

COMMERCIAL TRANSACTIONS (MISCELLANEOUS PROVISIONS) ACT.

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 105, 1974.

An Act to exclude from the operation of the Hire-Purchase Act, 1960, except section 32, certain hire-purchase agreements; to require terms charges in relation to certain hire-purchase agreements and credit-sale agreements to be expressed as a rate per centum per annum calculated in the prescribed manner; to repeal the provisions of that Act limiting terms charges and the provisions of the Credit-sale Agreements Act, 1957, limiting additional charges; to make further provisions with respect to the merchantable quality of goods the subject of hire-purchase agreements or consumer sales; to make

further

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- No. 105, 1974** further provisions for regulating money-lending transactions; to regulate certain finance brokers; to excuse the insured under a policy of insurance from any requirement of compulsory arbitration; to extend the obligations of insurers carrying out repairs to motor vehicles under policies of insurance; to make further provisions with respect to the obligations of vendors in respect of door-to-door sales; to validate a certain matter; for these and other purposes to amend the Hire-Purchase Act, 1960, the Money-lenders and Infants Loans Act, 1941, the Credit-sale Agreements Act, 1957, the Life, Fire, and Marine Insurance Act, 1902, the Sale of Goods Act, 1923, and the Door-to-Door Sales Act, 1967; and for purposes connected therewith. [Assented to, 13th December, 1974.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. 1. This Act may be cited as the "Commercial Transactions (Miscellaneous Provisions) Act, 1974".

Commencement. 2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) The amendment made by section 4 (c) shall be deemed to have commenced on 20th December, 1973.

(3) Except as provided in subsections (1) and (2), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3.

*Commercial Transactions (Miscellaneous Provisions).***3. The Hire-Purchase Act, 1960, is amended—****No. 105, 1974**Amend-
ment of
Act No. 33,
1960.

(a) (i) by omitting from section 1 (3) the matter relating to Part VI;

Sec. 1.
(Short
title.)

(ii) by omitting from section 1 (4) (b) the matter "subsection (1)" and by inserting instead the matter "paragraph (a)";

(iii) by inserting at the end of section 1 the following subsection :—

(6) Notwithstanding any other provision of this section, this Act, section 32 excepted, does not apply to or in relation to—

(a) a hire-purchase agreement entered into after the commencement of section 3 of the Commercial Transactions (Miscellaneous Provisions) Act, 1974, being a hire-purchase agreement—

(i) under which the hirer is a company; or

(ii) in respect of goods (other than industrial machinery, farm equipment or a motor vehicle) the cash price of which exceeds \$10,000 or, where a greater amount is prescribed, that greater amount; or

(b) an agreement entered into after the commencement of section 3 of the Commercial Transactions (Miscellaneous Provisions) Act, 1974, in

relation

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relation to a hire-purchase agreement of any kind referred to in paragraph (a).

Sec. 2.
(Inter-pretation.)

(b) by inserting in section 2 (1) after the definition of "Prescribed" the following definition :—

"Regular instalments hire-purchase agreement" means a hire-purchase agreement under which any instalments payable by the hirer are required—

- (a) to be paid at regular weekly, fortnightly or monthly intervals and at no other intervals; and
- (b) to be of equal amounts or of amounts none of which differs from another by more than two dollars.

Sec. 3.
(Summary of proposed hire-purchase transaction to be given to prospective hirer.)

(c) (i) by omitting from section 3 (2) (c) (iv) the words "instalments; and" and by inserting instead the word "instalments;"

(ii) by omitting from section 3 (2) (c) (v) the word "them;" and by inserting instead the following words and paragraph :—

them; and

(vi) specify, as a rate per centum per annum the terms charges referred to in paragraph (e) (vii);

(iii) by omitting from section 3 (2) (e) (vi) the words "the total" and by inserting instead the words "the amount to be financed, being the total".

(iv)

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- (iv) by inserting after section 3 (2) the following No. 105, 1974 subsection :—

(2A) A hire-purchase agreement does not comply with subsection (2) (c) (vi) unless the rate per centum per annum specified in it in accordance with subsection (2) (c) (vi)—

- (a) in the case of a regular instalments hire-purchase agreement, is not less than the rate calculated in accordance with whichever formula specified in Part 1 of the Fifth Schedule is applicable; or
- (b) in the case of a hire-purchase agreement that is not a regular instalments hire-purchase agreement, is not less than the rate calculated in accordance with Part 2 of the Fifth Schedule and the agreement contains a statement that that rate has been calculated as for an agreement requiring equal monthly instalments for the period of the agreement.

- (v) by inserting at the end of section 3 the following subsections :—

(7) Nothing in this section prevents the inclusion in a hire-purchase agreement or in a statement given pursuant to subsection (1) of a statement of the amount representing the whole or any part of any stamp duty chargeable on the agreement under the Stamp Duties Act, 1920.

