

CONSUMER PROTECTION ACT 1991

ENACTED BY THE PARLIAMENT

(Signed by the King; countersigned by the Minister of Economic Affairs, the Minister of Justice and the Secretary of State for the Middle Classes)

14 July 1991

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THE ACT

Act of 14 July 1991 on trade practices and consumer information and protection.

BAUDOUIN,King of the Belgians,

To all,now and in the future,greetings.

The Chambers have adopted and We sanction the following:

CHAPTER I General Definitions

Section 1

For the application of this Act,the following definitions apply:

- 1. Products: tangible movable goods;
- 2. Services: the supply of any work which constitutes a commercial transaction or a skilled trade covered by the Skified Trades Register Act;
- 3. Homogeneous services: all service having identical or similar characteristics and procedures, irrespective of the time or place of performance,the supplier of the services of the person for whom they are intended;
- 4. Labelling: the particulars,information,instructions for use,product brands,pictures or signs relating to a homogeneous product or service and appearing on the product itself or on any wrapping, document, notice, label, band or collar accompanying the product or service or referring to it;
- 5. Placing on the market: importing with a view to sale,keeping with a view to sale,offering for sale,sellingoffering to hire out products and services, the hiring-out

of products and services, transfer in return for payment or free of charge, where these operations are carried out by a seller;

6. Seller:

- (a) any dealer or tradesman and any natural or legal person who offers for sale or sells products or services on the course of trade or with a view to attaining its commercial objects;
- (b) public organisations or legal persons in which the State holds a preponderant interest, which pursue a commercial, financial or industrial activity and which offer for sale or sell products or services;
- (c) persons who pursue a commercial, financial or industrial activity with or without a view to profit, whether in their own name or in the name or for the account of a third party, who may or may not be a legal person, and who offer for sale or sell products or services;

7. Consumer: any person who acquires or uses for purposes other than those of their trade products or services which are placed on the market;

8. The Minister: the Minister responsible for economic affairs.

This Act shall not apply to transferable securities and other financial instruments covered by the legislation concerning financial transactions and financial markets.

CHAPTER II

Consumer Information

PART 1 Notification of price

Section 2

(1) Except in the case of an auction sale, any seller offering products for sale to consumers must show the price thereof unambiguously in writing.

Where products are displayed for sale, the price must also be shown legibly and conspicuously.

(2) Any seller offering services to consumers must show a written tariff which is legible, conspicuous and unambiguous.

Section 3

(3) The price or tariff shown must be the overall price or tariff to be paid by the consumer, including value added tax and all other taxes, as well as the cost of all services for which the consumer is required to make an additional payment.

Section 4

Prices and tariffs shall be shown at least in Belgian francs.

Section 5

Every indication of a reduction in price or tariff which is expressed as an amount or percentage of reduction shall be indicated:

- (a) either by showing the new price beside the former price crossed out with a line;or
- (b) by the words 'new price' and 'old price' beside the respective amounts;or
- (c) by showing a percentage reduction and the new price beside the former price with a line through it;or
- (d) by showing the uniform percentage reduction allowed on the products and services or classes of products and services concerned by the notice.In both cases the notice must state whether the reduction has or has not been effected.

Under no circumstances shall a reduction in the price of a product or service be presented to consumers as a free offer of a quantity of the product or of part of the service.

Section 6

For products and services or classes of products and services which he shall determine, the King may:

- 1. prescribe particular means of showing prices, announcements of reductions and price comparisons;
- 2. waive the obligation to indicate prices conspicuously in the case of display for sale;
- 3. specify,for the services or classes of services which do not meet the definition fo homogeneous services, the cases in which and conditions under which a prior estimate must be delivered to the consumer,provided that such estimate is requested and that the seller is prepared to supply the service.

PART 2 Notification of quantdes

Section 7

For the application of this section,the following definitions apply:

- 1. Products sold loose: products which are measured or weighed only in the presence of the buyer or by him;
- 2. Products sold by the piece: products which cannot be divided up without changing their nature of properties;
- 3. Prepared products: products which undergo operations for dividing up, weighing, counting or measuring,which may even be carried out in the coure of manufacture, whether or not followed by a packaging operation and which are intended to render these operations unnecessary at the time of sale;
- 4. Prepackaged products: prepared products which are packed, before being presented

for sale, in a packaging of some kind which covers them completely or partly, but in such a way that the contents cannot be changed without the packaging being opened or altered.

The following are covered by this definition:

- (a) products prepackaged in predetermined quantities: products which are prepackaged in such a way that the quantity contained in the packaging corresponds to a value chosen in advance;
 - (b) products prepackaged in variable quantities: products which are prepackaged in such a way that the quantity contained in the packaging does not correspond to a value chosen in advance;
- 5. Unit of measurement: unit corresponding to the definitions of the Act of 16 June 1970 on units, standards and measuring instruments and those in its implementing decrees;
 - 6. Packer: person who actually prepackages products with a view to sale;
 - 7. Preparer: person who prepares products with a view to sale;
 - 8. Nominal quantity of the product which the packaging is deemed to contain.

Section 8

(1) Any prepared product intended for sale must bear on the packaging or, in default thereof, on the product itself, in a legible, conspicuous and unambiguous manner information on its nominal quantity expressed in a unit of measurement.

(2) For products prepared in quantities exceeding 10 kg or 10 l intended to be sold wholesale, the indication of the nominal quantity expressed in a unit of measurement must be shown, either on the packaging or in default, on the product itself in a legible, conspicuous and unambiguous manner, or in the invoice, despatch note or any other document handed over or sent on delivery.

(3) For products delivered in units of loading of more than 10 kg or 10 l, the nominal quantity expressed in a unit of measurement must be shown in a weighing or measuring document which will be handed to the buyer at the time of delivery.

Section 9

The obligation to indicate the nominal quantity rests on the packer or preparer, as the case may be.

Where products are imported, the obligation to indicate the nominal quantity is on the importer.

However, the obligation to show the nominal quantity shall rest with the person who procures the preparation or prepacking, if he gives written notice of his intention to do so to the preparer, packer or importer, as the case may be.

Section 10

Where the nominal quantity has not been shown in accordance with the provisions of section 8(1) of this Act the seller may offer the products for sale to consumers only after showing that quantity expressed in units of measurement legibly, conspicuously and unambiguously on the packaging or, in default, on the product itself or on a notice placed close to the product.

Without prejudice to the application of section 37(2), for products sold loose which are weighed or measured in the presence of the consumer or by him it shall not be necessary to show the quantity.

Section 11

The information provided by the measuring instruments used to determine the quantities of products sold loose must be legible and conspicuous to the consumer.

Section 12

For the products or classes of products designated by Him, the King may:

1. prescribe special methods for showing quantities;
2. waive the obligations imposed by sections 8 to 10;
3. waive the obligation to show the nominal quantity in a unit of measurement and prescribe a different unit of measurement;
4. determine the permissible deviations between the nominal quantity shown and the actual quantity, as well as the methods for monitoring such deviations;
5. specify nominal quantities for the contents and/or the containers of products intended to be placed on the market;
6. require the number of items contained in a prepackaging to be shown and determine the permissible deviations between the number shown and the actual number, as well as the methods for monitoring such deviations.

PART 3 Name, composition and labelling of products and services

Section 13

The particulars which are the subject of the labelling and which are rendered compulsory by this Act, by the decrees implementing it and by the implementation decrees referred to in section 122(2), directions for use and guarantees shall be drawn up at least in the language or languages of the region in which the products are marketed.

Where it is compulsory, the labelling must be used in the form and with the contents laid down in the regulations.

The particulars on the labelling must be conspicuous and legible and clearly

distinguished from advertising.

Under no circumstances shall labelling be designed in such a way that it may be confused with a quality certificate.

Section 14

(1) Without prejudice to the power conferred upon Him in the public health sector, and in order to ensure fair trading or the protection of the consumer, the King may:

- (a) for products or classes of products to be designated by Him, prescribe the labelling and determine the particulars thereon and other features thereof;
- (b) lay down the conditions of composition, constitution, presentation, quality and safety with which the products must comply in order to be able to be placed on the market, whether under a specified name or not;
- (c) prohibit the placing on the market of products under a specified name;
- (d) require the use of a specified name for products which are placed on the market;
- (e) require the addition to the names under which products are placed on the market of signs, words or phrases intended to clarify their meaning;
- (f) prohibit the addition of certain signs, words or phrases to the names under which products are placed on the market.

(2) Before proposing a decree applying the preceding subsection, the Minister shall consult the Council for Consumer Affairs and the Higher Council for the Middle Classes and shall fix the period within which their opinion must be given. On expiry of such period the opinion shall no longer be required.

Section 15

For homogeneous services or classes of homogeneous services, and in order to ensure fair trading or the protection of the consumer, the King may, following the procedure laid down in section 14(2):

- (a) determine what description and general information on the services must be given to consumers and by what means;
- (b) prohibit the placing on the market of services under a specified name;
- (c) require the use of a specified name for services which are placed on the market;
- (d) require the addition to the names under which services are placed on the market of signs, words or phrases intended to clarify their meaning;
- (e) prohibit the addition of certain signs, words or phrases to the names under which services are placed on the market.

Where measures to be taken in execution of this section relate to financial services, such measures shall be proposed jointly by the Minister for Economic Affairs and the Minister of Finance.

CHAPTER III

Designation of Origin

Section 16

For the application of this Act, "designation of origin" means the geographical name of a country, region or locality used to designate a product which originates from it and whose quality and characteristics are due exclusively or essentially to the geographical environment comprising natural and human factors.

Section 17

Without prejudice to the application of any other legislative or regulatory provisions concerning the products, the King may, on a proposal by the Minister for the Middle Classes:

1. specify the names to be regarded as designations of origin applicable to Belgian products other than regional or local names;
2. lay down the conditions to be met by those products in order for them to be made, offered for sale and sold under a particular designation of origin.

The geographical name generally used to designate the type or the get-up of a product shall not in itself constitute a designation of origin.

Section 18

Before proposing any decree in execution of section 17, the Minister for the Middle Classes shall publish in the *Moniteur Beige* a notice specifying the names which he considers may be regarded as designations of origin and inviting any person or association interested to submit his or its observations within one month of such publication.

The Minister for the Middle Classes shall also consult the Chamber of Trade and Commerce set up for the province or provinces from which the products which may be given a designation of origin originate and shall fix the period within which the opinion must be delivered.

Section 19

In order to ensure the proper use of designations of origin recognised pursuant to section 17, the King may:

1. authorise one or more bodies whose task will be to certify by certificates of origin the products sold under a particular designation and the conditions laid down in the royal decree recognising such designation;
2. make the production, offering for sale and sale of products under a particular designation of origin subject to holding an individual or collective certificate of origin issued by an authorised body.

The King shall lay down the conditions and safeguards with which such bodies must comply in order to obtain authorisation, as well as the scale of charges which they are permitted to impose for issuing certificates of origin.

Section 20

It shall be prohibited:

1. to use a name by presenting it as a designation of origin when it has not been recognised as such;
2. to make, offer for sale and sell under a designation of origin products which do not fulfil the conditions laid down with regard to the recognition of such designation;
3. to make, offer for sale and sell under a designation of origin products which are not covered by a certificate of origin when such certificate is required.

Section 21

The wrongful use of a designation of origin shall still be prohibited notwithstanding;

1. the addition of any words whatever to such designation, particularly qualifications such as 'genre', 'type', 'façon' and 'similaire';
2. the fact that the contested designation is said to have been used to indicate the provenance of the product;
3. the use of foreign words where such words are only the translation of a designation of origin or are likely to cause confusion with a designation of origin.

CHAPTER IV

Advertising

Section 22

For the application of this Act, any communication having as its direct or indirect object the promotion of the sale of products or services, including immovables and obligations, shall be regarded as advertising, irrespective of the place or the means of communication used.

Section 23

Without prejudice to other legislative or regulatory provisions of law or delegated legislation, any advertising shall be prohibited if:

1. it contains statements, information or representations likely to cause confusion as to the identity, nature, composition, origin, quantity, availability, method and date of production or the characteristics of a product or the effects on the environment;
‘characteristics’ means the advantage of a product, particularly from the point of view of its properties, its potential uses, the results which may be expected from using it, the conditions on which it can be bought, such as the price or the method of determining it, and the essential characteristics of tests or checks carried out on the product and the services accompanying the purchase;
2. it contains statements, information or representations likely to cause confusion as to the identity, nature, composition, duration, availability, date of supply or characteristics of a service; ‘characteristics’ means the advantages of a service, particularly from the point of view of its properties, the results which may be expected from using it, the conditions on which it can be obtained, such as the price or the method of determining it, and the essential characteristics of tests or checks carried out on the service;
3. it contains statements, information or representations likely to cause confusion as to the identity or qualifications of the seller of a product or service;
4. the seller omits essential information with the aim of causing confusion concerning the same matters as those referred to in indents 1, 2 and 3;
5. it cannot, given its overall effect, including its layout, be clearly distinguished as such and which does not include the word ‘advertisement’ in a manner which is legible, conspicuous and unambiguous;
6. it includes elements disparaging another seller, his products, services or business;
7. it includes comparisons which are deceptive or disparaging or which needlessly entail the ability to identify one or more other sellers;
8. it induces elements likely to cause confusion with another seller, his products, services or business;
9. it relates to an offer of products or services when the seller does not have a sufficient stock or cannot effectively supply the services which should normally be anticipated, having regard to the scale of the advertising;
10. except in the cases referred to in section 56(6), it gives rise to a hope or certainty on the consumer’s part that he has won or may win a product, service or benefit of some kind by the effect of chance.

This prohibition does not apply to:

‘X advertising for authorised lotteries; advertising containing offers; whether free or not, of tickets for authorised lotteries, provided that such

- offers are not coupled with the purchase of other products or services;
11. it encourages an act which must be regarded as contrary to this Act or as an offence under sections 102 to 105 of this Act;
 12. it refers to comparative tests carried out by consumer organisations;
 13. in relation to products or appliances other than medicinal preparations, it refers wrongfully to improvement in the consumer's state of health.

Section 24

(1) Where, pursuant to section 101 of this Act, the Minister or the official commissioned by him under section 113(1), warns an advertiser who is using an advertisement which relates to one or more of the following factual data which are measurable and quantifiable:

- identity;
- quantity;
- composition;
- price;
- origin;
- date of manufacture or use- by date;
- conditions of sale, hire, supply, delivery or guarantee of products or services which are the subject of the advertisement;
- potential uses;
- the availability and existence of the products or services presented; that one or more of such data are likely to cause confusion, the advertiser must prove that such data are correct.

(2) For the data referred to in subsection (1), the advertiser must also furnish such evidence if an action for discontinuance is brought by:

1. the Minister and, as the case may be, the Minister responsible referred to in section 98(2);
2. the other persons referred to in section 98(1) provided that, having regard to the legitimate interests of the advertiser and of any other party to the proceedings, the president of the tribunal de commerce considers that such a requirement is appropriate in view of the circumstances of the particular case.

If the evidence required by the preceding paragraph is not furnished or is deemed insufficient, the president of the tribunal de commerce may regard the factual data as incorrect.

(3) Contracts and conditions for the supply of products and services to consumers may be interpreted particularly in the light of the factual data referred to in subsection (1) and contained in the advertising.

Sectbn 25

All advertising concerning products prepackaged in predetermined quantities must specify the nominal quantity of the contents of the packagings in conformity with the provisions of Chapter II, Part 2, where the advertising refers to the selling price of those products.

Sectbri 26

All advertising referring to a price or a price reduction must state it in conformity with sections 3 and 4 and, as the case may be, section 5 and measures adopted pursuant to section 6(1).

Sectbn 27

An action for discontinuance for failing to comply with section 23 can be brought only against the advertiser using the advertisement complained of.

However, if the advertiser is not domiciled in Belgium and has not designated a responsible person who has his domicile in Belgium, an action for discontinuance may also be brought against:

- the publisher of the written advertisement or the producer of the audiovisual advertisement;
- the printer or the director if the editor or the producer does not have his domicile in Belgium and has not designated a responsible person who has his domicile in Belgium;
- the distributor as well as any person who knowingly contributes to the advertisement producing its effect, if the printer or director does not have his domicile in Belgium and has not designated a responsible person who has his domicile in Belgium.

Section 28

(1) Without prejudice to the powers conferred upon Him under any other statutory provision, the King may, by decree adopted in the Council of Ministers, for such products or services or classes of products or services as He may determine:

1. prohibit or restrict advertising in order to ensure greater protection of the safety of consumers and of the environment;
2. specify minimum particulars in the advertisement in order to ensure better information for consumers.

