SOUTH AUSTRALIA

BILLS OF SALE ACT, 1886

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 29 June 1990.

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SCHEDULES

BILLS OF SALE ACT, 1886

being

Bills of Sale Act, 1886, No. 389 of 1886 [Assented to 17 November 1886]

as amended by

Stock Mortgages and Wool Liens Act, 1924, No. 1649 of 1924 [Assented to 24 December 1924]
Statute Law Revision Act, 1934, No. 2168 of 1934 [Assented to 15 November 1934]
Bills of Sale Act Amendment Act, 1934, No. 2187 of 1934 [Assented to 29 November 1934]
Statute Law Revision Act, 1935, No. 2246 of 1935 [Assented to 19 December 1935]
Bills of Sale Act Amendment Act, 1940, No. 52 of 1940 [Assented to 5 December 1940]
Bills of Sale Act Amendment Act, 1970, No. 35 of 1970 [Assented to 3 December 1970] [1]
Bills of Sale Act Amendment Act, 1972, No. 119 of 1972 [Assented to 30 November 1972] [2]
Bills of Sale Act Amendment Act, 1983, No. 83 of 1983 [Assented to 1 December 1983] [3]
Goods Securities Act, 1986, No. 111 of 1986 [Assented to 18 December 1986] [4]
Bills of Sale Act Amendment Act, 1987, No. 25 of 1987 [Assented to 16 April 1987]
Statute Law Revision Act, 1990, No. 23 of 1990 [Assented to 26 April 1990] [5]

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix 1.

An Act to provide for the registration of bills of sale; to provide for the form and content of bills of sale; and for other purposes.

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Bills of Sale Act, 1886*.

Interpretation

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

"bill of sale" includes bills of sale, assignments, transfers, declarations of trust without transfer, inventories of goods with a receipt for the goods attached, or receipts for purchase-money of goods and other assurances of personal chattels, and also powers of attorney, authorities, or licences to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument by which a right in equity to any personal chattels, or to any charge or security on personal chattels is conferred, but does not

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[1] Came into operation 15 February 1971: *Gaz.* 28 January 1971, p. 283.
[2] Came into operation 1 November 1973: *Gaz.* 6 September 1973, p. 1899.
[3] Came into operation 10 May 1984: *Gaz.* 22 March 1984, p. 724.
[4] 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.
[5] Came into operation (except Scheds. 4-7) 29 June 1990: *Gaz.* 14 June 1990, p. 1606.

include the following documents:—Assignments for the benefit of creditors made pursuant to any statutory provision, marriage settlements, transfers or assignments of any ship or vessel, or any share of a ship or vessel, stock mortgages, agreements conferring a preferable lien on wool, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, warehouse-keepers' certificates, dock warrants, warrants or orders for the delivery of goods, or any other documents 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 such document, to transfer or receive goods referred to in the document:

"contemporaneous advance" includes as well as a contemporaneous advance of money by the grantee to the grantor the sale of goods or property upon credit, or the drawing, accepting, endorsing, making or giving of any bill of exchange, promissory note, or guarantee, or other matter or thing by the grantee to, for, or on behalf of the grantor on the security of any bill of sale, and contemporaneously with the giving thereof:

"dealing" with a bill of sale means transfer, assignment, extension, variation, correction or discharge of the bill of sale:

"grantee" means the person to whom a bill of sale is given, and includes his or her executors, administrators, and assigns and where the grantee is a body corporate the term includes the successors in title of that body corporate:

"grantor" means the person giving the bill of sale, and includes his or her executors, administrators, and assigns and where the grantor is a body corporate the term includes the successors in title of that body corporate:

"personal chattels" means horses or cattle, furniture, goods, chattels, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures or growing crops; but does not include chattel interests in real estate, nor fixtures (except trade machinery), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor debentures, shares, or interests in the stock, funds, or securities of any government, or in the capital or property of any company, nor choses in action; nor sheep, pigs, goats, camels, mules, or donkeys, nor wool on the sheep's back, nor more than ten horses or more than ten head of cattle belonging to one owner:

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"Registrar" means the Registrar-General:

"registry" means the General Registry Office:

"trade machinery" means the machinery used in or attached to any factory or workshop.

(2) Fixtures and growing crops will not be taken to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed, mortgaged, or assigned to the same persons or person.

Note: For definition of divisional penalties see Appendix 2.

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PART II

FORM AND CONTENTS OF BILLS OF SALE

Form of bill of sale

7. Every bill of sale, the registration of which is necessary, must be executed in duplicate, and may be in the form in the first schedule.

