

SOUTH AUSTRALIA

GOODS SECURITIES ACT 1986

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **10 March 1997**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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GOODS SECURITIES ACT 1986

being

Goods Securities Act 1986 No. 111 of 1986
[Assented to 18 December 1986]¹

as amended by

Goods Securities Act Amendment Act 1987 No. 21 of 1987 [Assented to 16 April 1987]

Goods Securities (Highways Fund) Amendment Act 1991 No. 53 of 1991 [Assented to 28 November 1991]²

Statutes Repeal and Amendment (Commercial Tribunal) Act 1995 No. 82 of 1995 [Assented to 30 November 1995]³

¹ Came into operation (except ss. 5(3), 9, 11, 12 and Sched. 1) 25 May 1987; s. 5(3) came into operation 8 June 1987; transitional period for Sched. 2 25 May 1987 to 7 June 1987: *Gaz.* 21 May 1987, p. 1328; remainder of Act came into operation 15 June 1987: *Gaz.* 11 June 1987, p. 1492.

² Came into operation 1 January 1992: *Gaz.* 12 December 1991, p. 1747.

³ **Came into operation 10 March 1997: *Gaz.* 6 March 1997, p. 1114.**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix.*

An Act to provide for the registration of security interests in prescribed goods; to amend the Bills of Sale Act 1886, the Consumer Transactions Act 1972, the Mercantile Law Act 1936 and the Sale of Goods Act 1895; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Goods Securities Act 1986*.

Commencement

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

"**corresponding law**" means a law of another State, or a Territory, of the Commonwealth declared by proclamation to be a law corresponding to this Act;

"**Court**" means the Civil (Consumer and Business) Division of the Magistrates Court;

"**dealer**" means a person who carries on the business of purchasing and selling prescribed goods or any class of prescribed goods;

"**discharge**" of a security interest includes extinguishment of the interest;

"**the Highways Fund**" means the Highways Fund established under the *Highways Act 1926*;

"**hire-purchase agreement**" means an agreement—

- (a) that provides for the hiring out of goods and purports to confer on the person to whom the goods are hired an express or implied right or option to purchase the goods; or
- (b) that provides for the purchase of goods by 3 or more instalments (whether the instalments are described as rent, hire or in some other manner),

but does not include an agreement that provides for the property in the goods to pass on or before delivery;

"**notice**" means actual notice;

"**prescribed goods**" means—

- (a) a motor vehicle registered under the *Motor Vehicles Act 1959* or a motor vehicle that has been so registered but is not currently registered under that Act or under the law of another State or a Territory of the Commonwealth; and

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(b) goods of a class prescribed by regulation for the purposes of this definition, but does not include goods of a class excluded by regulation from the ambit of this definition;

"**register**" means the register kept under section 4;

"**registered security interest**" means a security interest registered under this Act or a corresponding law;

"**Registrar**" means a person employed in the Public Service of the State to whom the Minister assigns the functions of the Registrar under this Act;

"**security interest**" in relation to prescribed goods means—

- (a) a mortgage of the goods; or
- (b) a bill of sale over the goods; or
- (c) a lien or charge over the goods; or
- (d) the title to the goods held by a person who has hired out the goods under a goods lease; or
- (e) the title to the goods held by a person who has hired out or agreed to sell the goods under a hire-purchase agreement; or
- (f) any other prescribed interest in the goods.

(2) The Governor may, by proclamation—

- (a) declare a law of another State, or of a Territory, of the Commonwealth to be a corresponding law; or
- (b) vary or revoke a declaration previously made under this subsection.

**PART 2
THE REGISTER**

The register

4. (1) The Registrar shall keep a register of security interests in prescribed goods.

(2) The register shall contain—

- (a) such information as is required to be entered in the register by this Act; and
- (b) such other information as may be prescribed.

Application for registration

5. (1) The holder of a security interest in prescribed goods may make application for registration of that security interest.

(2) On receipt of an application under subsection (1) the Registrar shall register the security interest by entering the following particulars (insofar as those particulars are not already entered) in the register:

- (a) such details of the goods to which the security interest relates as are necessary to identify them; and
- (b) the name and address of the holder of the security interest; and
- (c) the type of security interest; and

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(e) the date and time of entry in the register.

