

South Australia

# Mercantile Law Act 1936

An Act relating to trade, commerce, and other matters.

---

## Contents

- 1 Short title
- 3 Interpretation
- 4 Powers of mercantile agent with respect to disposition of goods
- 5 Effect of pledges of documents of title
- 6 Pledge for antecedent debt
- 7 Consideration necessary for validity of sale etc and rights acquired by exchange of goods or documents
- 8 Agreements through clerks etc
- 9 Provisions as to consignors and consignees
- 10 Mode of transferring documents
- 11 Saving for rights of true owner
- 12 Saving for common law powers of agent
- 13 Application of provisions of Merchant Shipping Act relating to liens for freight
- 17 A surety who discharges the liability to be entitled to assignment of all securities held by a creditor
- 19 Re-assurance of sea risks and merchandise
- 20 Only amount of loss or damage to be recovered

## Legislative history

---

### The Parliament of South Australia enacts as follows:

#### 1—Short title

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

#### 3—Interpretation

- (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 authorising or purporting to authorise, 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.

#### **4—Powers of mercantile agent with respect to disposition of goods**

- (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 authorised 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 a security interest that is the subject of a financing statement registered under the *Personal Property Securities Act 2009* of the Commonwealth.
- (6) In subsection (5), **security interest** and **financing statement** have the same respective meanings as in the *Personal Property Securities Act 2009* of the Commonwealth.

#### **5—Effect of pledges of documents of title**

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.

## **6—Pledge for antecedent debt**

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.

## **7—Consideration necessary for validity of sale etc and rights acquired by exchange of goods or documents**

- (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.

## **8—Agreements through clerks etc**

For the purposes of sections 4 to 12 of this Act an agreement made with a mercantile agent through a clerk or other person authorised 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.

## **9—Provisions as to consignors and consignees**

- (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.

## **10—Mode of transferring documents**

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.

## **11—Saving for rights of true owner**

- (1) Nothing in sections 4 to 12 of this Act shall authorise 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.

## **12—Saving for common law powers of agent**

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.

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

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.

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

- (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
  - (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.

### **19—Re-assurance of sea risks and merchandise**

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.

### **20—Only amount of loss or damage to be recovered**

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.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Mercantile Law Act 1936* repealed the following:

*The Bills of Lading Act 1859*

*The Lien for Freight Act 1885*

*Lien of Unpaid Vendors Act 1885*

*The Mercantile Law Amendment Act 1861*

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

*The Wages Attachment Act 1898*

### Legislation amended by principal Act

The *Mercantile Law Act 1936* amended the following:

*Sale of Goods Act 1895*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1936	2285	<b><i>Mercantile Law Act 1936</i></b>	24.9.1936	24.9.1936
1978	84	<i>Enforcement of Judgments Act 1978</i> repealed by 69/1991	30.11.1978	repealed by 69/1991 without coming into operation
1982	81	<i>Statutes Amendment (Enforcement of Contracts) Act 1982</i>	16.9.1982	s 5—16.9.1982
1986	111	<i>Goods Securities Act 1986</i>	18.12.1986	Sch 1—15.6.1987 ( <i>Gazette 11.6.1987 p1492</i> )
1991	69	<i>Statutes Repeal and Amendment (Courts) Act 1991</i>	12.12.1991	s 7—6.7.1992 ( <i>Gazette 2.7.1992 p209</i> )
1998	34	<i>Sea-Carriage Documents Act 1998</i>	9.7.1998	Sch—5.10.1998 ( <i>Gazette 10.9.1998 p814</i> )
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 ( <i>Gazette 13.11.2003 p4048</i> )

2011 11 *Statutes Amendment (Personal Property Securities) Act 2011* 14.4.2011 Pt 16 (s 47)—30.1.2012 (*Gazette* 15.12.2011 p4988)

## Provisions amended since 3 February 1976

- 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.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 44/2003 s 3(1) (Sch 1)	24.11.2003
s 2	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
<i>heading preceding s 4</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
s 4		
s 4(5)	inserted by 111/1986 Sch 1	15.6.1987
	<b>amended by 11/2011 s 47(1)</b>	<b>30.1.2012</b>
<b>s 4(6)</b>	<b>inserted by 11/2011 s 47(2)</b>	<b>30.1.2012</b>
<i>heading preceding s 13</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
<i>heading preceding s 14</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
<i>ss 14 and 15</i>	<i>deleted by 34/1998 Sch</i>	<i>5.10.1998</i>
<i>heading preceding s 16</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
s 16	<i>deleted by 81/1982 s 5(1)</i>	<i>16.9.1982</i>
<i>heading preceding s 18</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
s 18	<i>deleted by 69/1991 s 7</i>	<i>6.7.1992</i>
<i>heading preceding s 19</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
<i>heading preceding s 21</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>
s 21	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	<i>24.11.2003</i>

## Historical versions

Reprint No 1—1.10.1991

Reprint No 2—6.7.1992

Reprint No 3—5.10.1998

Reprint No 4—24.11.2003