Bill of sale to have effect of a deed

8. Every bill of sale, when registered, has the effect of, and will be taken to be, a deed duly executed by the parties who have signed it.

Contents of bill of sale

9. (1) Every bill of sale must contain or state—

(a) the names of the grantor and grantee, their residences or places of business and occupations; but it will be sufficient to state the names by which the grantor or grantee are usually known, and, in the case of a corporation, it will be sufficient to state the corporate name, with the place or one of the places where the business of the corporation is usually carried on;

(b) the name, place of residence or business, and occupation of every attesting witness.

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(2) A bill of sale must not be registered unless it contains the particulars required by subsection (1).

Property assignable

10. (1) The classes of property referred to in paragraphs *(a)* and *(b)* may be assigned by bill of sale, and will be taken to have been assigned at law as well as in equity:

(a) crops (separately assigned) growing at the time of the execution of the bill of sale, but without prejudice to the rights of a genuine purchaser or mortgagee of the land on which the crops are growing;

(b) the progeny coming into existence during the operation of any bill of sale of any horses or cattle comprised in the bill of sale.

(2) The assignment by bill of sale of all other after-acquired property has, subject to the other provisions of this Act, the same effect as before the passing of *The Bills of Sale Act, 1885.*

Assignments of future crops

10a. (1) Notwithstanding any enactment or rule of law to the contrary, any document complying with this Act and executed after the commencement of the *Bills of Sale Act Amendment Act, 1934*, under which any person purports to assign separately whether absolutely or by way of security any crops to be grown by the assignor or on the assignor's behalf within 12 months after the execution of the document on land described in the document is a bill of sale within the meaning of this Act, and will operate to assign the ownership at law as well as in equity of the crops, but without prejudice to the rights of a genuine purchaser or mortgagee of the land on which the crops grow.

(2) Crops referred to in subsection (1) are personal chattels within the meaning of this Act and a bill of sale relating to any such crops must state their nature and describe the land on which they are intended to be grown.

Covenants and powers implied in bills of sale

11. The following covenants and powers will, unless negatived and subject to any modification, be implied in favour of the grantee and as to paragraph *(h)* as an agreement between the parties in every bill of sale for securing money:

(a) the grantor will pay to the grantee the principal and interest money secured, or intended to be secured, by the bill of sale, at the time and in the manner provided for payment in the bill of sale;

(b) the grantor will not, without the consent in writing of the grantee, sell, exchange, or fraudulently remove the personal chattels comprised in the bill of sale from the premises mentioned in the bill of sale, and will at all times keep the personal chattels in good order and condition;

(c) the grantor will not permit the personal chattels comprised in the bill of sale to be distrained for any rent, rates, or taxes, nor permit any execution to be levied against his or her goods or chattels, nor become insolvent, call a meeting of his or her creditors, or make any statutory assignment for the benefit of his or her creditors;

(d) the grantor will produce to the grantee, upon demand, the last receipt for all rent, rates, and taxes in respect of the premises at which the personal chattels are situated;

(e) the grantee or the grantee's agents, may, at all reasonable times, enter upon the grantor's premises at which the personal chattels are kept, and view their state and condition, and the grantor will produce to the grantee or the grantee's agents the personal chattels comprised in the bill of sale, and permit the grantee or the grantee's agents to take an inventory of them;

(f) if the grantor makes default in the payment of the principal or interest money secured by the bill of sale at the time provided for payment, or in the observance or performance of any one of the covenants, terms, conditions, or agreements, whether expressed or implied, in the bill of sale, it will be lawful for the grantee, without any further consent or concurrence on the part of the grantor, to enter into and upon the land, messuage, or tenement on which the personal chattels assigned are, or into or upon any other land, messuage, or tenement on or in which the personal chattels, or any other personal chattels comprised and included in the bill of sale respectively, may be, or may reasonably be supposed to be, and for that purpose to open or remove any outer or inner gate, door, fastening, or other obstruction, without liability to any action of trespass, or other proceeding for so doing; but with liberty to plead the leave and licence given in bar to any such action or proceeding, if any such be brought or instituted, and to seize and take possession of all such personal chattels, and to remove them to any other place or places for safety, convenience of sale, or for any other purpose, or permit them to remain in the place or places where they may be found, and to sell and dispose of such chattels and premises, or any of them, either together or in parcels, at such time or times, and place or places, and either by public auction or private contract, or partly by public auction and partly by private contract, to any person or persons, for such price or prices, either for cash or on credit, or partly for cash and partly on credit, and if either wholly or partly on credit, giving such time or times for payment, and taking or

