (chaired by Mr R. T. Feist). The Bill also provides for a substantial increase in the maximum amount of fines payable for offences.

*Clause 1* relates to the Short Title and commencement. The Bill is expressed to come into force on 1 January 1980.

*Clause 2* extends the functions of the Licensing Authority to include investigating and reviewing the distribution of licences and the availability of motor spirits to the public in any locality. In carrying out any investigation or review, the Authority is to have regard to the necessity, in the national interest, of encouraging the rational distribution of licences throughout New Zealand.

*Clause 3* amends section 15 (1) of the principal Act which sets out the matters to which the Licensing Authority must have regard when considering an application for a retailer's licence.

*Subclause (1)* repeals the provision requiring the Authority to take into account particular brand representation in a locality, and substitutes a provision requiring the Authority to have regard to the national interest in encouraging a rational distribution of licences throughout New Zealand.

*Subclause (2)* inserts a new matter to be taken into account, that of considering the desirability of providing for the relocation of licences in a locality.

*Clause 4* provides that, after the commencement of the Bill, authority to sell motor spirits otherwise than through pumps (an O.T.T.P. authority) shall only be given to the holder of a retailer's licence which authorises the sale of motor spirits exclusively through pumps. The clause also provides that licences having an O.T.T.P. authority granted before the Bill comes into force are not to be affected by the new provision.

*Clause 5* repeals the requirement that, in granting a retailer's licence, the Licensing Authority is to prescribe the maximum number and the position of pumps on any premises, and substitutes a provision requiring the Authority to prescribe the general layout of the premises without reference to pumps.

*Clause 6* amends section 18B of the principal Act (which deals with advances to retailers) by adding 2 new subsections.

The new subsection (5) authorises the Licensing Authority, subject to certain conditions, to vary the terms and conditions of any advance or guarantee made or given in accordance with the section.

The new subsection (6) requires all future supply covenants between a wholesaler of motor spirits and a retailer to be approved by the Licensing Authority, which is also required to impose restrictions on the subject-matter of the future supply covenant and on its term.

Provision is also made for advances and guarantees made or given before 25 October 1963 ("tabled interests") to be treated in the same manner as advances and guarantees made or given on or after that date.

*Clause 7:* Section 23 (5) of the principal Act provides that the Licensing Authority may revoke any licence if it is satisfied that the business to which the licence relates is not being carried on. This clause extends the power of revocation to the licence relating to those businesses which have such a low annual volume of sales of motor spirits that, in the opinion of the Licensing Authority, revocation would promote the general purposes of the principal Act. Before any licence is revoked under the new provision, the Authority is required to consider certain matters set out in the clause.

*Clause 8* increases the penalties for offences. The increased amounts are set out in the Schedule to the Bill. The clause also prevents the retro-active application of the increased penalties.

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*Hon. Mr Adams-Schneider*

## MOTOR SPIRITS DISTRIBUTION AMENDMENT

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### ANALYSIS

Title	4. Restrictions on selling motor spirits otherwise than through pumps
1. Short Title and commencement	5. What shall be prescribed in retailer's licence
2. Extension of functions of Licensing Authority	6. Advances to retailers
3. Matters to be considered in determining application for licence	7. Revocation and suspension of licences
	8. Increase in penalties for offences Schedule

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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 and commencement**—(1) This Act may be cited as the Motor Spirits Distribution Amendment Act 1979, and shall be read together with and deemed part of the Motor Spirits Distribution Act 1953\* (hereinafter referred  
10 to as the principal Act).

(2) This Act shall come into force on the 1st day of January 1980.

**2. Extension of functions of Licensing Authority**—Section 9 of the principal Act is hereby amended by inserting, after  
15 subsection (2A) (as inserted by section 3 of the Motor Spirits Distribution Act 1963), the following subsection:

\*Reprinted 1972, Vol. 3, p. 2631  
Amendment: 1975, No. 92

“(2B) In the exercise of its functions the Licensing Authority may, of its own volition, investigate and review the distribution of licences and the availability to members of the public of motor spirits in any locality, but in so doing shall have regard to the necessity in the national interest of encouraging the rational distribution of licences throughout New Zealand.” 5

**3. Matters to be considered in determining application for licence**—(1) Section 15 (1) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph: 10

“(b) The necessity in the national interest of encouraging the rational distribution of licences throughout New Zealand:”.

(2) The said section 15 (1) is hereby further amended by inserting, after paragraph (c), the following paragraph: 15

“(ca) The desirability of providing for the relocation of licences within a locality:”.

