

Layby Sales Act 1971

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

Note

This Act is administered in the Ministry of Commerce

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

1 Short Title

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.

2 Interpretation

In this Act, unless the context otherwise requires,—

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

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.

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—

- (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
- (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

- (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;

but a contract of sale of goods to be delivered by instalments, where the whole of the purchase price of each instalment is payable at the time that instalment is delivered, is not a layby sale.

- (2) Where, by virtue of 2 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.

Compare: 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—

- (a) The purchase price exceeds \$7,500; 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 Sales Act 2003 and the seller is a motor vehicle trader registered under that Act.

Paragraph (a) was amended, as from 15 November 2000, by section 3 Layby Sales Amendment Act 2000 (2000 No 70) by substituting the expression “\$7,500” for the expression “\$1,000”.

Paragraph (b) was amended by substituting the reference to the “Motor Vehicle Dealers Act 1975” for the repealed “Motor Vehicle Dealers Act 1958”.

Paragraph (b) was amended, as from 15 December 2003, by section 145 Motor Vehicle Sales Act 2003 (2003 No 12) by substituting the words “Motor Vehicle Sales Act 2003 and the seller is a motor vehicle trader registered” for the words “Motor Vehicle Dealers Act 1975 and the seller is a dealer licensed”. See sections 148 to 162 of that Act as to the transitional provisions. See clause 2 Motor Vehicle Sales Act Commencement Order 2003 (SR 2003/329).

5 Act to bind the Crown

This Act shall bind the Crown.

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.

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—
 - (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
 - (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
 - (d) The amount 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
 - (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.

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

Compare: 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:

- (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 sale is cancelled, exceeds the purchase price and an amount 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 a debt due and payable by him to the buyer:
 - (b) If the purchase price and an amount sufficient to recoup the seller for his selling costs in respect of the layby sale exceeds 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 sale is cancelled, the seller shall be entitled, subject to subsection (3) of this section, 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.
- (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 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 shall not exceed the amount of the deposit.
- (4) Where a layby sale of specific goods is cancelled within one 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) Nothing in this section shall apply in respect of any layby sale under which the purchase price does not exceed \$5.

Compare: Lay-by Sales Act 1943, s 10 (New South Wales)

10 Completion on liquidation, bankruptcy, or receivership of seller

- (1) If on the liquidation 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.
- (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 2 or more buyers agreed to purchase on the same day priority between them shall be determined by lot.
- (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 filing of the petition on which the seller is adjudged bankrupt, the commencement of the winding up, or the appointment; or
 - (b) He is an officer or employee of the seller or the spouse, civil union partner, or de facto partner of such an officer or employee.
- (4) If any buyer makes any payment on account of the purchase price after the commencement of the bankruptcy or liquidation or the 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.

Subsections (1) and (4) were amended, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16) by substituting the word “liquidation” for the words “winding up”.

Subsection (3)(b) was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by inserting the words “, civil union partner, or de facto partner” for the word “spouse”.

11 Preference on *liquidation*, bankruptcy, or receivership of seller

- (1) If, on the liquidation 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 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 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 the kind of security interest described in subsection (1A).
- (1A) The kind of security interest referred to in subsection (1) is a security interest that—
 - (a) is over all or any part of the seller’s accounts receivable and inventory or all or any part of either of them; and
 - (b) is not a purchase money security interest; and
 - (c) does not arise from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).
- (2) Debts to which priority is given by subsection (1) of this section shall—
 - (a) Be paid in accordance with the requirements of section 286 and Schedule 8C to the Companies Act 1955, or section 312 and Schedule 7 to the Companies Act 1993, or section 30 of the Receiverships Act 1993, as the case may be; and

- (b) For the purposes of section 104 of the Insolvency Act 1967, rank after debts which are to be paid in the 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 10 of this Act.
- (4) In subsection (1), the terms **account receivable**, **inventory**, **new value**, **purchase money security interest**, and **security interest** have the same meanings as in the Personal Property Securities Act 1999.
- (5) The provisions of this section, as in force immediately before the commencement of the Personal Property Securities Act 1999, continue to apply in respect of a seller's property that was subject to a floating charge that, before the commencement of that Act, became a fixed or specific charge.

Subsection (1) was amended, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16) by substituting the word "liquidation" for the words "winding up".

Subsection (1) was further amended, as from 1 May 2002, by section 191(1) Personal Property Securities Act 1999 (1999 No 126) by substituting the words "the kind of security interest described in subsection (1A)" for the words "a floating charge". See also Part 12 of that Act for transitional provisions.

Subsection (1A) was inserted, as from 1 May 2002, by section 191(1) Personal Property Securities Act 1999 (1999 No 126). See also Part 12 of that Act for transitional provisions.

Subsection (2) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Subsections (4) and (5) were inserted, as from 1 May 2002, by section 191(1) Personal Property Securities Act 1999 (1999 No 126). See also Part 12 of that Act for transitional provisions.

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 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. 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 District Court.
- (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.
- (5) Notwithstanding anything in the foregoing provisions of this section, a District 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.
- (6) This section does not apply to notices or other documents served in any proceedings in any Court.

Subsections (3) and (5) were amended, as from 1 April 1980, pursuant to section 18(2) District Courts Amendment Act 1979 (1979 No 125), by substituting the references to the "District Court" for references to the "Magistrates' 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.
- (2) Nothing in this Act shall prevent any layby sale from having effect according to its tenor in so far as the terms of that sale are more favourable to the buyer than the terms that the buyer would enjoy by virtue of the provisions of this Act.
- (3) 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.

15 Savings

Nothing in this Act shall derogate from the provisions of the Door to Door Sales Act 1967.

Section 15 was amended, as from 1 August 1972, by substituting the reference to the “Hire Purchase Act 1971” for the repealed “Hire Purchase Agreements Act 1939”.

Section 15 was amended, as from 1 April 2005, by section 139 Credit Contracts and Consumer Finance Act 2003 (2003 No 52) by omitting the words “and the Hire Purchase Act 1971”. See sections 141 to 143 of that Act as to the transitional provisions.