foregoing any security or securities for the payment of the unpaid purchase-money as the grantee may deem proper or expedient, with power for the grantee to make any other terms and conditions in regard to such sale or sales as the grantee may think proper, and also to buy in all or any of the chattels at any such sale or sales by auction, and rescind or vary any contract for sale, and again to resell or offer for resale the chattels from time to time, without being answerable or accountable for any loss, diminution in price, costs, or expenses to be occasioned by any such buying in, rescission, variance, or actual or attempted resale;

(g) it will be lawful for the grantee, upon or after any such sale, to execute any contract or other document that is necessary or expedient for the purpose of making and effecting any such sale, and which will be as binding and conclusive upon and against the grantor as if the grantor had executed it. And also that the receipt or receipts in writing of the grantee for all purchase-money or other property which is paid or delivered to the grantee under or by virtue of the bill of sale, will be a good and sufficient discharge or good and sufficient discharges to all purchasers or other persons paying or delivering the same, and that the purchaser or other persons will not be required to see the application, or be answerable for the misapplication or nonapplication of the purchase-money or other property, or be bound or concerned to inquire into the propriety or expediency of any such sale or resale;

(h) the grantee will out of the money which comes to the grantee's hands by reason of any such sale or sales, in the first place, discharge the costs and expenses incurred or sustained in or about such sale or sales, and all other costs, charges, and expenses incurred or occasioned in or about the execution of the powers and authorities contained in the bill of sale, and retain the balance of the money, or so much of it as may be necessary, in or towards payment and satisfaction of all money due and owing to him or her upon the security of the bill of sale, and the grantee will pay to the grantor the surplus then remaining.

Implication of certain words

12. The words "that the grantor will insure" in any bill of sale imply that the grantor will immediately insure and, so long as any money remains due on the security of the bill of sale, keep insured in some public insurance office, to be approved of by the grantee, against loss or damage by fire, in the name of the grantee, the personal chattels comprised in the bill of sale to the full amount secured by the bill of sale, and will hand over to the grantee the policy of insurance and produce to the grantee the receipts for the annual or other periodical premiums payable on account of insurance, and that all money payable by virtue of the insurance will be received by the grantee towards satisfaction of the money due on the security, and that if default is made by the grantor in effecting or keeping on foot the insurance it will be lawful for, but not obligatory upon, the grantee (without prejudice to any other remedy) to insure the personal chattels, and the money paid on account of insurance will be a charge on the personal chattels.

Joint and several liability under bill of sale

12a. Where two or more persons are liable upon the same engagement in a bill of sale, their liability is, unless the contrary intention is expressed, joint and several.

Joint and several entitlement of grantees

12b. Where two or more persons are registered as the grantees of a bill of sale, they are severally as well as jointly entitled to—

(a) the payment of principal and interest secured by the bill of sale;

and

(b) the observance and performance of the covenants, terms, conditions or agreements, whether expressed or implied, in the bill of sale,

except insofar as a contrary intention is expressed in the bill of sale.

Witnesses

13. The execution of a bill of sale, or any dealing with a bill of sale, must be attested by one or more credible witnesses, not being a party or parties to the bill of sale or the dealing with the bill of sale.

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PART III

REGISTRATION OF BILLS OF SALE AND OTHER DEALINGS

Bill of sale to be registered in General Registry Office

15. All bills of sale, and every subsequent dealing capable of being registered must be registered in the General Registry Office.

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Bill of sale to be registered

17. Subject to this Act, every bill of sale must be registered within 60 days from the date of its execution.

Successive bills of sale

17a. Where a subsequent bill of sale is executed within or on the expiration of 60 days after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in the prior bill of sale, then, if that subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of that debt, it will to the extent to which it is a security for the same debt or part of it, and so far as respects the personal chattels or part of them comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the court having cognizance of the case that the subsequent bill of sale was genuinely given for the purpose of correcting some material error in the prior bill of sale, and not for the purpose of evading this Act.

Power of Court to extend time for registration

17b. Where—

(a) a bill of sale is not registered within the prescribed time;

and

(b) the Supreme Court, on the application of the grantee or the holder of the bill of sale or of any other person interested, is satisfied that the failure to register the bill of sale within the prescribed time was accidental or that on other grounds it is just and equitable to grant relief,

the Supreme Court may, on such terms and conditions as the Court thinks just, by order, extend the time for registration for such period as is specified in the order.