(8) It is not necessary for a hire-purchase agreement which sets out the matters referred to in subsection (2) (e) to set them out in the sequence in which those matters are referred to in subsection (2) (e).

(9)

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(9) Subsections (2) (c) (vi) and (2A) (b) do not apply in respect of a hire-purchase agreement where the owner is a person belonging to a prescribed class of persons.

Sec. 5.
(Conditions and warranties to be implied in every hire-purchase agreement.)

(d) (i) by omitting section 5 (2) (c) and by inserting instead the following paragraph :—

(c) as regards defects acknowledged in writing by the hirer before the agreement was entered into, to have been brought to his notice.

(ii) by inserting after section 5 (2) the following subsections :—

(2A) Without limiting the meaning of the expression “merchantable quality”, goods of any kind which are the subject of a hire-purchase agreement are not of merchantable quality if they are not as fit for the purpose or purposes for which goods of that kind are commonly bought as is reasonable to expect having regard to their price, to any description applied to them by the owner or, if there is a dealer, by the dealer and to all other circumstances.

(2B) Where in any proceedings arising out of a hire-purchase agreement (not being a hire-purchase agreement relating to second-hand goods) it appears to the court that the goods, at the time of their delivery to the hirer, were not, by reason of any defect in them or for that and any other reason, of merchantable quality, the court may add the manufacturer of the goods as a party to the proceedings and, if of the opinion that the defect should be remedied by the manufacturer, may make against him either—

(a) an order requiring the manufacturer to pay to the hirer an amount equal to the estimated cost of remedying the defect; or

(b)

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(b) an order requiring the manufacturer to ^{No. 105, 1974} remedy, within such time as may be specified in the order, the defect and, in default of compliance with that order, requiring the manufacturer to pay to the hirer an amount equal to the estimated cost of remedying the defect,

and may make such other ancillary orders against the manufacturer as to the court seem proper.

(2C) In subsection (2B), "manufacturer", in relation to any goods the subject of proceedings referred to in that subsection, includes a person who resides or carries on business in the Commonwealth and who received those goods from outside the Commonwealth otherwise than from a person who resides or carries on business in the Commonwealth.

(2D) The jurisdiction of a court to make an order in any proceedings referred to in subsection (2B) is limited as to amount to the same extent as if proceedings in respect of the defect had been taken in that court by the hirer against the person liable for the remedying of the defect.

(2E) An order made by a court under subsection (2B) (a) or (b) has effect as if it were a judgment of that court.

(2F) In any legal proceedings for breach of the condition of merchantable quality implied pursuant to subsections (2) and (2A) in a hire-purchase agreement relating to second-hand goods, the liability of the owner is, subject to any contrary agreement, limited to the amount of the cash price of the goods in respect of which the condition is adjudged to be in breach.

(iii)

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(iii) by inserting in section 5 (5) after the word "section" the words "(subsection (2A) excepted)";

(iv) by omitting from section 5 (5) the word "of" where secondly occurring and by inserting instead the word "or";

Sec. 22.
(As to contents of contracts of insurance.)

(e) by omitting section 22 (2), (3) and (4);

Part VI.
(LIMITATION ON TERMS CHAR-
GES.)

(f) by omitting Part VI;

Sec. 32.
(Power to court to re-open certain hire purchase transactions.)

(g) (i) by inserting in section 32 (1) after the word "relief" the words "or that the hirer was induced to enter into the hire-purchase agreement by reason of the making by the owner of a statement, representation or promise that was false, misleading or deceptive in a material respect or by reason of the concealment by the owner of any material facts,";

(ii) by inserting in section 32 (3) after the word "unconscionable" the words "or that the hirer was induced to enter into the hire-purchase agreement by reason of the making by any person other than the owner of a statement, representation or promise that was false, misleading or deceptive in a material respect or by reason of the concealment by any person other than the owner of any material facts,";

Sec. 40.
(False statement by dealers, &c., in proposals.)

(h) by inserting at the end of section 40 the following subsections :—

(2) Where—

(a) a person enters into a hire-purchase agreement; and

(b)

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- (b) the dealer, if any, or the owner or a person ^{No. 105, 1974} acting on behalf of the dealer, if any, or owner makes, in the course of the negotiations leading to the making of the hire-purchase agreement or in the course of the transaction leading to the hire-purchase agreement, any statement, representation or promise, that is false, misleading or deceptive in a material respect, or conceals any material facts, as to the nature or terms or conditions of the transaction the subject of the negotiations or of the transaction leading to the hire-purchase agreement,

the dealer, owner or person acting on behalf of the dealer or owner is guilty of an offence against this Act and liable to a penalty not exceeding four hundred dollars or to imprisonment for a term not exceeding three months.

