

SOUTH AUSTRALIA

COMMERCIAL AND PRIVATE AGENTS ACT 1986

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 July 1994.

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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COMMERCIAL AND PRIVATE AGENTS ACT 1986

being

Commercial and Private Agents Act 1986 No. 93 of 1986
[Assented to 4 December 1986]¹

as amended by

Statutes Amendment (Commercial Licences) Act 1992 No. 55 of 1992 [Assented to 29 October 1992]²
State Bank (Corporatisation) Act 1994 No. 17 of 1994 [Assented to 12 May 1994]³

- ¹ Came into operation (except ss. 38 and 40) 19 February 1989: *Gaz.* 16 February 1989, p. 443; ss. 38 and 40 had not been brought into operation at the date of this reprint.
- ² Came into operation 10 December 1992: *Gaz.* 10 December 1992, p. 1752.
- ³ Came into operation 1 July 1994: *Gaz.* 23 June 1994, p. 1784.

NOTE:

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

An Act to provide for the licensing and control of commercial and other private agents; to repeal the Commercial and Private Agents Act 1972; 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 *Commercial and Private Agents 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.

Repeal

3. The *Commercial and Private Agents Act 1972* is repealed.

Interpretation

4. In this Act, unless the contrary intention appears—

"agent" means—

- (a) a commercial agent; or
- (b) a person who, for monetary or other consideration, performs on behalf of another any of the following functions:
 - (i) obtaining or providing (without the written consent of a person) information as to the personal character or actions of the person or as to the business or occupation of the person; or
 - (ii) protecting or guarding a person or property or keeping a person or property under surveillance; or
 - (iii) hiring out or otherwise supplying a dog or other animal for the purpose of protecting or guarding a person or property; or
 - (iv) providing advice upon, hiring out or otherwise supplying or installing or maintaining a device of a prescribed kind for the purpose of protecting or guarding a person or property or keeping a person or property under surveillance; or
 - (v) preventing, detecting or investigating the commission of any offence in relation to a person or property; or
 - (vi) controlling crowds; or
 - (vii) searching for missing persons; or

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(viii) obtaining evidence for the purpose of legal proceedings (whether the proceedings have been commenced or are prospective); or

(ix) serving any writ, summons or other legal process;

"**auditor**" means a person registered as an auditor under the *Companies (South Australia) Code*;

"**authorised officer**" means a person who is an authorised officer under the *Prices Act 1948*;

* * * * *

"**commercial agent**" means a person who, for monetary or other consideration, performs on behalf of another any of the following functions:

(a) ascertaining the whereabouts of, or repossessing goods or chattels that are subject to any security interest; or

(b) collecting, or requesting the payment of, debts; or

(c) executing any legal process for the enforcement of any judgment or order of a court; or

(d) executing any distress for the recovery of rates, taxes or moneys;

"**the Commissioner**" means the person for the time being holding or acting in the office of the Commissioner for Consumer Affairs under the *Prices Act 1948*;

"**the Commissioner of Police**" means the person appointed to be the Commissioner of Police under the *Police Regulation Act 1952* or a person exercising and performing the powers, authorities, duties and functions of the Commissioner of Police;

"**conditional endorsement**" means an endorsement to a licence subject to a condition referred to in section 11; and "**unconditional endorsement**" has a corresponding meaning;

"**debt**" includes any amount claimed to be owing; and "**creditor**" and "**debtor**" have corresponding meanings;

"**document**" includes book, record, register, account, paper and card;

"**endorsement**" means a conditional endorsement or an unconditional endorsement;

"**licence**" means a licence under this Act; and "**licensed**" and "**licensee**" have corresponding meanings;

"**order**" includes decision, direction or declaration;

"**registered address of an agent**" means the address for the time being registered in the name of the agent in accordance with the regulations as the address of the agent;

"**the Registrar**" means the person for the time being holding or acting in the office of the Commercial Registrar under the *Commercial Tribunal Act 1982*;

"**the repealed Act**" means the *Commercial and Private Agents Act 1972* repealed by this Act;

"**security interest**" means any interest in or power over goods that secures payment of a debt or performance of any other obligation;

"**the Tribunal**" means the Commercial Tribunal established under the *Commercial Tribunal Act 1982*;

"**trust money**" in relation to a commercial agent means money received by the commercial agent in the capacity of a commercial agent to which the agent is not wholly entitled at law and in equity.