Bills of sale to be registered in order of production

18. All bills of sale must be registered in the order of time in which they are produced in registrable form for that purpose, and will, in respect to the personal chattels to which they apply, be entitled to priority according to the time of production.

Bills of sale, how to be registered

19. For the purpose of registration every bill of sale must be lodged in duplicate with the Registrar, who must endorse upon each duplicate a certificate of registration, stating the consecutive registration number of the bill of sale, and the day and hour of its production for registration, and the certificate must be in the form of the third schedule, and be authenticated by the seal and signature of the Registrar, and one duplicate (hereinafter called the original) must be filed in the registry, and the other (hereinafter called the duplicate) must be delivered to the person entitled to it, and the production of the original, or of the duplicate, with the certificate duly endorsed on it, is *prima facie* evidence of the due registration of the bill of sale.

Renewal of registration of bills of sale

19a. * * * * * * * * * *

(2) The registration of every bill of sale which is registered after the commencement of the *Bills of Sale Act Amendment Act, 1940*, or the registration of which is renewed after that commencement, becomes void upon the expiration of five years after the last previous registration or (as the case may be) renewal of registration, unless the registration is renewed within that period of five years in the manner prescribed in this section.

(3) The renewal of a registration is effected by lodging with the Registrar a statutory declaration by the grantee or a person acting on the grantee's behalf, in the form and containing the particulars set out below and declaring that the bill of sale is still a subsisting security.

(4) The statutory declaration must be in the following form:

I ..... of ..... do solemnly and sincerely declare that the bill of sale, registered No. ....., bearing date the ..... day of ..... 19..... and made between ..... and ....., and registered on the ..... day of ..... 19..... is still a subsisting security.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act, 1936*.

..... [Signature of declarant.]

Declared before me at ..... the ..... day of ..... 19.....

..... [Signature of J.P. or other person taking the declaration.]

(5) The Registrar must endorse a memorandum of every renewal of the registration of a bill of sale on the original of that bill of sale filed in the registry, and on the duplicate thereof, if produced to him or her.

(6) This section does not apply to—

(a) any registered mortgage of stock as defined in the *Stock Mortgages and Wool Liens Act, 1924*;

or

(b) any registered agreement conferring a preferable lien on wool.

(7) An extension of a bill of sale duly registered as provided in section 23 will be taken to be a renewal of the registration of that bill of sale.

(8) A renewal of registration is not necessary by reason only of the transfer or assignment of a bill of sale.

(9) The fees payable in respect of the preparation, filing and endorsement of the renewal of the registration of a bill of sale are payable by the grantor, and if the grantee or any other person pays them, he or she may recover them from the grantor.

Power of Court to extend time for renewal

19b. Where—

(a) a bill of sale is not renewed within the prescribed time;

and

(b) the Supreme Court, on the application of the grantee or the holder of the bill of sale or of any other person interested, is satisfied that the failure to renew the bill of sale within the prescribed time was accidental or that on other grounds it is just and equitable to grant relief,

the Supreme Court may, on such terms and conditions as the Court thinks just, by order, extend the time for renewal for such period as is specified in the order.

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Destruction of old bills of sale

19d. (1) The Registrar may destroy any document kept in the Registrar's office and being—

(a) the original or duplicate of a bill of sale which has been discharged or has become void by reason of the non-renewal of its registration;

(b) a memorial filed under the Act No. 8 of 1841-42 in respect of any bill of sale;

or

(c) an index or other record of any bill of sale or memorial which the Registrar is by this section authorized to destroy.

(2) A bill of sale registered after the commencement of the *Bills of Sale Act Amendment Act, 1940*, must not be destroyed earlier than five years after it is discharged or the registration of it becomes void.

Bills of sale registered after expiry of registration of prior bill of sale

19e. If a bill of sale over any chattels is registered between the time when the registration of a prior bill of sale over the same chattels became void under section 19a and the time when that registration was renewed under section 19b, the bill of sale first mentioned is entitled to priority over the prior bill of sale.

Form of transfer of bill of sale

20. A transfer or assignment of a registered bill of sale may be made by endorsement on the duplicate in the form of the fifth schedule, or by separate instrument.

Bill of sale may be extended, varied or corrected

21. (1) An extension of time for the repayment of money secured by a bill of sale, or any other variation, or any correction, of a bill of sale, may be effected by endorsement on the duplicate, or by separate instrument, in either case signed by the parties or, where the bill is held on joint account, by the grantor or grantors and one or more of the grantees.