(3) Security interests in the same goods must be registered under this Act in the order in which applications for registration of those interests are lodged with the Registrar.

Change of particulars

6. (1) The holder of a registered security interest may make application for variation of the particulars of registration of the security interest.

(2) On receipt of an application under subsection (1) the Registrar shall enter in the register—

- (a) the variation of the particulars as specified in that application; and
- (b) the date and time of entry of the variation in the register.

Cancellation of registration

7. (1) The holder of a registered security interest—

- (a) may make application for cancellation of the registration; and
- (b) where the security interest has been discharged shall, within 14 days after discharge, make application for cancellation of the registration.

(2) On receipt of an application under subsection (1) the Registrar shall cancel the registration of the security interest.

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(3) The holder of a registered security interest who fails to comply with subsection (1)(b) is guilty of an offence.

Penalty: \$2 000.

(4) It is a defence to a charge of an offence against subsection (3) to prove that the defendant—

- (a) was not immediately aware of the discharge of the security interest; and
- (b) within 14 days after becoming aware of the discharge, made application for the cancellation of registration.

Correction, amendment and cancellation of entries

8. (1) The Registrar may correct any particulars that have been incorrectly entered in the register.

(2) Where a change occurs in circumstances to which a particular entered in the register relates, the Registrar may amend the entry to accord with that change.

(3) Where it appears to the Registrar that—

- (a) an entry in the register should not have been made either because the interest to which it relates does not exist, or is not registrable under this Act; or
- (b) a security interest entered in the register has been discharged,

the Registrar may, subject to this section, cancel the registration of the security interest.

(4) Before the Registrar cancels the registration of a security interest under subsection (3), the Registrar shall, by notice in writing sent by post to the person entered in the register as the holder of the security interest, require that person to show cause within 14 days after the date of the notice why registration of that security interest should not be cancelled.

(5) Where a person fails to show cause as required by a notice under subsection (4), the Registrar may give that person notice that the Registrar proposes to cancel registration of the security interest.

(6) Within 7 days after receipt of a notice under subsection (5) the person may apply to the Court for a review of the Registrar's decision.

(7) The Registrar may cancel registration of the security interest—

- (a) if no application to the Court is made within the time allowed under subsection (6); or
- (b) if an application to the Court is made and—
 - (i) the Court confirms the Registrar's decision; or
 - (ii) the application is subsequently withdrawn or struck out.

Certificate of registered security interests

9. (1) A person may make application for a certificate of registered security interests, if any, in respect of specified prescribed goods.

(2) On receipt of an application under subsection (1) the Registrar shall issue the person with a certificate, bearing the date and time of issue, containing—

- (a) the particulars of all registered security interests in the goods to which the application relates; or
- (b) where there are no registered security interests in those goods, a statement to that effect.

(3) In any legal proceedings, a document apparently certified by the Registrar to be a certificate issued under subsection (2) shall be admissible as evidence of the matters specified in the certificate.

Applications

10. (1) An application under a section of this Act—

- (a) must be made in a manner and form determined by the Registrar for the purposes of that section; and
- (b) must be accompanied by a fee prescribed for the purposes of that section; and
- (c) must be lodged with the Registrar.

(2) Differential fees may be prescribed for the purposes of subsection (1)(b) and the Registrar may, in appropriate cases, waive payment of a fee.

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**PART 3
DISCHARGE AND PRIORITY OF SECURITY INTERESTS**

Discharge of security interests

11. (1) Subject to subsection (4), where—

- (a) prescribed goods are subject to a security interest; and
- (b) a person ("the third party") honestly, for value and without notice of the security interest purports to acquire title to the goods from the owner or apparent owner of the goods; and
- (c)
 - (i) the security interest is unregistered; or
 - (ii) the owner or apparent owner is a dealer in goods of that kind; or
 - (iii) after registration of the security interest and before the time of the purported acquisition of title, a certificate of registered security interests was obtained under this Act by or on behalf of the third party and the certificate did not disclose the security interest,

the third party acquires a good title to the goods and the security interest is discharged in respect of the goods.