Application of Act

5. This Act does not apply to—

- (a) a member of the police force of this State;
- (b) a sheriff, deputy sheriff, sheriff's officer, bailiff or other officer of a court or tribunal, while performing functions as such;
- (c) an officer or employee of the Crown or any instrumentality of the Crown while performing functions as such;
- (d) an officer or employee of a council within the meaning of the *Local Government Act 1934* or body vested with the powers of a council, while performing functions as such;
- (e) any of the following:
 - (i) a person who practises as a legal practitioner; or
 - (ii) a person who holds prescribed qualifications in accountancy and practises as an accountant; or
 - (iii) a person who holds prescribed qualifications in loss adjusting and practises as a loss adjuster; or
 - (iv) a person licensed as an agent under the *Land Agents, Brokers and Valuers Act 1973*; or
 - (v) a company authorised by special Act of Parliament to act as a trustee; or
 - (vi) a society registered under the *Building Societies Act 1975*, the *Friendly Societies Act 1919* or the *Industrial and Provident Societies Act 1923*; or
 - (vii) a credit union registered under the *Credit Unions Act 1976*; or
 - (viii) a person licensed as a credit provider under the *Consumer Credit Act 1972*; or

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(ix) a person who lawfully carries on the business of banking or insurance or the business of an insurance intermediary (within the meaning of the *Insurance (Agents and Brokers) Act 1984* of the Commonwealth),

while acting in the ordinary course of the profession or business as such or a person employed under a contract of service by such a person, company, society or credit union while acting in the ordinary course of such employment;

(f) a person employed under a contract of service who acts as an agent only as an incidental part of the duties of that employment;

(g) a person who performs only clerical or secretarial functions on behalf of an agent.

Exemptions

6. The Governor may, by regulation, exempt a specified person or class of persons, or transaction or class of transactions, from compliance with this Act or a specified provision of this Act either absolutely or subject to conditions or limitations.

Non-derogation

7. (1) The provisions of this Act shall be in addition to and shall not derogate from the provisions of any other Act.

(2) Except as expressly provided, this Act shall not be taken to limit or derogate from any civil remedy at law or in equity.

Commissioner to be responsible for administration of Act

8. The Commissioner shall be responsible, subject to the control and directions of the Minister, for the administration of this Act.

**PART 2
LICENSING AND CONTROL OF AGENTS**

DIVISION 1—GRANT OF LICENCES

Endorsements to licences

9. Every licence under this Act shall bear one or more endorsements authorising the holder of the licence to act as an agent by performing one or more of the classes of functions prescribed by regulation under this Act.

Agents must be licensed

10. (1) No person shall—

- (a) claim or purport to be an agent authorised to perform functions of a particular kind; or
- (b) act as an agent by performing functions of a particular kind,

unless the person holds a licence with an endorsement authorising the performance of functions of that kind.

Penalty: \$5 000.

(2) No person shall employ another as an agent under a contract of service to perform functions of a particular kind unless that other person holds a licence with an endorsement authorising the performance of functions of that kind.

Penalty: \$5 000.

Conditional endorsements to licences

11. (1) An endorsement to a licence may be subject to—

- (a) the condition that the holder of the licence must not act as an agent by carrying on a business in which any of the functions authorised by the endorsement are performed on behalf of any other person; or
- (b) both the condition referred to in paragraph (a) and the condition that the holder of the licence must, in performing any of the functions authorised by the endorsement, be under the supervision of a person who holds and has held for the prescribed period (whether under this or the repealed Act) a licence authorising the person to perform the functions without supervision.

(2) Where an endorsement to a licence is subject to a condition referred to in subsection (1), the holder of the licence shall not act, or claim or purport to be authorised to act, as an agent in contravention of the condition.

Penalty: \$5 000.

Application for a licence or additional endorsement

12. (1) An application for a licence or an additional endorsement to a licence must—

- (a) be made to the Tribunal; and

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- (b) be in writing in the prescribed form; and
- (c) be accompanied by the prescribed application fee.

(2) A person making an application under this section must furnish the Tribunal with such information (verified, if the Tribunal so requires, by statutory declaration) as the Tribunal may require.

(3) Where an application is made under this section, the Registrar shall—

- (a) cause the application to be advertised in the prescribed manner and form; and
- (b) cause a copy of the application to be served on the Commissioner and the Commissioner of Police.

(4) Any person (including the Commissioner or the Commissioner of Police) may, within 10 days from the date on which an application is last advertised pursuant to subsection (3), lodge with the Registrar a written objection to the application setting out the grounds of the objection.

(5) The Tribunal may, on the application of any interested person, and subject to such terms as it thinks fit, extend the period within which objections must be lodged.

(6) Subject to subsection (7), the Registrar shall serve the applicant, the Commissioner and the Commissioner of Police with a copy of an objection lodged under subsection (4).

(7) Where the Commissioner or the Commissioner of Police has lodged an objection, a copy of the objection need not be served upon the Commissioner or Commissioner of Police, as the case may be.

(8) Where—

- (a) an objection to an application is lodged under subsection (4); or
- (b) the Tribunal does not propose to grant an application upon the basis of documentary material alone,

the Tribunal shall conduct a hearing of the application and the Registrar shall give to the applicant, the Commissioner, the Commissioner of Police and any person who has lodged an objection at least 7 days notice of the date for hearing of the application.