(2) Before proposing a decree pursuant to subsection (1), the Minister shall consult the Council for Consumer Affairs and fix the period within which its opinion must be

given. On expiry of such period the opinion shall no longer be required.

Section 29

(1) The King shall set up, within the Council for Consumer Affairs and in such manner as He shall determine, a committee with the task of delivering opinions and recommendations concerning advertising and labelling relating to effects on the environment and concerning the preparation of a code of ecological advertising.

(2) Before proposing a decree concerning labelling or advertising relating to effects on the environment pursuant to this Act, the Minister for Economic Affairs shall obtain the opinion of the committee provided for in subsection (1) as well as the Minister responsible for the environment. The Minister for Economic Affairs shall fix the period within which the opinion must be given. On expiry of such period the opinion shall no longer be required.

(3) After the opinion of the committee and on the joint initiative of the Minister for Economic Affairs and the Minister responsible for the environment, the King may lay down a code of ecological advertising.

(4) The King shall determine the composition of the committee. It must include among its members at least two representatives of associations for the protection of the environment.

CHAPTER V

General provisions concerning sales of products and services to consumers

PART 1 Obligation to provide consumer information

Section 30

No later than the time of conclusion of the sale, the seller must in good faith provide the consumer with the correct and necessary information concerning the characteristics of the product or service and the conditions of sale, taking account of the consumer's expressed need for information and of the intended use which is stated by the consumer or is reasonably foreseeable.

PART 2 Unfair terms

Section 31

§ 65 X

For the application of this Act, § 65 X means any term or condition which, on its own or in conjunction with one or more other terms or conditions, creates a clear imbalance between the rights and obligations of the parties.

Section 32

In offers for sale and sales of products and services by a seller to a consumer, terms and conditions or combination of terms and conditions are unfair if they have the object of:

1. providing for an immediate, final commitment by the consumer on signature of the contract, but the seller contracting subject to a condition the fulfilment of which depends on his will alone;
2. causing the price to vary by reference to factors depending on the seller's will alone;
3. granting the seller the right unilaterally to alter the characteristics of the product to be delivered or the service to be supplied, if those characteristics are essential to the consumer or to the use which the consumer intends to make of the product or service, provided at least that the seller is informed of and agrees to such use or that, failing such specification, it was reasonably foreseeable;
4. fixing or altering unilaterally the period for delivering a product to supplying a service;
5. granting the seller the right unilaterally to determine whether the product delivered or service supplied conforms to the contract;
6. prohibiting the consumer from seeking cancellation of the contract if the seller fails to fulfil his obligations;
7. restricting the consumer's right to cancel the contract if the seller, in connection with his guarantee obligation, does not fulfil his obligation to repair the product or does not do so within a reasonable period;
8. compelling the consumer to perform his obligations when the seller has not performed his or is in default in performing them;
9. without prejudice to section 1184 of the Civil Code, authorising the seller to break or alter the contract unilaterally, without compensation for the consumer, except in the case of force majeure;
10. even in the case of force majeure, authorising the consumer to break the contract only in return for the payment of damages;
11. exempting the seller from liability by reason of his own fraud, his own gross negligence or that of his employees or agents, or by reason of any failure to fulfil an obligation constituting one of the fundamental elements of the contract;
12. excluding or curtailing the statutory warranty concerning hidden defects provided for in sections 1641 to 1649 of the Civil Code;
13. fixing an unreasonably short period for notifying the seller of defects;
14. prohibiting the consumer from setting off a debt to the seller against a claim alleged by the seller against him;

15. determining the compensation payable by a consumer who fails to fulfil his obligations, without providing for compensation of the same magnitude by a seller who fails to fulfil his;
16. binding the consumer for an unlimited period without specifying a reasonable period for cancellation;
17. extending the contract for an unreasonable period if the consumer does not cancel it in time;
18. limiting the means of proof which the consumer can use;
19. causing the consumer to waive any ground of claim against the seller in the event of a dispute;
20. enabling the plaintiff, by stating an address for the service of proceedings in the contract, to bring his action before a court other than that designated in section 624, nos. 1,2 and 4, of the Judicial Code, without prejudice to the application of the [E.C.] Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, ratified by the Act of 13 January 1971;
21. fixing the levels of damages claimed in the event of the buyer's failure to fulfil his obligations or delay in execution of the buyer's obligations amount which clearly exceeds the extent of the loss which may be incurred by the seller.

Section 33

(1) Without prejudice to the other sanctions of common law, the court may revoke the terms and conditions as well as the combinations of terms and conditions referred to in section 31.

(2) Without prejudice to the other sanctions of common law, the terms and conditions as well as the combinations of terms and conditions referred to in section 32 shall be void and prohibited.

(3) A consumer may not waive rights established in his favour by this Part.

Section 34

In order to ensure a balance between the rights and obligations of the parties in sales of products or services to consumers or in order to ensure that commercial transactions are fair, the King may, by Order in Council, prescribe or prohibit the use of certain conditions in contracts of sale to consumers for such business sectors or such classes of products and services as He may determine. He may also make the use of standard form contracts compulsory.

Before proposing a decree pursuant to subsection (1), the Minister shall obtain the opinion of the Committee for Unfair Terms and the Higher Council for the Middle

Classes and shall fix the period within which the opinion must be given. On expiry of such period the opinion shall no longer be required.

PART 3 The Committee on unfair terms

Section 35

(1) The King shall set up a Committee on Unfair Terms within the Council for Consumer Affairs in such manner as He shall determine.

(2) The Committee shall take cognizance of terms and conditions used in offers for sale and sales of products and services by sellers to consumers.

(3) A reference to the Committee may be made by the Minister, by consumer organisations, and by enterprises or the professional, trade or joint-trade groups concerned.

It may also intervene of its own motion.

(4) The King shall determine the composition of the Committee on Unfair Terms.

Section 36

(1) The Committee shall recommend:

1. the deletion or alteration of terms and conditions which appear to it to create a clear imbalance between the rights and obligations of the parties, to the consumer's detriment;
2. the incorporation of information, terms and conditions which appear to it to be necessary for the information of consumers or the absence of which appears to it to create a clear imbalance between the rights and obligations of the parties, to the consumer's detriment;
3. that terms and conditions be worded and laid out in such a way as to enable the consumer to understand their meaning and effect.

Sellers, professional, trade and joint-trade groups or consumer organisations may seek the Committee's opinion on draft terms and conditions used in offers for sale and sales of products and services by sellers to consumers.

(2) The Committee shall, within its terms of reference, propose to the Minister amendments to the legislative or regulatory provisions which appear to it desirable.

(3) Each year the Committee shall draw up and publish a report on its work. The report shall contain the full text of the recommendations and proposals made during the year.

PART 4 Documents relating to the sale of products and services

Section 37

(1) A Seller of services shall be required to issue a supporting document, free of charge, to any consumer who requests one. A seller shall be released from this obligation where the price, of the service is shown in the tariff required by section 2(2) of this Act or where an estimate or invoice comprising the particulars referred to in subsection (2) is issued.

This section does not apply to contracts concluded under the description 'all-inclusive' or any other equivalent description, which relate to the supply of a service for a global fixed price agreed prior to the supply and covering the whole of the service.

(2) The King:

- shall determine, generally or for such services or classes of service as He may designate, the particulars which must be shown in the supporting document;
- may exempt from the application of this section such services or classes of service as He may designate;
- may designate the products or classes of product to which this section shall apply.

Section 38

A consumer shall not be required to pay for services supplied until the issue of the supporting document requested, where it is required to be issued pursuant to section 37.

Section 39

A seller shall be required to issue an order form where the delivery of the product or the supply of the service is deferred and a down payment is made by the consumer.

The particulars shown in the order form shall bind the person who draws it up, notwithstanding any general or special conditions which differ from or conflict with them.

The King may determine the particulars to be shown in the order form.

CHAPTER VI

Certain trade practices

PART 1

Section 40

It shall be prohibited for any trader to offer for sale or sell a product at a loss.

Selling at a price which is not at least equal to the price at which the product was invoiced at the time it was procured or at which it would be invoiced if it were reprocured shall be deemed to be selling at a loss.

A sale which, taking account of those prices and overheads, gives only a much reduced profit margin shall be treated as a sale at a loss.

To determine whether the profit margin is normal or much reduced, account shall be taken of the volume of sales and turnover of stocks.

The King may, for a maximum of six months, by Order in Council, fix the minimum gross profit margin below which a sale will be deemed to be a sale at a loss in respect of such products or classes of products as He may designate which are offered for sale or sold to consumers.

Before proposing a decree pursuant to the preceding paragraph, the Minister shall consult the Committee for Price Regulation and shall fix the period within which its opinion must be given. On expiry of such period the opinion shall no longer be required.

Section 41

(1) The prohibition laid down by section 40 shall not however apply:

- (a) to products sold in a closing-down sale;
- (b) to products sold in a clearance sale;
- (c) for the purpose of disposing of products liable to rapid deterioration which cannot be guaranteed to keep;
- (d) to products specially offered for sale in order to satisfy a temporary consumer demand, when the event or the passing fashion giving rise to such demand is over, if it is clear that those products can no longer be sold on normal trading terms;
- (e) to products the commercial value of which is severely reduced owing to deterioration, reduction in potential uses or a fundamental change in technology;
- (f) where the price of the product is aligned, by reason of the need for competition, with that generally charged by other traders for the same product.

(2) Contractual stipulations prohibiting sale at a loss shall not be pleaded as against a person selling the product in the case referred to in subsection (1)(C).

Such stipulations shall not be relied upon in the other cases referred to if the seller notifies the maker or, if he is not known, the supplier of the product, by registered letter, of his intention to sell at a loss and of the prices which he proposed to charge and if, within 15 working days of such notification, the person named above does not notify the seller, by the same means, of an offer to take back the products in question at the prices stated in the notice.

PART 2 Announcements of price reductions and price comparisons

Section 42

Announcements in conformity with section 5 of reductions in selling prices to consumers and announcements suggesting a price reduction without using one of the methods laid down in section 5 shall be subject to the provisions of this Part.

Section 43

(1) A seller who announces a price reduction must refer to the price which he customarily charged previously for identical products or services in the same establishment.

(2) The price reductions announced must be genuine. Except for products liable to rapid deterioration, no price or tariff shall be regarded as customary unless it was charged for a continuous period of one month immediately preceding the date from which the reduced price is applicable.

The date from which the reduced price is applicable must remain displayed during the entire period of sale.

Except for closing-down sales, such period shall not exceed one month and, save for the products referred to in section 41(IXc), shall not be less than one whole day of sale.

(3) For products offered for sale in the manner provided for in section 49, the price which was charged continuously during the periods specified in section 53 shall be regarded as customary.

(4) The seller may refer to other prices only if they are announced legibly, conspicuously and unambiguously and only if the price in question is a retail price regulated pursuant to the Act of 22 January 1945 on the economic regulation of prices. In this case he shall not use the methods provided for in section 5 for showing price reductions.

(5) No-one shall use an announcement of a price reduction or price comparison if he cannot prove that the reference price complies with the provisions of this section.

Section 44

The King shall designate the products, services or classes or classes of products or services for which the announcements of price or tariff reductions referred to in section 42 are prohibited and shall lay down the conditions and periods of application of such prohibitions.

Before proposing a decree pursuant to the preceding paragraph, the Minister shall consult the Council for Consumer Affairs and the Higher Council for the Middle

Classes and shall fix the period within which the opinion must be given. On expiry of such period the opinion shall no longer be required.

Sectbn 45

Where a price reduction is announced outside an establishment as being for a limited period, a seller who no longer has the products in question available shall, for any product with a price of more than 1,000 Bfr, the stock of which is exhausted, hand the consumer a voucher entitling him to make his purchase within a reasonable period on the terms of the offer, unless it is impossible to obtain further supplies on the same conditions.

This section does not apply to clearance sales or closing-down sales.

The King may amend the amount mentioned in paragraph 1.

PART 3 Closing-down sales

Sectbn 46

For the application of this Act, 'closing-down sale' means any offer for sale which is announced under the description 'Liquidation', 'Uitverkoop' or 'Ausverkauf' or any other equivalent description and which is made with a view to the rapid disposal of a stock or range of products in one of the following cases:

1. the sale is held pursuant to a judicial order;
2. the heirs or successors of a deceased seller place on sale all or part of the stock got in by them;
3. the seller places on sale all or part of the stock transferred by the person from whom he takes over the business;
4. a seller who discontinues trading places on sale his entire stock, provided however that the seller has not held a closing-down sale of similar products for the same reason within the previous three years;
5. conversion or repair work lasting more than 40 working days is carried out in the premises where consumer sales customarily take place and such work renders selling in those premises impossible while it is being carried out, provided however that the seller has not held a closing-down sale of similar products for the same reason within the previous three years;
6. the transfer or closure of the establishment necessitates the sale of the products, provided however that the seller has not held a closing-down sale of similar products for the same reason within the previous three years;
7. serious damage is caused by an accident affecting all or a large part of the stock of

products;

8. the business is seriously hampered as a result of a case of force majeure.

Section 47

It is prohibited to announce a sale by using the description 'Liquidation,' 'Uitverkoop' or 'Ausverkauf' in isolation or with other words or using any other equivalent description in cases other than those referred to in section 46 and if the conditions laid down for such sales are not fulfilled.

Section 48

(1) Except in the case provided for in section 46(1), a closing-down sale shall not be held or announced unless the seller gives prior notice to the Minister or the official designated by the Minister for that purpose of his intention to do so.

Such notice shall be given by registered letter and must state the commencement date of the sale and must cite and prove the existence of one of the cases referred to in section 46.

The closing-down sale shall not begin until ten working days after the registered letter is posted, except in the cases provided for in section 46(7) and (8).

The duration of the closing-down sale shall be limited to three months. However, one or two applications for extension may be submitted to the Minister or the official designated by him for the purpose not later than 30 working days before expiry of the current period, in the manner laid down in paragraph 2.

A decision on the application shall be given within 30 working days of the receipt of the letter requesting extension. Failing a reasoned notice of refusal within that period, an extension shall be deemed to have been granted.

An extension shall not exceed two months.

Any announcement or other advertisement concerning a closing-down sale must state the commencement date of the sale.

(2) Save in the cases referred to in section 46(1) and (7), a closing-down sale must take place in the premises where identical products were customarily placed on sale either by the seller himself or by the deceased or outgoing seller.

A seller who considers it impossible to comply with this provision shall be required to apply to the Minister or the official designated by him for the purpose to allow a derogation by registered letter, stating the reasons relied upon and the place where he wishes to hold the closing-down sale. A decision on the application shall be given within ten working days. Failing a reasoned notice of refusal within that period, the derogation shall be deemed to have been allowed.

(3) Only products which formed part of the seller's stock at the date of the judicial order referred to in section 46(1), at the date of the accident referred to in section 46(7), or at the date of the notice referred to in subsection (1) may be offered for sale or sold in a closing-down sale.

However, products which, at the date of the judicial order referred to in section 46(1), the date of the death of the seller referred to in section 46(2), the date of the accident referred to in section 46(7) or the date of force majeure referred to in section 46(8), had been ordered [but not yet received] in a manner which, taking account of the size and date of the order, may be regarded as normal, may also be offered for sale or sold in a closing-down sale.

If the seller has more than one sales outlet, products shall not be transferred, without the authorisation of the Minister to the official designated by him for the purpose, from one such establishment to the place where the closing-down sale is being held.

Authorisation [for such transfer] must be requested by registered letter, setting out the circumstances justifying the request. A decision on the request shall be given within ten working days. Failing a reasoned notice of refusal within that period, the transfer of products shall be deemed to have been allowed.

(4) Save in the case provided for in section 46(1), a product offered for sale or sold in a closing-down sale must undergo a price reduction which must be genuine in relation to the price customarily charged for identical products, in conformity with section 43, by the seller himself or the deceased or outgoing seller.

PART 4 Clearance sales

Section 49

For the application of this Act, 'clearance sale' means an offer for sale or sale to a consumer which is effected with a view to the seasonal replacement of the seller's stock by the rapid disposal of products at reduced prices, which is announced under the description 'Soldes', 'Opbruiming', 'Solden' or 'Schlussverkauf' or any other equivalent description.

Section 50

It is prohibited to announce a sale by using the description 'Soldes', 'Opbruiming', 'Solden' or 'Schlussverkauf' in isolation or in combination with other words or using any other description or presentation suggesting a clearance sale in a case other than that referred to in section 49. and if the conditions laid down for such a sale are not fulfilled.