(2) Subject to subsection (4), where—

- (a) prescribed goods are subject to a security interest; and
- (b) a person ("the third party") honestly, for value and without notice of the security interest purports to acquire an interest in the goods from the owner or apparent owner of the goods; and
- (c)
 - (i) the security interest is unregistered; or
 - (ii) the owner or apparent owner is a dealer in goods of that kind; or
 - (iii) after registration of the security interest and before the time of the purported acquisition of the interest, a certificate of registered security interests was obtained under this Act by or on behalf of the third party and the certificate did not disclose the security interest,

the third party acquires an interest that is valid against the holder of the security interest and has priority over that security interest.

(3) Where—

- (a) prescribed goods are subject to a registered security interest; and
- (b) a person purports to acquire title to or an interest in the goods from a dealer; and
- (c) the security interest is discharged under subsection (1), or its value is diminished under subsection (2),

the dealer is liable to compensate the holder for the loss.

(4) This section does not apply to the purported acquisition of title to or an interest in prescribed goods—

- (a) where the parties to the transaction are related to each other; or
- (b) where the transaction is subsequently rescinded.

(5) For the purposes of this section a party is related to another if—

- (a) one is a corporation and the other is a related corporation; or
- (b) one is a corporation and the other is a director or officer of the corporation or a related corporation.

(6) The onus of proving that a security interest is discharged under this section is on the person who asserts that the interest is so discharged.

(7) In this section—

"**apparent owner**" of goods means a person who has possession of the goods with the consent of the owner of the goods in circumstances in which that person appears to be the owner;

"**director**" or "**officer**" of a corporation has the same meaning as in the *Companies (South Australia) Code*;

"**interest**" in goods includes a right to possession of the goods;

"**owner**" in relation to goods subject to a goods lease or a hire purchase agreement means the person who has possession of the goods in pursuance of the lease or agreement;

"**related corporation**" has the same meaning as in the *Companies (South Australia) Code*.

Order of priority

12. (1) Subject to section 11(2), a registered security interest has priority over an unregistered security interest in the same prescribed goods.

(2) Subject to subsection (3) and section 11(2), registered security interests rank in priority in order of registration.

(3) The holder of a registered security interest may, by application made in accordance with section 10, postpone that security interest to a security interest subsequently registered.

(4) The Registrar shall enter in the register a note of any postponement of a security interest under subsection (3).

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Jurisdiction of Court

13. (1) The Court has jurisdiction to determine any questions relating to the application of section 11 or 12 to a security interest in prescribed goods.

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(3) The jurisdiction conferred by subsection (1) is not exclusive of any jurisdiction of any court.

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**PART 4
COMPENSATION**

Compensation

14. (1) Where the Registrar—

- (a) fails to register a security interest that should have been registered; or
- (b) cancels the registration of a security interest that should not have been cancelled; or
- (c) makes an erroneous entry in the register; or
- (d) issues an erroneous certificate of registered security interests,

any person who suffers loss or damage in consequence of that error may apply to the Court for an order for payment of compensation.

(2) Where an application is made under subsection (1), the Court shall determine whether or not compensation should be paid to the applicant and, if it determines that compensation should be paid, shall make an order for payment to the applicant of such amount as the Court determines.

(3) Compensation paid in respect of a claim under this section shall not exceed—

- (a) the amount secured by the security interest; or
- (b) the value of the goods in respect of which the application is made,

at the time the loss or damage is suffered, whichever is the lesser.

Application of fees and payment of compensation and administrative costs

15. (1) Fees paid to the Registrar under this Act will be credited to the Highways Fund.

(2) The money required—

- (a) to meet the cost of administration of this Act; and
- (b) for the payment of compensation payable under an order of the Court made under this Act,

will be paid out of the Highways Fund.

(3) The Commissioner of Highways must include in each annual report under the *Highways Act 1926* to the Minister responsible for the administration of that Act statements of—

- (a) the total of the amounts credited to the Highways Fund pursuant to this Act during the financial year to which the report relates; and
- (b) the total of the amounts paid out of that Fund during that year to meet the costs of administration of this Act; and
- (c) the total of the amounts paid out of that Fund during that year for the payment of compensation payable under orders of the Court; and

- (d) the total of the amounts credited to that Fund pursuant to this Act at any time up to the end of that year less the total of the amounts paid out of that Fund at any time up to the end of that year to meet the costs of administration of this Act and for the payment of compensation payable under orders of the Court.

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**PART 5
MISCELLANEOUS**

False or misleading statement

18. A person who in any application under this Act makes a statement knowing it to be false or misleading in a material respect is guilty of an offence.