(9) Upon an application under this section, the Tribunal shall, subject to this Act, upon payment of the prescribed fee, order that the applicant be granted a licence with a particular endorsement, or that an additional endorsement be made to the applicant's licence, if the Tribunal is satisfied—

- (a) where the applicant is a natural person—
 - (i) that the applicant is of or over the age of 18 years; and
 - (ii) that the applicant is resident in South Australia; and
 - (iii) that the applicant is a fit and proper person to hold a licence with that endorsement; and

- (iv) that the applicant has attained or complied with any standards or requirements of education, practical skill or experience prescribed in relation to that endorsement; and
- (b) where the applicant is a body corporate—that every person who is, in the opinion of the Tribunal, in a position to control or influence substantially the affairs of the body corporate is a fit and proper person to exercise such control or influence in respect of a body corporate that is the holder of a licence with that endorsement; and
- (c) where the applicant seeks an unconditional endorsement—
 - (i) that the applicant has made suitable arrangements to fulfil the obligations that may arise under the Act; and
 - (ii) that the applicant has sufficient financial resources to carry on business in a proper manner under a licence with that endorsement.

(10) An additional endorsement to a licence shall, if it is to be unconditional and authorise the performance of functions authorised by an existing conditional endorsement to the licence, be made in substitution of the existing conditional endorsement.

Duration of licences

13. (1) A licence remains in force (except for any period for which it is suspended) until—

- (a) the licence is surrendered or cancelled; or
 - (b) the holder of the licence dies or, in the case of a body corporate, is dissolved.
- (2) The holder of a licence shall, not later than the prescribed date in each year—
- (a) pay to the Registrar the prescribed annual licence fee; and
 - (b) lodge with the Registrar an annual return containing the prescribed information.

(3) Where the holder of a licence fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Registrar may, by notice in writing to the holder, require the holder to make good the default and, in addition, to pay to the Registrar the amount prescribed as a penalty for default.

(4) Where the holder of a licence fails to comply with a notice under subsection (3) within 14 days after service of the notice, the licence shall, by force of this subsection, be suspended until the notice is complied with.

(5) The Registrar must cause notice of a suspension under subsection (4) to be served personally or by post on the holder of a licence.

(6) Where the holder of a licence fails to comply with a notice under subsection (3) within six months after service of the notice, the licence is, by force of this subsection, cancelled.

(7) The holder of a licence may at any time surrender the licence.

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(8) Where a person carrying on business in pursuance of a licence dies, the personal representative of the deceased, or some other person approved by the Tribunal, may continue to carry on the business for a period of 28 days and thereafter for such period and subject to such conditions as the Tribunal may approve.

(9) A person shall while carrying on business in pursuance of subsection (8) be deemed to be the holder of a licence with the same endorsement as the licence held by the deceased.

(10) In this section—

"**holder of a licence**" includes a holder of a licence whose licence has been suspended otherwise than by force of this section.

Body corporate must employ licensed person as manager

14. (1) Where a body corporate holds a licence with a particular endorsement, the business of the body corporate consisting of the functions performed in pursuance of that licence must be managed by a natural person who is resident in this State and holds a licence with the same endorsement as that of the body corporate.

(2) Where the business of a body corporate is not managed as required by subsection (1), the body corporate must, within 14 days, or such longer period as may be allowed by the Tribunal, appoint a manager resident in this State to manage the business in accordance with that subsection.

(3) The licence of a body corporate shall be of no force or effect for the duration of any period for which the body corporate is in default under the provisions of subsection (2).

Person not entitled to fees, etc., if acts as agent in contravention of this Part

15. Where a person acts as an agent in contravention of a provision of this Part—

(a) the person shall not be entitled to recover any fee, commission or other consideration for so acting; and

(b) if the person has received any fee, commission or other consideration for so acting, a court convicting the person of an offence in respect of the contravention may, on the application of the prosecutor, order the person to repay the amount or value of the fee, commission or consideration.

DIVISION 2—DISCIPLINARY POWERS

Tribunal may exercise disciplinary powers

16. (1) The Tribunal may hold an inquiry for the purposes of determining whether proper cause exists for disciplinary action against a person who has acted as an agent (whether with or without a licence).

(2) An inquiry shall not be held under this section except in relation to matters alleged in a complaint lodged pursuant to subsection (3) or matters disclosed by investigations conducted pursuant to subsection (4).

(3) Any person (including the Commissioner or the Commissioner of Police) may lodge with the Tribunal a complaint in the prescribed form setting out matters that are alleged to constitute grounds for disciplinary action against a person referred to in subsection (1).

(4) Where a complaint has been lodged with the tribunal pursuant to subsection (3), the Commissioner or the Commissioner of Police shall, at the request of the Registrar, investigate or further investigate any matters to which the complaint relates and report to the Tribunal on the results of the investigations.