Section 51

(1) The sale must take place in the premises where the products in question or identical products were customarily placed on sale.

(2) Only products which the seller holds at the commencement of the clearance sale and which he customarily offered for sale before that date may be sold by way of a clearance sale.

(3) A product offered for sale or sold in a clearance sale must undergo a price reduction which must be genuine in relation to the price customarily charged for identical products, in conformity with section 43.

Section 52

(1) In the sectors of clothing, leather goods, fancy goods and footwear, offers for sale and sales of products referred to in section 49 may take place only during a period of one month from the third Saturday of January and one month from the third Saturday of July.

(2) For such other products or classes of products as He may determine, the King may fix for the whole of the Kingdom periods during which clearance sales may be held. In the absence of such regulations, clearance sales may be held only during the periods laid down in subsection (1).

(3) The King may lay down the conditions under which clearance sales take place.

(4) Before proposing a decree pursuant to subsections (2) and (3), the Minister shall consult the Council for Consumer Affairs and the Higher Council for the Middle Classes and shall fix the period within which the opinion must be given. On expiry of such period the opinion shall no longer be required.

Section 53

(1) During the period from 25 December to the third Saturday in January and from 1 July to the third Saturday in July it shall be prohibited to announce price reductions such as those referred to in section 42 for the products referred to in section 52(1). Paragraph 1 does not apply to closing-down sales.

(2) Decrees adopted pursuant to section 52(2) shall specify the periods during which the prohibition laid down in subsection (1) applies to the products or classes of products concerned.

In the absence of regulation pursuant to section 52(2), the prohibition laid down in subsection (1) shall also apply to the products or classes of products referred to in that section.

(3) Before proposing a decree pursuant to subsection (2), paragraph 1, the

Minister shall consult the Council for Consumer Affairs and the Higher Council for the Middle Classes and shall fix the period within which the opinion must be given. On expiry of such period the opinion shall no longer be required.

(4) The prohibition on announcing price reductions laid down in subsections (1) and (2) shall not apply to sales of products made in the course of occasional commercial events lasting not more than four days, organised not more than once a year by local groups of sellers or with their participation.

The King may lay down the conditions under which such events may be organised.

PART 5 Combined offer of products or services

Section 54

There is a combined offer within the meaning of this section where the acquisition or purchase, whether free of charge or not, of products, services, any other benefits or vouchers permitting them to be acquired, is coupled with the acquisition or purchase of other products or services, including identical ones.

Subject to the exceptions set out below, any combined offer to a consumer by a seller shall be prohibited. Any combined offer to a consumer by more than one seller acting with the same intention shall also be prohibited.

Section 55

It shall be permitted to make a combined offer for a global price:

1. of products or services constituting a whole; The King may, on a proposal by the Ministers responsible and the Minister of Finance, designate the services offered in the financial sector which constitute a whole;
2. of identical products or services, provided that:
 - (a) each product and each service can be purchased separately at the customary price in the same establishment;
 - (b) the buyer is clearly informed of this option as well as of the separate selling price of each product and each service;
 - (c) the price reduction finally offered to the buyer of the whole of the products or services does not exceed one-third of the aggregate prices.

Section 56

It shall be permitted to offer free of charge, in conjunction with a principal product or service:

1. the accessories of a principal product, specially adapted to that product by its maker and supplied at the same time as the product in order to extend or facilitate the use

thereof;

2. the packaging or containers used for the protection and wrapping of the products, taking account of their nature and value;
3. small products and small services allowed by trade custom, and the deliver, positioning, checking and maintenance of the products sold;
4. samples from the stock of the maker or distributor of the principal product, provided that they are offered under conditions of quantity or measurement strictly necessary for appraising the qualities of the product;
5. colour prints, stickers and other pictures of minimal commercial value;
6. tickets for tombolas which are duly authorised pursuant to the Lotteries Act of 31 December 1851 or for the types of lotteries organised pursuant to the National Lottery Act of 6 July 1964, as amended by the Act of 12 July 1976;
7. articles bearing indelible, conspicuous advertising and which are not dealt in as such, provided that their purchase price to the person offering them does not exceed 5 per cent, of the selling price to the person offering them does not exceed 5 per cent, of the selling price of the principal product or service with which they are given away.

Section 57

It shall also be permitted to offer free of charge, in conjunction with a principal product or service:

1. vouchers permitting the acquisition of an identical product or service, provided that the price reduction resulting from such acquisition does not exceed the percentage fixed in section 55(2);
2. vouchers permitting the acquisition of one of the items referred to in section 56(5) and (6);
3. vouchers giving exclusively a right to a cash discount, provided that:
 - (a) they state the cash value which they represent.
 - (b) the rate or amount of the discount offered is clearly shown in the establishments selling products or supplying services, and that the products or services the purchase of which gives a right to receive vouchers are likewise clearly shown;
4. vouchers consisting in documents giving a right, after the purchase of a certain number of products or services, to a free offer or price reduction on the purchase of a similar product or service, provided that such benefit is supplied by the same seller and does not exceed one-third of the price of the products or services previously purchased.

The vouchers must state the date, if any, on which their validity expires and the terms of the offer.

Where the seller suspends the offer, the consumer must be given the benefit of the offer in proportion to purchases previously made.

Sectbn 58

Any person who issues the vouchers referred to in this Part shall automatically owe the amount which those vouchers represent.

If the issue of vouchers referred to in section 57(3) is discontinued or is altered during the currency of the vouchers, a cash refund may be demanded for them irrespective of their total nominal value, for one year from the appearance of the advertisement provided for in section 62(1), no.2

Sectbn 59

Any person who issues the vouchers referred to in section 57(1) to (3), must hold a certificate of registration issued by the Minister or the official designated by him for that purpose.

An application for registration must be made by registered letter to the Minister or the official designated by him for that purpose.

Applicants must undertake to permit qualified persons designated by the Minister to check on the spot compliance with the requirements of sections 57 to 61 and to examine, without going elsewhere, any documents, papers or books likely to facilitate the performance of their task.

Sectbn 60

Vouchers issued pursuant to section 57(1) to (3) must bear the registration number of the natural or legal person issuing them.

This number, the name, description and address of the registered person and the conditions of exchange or redemption laid down pursuant to section 57(1) to (3), must be shown clearly in voucher collection books or on the voucher itself and in any advertisement concerning such vouchers.

Sechon 61

Registered persons must immediately request their removal from the register if they wish to discontinue the issue of vouchers, if they are in a state of cessation of payments or if they are covered by the cases provided for in paragraph 2 of this section.

Persons covered by Royal Decree 22 of 24 October 1934 prohibiting certain convicted persons and bankrupts from participating in the management and supervision of limited companies, co-operative societies and credit unions and from

practising the profession of stockbroker or engaging in the business of a deposit bank, persons covered by Royal Decree 148 of 18 March 1935 on usury and persons convicted by a final judgment delivered pursuant to section 29 of the Act of 9 July 1957 regulating hire-purchase sales and the financing thereof cannot become registered, whether directly or through an intermediary.

Section 62

(1)The King may:

1. prescribe a minimum format and distinctive signs for the vouchers referred to in section 57(1) to (3);
2. prescribe a special advertisement and lay down the manner thereof in the event of discontinuance of the issue or alteration of the issue during the currency of such vouchers;
3. fix the minimum amount above which the cash redemption of the vouchers referred to in section 57 (3) may be demanded;
4. make the issue of the vouchers referred to in section 57(3) subject to the creation of securities and the keeping of special accounts, and may lay down supervisory measures;
5. for such products or services as He may determine, alter the percentages laid down in sections 55, no. 2 (c), and 57(1) and (4), fix the maximum amount which may be attained by the value of the products, services or benefits offered under those provisions and limit the frequency and duration of the sales and supplies of services which are the subject of section 55(2);
6. make the offer subject to the condition that the products or services offered by way of a combined offer have been sold or supplied by the seller for at least one year;
7. exclude from the derogations allowed in sections 55, 56 and 57 such products and services as he may determine;
8. extend the prohibition laid down in section 54 to combined offers made to resellers.

(2)Before proposing a decree pursuant to subsection(1), nos.5,6,7 and 8, the Minister shall consult the Council for Consumer Affairs and the Higher Council for the Middle Classes and shall fix the period within which the opinion must be given. On expiry of such period the opinion shall no longer be required.

PART 6 Value coupons

Section 63

Value coupons within the meaning of this Act are documents distributed free by a dealer, producer or importer which enable the holder to receive a benefit consisting in

a cash reduction on the purchase of a particular product or service or the simultaneous purchase of several identical products or service.

Section 64

By way of exception to sections 5, 42 and 43, it shall be permitted to distribute value coupons free if they state the condition of the offer, viz.:

1. the cash value which they represent;
2. the products, services or set of products or services the purchase of which permits them to be used;
3. the points of sale where they can be used, unless the value coupon can be used at all points of sale where the product or service is customarily offered for sale;
4. their period of validity;
5. the issuer's identity.

Section 65

Any person who issues value coupons shall, according to the conditions of the offer, owe the amount which they represent.

Section 66

Provided that the conditions of the offer are complied with:

1. the seller shall be required to accept value coupons irrespective of whether they have been issued by him himself or a producer or importer;
2. the issuer of value coupons shall be required to redeem them to the seller within a reasonable period.

Section 67

The King may, for such value coupons as He may determine for each category of products and services:

1. prescribe a special advertisement and lay down the manner thereof in the event of discontinuance of the issue or alteration of the issue during the currency of value coupons;
2. fix a minimum and maximum percentage for the cash reduction represented by the coupons.

Section 68

The prohibition laid down in section 53 on announcing price reductions shall also include a prohibition on distributing value coupons entailing a price reduction, in any form whatever, applicable during the periods specified in section 53 and relating

to goods which may be sold by way of clearance sale within the meaning of section 49.

PART 7 Auction sales

Section 69

The provisions of this Part shall apply to public auction sales and discount sales and offers for sale and the exhibition of manufactured products for such sales, with the exception however of:

1. offers for sale and sales which are not of a commercial nature;
2. operations aimed exclusively at persons dealing in the products offered for sale;
3. operations involving objects of art or collectors' items with the exception of carpets and jewels or antiques, provided that such operations take place in rooms customarily intended for that purpose;
4. operations carried out pursuant to a provision of law or court order;
5. operations for the sale of assets of insolvent debtors.

(2) The King may prescribe such special conditions for auction sales of such products as He may determine.

Section 70

(1) Auction sales within the meaning of section 69 shall be authorised only where they relate to secondhand products.

(2) Any product which has obvious signs of use, except where the obvious signs of use are due exclusively to treatment for artificial ageing, shall be deemed to be secondhand.

Section 71

(1) Section 70(1) is not applicable to closing-down sales held in conformity with the rules set out in sections 46 to 48, with the exception of section 48(4), and which otherwise meet the following conditions.

(2) A seller wishing to hold a closing-down sale by auction must inform accordingly the Minister or the official designated by him for that purpose, by registered letter indicating the date of commencement of the auction sale operations. The sale may only be held ten working days after the registered letter is posted.

An inventory, in two copies, of the products to be sold off in accordance with the auction sale procedure must be enclosed with the registered letter.

(3) Subject to cases of force majeure, the auction sale must be held on the date indicated and must, if necessary, continue without interruption on the following days;

an exception may be made for Sundays and public holidays.

(4)The inventory shall be reproduced in notices affixed to the door of the sale premises not less than three working days before the sale. The notices shall not be removed before the end of the sale.

(5)The sale may relate only to the products listed in the inventory sent to the Minister or the official designated by him for that purpose.

Section 72

Auction sales within the meaning of section 69 may be held only in premises intended exclusively for such use, save for exceptions allowed where necessary by the Minister or the official designated by him for that purpose.

An organiser of an auction sale shall be responsible for complying with the preceding paragraph and section 70.

Section 73

In the event of failure to comply with section 70, a report shall be drawn up immediately and notified by registered letter to the organiser of the sale and the auctioneer with the task of conducting the sale.

By the effect of such notification, the products specified by the report shall not be offered for auction and must be regarded as having been seized in the possession of the organiser of the sale until a final ruling is given by the court or until the seizure is lifted by the seizing authorities referred to in section 117.

Section 74

The auctioneer with the task of conducting the sale must refuse to officiate:

1. if the notification provided for in section 71(2) is not given within the prescribed period;
2. in the case of operations relating to products which are not shown in the inventory required in section 71(2) or products deemed to have been seized pursuant to section 73(2).

Section 75

For certain products the King may authorise exceptions to section 70(1) where the sale of those products by other sale procedures is found to be difficult or impossible.

PART 8 Unsolicited offers

Section 76

It shall be prohibited to send to a person without prior request by him any product whatever inviting him to purchase it against payment of the price or else to return it to the sender, even if at no cost.

It shall also be prohibited to supply to a person without prior request by him any service whatever inviting him to accept the service against payment of the price.

The Minister may allow exceptions to these prohibitions for offers made for charitable purposes. In that case the authorisation number obtained and the words 'The recipient has no obligation for payment or return' must be shown legibly, conspicuously and unambiguously in the documents concerning the offer.

Under no circumstances shall the recipient be required to pay for the service supplied or the product dispatched or to return the latter, even if there is a stated presumption of implied acceptance of the service or purchase of the product.

PART 9 Distance sales

Section 77

For the application of this Act, a distance sale is a sale which takes place, without the simultaneous physical presence of the seller and the consumer, as a result of an offer of sale made in the context of a selling system which uses a technique of remote communication.

It shall be prohibited to make offers for sale by mail order to persons receiving treatment in psychiatric institutions or medical educational institutions.

Section 78

(1) A distance sale of products shall not be finalised until after a cooling-off period of seven working days commencing on the day following delivery.

Before delivery and during the cooling-off period the consumer shall have the right to notify the seller that he wishes to withdraw from the purchase.

For products delivered in instalments, this period shall begin to run on the day following the first delivery.

For the purpose of complying with the period, it shall be sufficient if notification is sent before the expiry thereof.

(2) Without prejudice to the application of the consumer credit legislation applying to hire purchase, no down-payment or other payment whatever may be demanded from the consumer before the end of the cooling-off period referred to in subsection (1).

Section 79

(1) Where an offer of a distance sale is made, the consumer must be informed

clearly and unambiguously of the following particulars; the seller's identity;

- the price;
- the quantity;
- the identification of the product;
- the exact period of validity of the offer;
- the conditions of payment;
- the delivery period;
- The cooling-off period;
- the conditions under which the product will be taken back or returned, including any associated costs.

(2) The consumer must also receive, at the latest on delivery, a document setting out the following particulars:

- the seller's identity;
- the price;
- the quantity;
- the identification of the product;
- the conditions of payment;
- the cooling-off period;
- the conditions for withdrawing from the purchase and the conditions under which the product will be taken back or returned, including and associated costs;
- the following withdrawal clause in bold type in a frame separate from the text on the front of the first page:

¶ Within seven working days of the day following the date of delivery, the consumer has the right to notify the seller that he withdraws from the purchase.

If the withdrawal clause is omitted the product will be deemed to have been delivered to the consumer without being previously requested by him and he shall not be required to pay for the product delivered or to return it.

Section 80

The seller shall have the burden of proving the conditions of the offer, fulfilment thereof, the previous request by the consumer and his agreement.

Evidence shall not be furnished by way of presumption.

Section 81

(1) If it is impossible to supply the product the contract shall automatically be cancelled, without prejudice to a possible award of damages. Save in the case of force majeure, the seller must inform the consumer in writing before expiry of the delivery period.

(2) Consignment of the products to the consumer shall always be at the seller's risk and peril.

(3) In the event of withdrawal from the purchase to section 78 and in the event of cancellation or termination of the contract pursuant to subsection (1) of this section, no compensation or costs may be claimed from the consumer on those grounds, unless the consumer has clearly consumed or damaged the product.

The consumer may be required to pay the costs of retaking possession of or returning the product, unless:

- the product does not conform to the description in the offer;
- delivery is late, that is to say, is effected on the seventh or later working day following the date on which the delivery period expires;
- the seller omits to give one of the particulars provided for in section 79(1) and (2).

(4) An offer which relates to an unspecified number of products each part of which may be regarded as a whole must provide that the consumer may cancel the contract at any time.

Where such an offer is made, the number and total price need not be specified at the time of the original offer.

Section 82

A condition whereby the consumer waives the rights conferred upon him in this Part shall be void.