**4. Restrictions on selling motor spirits otherwise than through pumps**—(1) Section 16 (4) (c) of the principal Act is hereby amended by omitting the words “To sell”, and substituting the words “Where the applicant is already the holder of a retailer’s licence authorising the sale of motor spirits exclusively through pumps under paragraph (b) of this subsection, to sell”. 25

(2) Section 16 of the principal Act is hereby amended by adding, as subsection (6), the following subsection:

“(6) No wholesaler’s licence shall be granted which authorises the sale of motor spirits otherwise than through pumps.” 30

(3) Nothing in this section shall affect any licence which authorises the holder to sell motor spirits otherwise than through pumps, being a licence which was granted before this Act came into force.

**5. What shall be prescribed in retailer’s licence**—(1) Section 17 of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph: 35

“(b) In the case of a licence authorising the retailer to sell motor spirits through pumps, the layout (including access ways but excluding the number and location of any pumps) of the site from which motor spirits are to be sold:” 40

(2) Section 18 (2) of the principal Act (as substituted by section 3 of the Motor Spirits Distribution Amendment Act 1958) is hereby consequentially amended by repealing paragraph (c).

5     **6. Advances to retailers**—(1) Section 18B of the principal Act (as added by section 6 of the Motor Spirits Distribution Amendment Act 1963) is hereby amended by adding the following subsections:

10     “(5) Notwithstanding the provisions of this Act, the Licensing Authority may, on the application in writing of a wholesaler or his nominee or a retailer, vary the terms and conditions of any advance or guarantee made or given in accordance with this section, subject to—

15     “(a) The Licensing Authority consulting with the other party to the advance or guarantee and having regard to any representations that party may make; and

       “(b) Such conditions as the Licensing Authority may think fit to impose.

20     “(6) Notwithstanding the provisions of this Act, where a wholesaler or his nominee proposes to make advances to a retailer subject to that retailer covenanting to accept supplies of motor spirits from that wholesaler only (in this section referred to as a future supply covenant), the terms and conditions of every future supply covenant shall be approved by the Licensing Authority which, in considering any application for approval, shall—

25     “(a) Limit the future supply covenant to the supply of motor spirits and to no other product:

30     “(b) Limit the term of the future supply covenant either to the time of cessation of a continued supply of motor spirits from the wholesaler or to the time of repayment of the principal sum advanced, whichever occurs sooner:

35     “(c) Impose such other conditions not inconsistent with the provisions of this Act as it thinks fit.”

       (2) Section 18B (5) of the principal Act (as added by subsection (1) of this section) shall also apply in respect of an advance or guarantee made or given before the 25th day of  
40     October 1963 (being the date on which the Motor Spirits Distribution Amendment Act 1963 came into force).

**7. Revocation and suspension of licences**—Section 23 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsections:

“(5) The Licensing Authority may revoke any licence if it is satisfied that the business to which the licence relates— 5

“(a) Is not being carried on; or

“(b) Is being carried on with such a low annual volume of sales of motor spirits that revocation may, in the opinion of the Licensing Authority, promote the general purposes of this Act. 10

“(5A) Before any licence is revoked under subsection (5) (b) of this section, the Licensing Authority shall consider the following matters:

“(a) If the business to which the licence relates is being carried on together with any other commercial activity, whether revocation of the licence would seriously affect the financial stability of the overall business: 15

“(b) The availability of motor spirits to members of the public if the licence was revoked: 20

“(c) Such other matters not inconsistent with the provisions of this Act as the Licensing Authority thinks fit.”

**8. Increase in penalties for offences**—(1) The principal Act is hereby amended in the manner indicated in the Schedule to this Act. 25

(2) Any proceedings commenced (whether before or after the commencement of this Act) for an offence against the principal Act or any regulations made under it arising out of any act done or omitted before the passing of this Act shall be heard and determined as if subsection (1) of this section had not been passed. 30

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SCHEDULE

Section 8

INCREASE IN PENALTIES FOR OFFENCES

Provision of Principal Act (as amended by section 7 of the Decimal Currency Act 1964)	Amendment
Section 11 (2) .....	By omitting the expressions "\$100" and "\$10", and substituting respectively the expressions "\$1,000" and "\$100".
Section 11 (3) .....	By omitting the expressions "\$400" and "\$40", and substituting respectively the expressions "\$5,000" and "\$500".
Section 11 (4) .....	By omitting the expression "\$20", and substituting the expression "\$250".
Section 18 (5) (as substituted by section 3 of the Motor Spirits Distribution Amendment Act 1958)	By omitting the expression "\$20", and substituting the expression "\$250".
Section 18A (3) (as inserted by section 4 (1) of the Motor Spirits Distribution Amendment Act 1958)	By omitting the expression "\$400", and substituting the expression "\$5,000".
Section 40A (as inserted by section 13 of the Motor Spirits Distribution Amendment Act 1963)	By omitting the expressions "\$1,000" and "\$200", and substituting respectively the expressions "\$10,000" and "\$2,000".