(3) A certificate of the conviction of any person for an offence under subsection (2) is, in any proceedings under section 32 (3), admissible and is conclusive evidence of—

- (a) the making by the person convicted of the statement in respect of which he was convicted and of that statement being false, misleading or deceptive in a material respect; or
- (b) the concealment of material facts by the person convicted,

as the case may be.

- (i) by omitting from the First Schedule the words ^{First} “† Insert, where the proposed agreement is an ^{Schedule.} agreement to which s. 25 of the Act applies, a rate per centum per annum not less than the rate per centum per annum obtained by calculating the terms charges in accordance with the formula set out in s. 26 (1).” and by inserting instead the words “† Insert a rate per centum per annum not less than
the

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the rate per centum per annum obtained by calculating the terms charges in accordance with whichever formula set out in Part 1 or Part 2 of the Fifth Schedule to the Act is applicable, with the addition of the words 'calculated as for an agreement requiring equal monthly instalments for the period of the agreement' where the rate per centum per annum is calculated in accordance with Part 2 of the Fifth Schedule to the Act."

Fifth Schedule.

(j) by inserting after the Fourth Schedule the following Schedule :—

Sec. 3 (2A).

FIFTH SCHEDULE.

PART 1.

The rate per centum per annum to be specified in the agreement shall be calculated in accordance with whichever of the following formulae is applicable :—

(a) where the agreement provides for weekly instalments—

$$R = \frac{10,400 \times (ny - P)}{P \times (n + 1)}$$

(b) where the agreement provides for fortnightly instalments—

$$R = \frac{5,200 \times (ny - P)}{P \times (n + 1)}$$

(c) where the agreement provides for monthly instalments—

$$R = \frac{2,400 \times (ny - P)}{P \times (n + 1)}$$

where—

R represents the rate per centum per annum calculated to two decimal places;

P represents the amount to be financed set out in the agreement in accordance with section 3 (2) (e) (vi);

y represents the amount of each instalment payable under the agreement or, where the instalments are not of equal amounts, the amount of the larger or largest instalment payable under the agreement;

n represents the number of instalments payable under the agreement.

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PART 2.

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The rate per centum per annum to be specified in the agreement shall be calculated in accordance with the following formula :—

$$R = \frac{2,400 \times (ny - P)}{P \times (n + 1)}$$

where—

- R represents the rate per centum per annum calculated to two decimal places;
- P represents the amount to be financed set out in the agreement in accordance with section 3 (2) (e) (vi);
- y represents the amount equal to the quotient obtained by dividing the sum of the amount represented by P and the amount of the terms charges by the amount represented by n;
- n represents the period, expressed in whole months and any remaining fraction of a month, between the date referred to in section 3 (2) (c) (i) and the date on which the final instalment is payable under the agreement.

4. The Money-lenders and Infants Loans Act, 1941, is amended—

- (a) by omitting from the long title the words “to money-lenders and infants loans” and by inserting instead the words “to money-lenders”; Amendment of Act No. 67, 1941. Long title.
- (b) (i) by omitting from section 1 (1) the words “Money-lenders and Infants Loans” and by inserting instead the word “Moneylending”; Sec. 1. (Short title and commencement and division into Parts.)
- (ii) by inserting in section 1 (3) after the matter relating to Part V the following matter :—

PART VI.—FINANCE BROKERS.

- (c) by omitting section 3B (1A) and by inserting instead the following subsection :— Sec. 3B. (Application of Part III excluded in certain circumstances.)
- (1A) Notwithstanding any other provision of this Act, a money-lender who—
- (a) in the course of his business as a money-lender, makes; or

(b)

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- (b) advertises or announces himself or holds himself out in any way as carrying on the business of making,

only loans of a class referred to in subsection (1) or executes any contracts, securities or guarantees in relation thereto (not including a loan of a class specified in an order made under subsection (2) or a contract, security or guarantee in relation to a loan of a class so specified), is not required to be the holder of a licence.

Sec. 4
(Licences
to be taken
out by
money-
lenders.)

- (d) by omitting from section 4 (2) the words "company by some person appointed in writing by the company" and by inserting instead the following words :—

company—

- (a) where the company carries on or proposes to carry on business as a money-lender at not more than one place, by some person appointed in writing by the company; or
- (b) where the company carries on or proposes to carry on business as a money-lender at two or more places—
- (i) by some person appointed in writing by the company to take out licences in respect of both or all of those places; or
- (ii) by some person appointed in writing by the company to take out a licence or licences in respect of any one or more, but not all, of those places.

(e)

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(e) (i) by inserting in section 5 (1) after the word "licence" the words "(not being a person who desires to obtain a licence on behalf of a company)";

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Sec. 5.
(Applica-
tions for
licences.)