(2) An extension by endorsement under subsection (1) may be effected by endorsing on the duplicate the word "Extended", which will mean an extension for a further period of one year of the time for repayment but otherwise upon the terms provided in the bill of sale.

(3) Subsection (2) does not limit the manner in which an extension may be effected by endorsement.

Discharge

22. A bill of sale, or personal chattels comprised in a bill of sale, may be discharged or partially discharged by endorsement on the duplicate in the form of the fourth schedule, or by separate instrument, in either case signed by the grantee or grantees or, where the bill of sale is held on joint account, by one or more of the grantees.

Registration of dealings with registered bills of sale

23. (1) The Registrar must, upon the application of a party or holder of a registered bill of sale or any other person interested, register any dealing with the bill of sale.

(2) An application under subsection (1)—

(a) may be made orally or, if the Registrar so requires, must be in writing in such form as the Registrar may require;

(b) must be accompanied by the duplicate bill of sale;

and

(c) must be supported by such evidence and other documents (if any) as the Registrar may require.

(3) The Registrar must register the dealing with the bill of sale by entering particulars of the dealing on the original bill of sale (including, in the case of an extension, the date and hour of the entry) and authenticating the entry by the Registrar's seal and signature.

(4) Where a dealing with a bill of sale is effected by separate instrument and registered under this section, the Registrar must, upon application, file the separate instrument or a duplicate of the separate instrument in the registry.

(5) Where a discharge is registered under this section and the discharge is for the whole of the money secured by the bill of sale, the Registrar must retain the duplicate bill of sale and file it in the registry.

(6) Where the Registrar is satisfied, on the basis of such evidence as the Registrar requires, that the duplicate bill of sale has been lost or destroyed the Registrar—

(a) may permit a dealing with the bill of sale to be effected by endorsement on the original bill of sale;

and

(b) may dispense with the requirement that the duplicate bill of sale be produced.

Index to be kept by Registrar

24. The Registrar must keep an alphabetical index of the names of every grantor and grantee of a bill of sale, together with the reference to the registrations.

Omissions and errors in the registry may be corrected

25. The Registrar, upon being satisfied that any omission or error has occurred in the registration of any bill of sale, or any renewal of, or dealing with, the bill of sale, may summon the grantee or grantor, or other holder of such bill of sale, or any renewal of, or dealing with, the bill of sale, to attend before the Registrar, at such time and place as the Registrar directs, to show cause why the error or omission should not

be corrected, and in case the grantee or grantor does not attend, or if he or she attends, and the Registrar is satisfied that the error or omission ought to be corrected, then the Registrar must (unless prohibited by the Supreme Court, or a Judge of the Supreme Court) proceed to make the necessary correction.

In case of variance, original to prevail

26. Whenever there is any difference or variation between the contents of an original bill of sale and of the duplicate, the original prevails.

Search allowed

27. Every person has access to any bill of sale filed in the registry, for the purpose of inspection, during the hours and upon the days appointed for search.

PART IV

DISPOSITION OF CHATTELS IN CASE OF INSOLVENCY OR DISTRESS

Bills of sale to be void in certain circumstances

28. Every bill of sale which has not been registered within the prescribed time, or within any extended time allowed under this Act, is void, as against—

(a) the Official Receiver or the trustee in insolvency of the grantor;

(b) the trustee of the estate of the grantor under any statutory assignment for the benefit of his or her creditors,

so far as regards the property in or right to the possession of any personal chattels comprised in the bill of sale which within three months before the insolvency, or the meeting of creditors at which the resolution for the assignment was passed, are in the possession, or apparent possession, of the grantor, and is void as against all sheriff's officers and other persons seizing any personal chattels comprised in such bill of sale in the execution of the process of any court against the goods of the grantor, and all judgment creditors on behalf of whom such process is executed, so far as regards the property in any such personal chattels as at the time of such seizure are in the possession or apparent possession of the grantor.

(1a) Until the expiration of the period allowed for registration, every bill of sale will be taken to have been registered within that period.

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(2) A bill of sale that constitutes a consumer mortgage within the meaning of the *Consumer Transactions Act, 1972*, is not rendered void as against any person under subsection (1) by reason of the fact that it is not registered.

(3) A bill of sale that constitutes a registered security interest within the meaning of the *Goods Securities Act, 1986*, is not rendered void as against any person under subsection (1) by reason of the fact that it is not registered under this Act.