Section 83

(1) The King may:

1. prescribe special regulations for such products or classes of products as he may designate and for certain distance sales techniques;
2. exclude such products or classes of product as he may designate from the ambit of this Part or certain provisions specified by Him;
3. determine the services or classes of service subject to this Part or to certain provisions thereof specified by Him;
4. prescribe special provisions applying to the services or classes of services referred to in no. 3 of this section;
5. exempt from all or some of the provisions of this Part certain institutions, organisations or certain classes of institutions or organisation, with or without legal personality, which have charitable, social, educational or cultural activities as their object, provided that the price of the products or services offered does not exceed a certain amount fixed by Him.

(2) Before proposing a decree pursuant to subsection (1) of this section, the Minister shall consult the Consumer Affairs and shall fix the period within which the opinion must be given. On expiry of such period the opinion shall no longer be required.

PART 10 Illegal selling practices

Section 84

It shall be prohibited to sell by using a chain-selling method, which consists in setting up a network of sellers, whether professional or not, each of whom expects a benefit of some kind resulting more from the enlargement of the network than from selling products to consumers. Participation in such sales with knowledge of the facts shall also be prohibited.

So-called "snowball selling," consisting in offering products to consumers who are induced to hope that they will obtain them free of charge or on payment of less than their actual value, on condition that they place vouchers, coupons or other similar papers with third parties, against payment, or obtain memberships or subscriptions from third parties, shall be treated as chain-selling.

Section 85

It shall be prohibited to make offers for sale or to sell by wrongfully referring to charitable, humanitarian or other activities likely to arouse the generosity of consumers.

PART 11 Consumer sales outside the seller's premises

Section 86

(1) This section refers to sales of products and services to consumers by sellers:

1. at the consumer's home or the home of another consumer, or the consumer's place of work;
2. during an excursion organised by or on behalf of the seller;
3. at shows, fairs and exhibitions, provided that in these cases payment is not made in cash and the price exceeds 8,600 Bfr.

(2) The King may adjust the amount referred to in subsection (1), no. 3.

Section 87

The following are outside the ambit of this Part:

- (a) sales referred to in section 86(1), no. 1, concerning a product or service for which the consumer makes a prior, express request to be visited by the seller in order to negotiate the purchase of the product or service.

Consent given by a consumer to a telephone offer of a visit by the seller shall not constitute a prior request;

- (b) sales of foodstuffs, beverages and household articles by sellers using mobile shops to serve regular customers on frequent, regular rounds;
- (c) auction sales;
- (d) distance sales;
- (e) insurance sales;
- (f) sales organised in the context of events solely for charitable objects and not of a commercial nature, on the conditions laid down pursuant to the Act on itinerant occupations, provided that the amount of the sale does not exceed 2,000 Bfr. The King may adjust this amount;
- (g) consumer credit agreements governed by the consumer credit legislation.

Section 88

Without prejudice to the rules of evidence at common law, the consumer sales covered by this Part must be set down in a written contract, with one copy for each party with a separate interest, before or, at the latest, on delivery of the product or supply of the service, otherwise the sale shall be void.

The contract must state:

- the seller's name and address;
- the date and place of conclusion of the contract; the precise description of the
- product or service and its main characteristics;
- the date of delivery of the product or supply of the service;
- the price to be paid and the conditions of payment;
- the following withdrawal clause in bold type in a frame separate from the text on the front of the first page:

¶ Within seven working days of the day following the date of signature of this contract the consumer has the right to withdraw from his purchase without cost, on condition that he notifies the seller by registered letter. Any clause whereby the consumer purports to waive this right is void. With regard to compliance with the time limit, it is sufficient if the notice is posted before expiry thereof.

If the withdrawal clause is omitted the contract shall be void.

Section 89

The sales of products or services covered by section 86 shall not be finalised until after seven working days from the day following the date of signature of the

contract provided for in section 88.

During this cooling-off period the consumer shall have the right to notify the seller by registered letter that he withdraws from the purchase.

The consumer shall lose the right to withdraw from the purchase of a service where it is supplied before he indicates his intention to withdraw from the purchase.

With the exception of the sales referred to in section 86(1), no.3, no down-payment or other payment may be demanded or accepted from the consumer on any pretext or in any form whatever before expiry of the cooling-off period provided for in this section.

Section 90

In the case of sale with a trial period, the cooling-off period shall commence on the date of delivery of the product and end on expiry of the trial period, but shall not be less than seven working days.

Section 91

If the consumer withdraws from the purchase, no claims for costs or compensation on the ground shall be made from him.

Section 92

The marketing of products by itinerant traders shall be permitted only in so far as it complies with the relevant legislation. In other respects the provisions of this Act apply.

CHAPTER VII

Acts contrary to fair practice

Section 93

Any act contrary to fair commercial practice whereby a seller damages or may damage the business interests of one or more other sellers shall be prohibited.

Section 94

Any act contrary to fair commercial practice whereby a seller damages or may damage the interests of one or more consumers shall be prohibited.

CHAPTER VIII

Action for discontinuance

Section 95

The president of the tribunal de commerce shall find the existence and order the

discontinuance of an act, including any which is criminally punishable, constituting an offence under this Act.

He may prohibit the advertising referred to in section 23 if it has not yet been published but publication is imminent.

Section 96

Section 95 does not apply to infringing acts which are punished by the laws on patents, product or service marks, designs or models and copyright.

Paragraph 1 does not, however, apply to service marks used in Benelux territory at the date of entry into force of the Protocol of 10 November 1983 amending the Uniform Benelux Trade Marks Act where the Uniform Benelux Trade Marks Act does not permit the owners of the abovementioned marks to rely on the provisions of trade mark law.

Section 97

¶The president of the tribunal de commerce shall also find the existence and order the discontinuance of the following offences:

1. engaging in a commercial activity by the use of a principal establishment, branch or agency without prior registration in the Commercial Register in accordance with the Commercial Register Acts, consolidated by the Royal Decree of 20 July 1964;
2. engaging in a commercial activity otherwise than by the use of a principal establishment, branch or agency without prior notification of the Commercial Registry in accordance with the Commercial Register Acts, consolidated by the Royal Decree of 20 July 1964;
3. engaging in a commercial activity other than that for which registration is effected in the Commercial Register;
4. engaging in a commercial activity other than that which has been notified to the Commercial Registry;
5. engaging in a skilled trade without prior registration in the Skilled Trades Register;
6. engaging in a skilled trade other than that for which registration is effected in the Skilled Trades Register;
7. failure to comply with the statutory provisions concerning the keeping of company records and the application of value added tax;
8. employing workers without being registered with the National Social Security Office, without submitting the necessary returns or without paying contributions, additional contributions or interest on overdue payments;
9. employing workers and using workers contrary to the regulations on temporary work and on providing workers for hire;

10. failure to comply with collective employment agreements which have been made compulsory;
11. hindering supervision exercised pursuant to the laws concerning the Commercial Register, the Skilled Trades Register and keeping company records;
12. failure to comply with the law concerning advertising.

The president of the tribunal de commerce may allow an offender a period of grace to put an end to the offence or order of the business. He may allow the business to be resumed when it is proved that the offences have stopped.

Section 98

(1) An action based on section 95 may be brought on application by:

1. the persons concerned;
2. the Minister, unless the application relates to an act covered by section 93 of this Act;
3. a professional, trade or joint-trade grouping with legal personality, save where the application relates to an act covered by section 94 of this Act;
4. an association with legal personality and having the object of protecting consumer interests, provided that it is represented on the Council for Consumer Affairs, in accordance with criteria laid down by royal decree adopted in the Council of Ministers, save where the application relates to an act covered by section 93 of this Act.

By way of exception to sections 17 and 18 of the Judicial Code, the associations and groupings referred to in nos. 3 and 4 may bring actions for the protection of their collective interests as defined by their rules.

(2) Without prejudice to the application of sections 93 and 95 to the acts to which they refer, an action based on section 97 shall be brought on application by the Minister responsible for the matter in question.

Section 99

The president of the tribunal de commerce may require his order or a summary thereof made by him to be posted, for such period as he may determine, outside and inside the offender's premises and may require publication of his order or the summary in newspapers or by any other means, all costs being paid by the offender.

However, these measures of public notification shall be ordered only if they are likely to contribute to the cessation of the act complained of or its effects.

Section 100

The action shall be brought and heard as for interlocutory proceedings.

It may be brought by application. The application must be lodged in four copies at the registry of the tribunal de commerce or sent by registered post.

The registrar shall without delay notify the other party by judicial communication, enclosing a copy of the original application, and summon him to appear not sooner than three days and not later than eight days after the communication is posted.

The application shall contain the following particulars, failing which it shall be void:

1. the day, month and year;
2. the full name, occupation and address of the applicant;
3. the name and address of the natural or legal person against whom the action is brought;
4. the object and grounds of the action;
5. the attorney's signature.

A ruling shall be given on the action notwithstanding a prosecution by reason of the same facts before any other criminal court.

The judgment shall be provisionally enforceable notwithstanding an appeal and without security.

Any judgment delivered on an action based on section 95 or section 97 shall be notified to the Minister within eight days by the registrar of the competent court, unless the judgment is delivered on application by the Minister.

In addition the registrar shall inform the Minister without delay of an appeal against any decision pursuant to section 95 or section 97.

CHAPTER IX

Warning procedure

Section 101

Where it is found that an act is an offence under this Act, - one of the decrees implementing it or the decrees referred to in section 122, or that it may give rise to an action for discontinuance on the Minister's initiative, the Minister or the official commissioned by him pursuant to section 113(1) may send the offender a notice warning him to put an end to the act in question, without prejudice to section 24.

The warning shall be notified to the offender within three weeks of the date of discovering the acts, by registered letter with acknowledgment of receipt or by service of a copy of the report recording the acts.

The warning shall state:

- (a) the acts alleged and the statutory provision or provisions infringed;
- (b) the period within which they must cease;
- (c) that in the event of failure to comply with the warning, either the Minister will bring an action for discontinuance or the officials commissioned pursuant to section 113(1) or section 116 respectively may inform the Royal Attorney or negotiate a settlement as provided for in section 116.

A detailed annual report on the functioning of the warning procedure shall be submitted within a reasonable period to the chambers of Parliament, which shall decide whether it should be published.

Information furnished in the report shall be anonymous.

CHAPTER X

Sanctions

PART 1 Penal sanctions

Section 102

Persons contravening the following provisions shall be punished by fines of between 250 and 10,000 Bfr.:

1. sections 2 to 5 and 8 to 11 on displaying prices and quantities, and decrees adopted pursuant to sections 6 and 12;
2. section 13 on the name, composition and labelling of products and services, and decrees adopted pursuant to sections 14 and 15;
3. sections 37 and 39 on documents concerning sales of products and services, and decrees adopted pursuant to those two sections;
4. sections 43 and 45 on sales at reduced prices, and decrees adopted pursuant to section 44;
5. section 59 making the issue of certain vouchers subject to prior registration;
6. section 74 requiring auctioneers responsible for conducting auction sales to refuse to take part in certain circumstances;
7. sections 88 to 91 on consumer sales concluded outside the seller's enterprise.

However, where an offence under section 14 on the name, composition and labelling of products is also an offence under the Act of 24 January 1977 on the protection of the health of consumers with regard to foodstuffs and other products, the penalties provided for in the latter alone shall apply.

Section 103

Persons who commit in bad faith an offence under the provisions of this Act,

with the exception of sections 102, 104 and 105, and except for the offences referred to by section 97, shall be punished by a fine of between 500 and 20,000 Bfr.

Section 104

The following shall be punished by a fine of between 1,000 and 20,000 Bfr.

1. persons who fail to comply with the measures laid down in an order as judgment delivered pursuant to sections 95 to 99 as a result of an action for discontinuance;
2. persons who deliberately prevent or impede the tasks of the persons referred to in sections 113 to 115 aimed at seeking and establishing the existence of offences under or failure to comply with the provisions of this Act;
3. persons who themselves or through an intermediary deliberately remove, conceal or deface all or part to a notice pursuant to sections 99 and 108.

Sectbn 105

Persons who commit an offence under section 84 prohibiting chain-seffing and section 85 prohibiting offers for sale and sales by wrongfully referring to charitable, humanitarian or other activities likely to arouse the generosity of consumers shall be punished by a term of imprisonment of between one month and five years or a fine of between 26 and 20,000 Bfr. or both.

Section 106

Where the acts referred to the court are the subject of an action for discontinuance, a decision in the criminal proceedings can be given only after the judgment delivered in. the action for discontinuance has become final.

Section 107

Without prejudice to the application of the normal rules concerning repeat offences, the penalty laid down in section 104 shall be doubled in the case of an offence under no.1 of that section within five years of the date of a conviction for the same offence which became finai.

Sectn 108

The court may order the judgment or a summary thereof made by it to be posted, for such period as it may determine, outside and inside the offender's premises at the latter's cost, and may order publication of the judgment or the summary in newspapers or by any other means, the costs being paid by te offender. The court may also order the confiscation of the illicit gains obtained as a result of the offence.

Section 109

Companies and associations having legal personality shall be vicariously liable

for any damages, fines, costs, orders for confiscation or restitution and pecuniary sanctions whatever imposed on their directors or agents for offences under this Act.

The same shall apply to the members of any trade association without legal personality, where the offence is committed by a member, manager or agent in connection with an operation within the framework of the activity of the association. However, the member with vicarious liability shall be personally liable only to the extent of the amounts or value received by him from the operation.

Such companies, associations and members may be summoned direct before the criminal court by the Public Prosecutor or the civil party.

Sectbn 110

The provisions of Book I of the Criminal Code, not excepting Chapter VII and section 85, shall apply to offences under this Act.

By way of exception to section 43 of the Criminal Code, the court shall determine whether special confiscation should be ordered when convicting a person of an offence under this Act. This provision shall not apply in the case provided for in section 107 where an offence is repeated.

On the expiry of ten days from delivery of the judgment, the registrar of the first instance or appeal court must notify the Minister by ordinary letter of any judgment concerning an offence under this Act.

The registrar must also notify the Minister without delay of an appeal against such judgment.

PART 2 Removal from the register

Sectbn 111

The Minister may remove the registrant provided for in section 59 in respect of:

1. a person who obtains registration in defiance of section 61(2) or section 112(2);
2. a person who, although required to apply for registration pursuant to section 61, fails to comply with this obligation;
3. a person against whom a judgment for discontinuance is given or who is convicted of issuing vouchers without complying with section 57;
4. a person who fails to fulfil the obligations arising out of section 58, 59(2) and 60, or from decrees adopted pursuant to section 62(1), nos. 1 to 4.

Section 112

(1) However, a person shall not be removed from the register until he has been notified by registered letter or by bailiff's notice:

- (a) of the irregularities alleged against him;
- (b) of the measure which may be taken against him
- (c) of his right to give notice, by the same means, of his submissions in defence within 30 working days of the date of posting of the registered letter or service of the bailiff's notice.

(2) Removal from the register shall be the subject of a ministerial decision, stating the grounds on which it is based, published in extract in the *Moniteur Belge*, and of notification by registered letter to the person concerned. Removal from the register shall take effect on the date of such notification.

In the event of removal from the register, the Minister shall fix the period during which re-registration cannot be obtained. Such period shall not be more than one year from the date of removal from the register.

However, any person who is twice removed from the register shall not obtain registration for a third time until after five years have elapsed. If he is removed from the register yet again, it shall be final. -

CHAPTER XI

Investigation and establishment of acts prohibited by this Act

Section 1

(1) Without prejudice to the powers of civil police officers, the officials commissioned by the Minister shall have authority to inquire into and establish the existence of the offences referred to in sections 102 to 105. The reports drawn up by those officials shall constitute proof until the contrary is proved:

- (2) In performing their functions the officials referred to in subsection (1) may:
1. during normal opening or working hours, enter workshops, buildings, adjacent yards and enclosures to which access is necessary in order to carry out their task;
 2. make all the necessary factual findings and obtain production, on demand and without going elsewhere, of the documents, papers or books necessary for their inquiries and take copies thereof;
 3. against receipt, seize the documents referred to in no 2 which are necessary to prove an offence or to make inquiries as to the offenders, associates or accomplices;
 4. take samples in the manner and subject to the conditions laid down by the King;
 5. if they have reason to believe that an offence has taken place, enter inhabited premises with the prior authorisation of a judge of the tribunal de police; searches in inhabited premises must be carried out between 8.00 and 18.00 hours and must be made by no fewer than two officials together.

(3) In performing their functions the officials referred to in subsection (1) may call on the assistance of the local police or the gendarmerie.

(4)The commissioned officials shall exercise the powers conferred upon them in this section under the supervision of the Attorney General, without prejudice to their subordination to their superiors in the administration.