(ii) by inserting after section 5 (1) the following subsection :—

(1A) Every person who desires to obtain a licence on behalf of a company shall—

(a) if he is a person referred to in section 4 (2) (a), lodge an application in triplicate in the prescribed form with the clerk of the court of petty sessions nearest to the place of business, or the proposed place of business, of the company;

(b) if he is a person referred to in section 4 (2) (b) (i), lodge an application in triplicate in the prescribed form with the clerk of the court of petty sessions nearest to the principal place of business, or the proposed principal place of business, of the company; or

(c) if he is a person referred to in section 4 (2) (b) (ii) and he desires to take out the licence in respect of a place in respect of which he has been appointed by the company to take out a licence, lodge an application in triplicate in the prescribed form with the clerk of the court of petty sessions nearest to that place.

(f) by omitting from section 8 (1) the words "of the applicant" where secondly occurring;

Sec. 8.
(Transfer,
etc., of
licence.)

(g)

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 Sec. 22.
 (Form of money-lenders' contracts.)
- (g) by omitting from section 22 (2) (d) the words "account rebates and penalties" and by inserting instead the following word and subparagraphs :—
- account—
- (i) rebates and penalties; or
- (ii) any extension, in accordance with the terms of the contract, of the full term of repayment of the loan (being a loan secured by way of mortgage of real property) which may after the loan is made be agreed upon by the lender and borrower;
- Sec. 46.
 (Special provisions as to companies.)
- (h) by inserting in section 46 (2) after the word "Act" where firstly occurring the words "other than Part VI";
- Part VI.
- (i) by inserting after Part V the following Part :—

PART VI.

FINANCE BROKERS.

Interpretation.

60. In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

"commission" includes fees, charges, reward or other remuneration, whether monetary or otherwise;

"finance broker" means a person who, whether or not he carries on any other business, carries on, or advertises or announces or holds himself out in any way as carrying on, the business of—

(a) negotiating; or

(b)

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(b) acting as intermediary to obtain, No. 105, 1974
loans or credits for persons other than himself or his employer or principal, but does not include—

(c) a person who carries on, or advertises or announces or holds himself out in any way as carrying on, the business of negotiating or acting as intermediary to obtain loans of any one or more of the classes referred to in section 3B (1) and of no other class;

(d) a person who—

(i) in association with a bona fide business of selling land or supplying goods or services (whether as principal or agent) carried on by him, negotiates or acts as intermediary to obtain, or advertises or announces or holds himself out in any way as being willing to negotiate or act as intermediary to obtain, loans or credits for persons who deal with him in the ordinary course of that business and who have authorised in writing the application of the loan or credit in payment for the land, goods or services; and

(ii) who does not carry on, or advertise or announce or hold himself out in any way

as

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as carrying on, the business of negotiating or acting as intermediary to obtain loans or credits for any other class of persons;

- (e) a solicitor, while acting in the ordinary course of the profession of a solicitor;
- (f) a registered company auditor within the meaning of the Companies Act, 1961, while acting in the ordinary course of the profession of a public accountant;
- (g) a corporation authorised under a law of the Parliament of the Commonwealth to carry on the business of—
 - (i) insurance; or
 - (ii) banking;
- (h) a stockbroker within the meaning of the Securities Industry Act, 1970, while acting in the ordinary course of the business of a stockbroker within the meaning of that Act;
- (i) a trustee company within the meaning of the Trustee Companies Act, 1964;
- (j) a society registered under the Friendly Societies Act, 1912, a building society registered under the Co-operation Act, 1923, a society

or

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or association registered under the No. 105, 1974 Permanent Building Societies Act, 1967, or a society mentioned in the Second Schedule to the Co-operation Act, 1923; or

- (k) any person who is an employee of a person referred to in paragraphs (c) to (j), while acting in the ordinary course of that employment;

“register” means the Finance Brokers Register required to be kept under section 62.

61. The requirements imposed by this Part on finance brokers do not, until the expiration of a period of one month beginning on the date of the commencement of section 4 (i) of the Commercial Transactions (Miscellaneous Provisions) Act, 1974, apply to finance brokers who, immediately before the commencement of that period, were carrying on the business of finance brokers. Postponement of operation of this Part in respect of certain finance brokers.

62. (1) The Commissioner of Police shall, for the purposes of this Part, keep in such form as he thinks fit a register, to be called the “Finance Brokers Register” in which he shall cause to be entered the names specified in notices lodged with him under section 63 and the address or addresses so specified in respect of each of those names. Finance Brokers Register.

(2) The register shall be available for perusal by any member of the public at any reasonable time on payment of the prescribed fee.

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Registration
of names
and
business
addresses of
finance
brokers.

63. A person who carries on, or proposes to carry on, the business of a finance broker may lodge with the Commissioner of Police a notice specifying as the name under which he carries on, or proposes to carry on that business—

- (a) his name, the name of a partnership of which he is a member or the name registered under any Act for the time being in force relating to the registration of business names under which he carries on, or proposes to carry on, that business; and
- (b) each address (being an address in New South Wales) in respect of that name at which he carries on, or proposes to carry on, that business.

