

DOOR TO DOOR (SALES).

No. 98 of 1973.

AN ACT to amend the Door to Door (Sales) Act, 1964.

[Assented to 27th December, 1973.]

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

1. (1) This Act may be cited as the *Door to Door (Sales) Act Amendment Act, 1973.* Short title and citation.

(2) In this Act the Door to Door (Sales) Act, 1964 is referred to as the principal Act. Act No. 107 of 1964.

(3) The principal Act as amended by this Act may be cited as the Door to Door (Sales) Act, 1964-1973.

S. 2
amended.

2. Subsection (1) of section 2 of the principal Act is amended—

- (a) by adding after the definition “credit purchase agreement”, a definition as follows—

“dealer” in relation to a credit purchase agreement means a person, not being the vendor under the agreement or an agent or servant of the vendor, by whom or on whose behalf any negotiation, transaction or dealing leading to the entering into or making of the agreement is carried on or arranged, and includes the servant or agent of that person; ;

- (b) by adding after the definition “hiring agreement”, a definition as follows—

“permitted hours” means—

- (a) the period between the hours of half past eight o'clock in the forenoon and noon on any day other than a Sunday or public holiday; and
- (b) the period between the hours of noon and half past five o'clock in the afternoon on any day other than a Saturday, Sunday or public holiday; and

- (c) by substituting for the definition “vendor”, a definition as follows—

“vendor” in relation to a credit purchase agreement means the person by whom or on whose behalf goods are bailed or sold under the agreement, and includes the servant or agent of that person. .

3. Section 3 of the principal Act is amended— S. 3 amended.

- (a) by deleting the words “by the owner” in line five; and
- (b) by adding after the word “vendor” in line thirteen, the words “or dealer”.

4. The principal Act is amended by adding after section 3 a section as follows— S. 3A added.

3A. Notwithstanding that the requirements of section three of this Act are complied with in relation to a credit purchase agreement made at the place of residence of the purchaser or bailee, that agreement shall be unenforceable unless it is made—

Credit purchase agreements to be made during certain hours.

- (a) during the permitted hours;
- (b) in the course of an uninterrupted negotiation that commenced during the permitted hours; or
- (c) in the course of a negotiation that takes place as a result of the purchaser making an unsolicited request that the vendor or dealer should call at his residence for the purpose of entering into that negotiation or continuing a negotiation entered into within permitted hours.

5. Subsection (1) of section 4 of the principal Act is amended by substituting for the words “the last preceding section” in lines nine and ten, the words “section three of this Act”. S. 4 amended.

6. Section 5 of the principal Act is repealed and the section is re-enacted as follows— S. 5 repealed and re-enacted.

5. (1) Where a notice of termination is given pursuant to section four of this Act the agreement shall be deemed to have been rescinded by mutual consent and there shall also be deemed to have been a total failure of consideration in respect of the agreement.

Rights and obligations of parties where agreement terminated or unenforceable.

(2) If a vendor or dealer has accepted or received from a purchaser or bailee any moneys or other property—

- (a) under or in relation to a credit purchase agreement that is, pursuant to section three or section three A of this Act, unenforceable; or
- (b) under or in relation to a credit purchase agreement that is terminated pursuant to section four of this Act,

the purchaser or bailee may demand that the vendor or dealer, as the case may be,—

- (c) repay or redeliver the moneys or other property to him; or
- (d) in the case of property other than money, pay to him an amount equivalent to the monetary value of the property as at the time it was accepted or received by the vendor or dealer, as the case may be,

and may sue for and recover the money, property or amount so demanded.

(3) If goods have been delivered to a purchaser or bailee by a vendor or dealer—

- (a) under a credit purchase agreement that is, pursuant to section three or section three A of this Act, unenforceable; or
- (b) under a credit purchase agreement that is terminated pursuant to section four of this Act whether those goods were so delivered before or after the agreement was so terminated,

the purchaser or bailee—

- (c) shall deliver up those goods to the vendor or dealer at the place where those goods were delivered to him upon demand by the vendor or dealer; and

- (d) shall be liable to pay compensation to the vendor for any damage done to the goods whilst the goods have been in his custody other than damage arising from the normal use of the goods or loss or damage arising from circumstances beyond his control,

and the goods so demanded, or that compensation, or both, may be sued for and recovered by the vendor.

(4) A vendor or dealer who fails to repay or redeliver any moneys, or property, or to pay any amount, when demanded to do so pursuant to subsection (2) of this section is guilty of an offence and, without prejudice to the right of the purchaser or bailee to recover the moneys, property or amount by action in a court of competent jurisdiction, liable to a penalty of not more than two hundred dollars.

(5) A purchaser or bailee who, without reasonable excuse, fails to deliver up any goods when demanded to do so pursuant to subsection (3) of this section is guilty of an offence and, without prejudice to the right of the vendor to recover the goods or compensation for their loss by action in a court of competent jurisdiction, liable to a penalty of not more than two hundred dollars. .

7. Section 6 of the principal Act is amended by adding after the word "vendor" in line eight, the words "or dealer". S. 6
amended.

8. Section 7 of the principal Act is amended— S. 7
amended.

- (a) by adding after the word "place" in the last line of paragraph (b) of subsection (1), the words "or at any particular time or on any particular day"; and

- (b) by substituting for the words “vendor under the agreement” in lines four and five of subsection (2), the passage “vendor, dealer and every person who acts on behalf of the vendor in connection with or in the course of any negotiation, transaction or dealing leading to the making of the agreement”.

S. 7A
added.

9. The principal Act is amended by adding after section 7 a section as follows—

Door to
door selling
prohibited
during
certain
hours.

7A. (1) Any person who at any time other than a time during the permitted hours calls at, enters or attempts to enter the place of residence of another person—

(a) for the purpose of—

- (i) soliciting an offer to enter into a credit purchase agreement; or
- (ii) taking part in any negotiation, transaction or dealing relating to, or intended to lead to the making of a credit purchase agreement; or

(b) for the purpose of—

- (i) selling or bailing or offering to sell or bail any goods;
- (ii) displaying or exhibiting any goods which are available for sale or bailment or providing any information relating to any such goods; or
- (iii) taking orders for goods or requests for the demonstration or delivery on approval of goods,

shall be guilty of an offence against this Act.

Penalty: Two hundred dollars.

(2) In proceedings for an offence against subsection (1) of this section it is a defence for the defendant to prove that he called at, entered or attempted to enter the residence at which the offence is alleged to have taken place as a result of an unsolicited request that he should do so made by a person who resided there. .