(5) Where the Tribunal decides to hold an inquiry under this section, the Tribunal shall give the person to whom the inquiry relates (in this section referred to as "the respondent") reasonable notice of the subject matter of the inquiry.

(6) If, after conducting an inquiry under this section, the Tribunal is satisfied that proper cause exists for disciplinary action, the Tribunal may exercise one or more of the following powers:

- (a) it may reprimand the respondent;
- (b) it may impose a fine not exceeding \$5 000 on the respondent;
- (c) where the respondent is the holder of a licence, it may—
 - (i) suspend the licence, or an endorsement to the licence, for a specified period or until the fulfilment of stipulated conditions or until further order; or
 - (ii) cancel the licence or an endorsement to the licence; or
 - (iii) impose a condition referred to in section 11 on an endorsement to the licence;
- (d) it may disqualify the respondent permanently, for a specified period, until the fulfilment of stipulated conditions, or until further order, from holding a licence under this Act, or from holding a licence with a particular endorsement.

(7) If a person has been convicted of an offence and the circumstances of the offence form, in whole or in part, the subject matter of an inquiry under this section, the convicted person shall not be liable to a fine under this section in respect of conduct giving rise to the offence.

(8) Where the Tribunal cancels a licence with an unconditional endorsement or cancels an unconditional endorsement, the Tribunal may stipulate that the cancellation is to have effect at a future time specified by the Tribunal and impose conditions as to the conduct of the business of the respondent until that time.

(9) Where a condition is imposed by the Tribunal under subsection (8) as to the conduct of the business of the respondent, the respondent shall not contravene or fail to comply with the condition.

Penalty: \$5 000.

- (10) There shall be proper cause for disciplinary action under this section if—
- (a) the respondent has been guilty of conduct that constituted a breach of this Act; or
 - (b) the respondent has failed to comply with an order of the Tribunal; or

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- (c) the respondent has in the course of acting as an agent—
- (i) been guilty of conduct that constituted a breach of any other Act or law; or
 - (ii) acted negligently, fraudulently or unfairly; or
- (d) in the case of a respondent who holds a licence with an unconditional endorsement—
- (i) the respondent has insufficient financial resources properly to carry on business as an agent; or
 - (ii) the respondent has not maintained satisfactory arrangements for the fulfilment of obligations that arise under this Act; or
- (e) in the case of a respondent who holds a licence (whether with a conditional or unconditional endorsement)—
- (i) the respondent has obtained the licence or endorsement improperly; or
 - (ii) the respondent has ceased to be a fit and proper person to hold a licence with that endorsement, or, in the case of a body corporate, a person who has gained or is in a position substantially to control or influence the affairs of the body corporate is not or has ceased to be a fit and proper person to exercise such control or influence in respect of a body corporate that holds a licence with that endorsement.

(11) The powers conferred by this section in relation to persons licensed under this Act may be exercised, in the case of a person who was also licensed under the repealed Act, in relation to conduct or circumstances occurring before or after the commencement of this Act.

Disqualified persons not to be involved in business of agent

17. Where a person who is disqualified from holding a licence is employed or otherwise engaged in the business of an agent, that person and the agent shall each be guilty of an offence and liable to a penalty not exceeding \$5 000.

Record of disciplinary action to be kept

18. Where the Tribunal takes disciplinary action against a person, the Registrar shall—

- (a) make an entry on the register established under the *Commercial Tribunal Act 1982* recording the disciplinary action taken; and
- (b) by notice in writing advise the Commissioner and the Commissioner of Police of the name of the person and the disciplinary action taken.

Advertising suspension, cancellation or disqualification

18A. Where disciplinary action taken against a person by the Tribunal consists of or includes the suspension or cancellation of the person's licence or an endorsement to the person's licence or disqualification of the person, the Registrar must cause notice of the action taken—

- (a) to be served personally or by post on that person; and
- (b) to be advertised in a newspaper circulating throughout the State.

PART 3
PROVISIONS APPLYING IN RELATION TO ALL AGENTS

Licence not to confer additional authority

19. (1) A licence does not confer upon an agent any power or authority to act in contravention of, or in disregard of, any law or any rights or privileges guaranteed or arising under, or protected by, any law.

(2) A person licensed as an agent who claims or purports to have by virtue of the licence any power or authority that is not in fact conferred by the licence shall be guilty of an offence against this Act and liable to a penalty not exceeding \$2 000.

Name in which agent carries on business

20. A person shall not carry on business as an agent in pursuance of a licence except in the name appearing in the licence or in a business name registered by the person in accordance with the provisions of the *Business Names Act 1965* of which the Registrar has been given prior notice in writing.

Penalty: \$1 000.

Misrepresentation

21. An agent shall not, by any false, misleading or deceptive statement, representation or promise, or by concealment of a material fact, induce, or attempt to induce, any person to enter into an agreement or contract in connection with the performance of any functions as an agent.