Notice of
cessation
of carrying
on business
at registered
address or
as finance
broker.

64. (1) A finance broker who has ceased to carry on the business of a finance broker at any address registered in the register shall, within fourteen days of so ceasing, lodge with the Commissioner of Police a notice stating that he has so ceased.

Penalty : \$200.

(2) A person who, at any time after lodging with the Commissioner of Police a notice referred to in section 63, ceases to carry on the business of a finance broker shall, within fourteen days of so ceasing, lodge with the Commissioner of Police a notice stating that he has so ceased.

Penalty : \$200.

(3) Upon receipt of a notice referred to in subsection (1) or (2) the Commissioner of Police shall delete from the register the address or the name of the finance broker, as the case may be.

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65. The Commissioner of Police may, by notice No. 105, 1974 in writing, send by post to any person, partnership or firm, whose name is entered in the register, requiring him or it to inform the Commissioner of Police in writing within fourteen days after the date of the notice, whether or not that person, partnership or firm is carrying on the business, or proposes to carry on the business, of a finance broker at the address or addresses appearing in the register in respect of that person, partnership or firm and if that person, partnership or firm—

Deletion of names and business addresses from the register.

- (a) does not comply with that requirement, the Commissioner of Police may delete from the register the name of that person, partnership or firm and the addresses appearing in the register of that person, partnership or firm; or
- (b) informs the Commissioner of Police that he or it is no longer carrying on the business, and does not propose to carry on the business—
 - (i) of a finance broker, the Commissioner of Police may delete from the register the name of that person, partnership or firm and the address or addresses appearing in the register of that person, partnership or firm; or
 - (ii) of a finance broker at a specified address, but is carrying on, or proposes to carry on, that business at any other address appearing in the register in respect of that person, partnership or firm, the Commissioner of Police may delete from the register that specified address.

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Finance
brokers not
to carry on
business
except under
registered
name and at
registered
address.

66. A finance broker shall not carry on the business of a finance broker—

- (a) except under his name, the name of a partnership of which he is a member or a name under which he carries on business and which is registered under any Act for the time being in force for the registration of business names and unless that name appears in the register; or
- (b) except at an address in respect of that name appearing in the register as his place of business.

Penalty : \$10 for each day on which the offence occurs.

Publication
of name
and business
address of
finance
broker in
advertisements.

67. A finance broker shall not publish or cause to be published, whether in a newspaper or otherwise, an advertisement relating to or in connection with his business as a finance broker without specifying therein—

- (a) a name appearing in the register, being his name, the name of the partnership of which he is a member or a name under which he carries on business and which is registered under any Act for the time being in force relating to the registration of business names; and
- (b) the address of a place of business appearing in the register in respect of that name.

Records
to be kept
by finance
brokers.

68. (1) A finance broker shall, not later than the time which is immediately after he enters into any transaction as a finance broker, make in a

legible

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legible manner a written record containing full particulars of that transaction. No. 105, 1974

Penalty : \$200.

(2) A finance broker shall preserve any record made by him under subsection (1) for a period of at least three years after the date of the transaction.

Penalty : \$200.

(3) A finance broker, upon being requested at any reasonable time by the Commissioner for Consumer Affairs, an officer of the Consumer Affairs Bureau authorised in writing by the Commissioner for Consumer Affairs generally or in a particular case or a member of the police force of or above the rank of sergeant, shall produce any record made by him under subsection (1) for inspection by the person making the request.

Penalty : \$200.

(4) An entry in any written record kept at the place of business of a finance broker shall be deemed, unless the contrary is proved, to have been made by or with the authority of the finance broker.

69. (1) A finance broker shall not demand, receive or accept any commission in respect of negotiating, or acting as intermediary for the obtaining of, a loan or credit on behalf of another person unless—

Restriction of right of finance broker to demand, receive or accept commission.

(a) his engagement or appointment to act as a finance broker is in writing signed by the person charged or to be charged with the payment of the commission; and

(b)

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- (b) that written engagement or appointment contains particulars of the amount of the loan or credit to be obtained, the maximum amount of interest or other charges to be paid in respect of the loan or credit and the term of the loan or credit.

Penalty : \$500.

(2) A finance broker shall not—

- (a) demand, receive or accept any commission in respect of negotiating, or acting as intermediary for the obtaining of, a loan or credit on behalf of another person, which is not authorised by the regulations;
- (b) demand, receive or accept any commission before he secures the loan or credit in respect of which the commission is charged; or
- (c) demand, receive or accept any commission in respect of any loan or credit which—
- (i) is for an amount less than the amount specified in the terms of his written engagement or appointment;
 - (ii) is at a rate of interest or for a charge greater than the rate or charge specified in the terms of his written engagement or appointment; or
 - (iii) is for a term less than the term specified in the written engagement or appointment.

Penalty : \$500.