(5)The offences referred to in section 102(2) may be investigated and reported by the officials referred to in subsection (1) and those referred to in section 11 of the Act of 24 January 1977 concerning the protection of the health of consumers with regard to foodstuffs and other products.

(6)In cases where section 101 is applied, the report referred to in subsection (1) shall be transmitted to the Royal Attorney only if no action is taken as a result of the warning. Where section 116 is applied, the report shall be transmitted to the Royal Attorney only if the offender does not accept the proposed compromise.

Section 114

(1)The officials referred to in section 113 (1) shall also have authority to inquire into and establish the existence of acts which, although not punishable, may be the subject of an action for discontinuance brought on the Minister's initiative. The reports drawn up in this connection shall constitute proof until the contrary is proved.

(2)In performing their functions, the officials referred to in subsection (1) shall have the powers provided for in section 113(2), nos. 1,2 and 4.

Section 115

(1)The officials commissioned for this purpose by the Ministers referred to in section 98(2) shall have authority to inquire into and establish the existence of offences which may give rise to the action provided for in section 97. The reports drawn up in this connection shall constitute proof until the contrary is proved.

(2)In performing their functions, the officials referred to in subsection (1) shall have the powers provided for in section 113(2), nos. 1,2 and 4.

Section 116

The officials commissioned for this purpose by the Minister may, on seeing the reports establishing the existence of an offence under sections 102 to 104 and drawn up by the officials referred to in section 113(1), propose to the offenders the payment of a sum which will extinguish an action by the public authorities.

The tariffs and methods of payment and collection shall be laid down by the King.

Section 117

The Public Prosecutor may, on seeing the reports drawn up pursuant to section 113(1), order the seizure of the products in respect of which the offence was committed.

Where the commissioned officials establish the existence of an offence under the powers conferred upon them in section 113(1), they may, as a precautionary measure, seize the products in respect of which the offence was committed. Such seizure must be confirmed by the Public Prosecutor within a period which shall not exceed eight days, in accordance with paragraph 1.

The person in whose possession the products are seized may be appointed their judicial custodian.

The seizure shall be discharged automatically by the judgment putting an end to the prosecution, where the judgment becomes final, or by decision to take no further action.

The Public Prosecutor may order discharge of the seizure ordered or confirmed by him if the offender refrains from offering the products under the conditions which gave rise to the proceedings. Such renunciation shall not imply an acknowledgment that the proceedings are justified.

Section 118

(1) A person holding a certificate of origin for a particular product may, with the authorisation of the president of the tribunal de commerce obtained on application, cause one or more experts appointed by the president to carry out a description, analysis and examination of a product which he presumes to be connected with wrongful use of the designation of origin.

Two copies of the application shall be sent to the president of the tribunal de commerce of the place where wrongful use is presumed to have taken place and shall contain an address for service in that place.

The president may, by the same order, prohibit the presumed wrongful user from parting with the product, permit the appointment of a custodian, cause the product to be placed under seals and, where the acts give rise to receipts, authorise the provisional seizure of funds.

(2) Immediately after the order is issued the registrar shall, by judicial communication, notify the applicant and the presumed wrongful user of the order. No operation shall be commenced until after such notification.

(3) The applicant and the presumed wrongful user may be present or represented at the taking of the description, examination, analysis or seizure if they are specifically authorised to do so by the president.

(4) If the doors are locked or if opening is refused, the procedure laid down in

section 1504 of the Judicial Code shall be used.

(5) The expert's report shall be lodged at the registry and copies shall be sent by the expert without delay, by registered post, to the applicant and the presumed wrongful user.

Section 119

If, within one month of the date of posting shown by the postmark, the applicant fails to join in the criminal proceedings as civil party or to bring an action against the keeper of the product in question and the person using the designation of origin before the tribunal de commerce whose president made the order, the order shall automatically cease to have effect and the keeper of the product may claim delivery of the original application, order and report on the affixing of the seals, with a prohibition on its use or publication by the applicant, all without prejudice to the award of damages.

CHAPTER XII

Amending, repealing and transitional provisions

Section 120

Section 589(1) of the Judicial Code, is replaced by the following provision:
Section 589

The president of the tribunal de commerce shall rule upon the applications provided for in sections 95 and 97 of the Act of 14 July 1991 on trade practices and consumer information and protection, in conformity with the rules laid down in sections 98 to 100 of that Act.

Section 121

The following are repealed:

1. the Act of 16 August 1962 authorising the King to regulate the weight of bread;
2. the Act of 14 July 1971 on trade practices, as amended by the Acts of 14 November 1983 and 26 July 1985;
3. section 2(3)(e), nos. 3 and 4, and section 3 of the Act of 13 August 1986 on itinerant occupations.

Section 122

Provisions of delegated legislation which do not conflict with the Act shall remain in force until they are repealed or replaced by decrees adopted pursuant to this Act.

Offences under decrees adopted pursuant to the Act of 9 February 1960

permitting the King to regulate the use of names under which goods are put into circulation and the Act of 14 July 1971 on trade practices shall be investigated, reported and punished in accordance with chapters IX,X and XI of this Act.

CHAPTER XIII

Final provisions

Section 123

This Act shall come into force six months after its publication in the Moniteur Belge.

Section 24

The King shall exercise the powers conferred upon Kin by the provisions of chapters II to VI of this Act on the joint proposal of the Ministers responsible for economic affairs and for the middle classes.

CONSUMER PROTECTION (EEA) ACT 1993
ENACTED BY THE PARLIAMENT
(247)

(Signed by the President countersigned by the Chancellor)

16 April 1993

Entry into force at the same time as the EEA Treaty. Territorial application: Austria.

*This box indicates the source of the Act. For this purpose Level IV means an international treaty or a constitution ; Level III means a statute ; Level II means a decree or other secondary legislation ; Level I means guidelines, recommendations and other informal rules. The box on the right indicates the legal system. XEd.

+ Published in C 1993] Bundesgesetzblatt der Republik Österreich 2417(16 April 1993). The authentic text is in German, which is also available at C 1993] 2 CLEF105. [1994] 1 CLEA

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Arrangement of sections

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2. New s.12a(Early repayment).
3. Amendments to ss.16(1)(1),19(2)and 26b.
4. New s. 26c(Enforcement of defences).
5. New s. 31b;Xf(Contract for travel arrangements).
6. New s. 41a(Entry into force and transitional provisions).

THE ACT

Federal Act amending the Consumer Protection Act to conform to the Treaty on the European Economic Area.

The National Assembly has resolved:

The Federal Act of 1979 which sets out provisions protecting the consumer, last amended by the Federal Act of 1985, shall be amended as follows:

Section 1

In section 3(1) the following provisions shall be substituted for the last two sentences:

¶This withdrawal may be declared prior to the conclusion of the contract or within one week thereafter; the period shall begin to run on delivery to the consumer of a document containing at least the name and the address of the contractor, the details required for the Identification of the contract as well as an explanation of the right to withdraw; however it shall begin to run at the earliest from the conclusion of the contract. This explanation shall be delivered to the consumer at the same time as the receipt of his declaration of contract. The fight to withdraw shall expire at the latest dne month from full performance of the contract by both contracting parties, and in the case of insurance contracts at the latest one month from the conclusion of the contract.¶

Section 2

The following section 12a, together with its heading, shall be inserted after section 12:

¶Early repayment

Section 12a

(1)The consumer shall be entitled to discharge his obligations under a credit agreement early. Jn that event he shall have the right to a reduction in borrowing costs equal to the amount of interest and the term-related costs which because of the early settlement on current account of the sum repaid no longer arise. It shall not be permissible to agree upon or to charge fees in excess of this.

(2)Subsection (1)shall not apply to:

1. Credits

- (a) which are intended for the construction or renovation of buildings and have a term of at least ten years, or
- (b) which are secured by a mortgage, or
- (c) which exceed 310,000 Sch.,and

2. Leases which do not provide for the transfer to the lessee of the title to the subject-matter of the Tease.¶

Section 3

In section 16(l)(l), section 19 paragraph 2 and section 26b the sum of 310,000 Sch. shall be substituted for the sum of 150,000 Schin each case.

Section 4

The following section 26c, including its heading, shall be inserted after section 26b:

~~¶~~Enforcement of defences

Section 26c

(1) If a consumer obtains a loan to finance the purchase of goods or services from a person other than the service provider (the supplier or person rendering the services respectively), he may also refuse to repay the lender ~~;~~ notwithstanding the application of sections 17 to 19 ~~;~~ in so far as he has a right to defences arising from his legal relationship with the service provider against the latter, provided that an agreement has been made with another person for a loan to purchase goods or service and

- (a) a prior arrangement exists between the creditor and the service provider whereby loans made available exclusively by the creditor to clients of the service provider for the purpose of purchasing goods or utilising services rendered by the service provider, and
- (b) the consumer obtains his loan within the terms of this arrangement, and
- (c) the goods or services covered by this credit agreement are not delivered or only partially delivered, or do not conform to the supply contract, and
- (d) the consumer has been unsuccessful in enforcing his rights against the supplier.

(2) Subsection (1) shall not apply to the legal transactions set out in section 12a(2) 2 to 4.

Section 5

The following provisions, including the heading, shall be inserted after section 31a:

~~¶~~Contract for travel arrangements

Section 31b

(1) The following provisions shall apply to travel arrangements.

(2) In these provisions there is meant by:

1. Travel arrangements: a combination, specified in advance, of at least two of the following services which is offered of agreed for a total fee:
 - (a) transportation,

- (b) accommodation,
 - (c) other tourist services which are not simply services incidental to transportation and which constitute a substantial part of the total service;
this condition is also fulfilled if individual services which are rendered as part of the same travel arrangements are part of the same travel arrangements and are taken into account separately;
2. Travel organiser: a person who agrees or offers on his own behalf, and not purely on an occasional basis, to render travel services organised by him;
 3. Traveller: a person who concludes the contract or a preliminary contract for travel services, every other person to whom one of these persons assigns his rights (the transferee).

Section 31c

(1) No agreements authorising the travel organiser to increase the fee specified in the travel contract may be made in the period following the 20th day prior to the agreed date of departure. In other respects, apart from the general restrictions on the permissibility of such a contractual provision, such an agreement is only permissible if, where the agreed conditions for a price increase are set out, it also provides for a reduction in price and contains precise details for the calculation of the new price. Only the following may be taken into account in this calculation: changes in transportation costs, for example in fuel costs, in duties for passenger services such as landing, embarkation or disembarkation fees in harbours and equivalent airport fees, or in exchange rates to be applied to the travel arrangements.

(2) If a travel organiser substantially alters essential elements of the contract, including the price, for instance, in so far as statutory or contractual provisions give him the right to do so, the traveller shall have the option of accepting the amendment to the contract or repudiating the contract without being bound to pay a penalty for breach of contract or a cancellation indemnity. The travel organiser shall notify the traveller promptly of the alteration in the contract and at the same time inform him of the different options available; the traveller shall exercise his right to choose an option promptly.

(3) If the traveller is prevented from departing under the travel arrangements, he may assign the contractual relationship to another person provided that the latter fulfils all the conditions for participation and the travel organiser is informed of the assignment within a reasonable period prior to the date of departure. The assignor and the transferee shall be jointly liable for fees which are still outstanding and, where applicable, for additional costs arising as a result of the assignment.

Section 31b

(1) If the traveller withdraws from the contract pursuant to section 31c(2) or if the travel organiser cancels the travel arrangements prior to the agreed date of departure on grounds other than fault on the part of the traveller, the latter may request that the contract be performed by participation in other travel arrangements of equal value, provided that the travel organiser is in a position to render this service, rather than bringing the contract to an end through reimbursement of all payments made. The travel organiser may also offer the traveller more expensive travel arrangements for the same price if the traveller chooses less expensive travel arrangements, the travel organiser shall refund to him the balance of the price for the service originally agreed.

(2) In addition to the right pursuant to subsection(1), the traveller shall have a right to damages for non-performance of the contract, unless

1. cancellation occurs because the number of persons who have booked the travel arrangements does not reach the required minimum number of participants and the traveller is informed in writing of the cancellation within the period set out in description of the travel arrangements, or
2. cancellation occurs by reason of force majeure, that is to say by reason of unusual and unforeseeable events over which the person claiming force majeure has no influence and whose consequences could not have been avoided despite the exercise of due care however this does not include overbooking.

PRODUCT LIABILITY (EEA) ACT 1993
ENACTED BY PARLIAMENT
(95)

(Signed by the President; countersigned by the Chancellor)

11 February 1993

Entry into force; at the same time as the EEA Treaty Territorial application: Austria

*This box indicates the source of the Act. For this purpose Level IV means an international treaty or a constitution ; Level III means a statute (primary legislation) Level U means a decree or other secondary legislation Level I means guidelines, recommendations and other informal rules. The box on the right indicates the legal system .jXEd.

Published in [1993] Bundesgesetzblatt (II69).The authentic text is in German. which is also available at [1993]2CLE 1247.

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Arrangement of sections

SECTION

1. Importer's liability.
2. Conditions for compensation.
3. No exclusion or exemption of liability in advance,
4. Claims for damages ; time-limits.
5. Rules relating to nuclear incidents.
6. Definition of importer Lugano Convention.
7. Entry into force transitional provisions.

THE ACT

Act 95 amending the Product Liability Act to Conform to the Treaty on the European Economic Area.

The federal Act on liability C 1988 3 BGBL 99 for a defective product is amended as follows:

Section 1

Section 1,subsection 1,No. 2 shall read:

¶2. the trader who imported the product into the European Economic Area for the purpose of marketing it there and has put it into circulation here (importer).;† -

Section 2

Section 2 shall read:

¶Section 2

Injury caused through damage to an article is only to be compensated for

1. where it has not been suffered by a trader who has used the article extensively in the course of his business, and
2. only to the extent that it exceeds 7,900 Sch.,

Section 3

Section 9 shall read:

¶Section 9

The liability to indemnify under this Act may not be excluded or limited in advance.

Section 4

Section 13,including the heading, shall read:

¶Expiry

§ Section 13

In so far as claims for damages under this Act are not extinguished earlier, they expire ten years after the date on which the person liable to indemnify put the product into circulation, unless the injured person has lodged a claim in the intervening period.;†

Section 5

Section 15, subsection 2 shall read:

¶(2) This Act shall not apply to damages in respect of a nuclear incident, if they are provided for in an international treaty ratified by EFTA States and member-States of the European Community.¶

Section 6

Section 17 shall read:

¶Section 17

An importer within the meaning of section 1, subsection 1, No. 2 is any trader who has imported the product from an EFTA State into the European Economic Community, or from the European Community into an EFTA State or from one EFTA State into another EFTA State for the purposes of marketing it there and has put it into circulation here. This applies from the day on which the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters enters into force for a member-State of the European Community or an EFTA State, but no longer to those states which have ratified the Convention, to the extent that on the basis of the ratification a national judgment is enforceable in favour of an injured person against the manufacturer or the importer within the meaning of section 1. subsection 2, No. 2.¶

Section 7

The following section 19a is inserted after section 19a Section 19a

(1) Section 1, subsection 1, No. 2, section 2, section 9, section 13, section 15, subsection 2 and section 17 in the version of the Act published in BGBl. No. 95/1993 enter into force at the same time as the agreement on the European Economic Area.

(2) The new wording of this definition does not apply to injury caused by products put into circulation before the date specified in subsection 1.

