

BILLS OF SALE AMENDMENT ACT 1983

No. 32 of 1983

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BILLS OF SALE AMENDMENT ACT 1983

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 No. 32 of 1983
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AN ACT to amend the Bills of Sale Act 1900 for the purpose of making further provision with respect to the registration of bills of sale under that Act and for related purposes.

[Royal Assent 19 July 1983]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Bills of Sale Amendment Act* Short title. 1983.

2—(1) This section and section 1 shall commence on the day Commence- on which this Act receives the royal assent. ment.

(2) Except as provided in subsection (1), this Act shall commence on a day to be fixed by proclamation.

3—In this Act, the *Bills of Sale Act 1900** is referred to as the Principal Act. Principal Act.

* 64 Vict. No. 70. For this Act, as amended to 1st January 1978, see the continuing Reprint of Statutes. Subsequently amended by No. 45 of 1979 and No. 9 of 1982.

Amendment of section 5 of Principal Act (Bill of Sale void unless registered).

4—Section 5 (1) of the Principal Act is amended by omitting “ and within 42 days after the lodging with the Commissioner of the notice hereinafter mentioned of the intention to make or give such bill of sale,”.

Substitution of section 6 of Principal Act.

5—Section 6 of the Principal Act is repealed and the following section is substituted:—

Provisional and full registration.

6—(1) A person who gives or makes a bill of sale shall lodge with the Commissioner the original or a true copy of—

(a) the bill of sale;

(b) any schedule or inventory annexed to or referred to in the bill of sale;

(c) each attestation of the execution of the bill of sale; and

(d) an affidavit setting out—

(i) the time of the making or giving of the bill of sale; and

(ii) the place of business or residence, and the occupation, of the person making or giving the bill of sale and of every attesting witness to that bill of sale.

(2) On receipt of the documents referred to in subsection (1), the Commissioner shall provisionally register the bill of sale.

(3) Provisional registration under subsection (2) shall become absolute 15 days after the date of the provisional registration unless an objection in accordance with section 11 is lodged within that time.

Repeal of section 9 of Principal Act (No bill of sale to be registered unless notice of intention to give same lodged, and no caveat).

6—Section 9 of the Principal Act is repealed.

Repeal of section 10 of Principal Act (How notice lodged).

7—Section 10 of the Principal Act is repealed.

8—Section 11 of the Principal Act is repealed and the following section is substituted:—

Substitution of section 11 of Principal Act.

11—(1) An interested person may, within 15 days after the day on which a bill of sale is registered in the office of the Commissioner, lodge in that office an objection to that registration.

Right of certain persons to object.

(2) For the purposes of subsection (1), an “interested person” means—

- (a) a creditor of a person making or giving a bill of sale whose debt is not less than \$100;
- (b) a group of creditors whose joint debts are not less than \$250; or
- (c) a person claiming ownership or other interest in the chattels assigned by the bill of sale.

(3) An objection referred to in subsection (1) shall be in accordance with the prescribed form and shall be lodged in duplicate.

9—Section 12 of the Principal Act is repealed and the following section is substituted:—

Substitution of section 12 of Principal Act.

12—(1) On receipt of an objection lodged in accordance with section 11, the Commissioner shall send a copy of that objection to the person making or giving the bill of sale to which the objection relates, at the address specified in the affidavit lodged with that bill of sale under section 6 (1) (d) (ii).

Commissioner to notify person making or giving bill of sale of objection.

(2) A person who receives, pursuant to subsection (1), a copy of an objection, or the grantee of the bill of sale to which the objection relates, may summon the objector before the Court to show cause why his objection should not be removed.

(3) On the return of a summons issued under subsection (2), the Court shall hear and determine whether the objector is a creditor of any person named in the objection as being indebted to him, or is entitled to the ownership of, or an interest in, the chattels assigned by the bill of sale.

(4) For the purposes of subsection (3), a person to whom any person making or giving a bill of sale is indebted on any account whatsoever, at law or in equity, on the balance of account or otherwise, and whether the debt is due or will accrue due, secured or unsecured, shall be deemed to be a creditor.

(5) Notwithstanding the preceding provisions of this section, the Court may, if it is of the opinion that the security held by a secured creditor is sufficient to satisfy his debt or claim, order the removal of the objection.

Substitution of
section 13 of
Principal Act.

10—Section 13 of the Principal Act is repealed and the following section is substituted:—

Power of
Court in
relation to
objection.

13—(1) On hearing a summons issued under section 12, the Court may—

(a) order that the provisional registration of the bill of sale be cancelled;

(b) order that terms imposed by the Court be complied with before the provisional registration becomes absolute; or

(c) order that the objection be removed.