(3)

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(3) In any proceedings for an offence ^{No. 105, 1974} arising under subsection (1) or (2) the court, if it finds the finance broker guilty of the offence and whether or not it proceeds to conviction, may order the finance broker to refund any amount received or accepted by him in contravention of subsection (1) or (2), together with interest at such rate as is fixed by the court, not exceeding 8 per centum per annum, from the time of the receipt or acceptance of the amount until the time it is refunded.

(4) Nothing in this section prohibits a finance broker who has been engaged or appointed in writing to act as a finance broker from demanding, receiving or accepting at any time an amount equal to the estimated cost (estimated on the basis of the valuation fees prescribed as the maximum fees for valuations) of obtaining a valuation of any security offered for any proposed loan or credit and any amount so paid shall be held in trust by the finance broker to pay the costs of that valuation and to repay the balance of any such amount to the person who paid the amount to him.

70. A finance broker shall not by any false, misleading or deceptive statement, representation or promise or by any dishonest concealment of material facts induce, or attempt to induce, a person to enter into an agreement or contract for or with respect to any loan or the provision of any credit. ^{Misrepresentation.}

Penalty : \$500 or imprisonment for 3 months, or both.

71. Where a person who is guilty of an offence against this Part is a corporation, any person being a chairman, member of the governing body, director, manager, secretary or officer of the corporation ^{Liability of directors, etc., of corporations.}

shall

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shall be deemed to have committed the like offence and be liable accordingly to the pecuniary penalty or imprisonment provided by this Act in the case of such an offence by a person other than a corporation, unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

Re-opening
of finance
brokers'
trans-
actions.

72. (1) Where—

- (a) proceedings are taken in any court by a finance broker for the recovery of money in respect of a transaction entered into by him in the course of his business as a finance broker; or
- (b) an application is made by any person who has entered into a transaction with a finance broker in respect of a transaction relating to the business of a finance broker, to any court in which proceedings might be taken for the recovery of an amount not exceeding the amount of the commission of the finance broker under that agreement or contract,

and it appears to the court that the commission charged by the finance broker in respect of the transaction is excessive, the court may re-open the transaction.

(2) In any proceedings referred to in subsection (1) the onus of proving that the commission charged by the finance broker in respect of the transaction concerned is not excessive lies upon the finance broker, unless the commission is at a rate equal to or less than that prescribed by the regulations in respect of the class of transactions to which that transaction belongs.

(3)

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(3) A court re-opening any transaction ^{No. 105, 1974} under this section may, notwithstanding any statement or settlement of accounts or any contract purporting to close previous dealings and create a new obligation, re-open an account already taken by the parties to the transaction and relieve the person liable under the contract to pay the commission and any guarantor of that person of any liability in excess of such amount as the court adjudges to be fairly and reasonably payable for the services rendered or to be rendered by the finance broker (including any expenses reasonably and necessarily incurred) and may—

- (a) set aside either wholly or in part or revise or alter any agreement or contract made or security given in connection with the transaction;
- (b) give a verdict or judgment for any party for such amount as, having regard to the relief, if any, that the court thinks fit to grant, is justly due to that party; and
- (c) make such other orders as the court thinks necessary or proper for the purposes of this section.

5. The Credit-sale Agreements Act, 1957, is amended— ^{Amendment of Act No. 29, 1957.}

- (a) (i) by omitting from section 8 (1) the words “of the purchase-price of the goods” and by inserting instead the words :— ^{Sec. 8. (Requirements relating to credit-sale agreements.)}
 - specifying—
 - (a) the purchase-price of the goods; and
 - (b) as a rate per centum per annum the charges referred to in subsection (2);

(ii) by omitting from section 8 (2) (b) (v) the word “and” where secondly occurring;

(iii)

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(iii) by omitting from section 8 (2) (b) (vi) the word "agreement" and by inserting instead the following words and paragraph :—

agreement; and

(vii) as a rate per centum per annum the charges payable;

(iv) by inserting after section 8 (2) the following subsection :—

(2A) A credit-sale agreement does not comply with subsection (2) (b) (vii) unless the rate per centum per annum specified in it in accordance with subsection (2) (b) (vii) is not less than the rate calculated in accordance with whichever formula specified in the Schedule is applicable.

Sec. 10.
(Credit-sale agreements to have regular payments of equal amount.)

(b) by inserting after section 10 (1) the following subsection :—

(1A) Where an instalment differs from any other instalment by a sum in excess of two dollars, the instalment shall, for the purposes of subsection (1), be taken to be not of approximately equal amounts.

Sec. 11.
(Limitation on additional charges.)

(c) by omitting section 11;

Sec. 13.
(Special provisions for add-on agreements.)

(d) by omitting section 13 (3) (b) (ii);

(e)

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- (e) by inserting after section 14 the following **No. 105, 1974**
Schedule :— **Schedule.**

SCHEDULE.