Penalty: \$2 000.

Publication of advertisements

22. A person carrying on business as an agent in pursuance of a licence shall not publish, or cause to be published, any advertisement relating to the business (other than an advertisement relating solely to the recruiting of staff) unless the advertisement specifies—

- (a) the name of the agent appearing in the licence or a registered business name in which the agent carries on business as an agent and of which the Registrar has been given prior notice in writing; and
- (b) the registered address of the agent.

Penalty: \$1 000.

Notice to be displayed

23. A person carrying on business as an agent in pursuance of a licence shall maintain in a conspicuous position in each place from which the business is carried on, a notice clearly showing—

- (a) the name of the agent as it appears in the licence or a registered business name in which the agent carries on business as an agent and of which the Registrar has been given prior notice in writing; and
- (b) where the agent is a body corporate—the name of the agent who manages the business; and

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- (c) such other matters as may be prescribed.

Penalty: \$1 000.

Licence to be produced upon demand

24. A person licensed as an agent shall, on demand, produce the licence for inspection—

- (a) to the Registrar, the Commissioner, an authorised officer or a member of the police force; or
- (b) to any other person with whom the person has dealings as an agent.

Penalty: \$1 000.

Registered address

25. Service of any notice, communication, process or document upon an agent otherwise than in pursuance of this Act may be effected by sending or delivering the notice, communication, process or document to the registered address of the agent.

Excessive charges may be reduced by the Tribunal

26. (1) Where an agent claims or receives from another person any amount in respect of services rendered as an agent (whether or not being services rendered on behalf of that other person), that other person may apply to the Tribunal for a review of the agent's charges.

(2) The Tribunal may, upon application under subsection (1), by order, reduce the agent's charges to such amount as it considers reasonable.

(3) Where an order has been made under subsection (2)—

- (a) if an amount has been paid by the applicant in excess of the amount to which the charges have been reduced by the Tribunal—the Tribunal may order the agent to pay to the applicant the amount of the excess; or
- (b) in any other case—the agent shall not be entitled to recover an amount in excess of the amount to which the charges have been reduced by the Tribunal.

Limitations upon functions of agents

27. (1) Subject to this section, an agent shall not, when acting on behalf of another, settle or compromise or attempt to settle or compromise any claim in respect of loss or injury arising out of the use of a motor vehicle, or injury arising out of or in the course of employment, after proceedings have been instituted in any court in respect of that loss or injury.

Penalty: \$2 000.

(2) This section does not apply unless the process by which the proceedings are instituted has been served upon the defendant to those proceedings.

(3) It shall be a defence to a charge of an offence against subsection (1) that the defendant did not know, and could not by the exercise of reasonable diligence have discovered, that proceedings had been instituted in a court in respect of the loss or injury,

PART 4
PROVISIONS APPLYING ONLY IN RELATION TO COMMERCIAL AGENTS

Trust accounts

28. (1) A commercial agent shall pay all trust moneys received by the agent into an account maintained in the name of the agent at a bank or prescribed financial institution (which account shall be, and be designated, a trust account).

(2) The trust moneys shall be paid into the trust account not later than the day next ensuing after the day on which the moneys are received upon which the bank or institution at which the trust account is maintained is open for business.

(3) This section does not apply to a commercial agent in relation to moneys received on behalf of—

- (a) a person by whom the agent is employed under a contract of service; or
- (b) a person who is also a commercial agent.

(4) No other moneys received by a commercial agent shall be paid into the agent's trust account.

(5) A commercial agent shall not withdraw, or permit another person to withdraw, moneys from a trust account except—

- (a) for payment to the person entitled to the moneys or in accordance with the direction of that person; or
- (b) in satisfaction of a claim for commission, fees, costs or disbursements that the agent has against the person on behalf of whom the moneys are held; or
- (c) to satisfy the order of a court of competent jurisdiction against the person on behalf of whom the agent is holding the moneys; or
- (d) for payment into a court before which proceedings have been instituted in relation to the moneys; or
- (e) for the purpose of dealing with the moneys in accordance with the *Unclaimed Moneys Act 1891*; or
- (f) for making any other payment authorised by law.

(6) A commercial agent who contravenes any provision of this section shall be guilty of an offence and liable to a penalty not exceeding \$5 000.

Effect of certain payments to commercial agents

29. Payment to a commercial agent of moneys sought to be recovered by the agent on behalf of another person in respect of a debt owed to that other person shall constitute a discharge, as between the debtor and the creditor, of the liability in respect of the debt to the extent of the amount of the payment.

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Accounts, records, etc., to be kept and their inspection

30. (1) A commercial agent shall keep or cause to be kept fully and correctly prescribed accounts, records and documents in relation to the agent's functions as a commercial agent.