Bill of sale valid security for further advance

29. Where any bill of sale is given as security wholly or partly for a contemporaneous or further advance, it will, subject to the provisions of this Act, be a valid security to the extent of the advance made at the time of, and subsequently to, the making of the bill of sale.

Distress for rates may be levied on goods comprised in bill of sale

30. A bill of sale does not protect the personal chattels to which it applies against any distress for any rates or taxes payable by the owner or occupier of any land under any Act.

Distress not to be levied against goods in bill of sale except for a limited amount

31. No distress for any rent made and levied upon any personal chattels comprised in any duly registered bill of sale will be available except for four weeks rent where the tenement is let by the week; for two terms of payment (but not exceeding three months) where the tenement is let for any other term less than six months; or for twelve months rent where the tenement is let for any longer term, unless the landlord pays off the sum of money owing on the bill of sale.

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PART VI

MISCELLANEOUS PROVISIONS

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Fees

34. It is lawful for the Registrar to demand and receive such fees as may be prescribed by regulation for the purposes of this Act, and those fees must be accounted for by the Registrar and paid into the Consolidated Account.

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Goods not to be sold until five days after seizure

36. Personal chattels (except those of a perishable nature) must not be sold until five days after seizure under a bill of sale.

Fraudulently disposing of goods to be misdemeanour

37. Any person who conceals, sells, pawns, kills, or destroys any personal chattels comprised in any bill of sale, with intent to deprive the grantee of his or her security, is guilty of a misdemeanour.

Penalty: Division 5 imprisonment.

False declaration to be perjury

38. Any person guilty of making a false declaration concerning any matter or procedure to be done in pursuance of this Act is guilty of perjury.

Penalty: Division 5 imprisonment.

Paper to be used for instruments

38a. (1) Subject to this section, every bill of sale or other instrument lodged with the Registrar for registration or filing in the registry must be on paper of a size and kind prescribed by regulation.

(2) The Registrar may dispense with the requirement to comply with subsection (1) in such circumstances as the Registrar thinks fit.

Minister may discharge bill of sale in certain circumstances

38b. (1) Where all money secured by a bill of sale has been paid by the grantor and the grantee—

(a) is dead;

(b) cannot be found;

(c) is incapable of executing a discharge of the bill of sale;

or

(d) has, in the opinion of the Minister, refused to execute a discharge of the bill of sale without sufficient reason,

the Minister may execute a discharge of the bill of sale.

(1a) The Minister must not execute a discharge of a bill of sale pursuant to subsection (1) *(d)* unless—

(a) the Registrar-General has sent by certified mail to the grantee at his or her last known address a notice stating that the Minister proposes to discharge the bill of sale pursuant to subsection (1) *(d)* at the expiration of the

prescribed period unless the grantee establishes to the satisfaction of the Minister that he or she is justified in refusing to execute a discharge of the bill of sale;

and

(b) the prescribed period has elapsed since the notice was sent.

(1b) The prescribed period is—

(a) in a case where the notice is addressed to the grantee within Australia—one month;

(b) in any other case—two months.

(2) The Minister may receive money on behalf of a grantee, or the estate of a grantee, who—

(a) is dead;

(b) cannot be found;

(c) is incapable of executing a discharge of the bill of sale;

or

(d) has, in the opinion of the Minister, refused to accept payment under the bill of sale without sufficient reason,

and any money so received will, for the purposes of this section and the bill of sale, be taken to have been paid to the grantee.

(3) Any money received by the Minister under subsection (2) must be held by the Minister upon trust for the grantee or other person entitled to it.

(4) Subject to subsection (5), a discharge of a bill of sale executed under this section has the same effect as a discharge executed by the grantee.

(5) A discharge of a bill of sale executed under this section does not operate as a discharge of the personal covenants of the bill of sale.

Regulations

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

* * * * * * * * * *

Act not to apply to chattels taken and kept by grantee within 21 days

41. This Act does not apply to any bill of sale where the grantee takes the personal chattels to which the bill of sale applies out of the possession, or apparent possession, of the grantor within 21 days of the date of the bill of sale, and keeps possession of them.