§ 13. Sofern nach diesem Bundesgesetz bestehende Ersatzansprüche nicht früher verjähren, erloschen sie zehn Jahre nach dem Zeitpunkt, zu dem der Ersatzpflichtige das Produkt in den Verkehr gebracht hat, es sei denn, der Geschädigte hat seinen Anspruch inzwischen gerichtlich geltend gemacht.¶

5. § 15 Abs. 2 hat zu lauten:

§(2) Dieses Bundesgesetz gilt nicht für Schaden durch ein nukleares Ereignis, die in einem von EFTA-Staaten und EG-Mitgliedstaaten ratifizierten internationalen Übereinkommen enthalten sind.¶

6. § 17 hat zu lauten:

§ 17. Als Importeur im Sinn des § 1 Abs. 1 Z 2 gilt ferner derjenige

Unternehmer, der das Produkt zum Vertrieb von einem EFTA-Staat in die Europäische Wirtschaftsgemeinschaft oder von der Europäischen Wirtschaftsgemeinschaft in einen EFTA-Staat oder von einem EFAT-Staat in einen anderen EFTA-Staat eingeführt und hier in den Verkehr gebracht hat. Dies gilt ab dem Tag, an dem das Lugarier Übereinkommen vom 16. September 1988 über die gerichtliche Zuständigkeit und die Vollstreckung gerichtlicher Entscheidungen in Zivil- und Handelsachen für einen EG-Mitgliedstaat oder einen EFTA-Staat in Kraft tritt, nicht mehr für diejenigen Staaten, die das Übereinkommen ratifiziert haben, insoweit auf Grund dieser Ratifikationen ein zugunsten des Geschädigten erwirktes nationales Urteil gegen den

CONSUMER PROTECTION ACT

REVISED STATUTES OF ONTARIO, 1990

t Defiitions

In this Act,

“*actually received*” means the sum of money received by the borrower from the lender that can be used by the borrower without any restrictions on its use imposed by the lender ; (“*effectivement reue*”)

“*borrower*” means a person who receives credit (“*emprunteur*”)

“*business premises*” does not include a dwelling ; (“*locaux commerciaux*”)

“*buyer*” means a person who purchases goods for consumption or services under an executory contract and includes his or her agent, but does not include a person who buys in the course of carrying on business or an association of a person for a purpose (“*sacheteur*”)

“*cost of borrowing*” means,

- (a) in the case of credit other than variable credit, the amount by Which,
 - (i) the total sum that the borrower is required to pay if the payments required are made as they become due, including all such sums regardless of the purpose or reason for the payment or the time of the payment,

exceeds,

- (ii) the sum actually received in cash by the borrower or, where the lender is a seller, the amount of the cash price of the goods or services less the sums, if any, actually paid as a down payment or credited in respect of a trade-in or paid or credited for any other reason plus, in each case, insurance or official fees, if any, actually paid by the lender,

- (b) in the case of variable credit, the charges made in respect of the extension of the variable credit (“*Trais d’emprunt*”)

“*credit*” means credit for which the borrower incurs a cost of borrowing and,

- (a) given under an agreement between a seller and a buyer to buy to purchase goods or services by which all or part of the purchase price is payable after the agreement is entered into, or

- (b) given by the advancement of money, but does not include credit given on the security of a mortgage or real property ; (“*credit*”)

“*Director*” means the Director under the Ministry of Consumer and Commercial Relations Act ; (“*directeur*”)

“*dwelling*” means any premises or any part thereof occupied as living accommodation (“*logement*”)

“*executory contract*” means a contract between a buyer and a seller for the purchase and sale of goods or services in respect of which delivery of the goods or

performance of the services or payment in full of the consideration is not made at the time the contract is entered into (i§contrat ex i¥ecutoire;")

i§goods;" means personal property (i§marchandises;") i§itinerant seller i§means a seller whose business includes soliciting, negotiating or arranging for the signing by a buyer, at a place other than the seller's permanent place of business, of an executory contract for the sale of goods or services, whether personally or by an agent or employee ; (i§vendeur itinerant;")

lender;" means a person who extends credit ; (i§preteur;") i§Minister;" means the Minister of Consumer and Commercial Relations ; (i§ministre;")

i§Ministry;" means the Ministry of Consumer and Commercial Relations ; (i§ministere;")

i§official fee;" means a fee that is required to be paid by or under a statute of Ontario or Canada (i§droits officiels;")

i§prescribed;" means prescribed by this Act or the regulations (i§prescrit;")

i§purchase price;" means the total obligation payable by the buyer under an executory contract (i§prix d'achat;")

i§registered;" means registered under this Act ; (i§inscrit;")

i§Registrar;" means the Registrar of the Consumer Protection Bureau (i§registrateur;")

i§regulations;" means regulations made under this Act (i§reglements;")

i§seller;" means a person who is in the business of selling goods or services to buyers, and includes an agent of the seller (i§vendeur;")

i§trade-in;" means consideration given by a buyer in a form other than money or an obligation to pay money (i§objet donne en reprise;")

Tribeunal;" means The Commercial Registration Appeal Tribunal ; (i§Commission;")

i§variable credit;" means credit made available under an agreement whereby the lender agrees to make credit available to be used from time to time, at the option of the borrower, for the purpose of the purchase from time to time of goods or services, and, without limiting the generality of the foregoing, includes credit arrangements commonly known as revolving credit accounts, budget accounts, cyclical accounts and other arrangements of a similar nature. Q i credit variable;" R.S.O.1980, c.87, s.1.

2. Exception re sa of utility; gas charges

This Act does not apply to the sale of a public utility as defined in section 1 of the Public Utilities Act or to any charge for the transmission, distribution or storage of gas as defined in the Ontario Energy Board Act where such charge has been approved by the Ontario Energy Board R.S.O.1980, c.87, s.2.

PART I

REGISTRATION OF ITINERANT SELLERS

3. Duties of Registrar

The Registrar may exercise the powers and shall perform the duties conferred or imposed upon him or her by or under this Part under the supervision of the Director R.S.O.1980. c.87. s.3.

4. (1) Registrar to require

No person shall carry on business as an itinerant seller unless registered by the Registrar under this Act.

(2) Name and place of business

A registered itinerant seller shall not carry on business in a name other than the name in which the seller is registered or from a place of business other than that authorized by the registration.

(3) Representation

No person shall publish or cause to be published in writing any representation that the person is registered under this Act. R.S.O.1980, c.87, s.4.

5. (1) Registration

An applicant is entitled to registration or renewal of registration by the Registrar except where,

- (a) having regard to his or her financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his or her business; or
- (b) the past conduct of the applicant affords reasonable grounds for belief that he or she will not carry on business in accordance with law and with integrity and honesty; or
- (c) the applicant is a corporation and,
 - (i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or
 - (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty or
- (d) the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations.

(2) Conditions of registration

A registration is subject to such terms and conditions to give effect to the purposes of this Act as are consented to by the applicant, imposed by the Tribunal or prescribed by the regulations. R.S.O.1980, c.87, s.5.

6. (1) Refusal to register

Subject to section 7, the Registrar may refuse to register an applicant where in

the Registrar's opinion the applicant is disentitled to registration under section 5.

(2) Refusal to renew, suspend or revoke

Subject to section 7, the Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 5 if the Registrar were an applicant, or where the registrant is in breach of a term or condition of the registration R.S.O.1980, c.87, s.6.

7. (1) Notice of proposal to refuse or revoke

Where the Registrar proposes to refuse to grant or renew a registration or proposes to suspend or revoke a registration, the Registrar shall serve notice of the proposal, together with written reasons therefor, on the applicant or registrant R.S.O.1980, c.87, s.7(1).

(2) Notice requiring hearing

A notice under subsection (1) shall inform the person on whom it is served that the person may require a hearing by the Tribunal by mailing or delivering to the Registrar and the Tribunal, within fifteen days after service of the notice under subsection (1), a notice in writing requiring a hearing. R.S.O.1980, c.87, s.7(2), revised.

(3) Powers of Registrar where no hearing

Where an applicant or registrant does not require a hearing by the Tribunal in accordance with subsection(2), the Registrar may carry out the proposal stated in the notice under subsection(1).

(4) Powers of Tribunal where hearing

Where an applicant or registrant requires a hearing by the Tribunal in accordance with subsection(2), the Tribunal shall appoint a time for and hold the hearing and, on the application of the Registrar at the hearing, may by order direct the Registrar to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Registrar.

(5) Conditions of order

The Tribunal may attach such terms and conditions to its order or to the registration as it considers proper to give effect to the purposes of this Act.

(6) Parties

The Registrar, the applicant or registrant who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section.

(7) Voluntary cancellation

Despite subsection(1), the Registrar may cancel a registration upon the request in writing of the registrant in the prescribed form surrendering his registration.

(8) Continuation of registration pending renewal

Where, within the time prescribed therefor or, if no time is prescribed, before expiry of a registration, a registrant has applied for renewal of registration and paid the prescribed fee, the registration shall be deemed to continue,

(a) until the renewal is granted or

(b) where the registrant is served with notice that the

Registrar proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing has expired and, where a hearing is required, until the Tribunal has made its order.

(9) Order effective, stay.

Even if a registrant appeals from an order of the Tribunal under section II of the Ministry of Consumer and Commercial Relations Act, the order takes effect immediately but the Tribunal may grant a stay until disposition of the appeal. R.S.O.1980, c.87, s.7(3-9).

8. Further application

A further application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed. R.S.O.1980, c.87, s.8.

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9. How to file complaints

(1) Where the Registrar receives a complaint in respect of an itinerant seller and so requests in writing, the itinerant seller shall furnish the Registrar with such information respecting the matter complained of as the Registrar requires.

(2) The request under subsection (1) shall indicate the nature of the inquiry involved.

(3) For the purposes of subsection (1), the Registrar or any person designated in writing by the Registrar may at any reasonable time enter upon the business premises of the itinerant seller to make an inspection in relation to the complaint. R.S.O.1980, c.87, s.9.

10. Inspection

(1) The Registrar or any person designated by the Registrar in writing may at any reasonable time enter upon the business premises of a registered itinerant seller to make an inspection to ensure that the provisions of this Act and the regulations relating to registration and the maintenance of trust accounts are being complied with.

(2) Where the Registrar has reasonable and probable grounds to believe that any person is acting as an itinerant seller while unregistered, the Registrar or any person designated by the Registrar in writing may at any reasonable time enter upon such person's business premises to make an inspection for the purpose of determining

whether or not the person is in contravention of section 4. R.S.O.1980, c.87, s.10.

11. (1) Powers on inspection

Upon an inspection under section 9 or 10, the person inspecting,

- (a) is entitled to free access to all books of account, cash, documents, bank accounts, vouchers, correspondence and records of the person being inspected that are relevant for the purposes of the inspection and
- (b) may, upon giving a receipt therefor, remove any material referred to in clause (a) that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected,

and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection.

(2) Admissibility of copies

Any copy made as provided in subsection (1) and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as proof, in the absence of evidence to the contrary, of the original. R.S.O.1980, c.87, s.11.

12. Notice of changes

(1) Every itinerant seller shall, within five days after the event, notify the Registrar in writing of,

- (a) any change in address for service
- (b) any change in the officers in the case of a corporation or of the members in the case of a partnership.

(2) The Registrar shall be deemed to be notified under subsection (1) on the day on which he or she is actually notified or, where the notification is by mail, on the day of mailing. R.S.O.1980, c.87, s.12.

13. (1) Financial statements

Every itinerant seller shall, when required by the Registrar with approval of the Director, file a financial statement showing the matters specified by the Registrar and signed by the itinerant seller and certified by a person licensed under the Public Accountancy Act.

(2) Statement confidential

The information contained in a financial statement filed under subsection (1) is confidential and no person shall otherwise than in the ordinary course of the person's duties communicate any such information or allow access to or inspection of the financial statement. R.S.O.1980, c.87, s.13.

14. (1) Service

Any notice or order required to be given or served under this Part or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the Ministry.

(2) When service deemed made

Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control receive the notice or order until a later date.

(3) Exception

Despite subsections (1) and (2), the Tribunal may order any other method of service in respect of any matter before the Tribunal. R.S.O.1980, c.87, s.14.

15. (9) Restaining orders

Where it appears to the Director that any person does not comply with any provision of this Part, the regulations or and order made under this Part despite the imposition of any penalty in respect of such non-compliance and in addition to any other rights the Director may have, the Director may apply to a judge of the Ontario Court (General Division) for an order directing such person go comply with such provision, and upon the application the judge may make such order or such other order as the judge thinks fit. R.S.O.1980, c.87, s.15(1), revised.

(2) Appeal

An appeal lies to the Divisional Court from an order made under subsection (1). R.S.O.1980, c.87, s.15(2).

16. (1) Offences

Every person who, knowingly,

- (a) furnishes false information in any application under this Part or in any statement or return required to be furnished under this Part or the regulations or
 - (b) fails to comply with any order, direction or other requirement made under this Part or section 38,
- is guilty of an offence punishable under section 39, but no proceeding under clause (a) shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Director.

(2) Certificate as evidence

A statement as to,

- (a) the registration or non-registration of any person
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar
- (c) the time when the facts upon which proceedings are based first came to the knowledge of the Director or
- (d) any other matter pertaining to such registration, non-registration, filing or non-filing,

purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as proof, in the absence of evidence to the contrary, of the facts stated therein for all purposes in any action, proceeding or prosecution. R.S.O.1980, c.87, s. 16.

17. (1) Matters confidential

Each person employed in the administration of this Act, including any person making an inspection under section 9, 10 or 11 shall preserve secrecy in respect of all matters that come to his or her knowledge in the course of his or her duties, employment or inspection and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations or
- (b) to his or her counsel or
- (c) with the consent of the person to whom the information relates.

(2) Testimony in civil suit

No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained in the course of his or her duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations. R.S.O.1980, c.87, s.17.

PART II EXECUTORY CONTRACTS

18. Application of part

This Part Applies to executory contracts for the sale of goods or services where the purchase price, excluding the cost of borrowing, exceeds \$50. R.S.O.1980, c.87, s.18.

19. (1) Form of executory contract

Every executory contract, other than an executory contract under an agreement for variable credit, shall be in writing and shall contain,

- (a) the name and address of the seller and the buyer
- (b) a description of the goods or services sufficient to identify them with certainty
- (c) the itemized price of the goods or services and a detailed statement of the terms of payment
- (d) where credit is extended, a statement of any security for payment under the contract, including the particulars of any negotiable instrument, conditional sale agreement, chattel mortgage or any other security
- (e) where credit is extended, the statement required to be furnished by section 24
- (f) any warranty or guarantee applying to the goods or services and, where there is no warranty or guarantee, a statement to this effect and
- (g) any other matter required by the regulations.

(2) Validity

An executory contract is not binding on the buyer unless the contract is made in accordance with this Part and the regulations and is signed by the parties, and a duplicate original copy thereof is in the possession of each of the parties thereto.

(3) Amount for trade-in set off to adjustment Where the amount to be paid by a buyer under an executory contract is determined after an allowance for a trade-in and is stated in the contract to be subject to adjustment after the existence or amount of liens against the trade-in is ascertained or confirmed, the statement of the terms of payment and the statement of the cost of credit shall be based upon the amount as determined upon the information provided by the buyer but, upon any subsequent adjustment, the percentage rate by which the cost of borrowing is expressed, the total number of instalments required to pay the total indebtedness or the price shown in the contract shall not be changed. R.S.O. 1980, c.87, s.19.

20. Deposit in advance

Where a trade-in is delivered or money is paid, whether by way of deposit or otherwise, on account of the proposed purchase of goods or services but no binding contract is entered into in respect of the goods and no delivery of the goods or any part thereof has been made to the buyer or no performance of the services has been made, the seller shall upon the request of the buyer return such trade-in or refund in full the money so paid, as the case may be. R.S.O.1980, c.87, s20.

21. (1) Rescission of certain executory contracts within two days

Where a seller solicits, negotiates or arranges for the signing by a buyer of an executory contract at a place other than the seller's permanent place of business, the buyer may rescind the contract by delivering a notice of rescission in writing to the seller within two days after the duplicate original copy of the contract first comes into

the possession of the buyer, and the buyer is not liable for any damages in respect of such rescission.

(2) Duties upon rescission

Where a buyer rescinds a contract under subsection (1),

- (a) the buyer shall immediately return any goods received under the contract and the seller shall bear the expense of the return, not exceeding the expense of returning the goods from the place where the buyer received their delivery and
- (b) the seller shall return any money received or realized in respect of the contract, whether from the buyer or any other person, and shall return any trade-in received under the contract.

(3) Trade-in

Where part of the consideration for the sale of goods is a trade-in, the title to the trade-in does not pass to the seller until the two-day period mentioned in subsection (1) has expired without rescission of the contract.

(4) Delivery of notice

A notice of rescission may be delivered personally or sent by registered mail addressed to the person to whom delivery is required to be made at the address shown in the contract, and delivery by registered mail shall be deemed to have been made at the time of mailing. R.S.O.1980, c.87, s.21.

22. Lien on other goods not enforceable

Any provision in any executory contract or in any security agreement incidental thereto under which the seller may acquire title to, possession of or any rights in any goods of the buyer, other than the goods passing to the buyer under the contract, is not enforceable. R.S.O. 1980, c.87, s.22.

23. (1) No repossession after two-thirds paid except by leave of judge

Where a buyer under an executory contract has paid two-thirds or more of the purchase price of the goods as fixed by the contract, any provision in the contract, or in any security agreement incidental thereto, under which the seller may retake possession of or resell the goods upon default in payment by the buyer is not enforceable except by leave of a judge of the Ontario Court (General Division). R.S.O.1980, c.87, s.23.(1), revised.