Sec. 8 (2A).

The rate per centum per annum to be specified in the agreement shall be calculated in accordance with whichever of the following formulae is applicable:—

- (a) where the agreement provides for weekly instalments—

$$R = \frac{10,400 \times (ny - P)}{P \times (n + 1)}$$

- (b) where the agreement provides for fortnightly instalments—

$$R = \frac{5,200 \times (ny - P)}{P \times (n + 1)}$$

- (c) where the agreement provides for monthly instalments—

$$R = \frac{2,400 \times (ny - P)}{P \times (n + 1)}$$

where—

R represents the rate per centum per annum calculated to two decimal places;

P represents the difference between the purchase-price of the goods and the amount of the deposit provided by the buyer in connection with the agreement;

y represents the amount of each instalment payable under the agreement or, where the instalments are not of equal amounts, the amount of the larger or largest instalment payable under the agreement;

n represents the number of instalments payable under the agreement.

6. The Life, Fire, and Marine Insurance Act, 1902, is amended— **Amendment of Act No. 49, 1902.**

- (a) (i) by omitting from section 1 the words “Life, Fire, and Marine”; **(Short title and division of Act.)**

(ii)

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(ii) by inserting at the end of section 1 the following matter :—

PART VI.—Miscellaneous.

Part VI.

(b) by inserting after section 17 the following Part :—

PART VI.

Miscellaneous.

Powers of court in relation to insurance contracts.

18. (1) In any proceedings taken in a court in respect of a difference or dispute arising out of a contract of insurance, if it appears to the court that a failure by the insured to observe or perform a term or condition of the contract of insurance may reasonably be excused on the ground that the insurer was not prejudiced by the failure, the court may order that the failure be excused.

(2) Where an order of the nature referred to in subsection (1) has been made, the rights and liabilities of all persons in respect of the contract of insurance concerned shall be determined as if the failure the subject of the order had not occurred.

Insured not bound to arbitrate.

19. A provision in a contract of insurance or other contract or agreement, being a provision with respect to the submission to arbitration of any matter arising out of the contract of insurance, does not bind the insured except where the provision is contained in a contract or agreement, entered into after a difference or dispute has arisen between the insurer and the insured, providing for the submission to arbitration of that difference or dispute.

Repairs to motor vehicle carried out by insurer.

20. In any proceedings arising out of a difference or dispute with respect to—

(a) the materials used in carrying out repairs;
or

(b)

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(b) the manner of carrying out repairs,

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to a motor vehicle, which repairs were carried out by the insurer under a policy of insurance relating to that motor vehicle or by a company which is a subsidiary company or by a related company within the meaning of the Companies Act, 1961, of the insurer, the onus lies upon the insurer of proving that the materials used were proper materials or that the repairs were properly carried out, as the case may be, notwithstanding any acknowledgment as to the materials or the manner of carrying out the repairs given by the insured.

21. The Governor may make regulations not inconsistent with this Act exempting, subject to such terms and conditions as are specified in the regulations—

Exemption.

- (a) persons belonging to any class of persons; or
- (b) contracts of insurance included in any class of contracts of insurance.

specified in the regulations from all or any of the provisions of this Part as may be so specified in respect of that class of persons or that class of contracts of insurance.

7. The Sale of Goods Act, 1923, is amended—

Amend-
ment of
Act No. 1,
1923.

- (a) (i) by omitting from the matter relating to Part VII in section 2 the figures "60" and by inserting instead the figures "61";

Sec. 2.
(Division
of Act.)

- (ii) by inserting in section 2 after the matter relating to Part VII the following matter :—

PART VIII.—CONSUMER SALES—ss. 62–64.

(b)

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(b) by inserting after section 61 the following Part :—

Part VIII.

PART VIII.

CONSUMER SALES.

Interpre-
tation.

62. In this Part, “consumer sale” means a sale of goods (other than a sale by auction) by a seller in the course of a business where the goods—

- (a) are of a kind commonly bought for private use or consumption; and
- (b) are sold to a person who does not buy or hold himself out as buying them in the course of a business.

Onus of proving that a sale is not a consumer sale.

63. In any proceedings arising out of a contract for a consumer sale, the onus of proving that the sale is not a consumer sale lies upon the party so contending.

Conditions and warranties in contracts for consumer sales.

64. (1) Any provision in, or applying to, a contract for a consumer sale and purporting to exclude or restrict the operation of all or any of the provisions of sections 18, 19 and 20 (section 19 (4) excepted) or any liability of the seller for a breach of a condition or warranty implied by any provision of those sections is void.

(2) An express warranty or condition in a contract for a consumer sale does not negative a condition as to merchantable quality implied by this Act.