(2) An order made under subsection (1) shall be served on the Commissioner, who shall ensure that the order is complied with.

Substitution of
section 14 of
Principal Act.

11—Section 14 of the Principal Act is repealed and the following section is substituted:—

Withdrawal
or removal
of objection.

14—(1) An objector may withdraw his objection at any time by signing and lodging an application in accordance with the prescribed form.

(2) If, after satisfaction of his debt or claim together with his reasonable costs of lodging and withdrawing his objection, the objector refuses to withdraw his objection, the person giving or making the bill of sale may summon the objector before the Court to show cause why the objection should not be removed.

(3) On hearing a summons issued under subsection (2), the Court may order the removal of the objection.

(4) An order made under subsection (3) shall be served on the Commissioner, who shall ensure that the order is complied with.

12—Section 15 of the Principal Act is repealed.

Repeal of section 15 of Principal Act (Power of Court to extend time for filing when caveat lodged).

13—Section 16 of the Principal Act is repealed and the following section is substituted:—

Substitution of section 16 of Principal Act.

16—(1) On hearing a summons under this Act, the Court may make any order as to costs that it thinks fit.

Costs and compensation.

(2) On hearing a summons under this Act, the Court may order a person who—

(a) lodges an objection to registration of a bill of sale without reasonable cause; or

(b) unreasonably refuses to withdraw his objection, to pay to the person making or giving that bill of sale any sum by way of compensation that the Court thinks fit.

14—Section 17 of the Principal Act is amended as follows:—

Amendment of section 17 of Principal Act (Power of commissioner, &c., to exercise certain powers of Court).

(a) by omitting “ 15,”;

(b) by omitting “ commissioner,” and substituting “ commissioner ”;

(c) by omitting “ *Local Courts Act 1896*,” and substituting “ *Local Courts Act 1896* ”;

(d) by omitting “ any such caveat as aforesaid ” and substituting “ an objection under section 11 ”;

(e) by omitting “ such caveat ” and substituting “ that objection ”.

15—Section 20 of the Principal Act is amended by omitting “ the form set forth in Schedule IV ” and substituting “ accordance with the prescribed form ”.

Amendment of section 20 of Principal Act (Form of affidavit).

16—Section 23 of the Principal Act is repealed.

Repeal of section 23 of Principal Act (Notice book to be kept).

17—Section 24 (1) of the Principal Act is amended as follows:—

(a) by omitting “ shall also keep ” and substituting “ shall keep ”;

(b) by omitting “ the form set forth in Schedule V ” and substituting “ accordance with the prescribed form ”;

Amendment of section 24 of Principal Act (Register to be kept).

(c) by omitting “ the said schedule ” and substituting “ that form ”.

Amendment of section 25 of Principal Act (Index of grantors).

18—Section 25 of the Principal Act is amended as follows:—

(a) by omitting from subsection (1) “ shall also keep ” and substituting “ shall keep ”;

(b) by omitting from subsection (1) “ intending to make or give a bill of sale with reference to the entries in the notice book, and shall also keep an index of the names of the persons ”;

(c) by omitting from subsection (2) “ such indexes respectively ” and substituting “ that index ”;

(d) by omitting from subsection (2) “ in each index ”.

Amendment of section 27 of Principal Act (Office copies of bills of sale, &c.).

19—Section 27 of the Principal Act is amended by omitting “ notice,”.

Amendment of section 28 of Principal Act (Search).

20—Section 28 of the Principal Act is amended by omitting “ notice book and the register, and every notice,” and substituting “ register and every ”.

Amendment of section 29 of Principal Act (Satisfaction to be registered).

21—Section 29 of the Principal Act is amended by omitting “ the form set forth in Schedule VI ” and substituting “ accordance with the prescribed form ”.

Amendment of section 30 of Principal Act (Satisfaction or recon to be registered).

22—Section 30 of the Principal Act is amended as follows:—

(a) by omitting “ the form in Schedule VI ” and substituting “ accordance with the prescribed form ”;

(b) by omitting “ the form in Schedule VII ” and substituting “ accordance with the prescribed form ”.

Amendment of section 38 of Principal Act (Form of security).

23—Section 38 of the Principal Act is amended by omitting “ the form set forth in Schedule VIII ” and substituting “ accordance with the prescribed form ”.

24—Section 46 of the Principal Act is repealed and the following section is substituted:—

Substitution of
section 46 of
Principal Act.

46—(1) The Governor may make regulations for the purposes of this Act.

Regulations.

(2) Without limiting the generality of subsection (1), the regulations may prescribe forms and impose fees.

25—Schedules I to VIII inclusive of the Principal Act are repealed.

Repeal of
Schedules I
to VIII
inclusive of
Principal Act.