(2) This section does not apply to a commercial agent in relation to functions performed by the commercial agent on behalf of—

- (a) a person by whom the agent is employed under a contract of service; or
- (b) a person who is also a commercial agent.

(3) Where a commercial agent fails to keep, or to cause to be kept, accounts, records and documents as referred to in subsection (1) for the period of 5 years after their making, the agent shall be guilty of an offence against this Act and liable to a penalty not exceeding \$2 000.

(4) All prescribed accounts, records and documents of a commercial agent or former commercial agent shall at all reasonable times be open to inspection by the Commissioner, an authorised officer or any member of the police force.

(5) The Commissioner, authorised officer or member of the police force may require the commercial agent or former commercial agent, or a person apparently acting on behalf of the agent or former agent—

- (a) to produce for inspection all or any prescribed accounts, records and documents in the custody or control of the person; and
- (b) to furnish such other documents in the custody or control of the person as may be reasonably required for the purpose of ascertaining whether there has been any failure to comply with this Act or with any other Act or law relating to trust moneys.

(6) The Commissioner, authorised officer or member of the police force may make any notes concerning, or take any copies or extracts from, any accounts, records or documents subject to inspection.

(7) A person who—

- (a) wilfully delays or obstructs any inspection under this section; or
- (b) wilfully mutilates, destroys, or in any way alters any account, record or document to delay or obstruct any inspection under this section; or
- (c) refuses or fails to comply with a requirement duly made under this section,

shall be guilty of an offence under this Act and liable to a penalty not exceeding \$2 000.

Restriction on dealings in trust moneys and appointment of administrators

31. (1) If the Tribunal, upon application by the Commissioner, is satisfied that it is necessary or expedient to do so for the protection of trust moneys held by a commercial agent or for the proper administration of a commercial agent's trust account, the Tribunal may, by order, do either or both of the following:

- (a) restrict or prohibit any dealing in, or disposition of, the trust moneys;

- (b) appoint a person to administer the trust account with such powers as the Tribunal sets out in the order.

(2) An order under subsection (1) shall, as soon as practicable, be served on the bank or other financial institution at which trust moneys to which the order relates are kept.

(3) A person who acts in contravention of an order under subsection (1) shall be guilty of an offence and liable to a penalty not exceeding \$5 000.

Protection to banks, etc.

32. (1) Subject to subsection (2), a bank or other financial institution shall be deemed not to be affected with notice of any specific trust to which moneys deposited in a trust account are subject, and shall not be bound to satisfy itself of the due application of those moneys.

(2) This section does not relieve a bank or other financial institution of any liability for negligence.

Audit of trust accounts, etc.

33. A commercial agent who maintains a trust account shall in each year—

- (a) have the accounts, records and documents kept by the commercial agent under this Part (made up to the thirtieth day of June in that year) audited by an auditor; and
- (b) submit a copy of the auditor's report to the Commissioner on or before the thirty-first day of October in that year or such later date as the Commissioner may allow.

Penalty: \$2 000.

Appointment of inspector

34. (1) The Commissioner may at any time appoint an inspector—

- (a) to examine, either generally or in a particular case, the accounts, records and documents kept pursuant to this Part by a commercial agent; and
- (b) to examine, either generally or in a particular case, the audit programme, working papers and other documents used or prepared by any auditor in the course of auditing the trust account of a commercial agent; and
- (c) to confer with any such auditor in relation to audits of the trust account of a commercial agent.

(2) An inspector may, and shall if required by the Commissioner to do so, furnish the Commissioner with a confidential report as to the state of any accounts, records or documents subject to examination by the inspector.

(3) The Commissioner shall, as soon as practicable, cause a copy of any report furnished by an inspector under this section to be given or sent by post to the relevant commercial agent.

(4) In this section—

"**commercial agent**" includes a former commercial agent.

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Obtaining information for purposes of audit or examination

35. (1) An auditor employed by a commercial agent to make an audit of the trust account of the commercial agent, or an inspector appointed under this Part, may require the commercial agent or any servant or agent of the commercial agent to produce all the accounts (including accounts other than the trust account) relating to the business of the commercial agent and all books, papers, securities and other documents, relating to those accounts and to give all relevant information and to furnish all authorities and orders to bankers and others that may be reasonably required by the auditor or inspector.

(2) An inspector appointed under this Part may require an auditor employed by a commercial agent as an auditor of the trust account of the commercial agent to produce to the inspector all books, papers and other documents (not being working papers of the auditor) that are in the possession or control of the auditor and that relate to that trust account or an audit of that account.

(3) The manager or other principal officer of any bank or other financial institution with which a commercial agent has deposited any moneys, whether in a trust account or any other account, shall, upon being required to do so by an auditor or inspector employed or appointed to make an audit or examination under this Part, disclose every such account (including all deposit slips, cancelled cheques or other documents relating to the operation of such account) to the auditor or inspector.

