

SOUTH AUSTRALIA

**MERCANTILE LAW ACT, 1936**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **6 July 1992**.*

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

## SUMMARY OF PROVISIONS

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## MERCANTILE LAW ACT, 1936

being

Mercantile Law Act, 1936, No. 2285 of 1936  
[Assented to 24 September 1936]

as amended by

Statutes Amendment (Enforcement of Contracts) Act, 1982, No. 81 of 1982 [Assented to 16 September 1982]  
Goods Securities Act, 1986, No. 111 of 1986 [Assented to 18 December 1986]<sup>1</sup>  
Statutes Repeal and Amendment (Courts) Act 1991 No. 69 of 1991 [Assented to 12 December 1991]<sup>2</sup>

<sup>1</sup> 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.

<sup>2</sup> Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.

N.B. The *Enforcement of Judgments Act, 1978*, was repealed before it was brought into operation. The amendments effected to this Act by the *Sea-Carriage Documents Act 1998* had not been brought into operation at the date of, and have not been included in, this reprint.

*Note:* 1. Asterisks indicate repeal or deletion of text.

2. 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 consolidate and amend certain laws relating to trade, commerce, and other matters.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

**Short title**

1. This Act may be cited as the *Mercantile Law Act, 1936*.

**Repeals**

2. The following Acts are repealed, namely:—

*The Bills of Lading Act, 1859*—No. 25 of 1859.

*The Mercantile Law Amendment Act, 1861*—No. 3 of 1861.

*Prohibition to Re-assurance Repeal Act*—No. 4 of 1867.

*The Lien for Freight Act, 1885*—No. 339 of 1885.

*Lien of Unpaid Vendors Act, 1885*—No. 343 of 1885.

*The Wages Attachment Act, 1898*—No. 697 of 1898.

**Interpretation**

3. (1) In this Act, unless the context otherwise requires or some other meaning is clearly intended—

"document of title" includes any bill of lading, dock warrant, warehousekeeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive the goods thereby represented:

"goods" includes every description of wares and merchandise:

"mercantile agent" means a mercantile agent having in the customary course of his business as such an agent, authority either to sell goods or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods:

"pledge" includes any contract pledging or giving a lien or security on goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability:

"wages" includes any remuneration, whether in money or in kind paid under a contract of service:

"workman" means any person in any manner engaged or employed under a contract of service in work or labour of any kind whether his remuneration is to be according to time or by piece work or at a fixed price or otherwise.

- (2) A person shall be deemed to be in possession of goods or of the documents of title to goods, where the goods or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf.

*Dispositions by Mercantile Agents***Powers of mercantile agent with respect to disposition of goods**

4. (1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to sections 4 to 12 of this Act, be as valid as if he were expressly authorized by the owner of the goods to make that disposition: Provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition, has not authority to make it.

(2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition, which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent: Provided that the person taking under the disposition has not at the time thereof notice that the consent has been determined.

(3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first-mentioned documents shall, for the purposes of sections 4 to 12 of this Act, be deemed to be with the consent of the owner.

(4) For the purposes of sections 4 to 12 of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary.

(5) This section does not operate to defeat an interest that is registered under the *Goods Securities Act, 1986*.

**Effect of pledges of documents of title**

5. Where documents of title to goods are pledged by a mercantile agent, the pledge of the documents shall be deemed to be a pledge of the goods.

**Pledge for antecedent debt**

6. Where a mercantile agent pledges goods as security for a debt due from or liability incurred by the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge.

**Consideration necessary for validity of sale, etc. and rights acquired by exchange of goods or documents**

7. (1) The consideration necessary for the validity of a sale, pledge, or other disposition, of goods, in pursuance of sections 4 to 12 of this Act, may be—

- (a) a payment in cash; or
- (b) the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security; or
- (c) any other valuable consideration.

(2) Where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, documents, or security when so delivered or transferred in exchange.

**Agreements through clerks, etc.**

8. For the purposes of sections 4 to 12 of this Act an agreement made with a mercantile agent through a clerk or other person authorized in the ordinary course of business to make contracts of sale or pledge on his behalf shall be deemed to be an agreement with the agent.

**Provisions as to consignors and consignees**

9. (1) Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that that other person is not the owner of the goods, the consignee shall, in respect of advances made to or for the use of that other person, have the same lien on the goods as if that other person were the owner of the goods, and may transfer any such lien to another person.

(2) Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition, by a mercantile agent.