Penalty: \$5 000.

Fraudulent sale of prescribed goods subject to security interest

19. (1) A person who sells or purports to sell prescribed goods that are subject to a security interest without the consent of the holder of the security interest is guilty of an offence.

Penalty: \$5 000 or imprisonment for 12 months.

(2) It is a defence to a charge of an offence against this section to prove that the defendant did not know and could not by the exercise of reasonable diligence have ascertained that the goods to which the charge relates were subject to a security interest.

(3) An offence against this section is a minor indictable offence.

(4) This section does not derogate from any other criminal liability that may arise by reason of the sale or purported sale of prescribed goods subject to a security interest but where 2 or more offences arise from the same circumstances the defendant is only liable to be convicted of one of those offences.

Summary offences

20. Except as otherwise provided, the offences constituted by this Act are summary offences.

Exemption from Stamp Duties Act 1923, s. 27

21. Section 27 of the *Stamp Duties Act 1923* does not apply in relation to an entry made in the register under this Act.

Regulations

22. The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

SCHEDULE 1

The Acts specified in the first column of this schedule are amended in the manner indicated in the second column.

Act Amended	How Amended
<i>Bills of Sale Act 1886</i>	Section 28 Insert the following subsection after subsection (2): (3) A bill of sale that constitutes a registered security interest within the meaning of the <i>Goods Securities Act 1986</i> is not rendered void as against any person under subsection (1) by reason of the fact that it is not registered under this Act.
<i>Consumer Transactions Act 1972</i>	Section 36 Strike out subsection (2) and substitute the following subsection: (2) This section does not apply— (a) to the purported acquisition of title to goods by a person who carries on a trade or business in which that person trades in goods of that description; (b) to prescribed goods within the meaning of the <i>Goods Securities Act 1986</i> .
<i>Mercantile Law Act 1936</i>	Section 4 Insert after subsection (4) the following subsection: (5) This section does not operate to defeat an interest that is registered under the <i>Goods Securities Act 1986</i> .
<i>Sale of Goods Act 1895</i>	Section 25 Insert after subsection (3) the following subsection: (4) Subsection (2) does not operate to defeat an interest that is registered under the <i>Goods Securities Act 1986</i> .

SCHEDULE 2

Transitional Provisions

(1) Where a security interest is registered under this Act during the transitional period, the date and time of entry on the register will, notwithstanding any other provision of this Act, be taken to be—

- (a) where the security interest was registered under the *Bills of Sale Act 1886* or the *Companies (South Australia) Code* before the commencement of the transitional period, the date and time of its first registration under either of those Acts;
- (b) in any other case, the date and time at which the transitional period ends.

(2) In this clause—

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"**the transitional period**" means the period declared by proclamation to be the transitional period for the purposes of this schedule.

(3) The money standing to the credit of the Goods Securities Compensation Fund immediately before the commencement of this subclause is transferred to the Highways Fund.

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APPENDIX

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 3(1):	definition of "Court" inserted by 82, 1995, s. 12(a) definition of "the Fund" repealed and definition of "the Highways Fund" inserted in its place by 53, 1991, s. 3
Section 5(2)(d):	definition of "the Tribunal" repealed by 82, 1995, s. 12(b) repealed by 21, 1987, s. 2
Section 8(6):	amended by 82, 1995, s. 13(a)
Section 8(7):	amended by 82, 1995, s. 13(b)
Section 9(2):	amended by 21, 1987, s. 3
Section 12(5) and (6):	repealed by 21, 1987, s. 4
Section 13(1):	amended by 82, 1995, s. 14(a)
Section 13(2):	repealed by 82, 1995, s. 14(b)
Section 14(1):	amended by 82, 1995, s. 15(a)
Section 14(2):	amended by 82, 1995, s. 15(b)
Section 15:	substituted by 53, 1991, s. 4
Section 15(2):	amended by 82, 1995, s. 16(a)
Section 15(3):	amended by 82, 1995, s. 16(b)
Sections 16 and 17:	repealed by 53, 1991, s. 4
Schedule 2	
Subclause (1):	substituted by 21, 1987, s. 5(a)
Subclause (2):	definition of "the registration Acts" repealed by 21, 1987, s. 5(b)
Subclause (3):	inserted by 53, 1991, s. 5