(2) Powers of judge

Upon an application for leave under subsection (1), the judge may, on his or her absolute discretion, grant or refuse leave or grant leave upon such terms and conditions as he or she considers advisable. R.S.O.1980, c.87, s.23.(2)

PART 111

CRED TRANSACTIONS

24. Discbsure of cost of borrowing

Except as provide in section 25, every lender shall furnish to the borrower, before giving the credit, a clear statement in writing showing,

- (a) the sum,
 - (i) expressed as one sum in dollars and cents, actually received in cash by the borrower, plus insurance or official fees, if any, actually paid by the lender, or
 - (ii) where the lender is a seller, being the amount of the cash price of the goods or services, including any insurance or official fees
- (b) where the lender is a seller, the sums, of any actually paid as a down payment or credited in respect of a trade-in, or paid or credited for any other reason
- (c) where the lender is a seller, the amount by which sum stated under subclause (a) (ii) exceeds the sum stated under clause (b)
- (d) the cost of borrowing expressed as one sum in dollars and cents
- (e) the percentage that the cost of borrowing bears to the sum stated,
 - (i) under subclause (a) (i), where the lender is not a seller, or
 - (ii) under clause (c), where the lender is a seller, expressed as an annual rate applied to the unpaid balance thereof from time to time, calculated and expressed in the manner prescribed by the regulations
- (f) the amount, if any, charged for insurance
- (g) the amount, if any, charged for official fees and
- (b) the basis upon which additional charges are to be made in the event of default.

R.S.O.1980, c.87, s. 24.

25. (cDeflnftlon

In this section, ;§period;” means a period of time of not less than four weeks and not more than five weeks in duration.

(2) Variable credft

A lender extending variable credit shall,

- (a) before agreeing to extend variable credit, furnish the borrower with a clear statement in writing setting forth the cost of borrowing in respect of the unpaid balances from time to time,
 - (i) stated as an annual percentage, or scale of atmual percentages, of such balance charged at the end of each period, subject to a minimum dollars-and-cents charge, if any, and
 - (ii) stated in dollars and cents in a schedule of fixed amounts of outstanding

- balances, and the corresponding charges for the cost of borrowing and
- (b) at the end of each period during extension of credit, furnish the borrower a clear statement in writing showing,
- (i) the outstanding balance in the account of the borrower at the beginning of the period,
 - (ii) the amount and date of each extension of credit to the borrower during the period and the identity of the goods or services in respect of which the credit was extended,
 - (iii) the amount of each sum received or credited to the account of the borrower during the period, and the date and occasion thereof,
 - (iv) the cost of borrowing, expressed as one sum in dollars and cents, charged during the period,
 - (v) the outstanding balance in the account of the borrower at the end of the period, and
 - (vi) the statement referred to in clause (a). R.S.O.1980, c.87, s.25.

26. Manner of applying percentage rate

The percentage rate by which the cost of borrowing is expressed shall be applied in the manner prescribed by the regulations. R.S.O.1980, c.87, s.26.

27. When costs of borrowing not recoverable

A borrower is not liable to pay a lender as the cost of borrowing any sum in excess of the sum shown in the statement required by section 24 or 25 in respect of the transaction. R.S.O.1980, c.87, s.27.

28. Prepayment

Where the sum remaining to be paid under an agreement for credit is paid in full before the term of the agreement has expired,

- (a) the borrower is entitled to a proportionate credit in respect of the cost of borrowing ; and
- (b) the lender is entitled to a proportionate part of the cost of lending, in an amount determined in the manner prescribed by the regulations. R.S.O.1980, c.87, s.28.

29. (Advertising of cost of borrowing

Subject to regulations, no lender shall represent, either orally or in print, or by radio or television broadcast, the lender's charge for credit of cause such charge to be so represented unless the representation includes the full cost of borrowing and is expressed in the manner required by section 24 or 25.

(2) Advertising of other terms of credit

Subject to the regulations, where a lender represents or causes to be represented

in a printing, broadcast or other publication any terms of the credit agreement other than that referred to in subsection(1), the lender shall also include or cause to be included all other relevant terms of the credit transaction,including,

- (a) the sum to be actually received in cash by the borrower or the actual cash price of the goods
- (b) the amount of the down payment
- (c) the amount of each instalment ; and
- (d) the number of instalments required to repay the total indebtedness, including the cost of borrowing. R.S.O.1980, c.87, s.29.

30. (1) Assignment of negotiable instrument

Where a lender assigns a negotiable instrument given to secure credit, the lender shall deliver to the assignee with the negotiable instrument a copy of the statement required by section 24 and, where the lender is a seller, a copy of the contract of sale.

(2) Reassignment of negotiable instrument

Every assignee of a negotiable instrument who reassigns the instrument shall deliver to his, her or its assignee the statement and contract of sale, if any, received by him, her or it in respect of the instrument.

(3) indemnity

Where an assignee of a negotiable instrument to which subsection (2) applies is entitled to recover on the instrument from the maker, the maker is entitled to be indemnified therefor or by any assignor of the instrument who has not complied with subsection (1) or (2), as the case may be. R.S.O.1980, c.87, s.30.

31. Obligations of assignee of lender

(1)The assignee of any rights of a lender has no greater rights than and is subject to the same obligations, liabilities and duties as the assignor, and the provisions of this Act apply equally to such assignee.

(2)Despite subsection (1), a borrower shall not recover from, or be entitled to set off against, an assignee of the lender an amount greater than the balance owing on the contract at the time of the assignment, and, if there have been two or more assignments, the borrower shall not recover from an assignee who no longer holds the benefit of the contract an amount that exceeds the payments made by the borrower to that assignee. R.S.O.1980, c.87, s.31.

32. (1) Order to pay indemnity

Where an assignor of a negotiable instrument is convicted of a contravention of section 30, the Ontario Court (Provincial Division) making the conviction may order that the person convicted is liable to indemnify the maker under subsection 30 (3). R.S.O.1980, c.87, s.32 (1), revised.

(2) Ring indemnity order in court

Where an indemnity order is made under subsection (1) in favour of a person who is or becomes liable under a judgment of a court to an assignee of the negotiable instrument in respect of which the indemnity order was made, the person entitled to the indemnity may file the indemnity order in the court office of the court in which the judgment was issued.

(3) Default judgment

Upon the filing of the indemnity order, the local registrar or clerk of the court shall issue a default judgment in favour of the person entitled to the indemnity and against the person required by the indemnity order to give the indemnity, and the amount of the default judgment shall be the amount of the judgment referred to in subsection (1) and costs together with the costs of issuing the default judgment, or such less amount as the person entitled to the indemnity by requisition requests.

(4) Setting aside or variation of default judgment

Upon application thereof, the court in which the default judgment is issued may set aside the default judgment or may determine the amount of the indemnity or make an order of reference for the purpose and may vary the amount of the default judgment. R.S.O.1980, c. 87, s.32(2-4).

PART IV GENERAL

33. Agreements and waivers contrary to Act

This Act applies despite any agreement or waiver to the contrary. R.S.O.1980, c.87, s.33.

34.(1) Definition

In this section, "consumer sale" means a contract for the sale of goods made in the ordinary course of business to a purchaser for the purchaser's consumption or use, but does not include a sale,

- (a) to a purchaser for resale
- (b) to a purchaser whose purchase is in the course of carrying on business
- (c) to an association of individuals, a partnership or a corporation;
- (d) by a trustee in bankruptcy, receiver, a liquidator or a person acting under the order of a court.

(2) Implied warranties

The implied conditions and warranties applying to the sale of goods by virtue of the Sale of Goods Act apply to goods sold by a consumer sale and any written term of acknowledgment, whether part of the contract of sale or not, that purports to negative

or vary any of such implied conditions and warranties is void and, if a term of a contract, is severable therefrom, and such term or acknowledgment shall not be evidence of circumstances showing an intent that any of the implied conditions and warranties are not to apply. R.S.O.1980, c.87, 5.34.

35. Rights of buyer and borrower preserved

The rights of a buyer or borrower under this Act are in addition to any rights of the buyer or borrower under any other Act or by the operation of law, and nothing in this Act shall be construed to derogate from such rights.

R.S.O.1980, c.87, s.35.

36. (1) Definitions

"credit" means the advancing of money, goods or services to or on behalf of another for repayment at a later time, whether or not there is a cost of borrowing, and includes variable credit; ("credit")

"unsolicited goods" means personal property furnished to a person who did not request it and a request shall not be inferred from inaction or the passing of time alone, but does not include,

- (a) personal property that the recipient knows or ought to know is intended for another person, or
- (b) personal property supplied under a contract in writing to which the recipient is a party that provides for the periodic supply of personal property to the recipient without further solicitation. ("merchandise non sollicitée")

(2) Credo arrangement

No action shall be brought by which to charge any person upon any arrangement for the extension of credit evidenced by a credit card unless the person to whom credit is to be extended requested or accepted the credit arrangement and card in writing, and the obtaining of credit by the person named in the credit card shall be deemed to constitute such written acceptance by the person.

(3) Use of Unsolicited goods

No action shall be brought by which to charge any person for payment in respect of unsolicited goods notwithstanding their use, misuse, loss, damage or theft.

(4) Relief from obligation

Except as provided in this section, the recipient of unsolicited goods or of a credit card that has not been requested or accepted in accordance with subsection (2) has no legal obligation in respect of their use or disposal. R.S.O. 1980, c. 87, s. 36.

37.(1) Definitions

For the purposes of this section in addition to the meanings defined in section 1 for "buyer" and "seller", "buyer" includes a person who hires or leases goods for consumption where,

- (a) the person has an option to purchase the goods, or
 - (b) upon compliance with agreed terms, the person will become the owner of the goods or will be entitled to keep them without further payment;
- (“sacheteur”)

“seller” includes a person who is in the business of letting goods, by hire or lease, to buyers. (“vendeur”)

(2) Referral selling

No seller shall hold out to a buyer or prospective buyer any advantage, benefit or gain to the buyer or prospective buyer for doing anything that purports to assist the seller in finding or selling to another prospective buyer.

(3) Contracts not binding on buyer

Despite the provision for or imposition of a penalty under this Act, any contract entered into following the holding out referred to in subsection (2) is not binding on the buyer. R.S.O. 1980, c. 87, s. 37.

38. False advertising

Where the Registrar believes on reasonable and probable grounds that a seller or lender is making false, misleading or deceptive statements in any advertisement, circular, pamphlet or similar material, the Registrar may order the immediate cessation of the use of such material and section 7 applies with necessary modifications to the order in the same manner as to a proposal by the Registrar to refuse registration and the order of the Registrar shall take effect immediately, but the Tribunal may grant a stay until the Registrar's order becomes final. R.S.O. 1980, c. 87, s. 38.

39. (1) Offence

Every person who contravenes this Act or the regulations and every director or officer of a corporation who knowingly concurs in a contravention of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1980, c. 87, s. 39 (1); 1989, c. 72, s. 26, part.

(2) Corporations

Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$100,000 and not as provided therein. R.S.O. 1980, c. 87, s. 39 (2); 1989, c. 72, s. 26, part.

(3) Limitation

Subject to subsection 16 (1), no proceeding under this section shall be instituted more than three years after the time when the subject-matter of the proceeding arose,

(4) Deviations from forms

For the purposes of this section, an error or omission in any form prescribed or

information required to be given by this Act or the regulations shall not be deemed to be in contravention of this Act or the regulations where the person against whom the contravention is alleged proves that the error or omission was accidental or clerical or was beyond the person's control. RIO. 1980, c. 87, s. 39 (3, 4).

40. Regulations

The Lieutenant Governor in Council may make regulations,

- (a) governing applications for registration or renewal of registration of itinerant sellers and prescribing terms and conditions of registration;
- (b) requiring itinerant sellers to make returns and furnish information to the Registrar;
- (c) prescribing further procedures respecting the conduct of matters coming before the Tribunal;
- (d) providing for the responsibility for payment of witness fees and expenses in connection with proceedings before the Tribunal and prescribing the amounts thereof;
- (e) requiring itinerant sellers or any class thereof to be bonded in such form and terms and with such collateral security as are prescribed, and providing for the forfeiture of bonds and the disposition of the proceeds;
- (f) requiring the payment of fees on application for registration as an itinerant seller or for renewal of such registration, and prescribing the amounts thereof;
- (g) prescribing the form of executory contracts and statement of the cost of borrowing and the size, type and colour of lettering used in any provision thereof;
- (h) requiring and governing the maintenance of trust accounts by sellers or any class thereof, and prescribing the money that shall be held in trust and the terms and conditions thereof;
- (i) prescribing the manner in which the cost of borrowing stated as a percentage shall be calculated, expressed and applied;
- (j) prescribing the manner of determining the apportionment of the cost of borrowing for the purposes of section 28;
- (k) exempting any class of buyer, seller, itinerant seller, lender or borrower from the application of this Act or any provision thereof;
- (l) prescribing forms for the purposes of this Act and providing for their use;
- (m) requiring any information required to be furnished or contained in any form or return to be verified by affidavit;
- (n) defining any expression used in Part II or Part III of this Act;
- (o) governing the advertising by lenders of the cost of borrowing or other terms

of credit. R.S.O. 1980, c. 87, s. 40.

CONSUMER PROTECTION ACT
REGULATION 176
GENERAL
INTERPRETATION

1. — (1) In this Regulation, “branch office” means a place at which the public is invited to deal in the conduct of the business of an itinerant seller.

(2) For the purposes of subsection 19(1) of the Act, “warranty or guarantee” means warranty or guarantee that is enforceable by a buyer against a seller.

(3) For the purposes of,

(a) subclause 24 (a) (i) of the Act, “cash” includes the sum remaining unpaid under a previous extension of credit, in an amount determined under section 23 of this Regulation, that the borrower and lender agree is to be consolidated with the extension of credit in respect of which the statement is given; and

(b) subclause 24 (a) (ii) of the Act, “cash price” includes the sum remaining unpaid under a previous extension of credit, in an amount determined under section 23 of this Regulation, that the buyer and seller agree is to be consolidated with the extension of credit in respect of which the statement is given. R.R.O. 1990, Reg. 176, s. 1.

EXEMPTIONS

2. — (1) The Act does not apply to a person who,

- (a) borrows in the course of carrying on business or who lends to a person who borrows in the course of carrying on business;
- (b) buys goods or services for purposes of resale in the ordinary course of trade or for use in the further production of goods or services; or
- (c) who sells goods or services to a person referred to in clause (b).

(2) Section 19 of the Act does not apply to a buyer or seller under an executory contract under an agreement for variable credit for which the borrower incurs no cost of borrowing.

(3) Subsections 4 (1) and (3) of the Act do not apply to,

- (a) a motor vehicle dealer registered under the Motor Vehicle Dealers Act;
- (b) an insurer, insurance agent or an insurance broker licensed under the Insurance Act; or
- (c) a funeral director, the operator of a funeral establishment or the operator of a transfer service licensed under the Funeral Directors and Establishments Act.

(4)Section 21 of the Act does not apply to the sale of,

- (a) a motor vehicle by a seller who is registered under the Motor Vehicle Dealers Act;
- (b) funeral services, funeral supplies or transfer services by a funeral director or operator of a funeral establishment licensed under the Funeral Directors and Establishments Act; or
- (c) transfer services or funeral supplies by the operator of a transfer service licensed under the Funeral Directors and Establishments Act.

(5)Section 22 of the Act does not apply to a seller who acquires title to a trade-in under an executory contract.

(6)Section 24 of the Act does not apply to a credit union as defined in the Credit Unions and Caisses Populaires Act. RY.O. 1990, keg. 176,s.2.

PART 1 REGISTRATION

3. — (1)An application for registration as an itinerant seller or renewal thereof shall be in a form provided by the Minister.

(2)A notice by an itinerant seller under clause 12(1) (a) or (b) of the Act shall be in a form provided by the Minister. kP.O. 1990, keg. 176, s.3.

FEEES

4. The fee payable to the Registrar upon application for registration as an itinerant seller or renewal of the registration is as follows:

- 1. Beginning on the 1st thy of Jaunary, 1992 to and including the 31st thy of December, 1992;~ \$225.00
- 2. Beginning on the 1st thy of January, 1993 to and including the 31st thy of December, 1993;~ 250.00
- 3. Beginning on the 1st thy of January, 1994;~ 275.00 OReg.691/91, s.1.

5. An itinerant seller shall obtain a separate registratio n, on application for each trade name under which the itinerant seller carries on business as an itinerant seller. RR.O. 1990, Reg.176, s.5.