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FIRST SCHEDULE

Bill of Sale

I, (*or* we) [*state the full or usual given names of the grantor, the grantor's proper surname, residence or place of business, and occupation*] in consideration of the sum [*here state consideration*] lent to me (*or* us) by [*here state the full or usual given names of the grantee, the grantee's proper surname, residence or place of business, and occupation*] the receipt of which I (*or* we) acknowledge, transfer and assign to [*the grantee*] all and singular the personal chattels described at the foot of this bill of sale, which are situated [*describe the land or premises where the goods are situated*], and all my (*or* our) right, title, claim, and demand to the personal chattels, to have, hold, take, and receive the personal chattels unto [*the grantee*], subject to the provisos, terms, covenants, conditions, and agreements expressed or implied in this bill of sale; but if I pay to [*grantee*] the sum of $ on the day of , 19 (or *on demand or at such other time as provided for by the bill of sale*), and interest on that sum, or on so much as remains due at the rate of $ per cent per annum, payable in payments on during this security then this bill of sale becomes void.

[*Here insert any other necessary condition.*]

And it is agreed that, upon payment of the money secured, [*grantee*] will, at my cost and my request, execute a discharge to me (*or* us) of this security, and that it will be lawful for me (*or* us) to retain possession of the personal chattels until default is made in the expressed or implied terms, covenants, conditions, and agreements of this security.

Dated the day of , 19 .

Signed by [*grantor*] in the presence of }

Personal chattels comprised in this Bill of Sale

[*Here give a description of the personal chattels assigned, and in case of horses or cattle, state the brand or other distinctive mark.*]

* * * * * * * * * *

THIRD SCHEDULE

Certificate of Registration to be endorsed by Registrar on each Bill of Sale

No. This bill of sale was received into the Registry Office at this day of 19 , at the hour of in the noon, and is registered as provided in the *Bills of Sale Act, 1886*.

Registrar.

FOURTH SCHEDULE

Discharge of Bill of Sale

I, [*name of grantee*] in (*or* upon) [*here state consideration*], discharge (*or* partially discharge) [*here describe the bill of sale*] (*or* the personal chattels comprised in [*here describe the bill of sale*] and listed below).

[List personal chattels here, if applicable.]

Dated this day of , 19 .

Signed by the said, etc.

FIFTH SCHEDULE

Transfer of Bill of Sale

I, the grantee of this bill of sale, in consideration of the sum of $ [*state consideration*], paid to me by [*here state full or usual given names of the transferee, the transferee's proper surname, residence, place of business, and occupation*], transfer and assign to the transferee the personal goods and chattels comprised in this bill of sale, subject to the terms, provisos, conditions, and agreements expressed or implied in this bill of sale; and also the principal and interest money that it secures, and all claims, demands, powers, rights, privileges, and authorities that it confers on or vests in me.

Dated this day of , 19 .

Signed by the said, etc.

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APPENDIX 1

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 1 of The Public General Acts of South Australia 1837-1975 at page 509.