**Mode of transferring documents**

10. For the purposes of sections 4 to 12 of this Act, the transfer of a document may be by endorsement, or, where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery.

**Saving for rights of true owner**

11. (1) Nothing in sections 4 to 12 of this Act shall authorize an agent to exceed or depart from his authority as between himself and his principal or exempt him from any liability, civil or criminal, for so doing.

(2) Nothing in sections 4 to 12 of this Act shall prevent the owner of goods—

- (a) from recovering the goods from an agent or, subject to any Bankruptcy Acts for the time being in force, from his trustee in bankruptcy at any time before the sale or pledge of the goods; or
- (b) if the goods are pledged by an agent, from having the right to redeem the goods at any time before the sale thereof, on satisfying the claim for which the goods were pledged, and paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner; or
- (c) from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien.

(3) Nothing in sections 4 to 12 of this Act shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set off on the part of the buyer against the agent.

**Saving for common law powers of agent**

12. The foregoing provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act.

*Liens for freight*

**Application of provisions of Merchant Shipping Act relating to liens for freight**

13. For the purpose of removing doubts it is hereby declared that those provisions of Part VII of the Act of the Parliament of the United Kingdom known as *The Merchant Shipping Act, 1894* which apply to liens for freight, apply in respect of goods landed in the State from any ship wherever registered.

*Bills of lading*

**Rights under bills of lading to vest in consignee or endorsee**

14. (1) Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading, to whom the property in the goods therein mentioned has passed upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of action, and be subject to the same liabilities in respect of the goods as if the contract contained in the bill of lading had been made with himself.

(2) Nothing in this section shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee, by reason or in consequence of his being the consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

**Evidentiary effect of bills of lading**

15. Every bill of lading in the hands of a consignee or endorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of that shipment as against the master or other person signing the bill of lading, notwithstanding that the goods or part thereof have not been so shipped, unless the holder of the bill of lading has had actual notice, at the time of receiving the bill, that the goods had not been, in fact, loaded on board.

*Contracts of guarantee*

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**A surety who discharges the liability to be entitled to assignment of all securities held by a creditor**

17. (1) Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, pays that debt, or performs that duty, shall be entitled—

- (a) to have assigned to him, or to a trustee for him, every judgment, speciality, or other security which is held by the creditor in respect of that debt or duty, whether that judgment, speciality, or other security is or is not deemed at law to have been satisfied by the payment of the debt or performance of the duty; and

6.

(b) to stand in the place of the creditor, and to use all the remedies, and, if need be, and upon a proper indemnity, to use the name of the creditor in any action or other proceeding at law or in equity, in order to obtain from the principal debtor, or any co-surety, co-contractor, or co-debtor as the case may be, indemnification for the advances made and loss sustained, by the person who has so paid the debt, or performed the duty.

(2) Payment or performance so made by the surety, shall not be pleadable in bar of any such action or other proceeding by him.

(3) No co-surety, co-contractor, or co-debtor shall be entitled under this section to recover from any other co-surety, co-contractor, or co-debtor more than the just proportion to which, as between those parties themselves, that other co-surety, co-contractor, or co-debtor is justly liable.

*Wages attachment*

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*Reassurances*

**Re-assurance of sea risks and merchandise**

19. Notwithstanding anything contained in the Act of the Parliament of Great Britain, 19 Geo. II., c. 37, it shall be lawful to make re-assurances upon any ship or vessel, or upon any goods, merchandise, or other property on board of any ship or vessel, or upon the freight of any ship or vessel, or upon any other interest in or relating to any ship or vessel which may lawfully be insured.

**Only amount of loss or damage to be recovered**

20. The person re-assuring as mentioned in the last preceding section shall not be entitled to recover on such re-assurances in the aggregate more than the amount of loss or damage actually sustained by him.

*Amendment of the Sale of Goods Act, 1895*

**Amendment of 630, 1895**

21. *The Sale of Goods Act, 1895*, is amended by striking out the words "The Mercantile Law Amendment Act" occurring in subsection (2) of section 21 and in subsection (1) of section 60, and inserting in lieu thereof in each case the words "The Mercantile Law Act, 1936".



**APPENDIX**

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 7 of The Public General Acts of South Australia 1837-1975 at page 248.

Legislative history since 3 February 1976 (entries in bold type indicate amendments incorporated since the last reprint):

Section 4(5):	inserted by 111, 1986, Sched. 1
Section 16:	repealed by 81, 1982, s. 5(1)
Section 18:	repealed by 69, 1991, s. 7