TERMS AND CONDITIONS OF REGISTRATION

6. — (1)Every registration expires on the thte shown on the certificate of registration unless an application for renewal of registration in a form provided by the Minister, together with the appropriate fee prescribed in section 4, is filed with the Registrar prior to the date of expiry.

(2) Every registration is conditional for a sixty-day period following registration pending verification of the registrant's application.

(3) Every applicant for registration shall state in the application an address for service in Ontario.

(4) Every person registered as an itinerant seller shall maintain a permanent place of business in Ontario.

(5) Where the registration of an itinerant seller is revoked, suspended or cancelled or, where the itinerant seller has voluntarily gone out of business, the itinerant seller shall immediately return the certificate of registration to the Registrar by registered mail.

(6) Where a notice of intention to cancel a bond has been served on the Registrar under section 10, and the bond has been cancelled on the date stated in the notice, the registration of the itinerant seller shall no longer be valid unless prior to that date a replacement bond has been received by the Registrar.

(7) The Registrar may require further information or material to be submitted by any applicant or any registrant within a specified time limit and may require verification by affidavit or otherwise of any information or material then or previously submitted. R.R.O. 1990, Reg. 176, s. 6.

7. Where an itinerant seller is a corporation it shall, within five days after the event, notify the Registrar in a form provided by the Minister where there is a change in a director of the corporation or where there is a change in its controlling interest. R.R.O. 1990, Reg. 176, s. 7.

BONDS

8. — (1) Every application for registration shall be accompanied by the prescribed fee and a bond in such amount and form as is prescribed.

(2) The bond shall be,

- (a) the bond of a guarantee company approved under the Guarantee Companies Securities Act;
- (b) a personal bond accompanied by collateral security; or
- (c) the bond of a guarantor, other than a guarantee company, accompanied by collateral security,

and shall be in the principal amount of \$5,000.

(3) The classes of negotiable security that may be accepted as collateral security for a bond are,

- (a) bonds issued or guaranteed by Canada; or
- (b) bonds issued or guaranteed by any province of Canada.

(4) The market value of the collateral security referred to in subsection (3) shall

be posted with the Treasurer of Ontario and maintained at an amount not less than \$5,000.

(5) The bond referred to in subsection (1) shall be in Form 1, Form 2 or Form 3, as the case may be. R.R.O. 1990, Reg. 176, s.8.

TRUST FUNDS

9. — (1) All money received by a seller under an executory contract to which Part II of the Act applies and that is subject to rescission shall be retained by the seller in trust for the buyer until the contract is rescinded under section 21 of the Act or until the period for rescission has expired, whichever is the later.

(2) Where money is paid, whether by way of deposit or otherwise, on account of the proposed purchase of goods or services but no binding contract is entered into in respect of the goods and no delivery of the goods or any part thereof has been made to the buyer or no performance of the services has been made, the seller shall retain the money in trust for the buyer until,

- (a) the goods are delivered or the services performed;
- (b) the buyer requests the refund in full of the money paid; or
- (c) subject to subsection (1), a binding contract is entered into.

(3) Every seller shall maintain a ledger account in which shall be entered full details of all trust money so received and disbursements therefrom and shall keep all trust money retained by the seller separate and apart from the seller's own money.

(4) An entry in a ledger account referred to in subsection (3) shall be retained for a period of six years from the date of the entry. R.R.O. 1990, Reg. 176, s.9.

FORFEITURE OF BONDS

10. A bond may be cancelled by any person bound thereunder by giving to the Registrar and the itinerant seller named in the bond, at least two months notice in writing of intention to cancel and, subject to section 11, the bond shall be deemed to be cancelled on the date stated in the notice, which date shall be not less than two months after the receipt of the notice by the Registrar. R.R.O. 1990, Reg. 176, s.10.

11. For the purpose of every act or omission occurring,

- (a) during the period of registration; or
- (b) during the period prior to cancellation of the bond under section 10 where there has been no termination of registration,

every bond shall continue in force and the collateral security, if any, shall remain on deposit for a period of two years following the termination of the registration or the

cancellation of the bond, as the case may be. R.R.O. 1990, Reg. 176, s.11.

12. Where a bond has been canceled or the registration has been terminated, and the bond has not been forfeited, the Treasurer of Ontario may, two years following the termination of the registration to which the bond related or two years following the cancellation of the bond, deliver the collateral security to the person who deposited such security R.R.O. 1990, s.12.

13. The Registrar may declare any bond mentioned in section 8 forfeited,

(a) where a registered itinerant seller, including any member of a partnership, in respect of whose conduct the bond has been conditioned has been convicted of,

(i) an offence under Act, or

(ii) an offence involving fraud or theft or conspiracy to commit an offence involving fraud or theft under the Criminal Code (Canada), and the conviction has become final;

(b) where a proceeding by or in respect of a registered itinerant seller, including any member of a partnership, in respect of whose conduct the bond has been conditioned, has been taken under the Bankruptcy Act (Canada), either by way of assignment, or by petition, or where a proceeding has been taken by way of winding-up, and in the case of a petition a receiving order under the Bankruptcy Act (Canada), or a winding-up order has been made, and the order has become final;

(c) where a judgment based on a finding of fraud has been given against a registered itinerant seller, including any member of a partnership, in respect of whose conduct the bond has been conditioned and the judgment has become final; or

(d) where judgment has been given against a registered itinerant seller, including any member of a partnership, in respect of whose conduct the bond has been conditioned, on any claim arising out of a sale of goods or services made in the course of business as an itinerant seller, and the judgment has remained unsatisfied for a period of ninety days,

and thereupon the amount thereof becomes due and owing by the person bound thereby as a debt due the Crown in right of Ontario. R.R.O. 1990, Reg. 176, s.13.

14. Where a bond secured by the deposit of collateral security is forfeited under section 13, the Treasurer of Ontario may sell the collateral security at the current market price. R.R.O. 1990, Reg. 176, s.14.

15. Where the Crown in right of Ontario becomes a creditor of a person in respect of a debt to the Crown arising from the provisions of section 13, the Registrar may take such steps as the Registrar sees fit under the Bankruptcy Act (Canada), the Courts of Justice Act, the Business Corporations Act or the Winding-up Act (Canada)

for the appointment of an interim receiver, custodian, trustee, receiver or liquidator, as the case may be. RR.O. 1990, Reg. 176, s.15.

16. — (1) The Treasurer of Ontario may in his or the discretion,
- (a) assign any bond forfeited under section 13 and transfer the collateral security, if any;
 - (b) pay over any money recovered under the bond;
 - (c) pay over any money realized from the sale of the collateral security under section 14, to any person who,
 - (d) is a judgment creditor of any itinerant seller, including any member of a partnership, in respect of whose conduct the bond has been conditioned where the judgment was based on a claim arising out of a sale of goods or services;
 - (e) in respect of a claim for less than \$100 against any itinerant seller, including any member of a partnership, in respect of whose conduct the bond has been conditioned, arising out of a sale of goods or services, satisfies the Registrar as to the validity of such claim; or
 - (f) has proven a claim in bankruptcy against any itinerant seller, including any member of a partnership in respect of whose conduct the bond has been conditioned, in respect of any claim arising out of a sale of goods or services, if the claim or transaction occurred during the period referred to in clause 11(a) or (b).

(2) The Treasurer of Ontario may, where he or she considers it advisable, without any order, pay the whole or any part of the proceeds referred to in clause (1) (a) or (c) to the Accountant of the Ontario Court in trust for such persons as are or may become entitled to share in the proceeds of the bond under subsection (1). RR.O. 1990, Reg. 176, s.16.

17. Where a bond has been forfeited and the Treasurer of Ontario has not received notice in writing of any claim against the proceeds of the bond or such part as remains in the Treasurer's hands within two years of the forfeiture, the Treasurer may pay the proceeds of the bond or the collateral security, or any part remaining, to any person who made a payment under the bond or who deposited the collateral security, after first deducting the amount of any expenses that have been incurred in connection with any investigation or otherwise relating to the itinerant seller, including any member of a partnership, in respect of whose conduct the bond was conditioned. RR.O. 1990, Reg. 176, s.17.

PART II DISCLOSURE

18. In this Part,

“annual percentage rate” means for the purposes of sections 19 and 20 a percentage that is 365 times greater than a daily percentage rate that, when multiplied by the balance of the principal sum outstanding at the end of each day during the term of the contract will produce a sum that equals the cost of borrowing, or sums, the total of which equal the cost of borrowing;

“approximately” means an interval or amount that does not vary from the average interval or amount by more than 10 per cent;

“median amount” means an amount that is half way between one amount and another amount;

“payment period” means the number of days that elapse between the dates upon which a payment is required in an agreement;

“principal sum” means the sum stated in clause 24 (a) or (c) of the Act, which shall be deemed to be unpaid or outstanding for at least one day, and the unpaid balances thereof from time to time outstanding but does not include any amount or amounts that are components of the cost of borrowing;

“regular payment contract” means a contract in which payments are required at approximately equal intervals and in approximately equal amounts during the term of the contract. R.R.O. 1990, Reg. 176, s.18.

19. The percentage required by clause 24 (c) of the Act shall be calculated, expressed and applied with respect to an extension of credit in the following manner:

1. Subject to paragraphs 4 and 5 to section 20, the percentage that a lender shall disclose with respect to an extension of credit shall be the annual percentage rate applicable to the contract.
2. The annual percentage rate shall be deemed to have been charged not in advance on the principal sum from time to time outstanding, so long as the payments required to be made by the borrower are made as they become due and such payments are applied first to the reduction of the accrued cost of borrowing.
3. For the purposes of paragraph 2, the cost of borrowing shall be deemed to be charged daily and summed until the next succeeding payment becomes due and the accrued cost of borrowing is that amount which is so charged and summed at any given time.
4. Where a contract provides for approximate monthly payment periods, the rate that shall be deemed to have been applied monthly under paragraphs 1, 2 and 3 shall be one-twelfth of the annual percentage rate.
5. Where a contract provides for payments at periods other than approximately monthly, the rate that shall be deemed to have been applied under paragraphs

1,2 and 3 with respect to each payment shall be the same fraction of the annual percentage rate that the payment period is of one year. RR.O. 1990, Reg. 176, s.19.

20. X (1) In this section, “amount of the credit” means the sum stated in clause 24 (a) or (c) of the Act.

(2) The annual percentage rate required to be disclosed under section 19 may be a rate that differs by not more than one per cent from the annual percentage rate that the cost of borrowing bears to the amount of the credit, except that a greater arithmetic difference may be permitted in a regular payment contract, in which case the annual percentage rate required to be disclosed may be the actual annual percentage rate that the cost of borrowing bears to an amount that differs by not more than \$5 from the amount of the credit.

(3) In addition to the tolerance permitted by subsection (2), where the due date of the first instalment in an extension of credit having approximately monthly payments and a term of six months or more is not less than fifteen or more than forty-five days after the credit is advanced, it may be deemed by the lender, for the purposes of the statement required by section 24 of the Act, that the credit was advanced on a date not more than thirty-one days immediately prior to the due date of the first instalment, RR.O. 1990, Reg. 176, s20.

21. X (1) Subject to subsections (2), (3) and (4), the annual percentage or scale of annual percentages that a lender shall disclose pursuant to clause 25 (2) (a) and to section 26 of the Act shall be the rate or scale of annual percentage rates that, when applied in the manner prescribed in subsection (2) or (3) of this section to the unpaid balance at the end of the preceding month or period, will yield a sum that equals the cost of borrowing, or sums, the total of which equals the cost of borrowing.

(2) Where a contract for variable credit provides for monthly payments, the percentage rate that shall be applied monthly under subsection (1) shall be one-twelfth of the annual percentage rate.

(3) Where a contract for variable credit provides for payments at period other than monthly, the percentage rate that shall be applied under subsection (1) with respect to each payment period shall be the same fraction of the annual percentage rate that the payment period is of one year. -

(4) For the purposes of subsection (1), the cost of borrowing may be computed within a range,

- (a) not in excess of \$10 on the median amount in a selected range of outstanding balances, where the largest amount in the range is not more than \$1,000; or

(b) not in excess of \$20 on the median amount in a selected range of outstanding balances where the smallest amount in the range is more than \$1,000; or

so long as the cost of borrowing is applied to all outstanding balances within the range.
RR.O. 1990, keg. 176, s21.

22. — (1) In this section,

“denominator” means the sum of the balances of the obligation at the beginning of the contract and at the end of each period in accordance with the schedule of payments required as originally required as originally scheduled;

“lender” includes any assignee of the lender;

“numerator” means the sum of the balances at the beginning of the contract and the balances unpaid at the end of each period up to the date of full payment of the total obligation;

“obligation” means the total amount payable when the contract was entered into;

“period” means an interval of time not in excess of thirty-one days;

“unit” means the amount produced by dividing the obligation by the number of months in the contract.

(2) Subject to subsections (4), (5), (6), (7), (8), (9) and (10), where an amount, due under an extension of credit wherein the cost of borrowing is precomputed, is paid in advance of the due date, the lender may retain a proportion of the cost of borrowing calculated, when the amount of the obligation is fully paid, by dividing the numerator by the denominator, so long as the period in the numerator is equal to the period in the denominator, to produce a fraction, which fraction shall be multiplied by the cost of borrowing and the resultant sum is the amount to be retained by the lender.

(3) Where the original term of the transaction is varied by one or more extensions of payment, the extended payment or payments shall be deemed to have been made as originally scheduled.

(4) Subject to subsections (5) and (6), the lender shall allow the borrower a rebate of the cost of borrowing less the retention allowed the lender under subsection (2).

(5) Except where the prepayment is made under an arrangement for refinancing or for the extension of additional credit, the lender is entitled, in addition to the amount allowed under subsection (2), to retain an amount equal to not more than \$20 or one-half of the rebate as computed in subsection (4), whichever is the lesser, and the borrower is entitled to a rebate of the remainder of the cost of borrowing.

(6) Where the rebate required to be given under subsection (4) is less than \$2, the borrower is not entitled to the rebate.

(7) Where a payment is received after it had become due, the lender may deem that

the payment had been received on the instalment due date.

(8)Where a payment is received before it is due, the lender shall deem that the payment has been received not later than the end of the period in which the payment has been received.

(9)Where a regular payment contract requires payments monthly or more frequently or less frequently than monthly and the obligation is paid in full before the term of the contract has expired, the obligation shall be deemed by the lender to have been substantially prepaid if the actual balance due, exclusive of default charges, at the end to the period immediately preceding the date of the payment in full plus the greater of one unit or 15 per cent of the obligation is less than the balance at the end of the preceding period as such balance was originally scheduled:

(10)Despite subsection (8), where the obligation has not been substantially prepaid as described in subsection (9), the lender may deem that the balances in the numerator are identical to the balances in the denominator up to the end of the period preceding the payment in full or up to the end of the period in which the payment in full is made, whichever period date is nearest to the actual date of the payment in full. R.R.O. 1990, Reg. 176, s.22.

23. ~~X~~ (1)For the purposes of section 28 of the Act, ~~“paid in full”~~ includes the consolidation in an agreement to extend credit of a sum owing under a previous agreement to extend credit.

(2)Where a borrower or a buyer, as the case may be, pays in full under the circumstances referred to in subsection (1), the amount allowed to the borrower or buyer shall be determined under section 22 and shall include the unearned portion of any insurance premium required to be paid by the borrower or the buyer under the original agreement. R.R.O. 1990, Reg. 176, s.23.

24. ~~X~~ (1)Where a lender represents, or causes to be represented, in print, the lender's charge for credit, the lender shall provide an example of the calculation of the charge and the rate represented thereby.

(2)The representations required to be made by a lender under section 29 of the Act,

- (a) shall, in the case of a lender who advertises in a place other than the lender's business premises, be printed on the advertisement;
- (b) may, in the case of a lender who advertises in the lender's business premises, be omitted from the advertisement, so long as a statement is printed on the advertisement that the charge for credit and the calculation thereof and the other terms of the credit transaction may be obtained from a source on the lender's business premises; and
- (c) shall, where the advertisement is printed on a page in catalogue, refer to a page or pages in the catalogue where the charge for credit and the calculation

therefor and the other terms of the credit transaction may be obtained.

(3) Where a lender represents, or causes to be represented, orally the lender's charge for credit by radio or television broadcast, or otherwise, the lender shall provide an example of the calculation of the charge and the rate represented thereby. RR.O. 1990, Reg. 176 s.24.

25. A request for voluntary cancellation of registration under subsection 7 (7) of the Act shall be in a form provided by the Minister. RR.O. 1990, Reg. 176, s.25.