(4) A person who is required by this section to produce or disclose accounts, books, papers, securities, deposit slips, cancelled cheques or other documents to an auditor or inspector shall permit the auditor or inspector to make a copy of the whole, or any part, of those documents.

(5) A person who—

- (a) wilfully delays or obstructs an auditor or inspector in the exercise of powers under this section; or
- (b) wilfully mutilates or destroys, or in any way alters any account, book, paper, security, deposit slip, cancelled cheque or other document to delay or obstruct an auditor or inspector in the exercise of powers under this section; or
- (c) refuses or fails to comply with a requirement duly made under this section,

shall be guilty of an offence and liable to a penalty not exceeding \$2 000.

(6) In this section—

"**account**" includes any record, or document required to be kept under this Part;

"**commercial agent**" includes a former commercial agent.

Banks, etc., to report deficiencies in trust accounts

36. A bank or other financial institution with which a trust account has been established by a commercial agent shall report any deficiency in that account to the Commissioner.

Penalty: \$500.

Confidentiality

37. (1) No auditor or inspector employed or appointed to make any audit or examination of any accounts of a commercial agent for the purposes of this Part shall communicate any matter that comes to the knowledge of the auditor or inspector in the course of the audit or examination to any person except in the course of furnishing a report under this Part.

(2) No officer engaged in the administration of this Act, shall divulge any information disclosed in a report furnished under this Part except—

- (a) for the purpose of confidential consideration of the report by the Commissioner; or
- (b) as is otherwise necessary for the proper administration of this Act.

(3) A person who contravenes or fails to comply with a provision of this section shall in addition to any other penalty or punishment be guilty of an offence and liable to a penalty not exceeding \$2 000.

Recovery of moneys from debtors¹

38. A commercial agent shall not, when recovering or attempting to recover a debt on behalf of another, seek or demand (whether directly or indirectly) from the debtor any payment in addition to the amount of the debt other than—

- (a) the amount allowed under the regulations in respect of the services rendered by the agent in recovering or attempting to recover the debt; or
- (b) the amount that the commercial agent has charged or agreed to charge the creditor for those services,

whichever is the lesser.

Penalty: \$2 000.

Repossession of motor vehicles to be reported

39. A commercial agent who takes possession of a motor vehicle that is subject to a security interest—

- (a) shall, as soon as practicable after taking possession of the motor vehicle, inform a member of the police force on duty at the police station nearest to the place where the agent took possession of the vehicle; and
- (b) within 24 hours after taking possession of the motor vehicle, deliver or send by post to the member of the police force in charge of the police station nearest to the commercial agent's registered address, written particulars in duplicate of the motor vehicle, including particulars of the registered number of the vehicle.

Penalty: \$1 000.

Form of letters of demand²

¹ S. 38 had not been brought into operation at the date of this reprint.

² S. 40 had not been brought into operation at the date of this reprint.

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40. (1) *A commercial agent shall not, for the purpose of recovering a debt on behalf of any other person, use or send to any person a document or letter demanding payment of the debt unless—*

- (a) *the form of the document or letter has been approved by the Tribunal upon the application of the commercial agent; or*
- (b) *the commercial agent, within 14 days after first using or sending a document or letter of that form, lodges with the Commissioner a sample of that form of document or letter.*

Penalty: \$1 000.

(2) *A form of document or letter approved by the Tribunal under subsection (1) shall be deemed to comply with any provisions as to the form of documents or letters of demand contained in a relevant code of practice prescribed by regulation under this Act.*

Place of business

41. A commercial agent shall not invite the public, or any debtor from whom the agent is seeking to recover a debt, to deal with the agent at any place other than the registered address of the agent or any other place of which the Registrar has been notified by writing.

Penalty: \$1 000.

**PART 5
GENERAL PROVISIONS**

Prohibition against assisting a person falsely to pretend to be a commercial agent, etc.

42. No person (whether licensed under this Act or not) shall supply or lend any document or form or provide any other assistance to another person for the purpose of enabling that other person falsely to pretend to be a commercial agent, or a person who, in the course of a business, performs any of the functions of a commercial agent.

Penalty: \$2 000.

Liability of agents for acts or omissions of employees, etc.

43. For the purposes of this Act, an act or omission of a person employed by an agent (whether under a contract of service or otherwise) shall be deemed to be an act or omission of the agent unless the agent proves that the person was not acting in the course of the employment.

Commissioner of Police may appear in proceedings before Tribunal

44. The Commissioner of Police may, in any proceedings that are before the Tribunal in pursuance of this Act, appear personally or be represented by counsel or a member of the police force.

Investigations

45. The Commissioner or the Commissioner of Police shall, at the request of the Registrar, cause officers to investigate and report upon any matter relevant to the determination of—

- (a) any application or other matter before the Tribunal; or
- (b) any matter that might constitute proper cause for disciplinary action under this Act.