Long title:	substituted by 23, 1990, s. 3(1) (3rd Sched.)
Heading preceding section 1:	inserted by 23, 1990, s. 3(1) (3rd Sched.)
Section 2:	amended and redesignated as s. 2(1) by 23, 1990, s. 3(1) (3rd Sched.)
	definition of "bill of sale" amended by 23, 1990, s. 3(1) (3rd Sched.)
	definition of "contemporaneous advance" amended by 23, 1990, s. 3(1) (3rd Sched.)
	definition of "dealing" inserted by 83, 1983, s. 3
	definition of "grantee" amended by 23, 1990, s. 3(1) (3rd Sched.)
	definition of "grantor" amended by 23, 1990, s. 3(1) (3rd Sched.)
	definition of "personal chattels" amended by 23, 1990, s. 3(1) (3rd Sched.)
	definition of "prescribed" repealed by 23, 1990, s. 3(1) (3rd Sched.)
	definition of "registry" amended by 23, 1990, s. 3(1) (3rd Sched.)
	definition of "trade machinery" substituted by 23, 1990, s. 3(1) (3rd Sched.)
Section 2 second sentence:	amended and redesignated as s. 2(2) by 23, 1990, s. 3(1) (3rd Sched.)
Section 3:	amended by 83, 1983, s. 4; repealed by 23, 1990, s. 3(1) (3rd Sched.)
Heading preceding section 7:	substituted by 23, 1990, s. 3(1) (3rd Sched.)
Sections 7 and 8:	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 9:	amended by 83, 1983, s. 5; amended and redesignated as s. 9(1) and (2) by 23, 1990, s. 3(1) (3rd Sched.)
Section 9 paras. (3) - (5):	repealed by 83, 1983, s. 5
Section 10:	substituted by 23, 1990, s. 3(1) (3rd Sched.)
Section 10a:	amended and redesignated as s. 10a(1) and (2) by 23, 1990, s. 3(1) (3rd Sched.)
Section 11:	amended by 23, 1990, s. 3(1) (3rd Sched.)
Sections 12 and 12a:	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 12b:	inserted by 83, 1983, s. 6; amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 13:	amended by 83, 1983, s. 7; 23, 1990, s. 3(1) (3rd Sched.)
Section 14:	repealed by 83, 1983, s. 8
Section 15:	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 17:	substituted by 83, 1983, s. 9; amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 17a:	amended by 83, 1983, s. 10; 23, 1990, s. 3(1) (3rd Sched.)
Section 17b:	inserted by 83, 1983, s. 11
Section 18:	amended by 83, 1983, s. 12; 23, 1990, s. 3(1) (3rd Sched.)
Section 19:	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 19a(1):	repealed by 23, 1990, s. 3(1) (3rd Sched.)
Section 19a(2) - (6):	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 19a(7):	amended by 83, 1983, s. 13; 23, 1990, s. 3(1) (3rd Sched.)
Section 19a(8) and (9):	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 19b:	substituted by 83, 1983, s. 14
Section 19c:	repealed by 83, 1983, s. 14
Section 19d:	amended and redesignated as s. 19d(1) and (2) by 23, 1990, s. 3(1) (3rd Sched.)
Section 19e:	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 20:	amended by 83, 1983, s. 15; 23, 1990, s. 3(1) (3rd Sched.)
Section 21:	substituted by 83, 1983, s. 16
Section 21(1) and (2):	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 22:	substituted by 83, 1983, s. 16
Section 23:	substituted by 83, 1983, s. 16; amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 24:	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 25:	amended by 83, 1983, s. 17; 23, 1990, s. 3(1) (3rd Sched.)
Sections 26 and 27:	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 28(1):	amended by 83, 1983, s. 18(a), (b); 23, 1990, s. 3(1) (3rd Sched.)
Section 28(1) first proviso:	amended and redesignated as s. 28(1a) by 23, 1990, s. 3(1) (3rd Sched.)
Section 28(1) second proviso:	repealed by 83, 1983, s. 18(c)
Section 28(2):	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 28(3):	inserted by 111, 1986, Sched. 1
Sections 29 - 31:	amended by 23, 1990, s. 3(1) (3rd Sched.)
Part V heading:	repealed by 83, 1983, s. 19
Section 33:	repealed by 23, 1990, s. 3(1) (3rd Sched.)
Section 34:	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 35:	repealed by 83, 1983, s. 20
Section 36:	substituted by 23, 1990, s. 3(1) (3rd Sched.)
Sections 37 and 38:	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 38a:	inserted by 83, 1983, s. 21
Section 38a(2):	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 38b:	inserted by 83, 1983, s. 21
Section 38b(1):	substituted by 25, 1987, s. 2(a)
Section 38b(1a) and (1b):	inserted by 25, 1987, s. 2(a)
Section 38b(2):	amended by 25, 1987, s. 2(b), (c); 23, 1990, s. 3(1) (3rd Sched.)
Section 38b(3):	amended by 25, 1987, s. 2(b); 23, 1990, s. 3(1) (3rd Sched.)
Section 38b(4) and (5):	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 39:	substituted by 23, 1990, s. 3(1) (3rd Sched.)
Section 40:	repealed by 23, 1990, s. 3(1) (3rd Sched.)
Section 41:	amended by 23, 1990, s. 3(1) (3rd Sched.)
Section 42:	repealed by 23, 1990, s. 3(1) (3rd Sched.)
Heading preceding First Schedule:	repealed by 23, 1990, s. 3(1) (3rd Sched.)
First Schedule:	amended by 23, 1990, s. 3(1) (3rd Sched.)

Second Schedule:	repealed by 83, 1983, s. 22
Fourth Schedule:	substituted by 83, 1983, s. 23; amended by 23, 1990, s. 3(1) (3rd Sched.)
Fifth Schedule:	amended by 23, 1990, s. 3(1) (3rd Sched.)
Seventh Schedule:	repealed by 83, 1983, s. 24

APPENDIX 2

Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	$60 000
2	10 years	$40 000
3	7 years	$30 000
4	4 years	$15 000
5	2 years	$8 000
6	1 year	$4 000
7	6 months	$2 000
8	3 months	$1 000
9	-	$500
10	-	$200
11	-	$100
12	-	$50

Note: This appendix is provided for convenience of reference only.