(3) Without limiting the meaning of the expression “merchantable quality”, goods of any kind which are the subject of a contract for a consumer sale are not of merchantable quality if they

are

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are not as fit for the purpose or purposes for which No. 105, 1974
goods of that kind are commonly bought as is
reasonable to expect having regard to their price, to
any description applied to them by the seller and
to all other circumstances.

(4) In a contract for a consumer sale there is no implied condition that the goods are of merchantable quality as regards defects brought to the buyer's notice before the contract was entered into.

(5) Where, in any proceedings arising out of a contract for a consumer sale (not being a consumer sale of second-hand goods), it appears to the court that the goods, at the time of their delivery to the buyer, were not, by reason of any defect in them or for that and any other reason, of merchantable quality, the court may add the manufacturer of the goods as a party to the proceedings and, if of the opinion that the defect should be remedied by the manufacturer, may make against him either—

- (a) an order requiring the manufacturer to pay to the buyer an amount equal to the estimated cost of remedying the defect; or
- (b) an order requiring the manufacturer to remedy, within such time as may be specified in the order, the defect and, in default of compliance with that order, require the manufacturer to pay to the buyer an amount equal to the estimated cost of remedying the defect,

and may make such other ancillary orders against the manufacturer as to the court seem proper.

(6)

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(6) In subsection (5), “manufacturer”, in relation to any goods the subject of proceedings referred to in that subsection, includes a person who resides or carries on business in the Commonwealth and who received those goods from outside the Commonwealth otherwise than from a person who resides or carries on business in the Commonwealth.

(7) The jurisdiction of a court to make an order in any proceedings referred to in subsection (5) is limited as to amount to the same extent as if proceedings in respect of the defect had been taken in that court by the buyer against the person liable for the remedying of the defect.

(8) An order made by a court under subsection (5) (a) or (b) has effect as if it were a judgment of that court.

(9) In any legal proceedings for breach of the condition of merchantable quality implied pursuant to this Act in a consumer sale relating to second-hand goods, the liability of the seller is, subject to any contrary agreement, limited to the amount of the cash price of the goods in respect of which the condition is adjudged to be in breach.

Amendment
of Act No.
36, 1967.

8. The Door-to-Door Sales Act, 1967, is amended—

Sec. 3.
(Credit
purchase
agreement
or offer
to be in
writing,
etc.)

(a) (i) by omitting from section 3 (1) (c) the words “and notice appended thereto, in the form of the Schedule to this Act” and by inserting instead the words “in the form of Part 1 of the Schedule and a notice in the form of Part 2 of the Schedule, contained in separate documents”;

(ii)

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(ii) by omitting from section 3 (1) (c) the words ^{No. 105, 1974} "purchaser at the time when the agreement or offer is made" and by inserting instead the following word and subparagraphs :—

purchaser—

(i) except as provided by subparagraph (ii), before the agreement or offer is made; or

(ii) in the case of an agreement made by way of acceptance by the vendor of a written offer signed by or on behalf of the purchaser, before the written offer was so signed;

(iii) by omitting from section 3 (2) (b) (ii) the words "and notice appended thereto, in the form of the Schedule to this Act" and by inserting instead the words "in the form of Part 1 of the Schedule and a notice in the form of Part 2 of the Schedule, contained in separate documents";

(iv) by omitting from section 3 (2) (b) the words "at the time when" and by inserting instead the word "before";

(v) by inserting at the end of section 3 the following subsection :—

(5) For the purposes of this section, a credit purchase agreement, a statement and notice referred to in this section or any part of such an agreement, statement or notice (not being the signature or initials of any person)—

(a) that is in handwriting that is not clear and legible; or

(b)

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(b) that is printed or typewritten in a size less than the face measurement of the type known as ten-point Times new Roman,

shall be deemed not to be in writing.

Sec. 4.
(Power to terminate certain credit purchase agreements and offers.)

- (b) (i) by omitting from section 4 (1) the words "the Appendix in" and by inserting instead the words "Part 2 of";
- (ii) by omitting from section 4 (2) the word "five" and by inserting instead the word "ten";

Schedule.

- (c) (i) by inserting in the Schedule next before the word "STATEMENT" where firstly occurring the matter "PART 1";
- (ii) by omitting from the Schedule the words "the Appendix to this statement" and by inserting instead the words "Part 2 of this Schedule";
- (iii) by omitting from the Schedule the words "the Appendix" where secondly occurring and by inserting instead the words "that notice";
- (iv) by omitting from the Schedule the word "five" wherever occurring and by inserting instead the word "ten";
- (v) by omitting from the Schedule the words "given to you" where firstly occurring and by inserting instead the following words :—

given to you.

The vendor's address for the service of notices or the return of goods is **.....
.....

(vi)

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(vi) by omitting from the Schedule the word ^{No. 105, 1974} "APPENDIX" where thirdly occurring and by inserting instead the matter "PART 2";

(vii) by omitting from the Schedule the words "that period." and by inserting instead the following words :—

that period.

** Insert address.