Annual Report

46. (1) The Commissioner shall, on or before the thirty-first day of October in each year, submit to the Minister a report upon the administration of this Act during the period of 12 months ending on the preceding thirtieth day of June.

(2) The Minister shall, within 12 sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

Service of documents

47. Any notice or document required or authorised by this Act or the *Commercial Tribunal Act 1982* to be given to or served on any person shall be deemed to have been duly served if it has been—

- (a) served on the person personally; or
- (b) posted in an envelope addressed to the person at the person's last known address, or, in the case of a person who is the holder of a licence, the person's registered address; or
- (c) in the case of a person who is the holder of a licence, left for the person at the person's registered address with a person apparently over the age of 16 years.

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False or misleading information

48. A person shall not, in furnishing any information required under this Act, make a statement that is false or misleading in a material particular.

Penalty: \$2 000.

Return of licences

49. Where a licence, or an endorsement to a licence, is suspended or cancelled under this Act, the holder of the licence shall, at the direction of the Tribunal or the Registrar, return the licence to the Registrar.

Penalty: \$1 000.

Offences by bodies corporate

50. Where a body corporate is guilty of an offence against this Act, every member of the governing body of the body corporate shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the member could not by the exercise of reasonable diligence have prevented the commission of that offence.

Continuing offences

51. (1) A person convicted of an offence against any provision of this Act in respect of a continuing act or omission—

- (a) shall be liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than the amount equal to one-tenth of the maximum penalty prescribed for that offence; and
- (b) shall, if the act or omission continues after the conviction, be guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than the amount equal to one-tenth of the maximum penalty prescribed for the offence.

(2) Where an offence against a provision of this Act consists of an omission to do something that is required to be done, the omission shall, for the purposes of subsection (1), be deemed to continue for so long as the thing required to be done remains undone after the expiration of the period for compliance with the requirement.

Summary proceedings

52. Proceedings for an offence against this Act shall be disposed of summarily.

Commencement of prosecutions

53. (1) Proceedings for an offence against this Act shall be commenced within 12 months after the date on which the offence is alleged to have been committed.

(2) Proceedings for an offence against this Act shall not be commenced by a person other than the Commissioner or an authorised officer except with the consent of the Minister.

(3) An apparently genuine document purporting to be a certificate of the Minister certifying that the Minister has consented to the commencement of proceedings for an offence against this Act shall be accepted, in the absence of proof to the contrary, as proof of the matter so certified.

Regulations

54. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) prescribe any form for the purposes of this Act;
- (b) prescribe the classes of functions that may be authorised by endorsements made to licences under this Act;
- (c) prescribe fees (including differential fees) for the purposes of this Act;
- (d) prescribe codes of practice for the holders of licences with the various endorsements under this Act;
- (e) make any provision that may be necessary or desirable to ensure that trust accounts of commercial agents are properly kept and audited;
- (f) regulate the charges that may be made by agents for services of various kinds defined in the regulations;
- (g) prescribe penalties (recoverable summarily) not exceeding \$1 000 for contravention of, or non-compliance with, any regulation.

(3) A code of practice may be prescribed for the purposes of this Act by referring to, or incorporating, in whole or in part, and with or without modifications, a code of practice for the time being, or from time to time, adopted by a body which, in the opinion of the Governor, represents the interests of a substantial section of licensees.

(4) Any regulations made under this Act may be of a general or limited application and may vary according to the persons or classes of persons, the times, the places or the circumstances to which they are expressed to apply.

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SCHEDULE

Transitional Provisions

(1) A person who was, immediately before the commencement of this Act, licensed under the repealed Act, is not, for a period of 6 months after the commencement of this Act, or the remainder of the term for which the licence was granted or last renewed, whichever is the lesser, required to be licensed under this Act.

(2) A person is not, for a period of 6 months after the commencement of this Act, required to be licensed under this Act for the purpose of performing any function for which a licence was not required under the repealed Act.

(3) A person who was, immediately before the commencement of this Act, the holder of a licence of a particular category under the repealed Act shall be deemed, for the purposes of section 11, to be entitled to hold a licence under this Act with such an endorsement or endorsements as are declared by the regulations to correspond to a licence of that category.

(4) An address that was, immediately before the commencement of this Act, the registered address of an agent under the repealed Act shall be deemed to be an address registered in the name of the agent under this Act.

(5) The *Acts Interpretation Act 1915* applies to the repeal affected by this Act.

APPENDIX

LEGISLATIVE HISTORY

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

Section 4:

Section 13(1):

Section 13(5) and (6):

Section 13(10):

Section 18A:

definition of "bank" repealed by 17, 1994, Sched. 4 cl. 1

substituted by 55, 1992, s. 7(a)

substituted by 55, 1992, s. 7(b)

inserted by 55, 1992, s. 7(c)

inserted by 55, 1992, s. 8