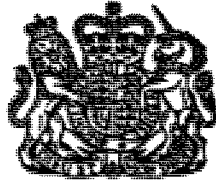


South Australia



ANNO QUADRAGESIMO NONO
ELIZABETHAE II REGINAE
A.D. 2000

GOODS SECURITIES (MISCELLANEOUS) AMENDMENT ACT 2000

No. 5 of 2000

[Assented to 20 April 2000]

An Act to amend the Goods Securities Act 1986.

SUMMARY OF PROVISIONS

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SCHEDULE

Further Amendments of Principal Act

The Parliament of South Australia enacts as follows:**Short title**

1. (1) This Act may be cited as the *Goods Securities (Miscellaneous) Amendment Act 2000*.

(2) The *Goods Securities Act 1986* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 3—Interpretation

3. Section 3 of the principal Act is amended—

(a) by striking out the definition of "notice" in subsection (1) and substituting the following definition:

"notice"—*see subsection (3)*;;

(b) by inserting after subsection (2) the following subsection:

(3) For the purposes of this Act, a person has notice of a security interest in prescribed goods if—

(a) the person has actual notice of the security interest; or

(b) the person has been put upon inquiry as to the existence of the security interest and has deliberately abstained from inquiry or further inquiry when the person might reasonably have expected the inquiry or further inquiry to reveal the security interest.

Substitution of s. 8B

4. Section 8B of the principal Act is repealed and the following section is substituted:

Time within which Registrar must register security interests, vary particulars or cancel registration

8B. This Act is to be taken to require the Registrar to register a security interest, vary particulars of a registered security interest or cancel the registration of a security interest as soon as practicable after—

(a) the receipt of a due application for such registration, variation or cancellation under this Act; or

(b) the registration of the security interest, variation of particulars of the security interest or cancellation of the registration of the security interest, under a corresponding law,

but no right arises to compensation or damages under this Act or at law in relation to that duty unless the security interest remains unregistered, or the particulars of the security interest are not varied or the registration of the security interest is not cancelled, beyond the end of the day after the day of the receipt of the application, or the registration, variation of particulars or cancellation of the security interest under the corresponding law.

Amendment of s. 11—Discharge of security interests**5. Section 11 of the principal Act is amended—**

(a) by striking out from subsection (1) "subsection (4)" and substituting "subsections (1a) and (4)";

(b) by inserting after subsection (1) the following subsection:

(1a) The third party does not acquire a good title to the goods and the security interest is not discharged in respect of the goods under subsection (1) if—

(a) the third party is a party to an agreement or understanding with another person under which the third party is acquiring or purporting to acquire the goods for the purpose of supplying the goods to the other person under a goods lease, hire-purchase agreement or other contract; and

(b) the other person is not acting honestly and without notice of the security interest.;

(c) by inserting after subsection (2) the following subsections:

(2a) Subject to subsection (4), where—

(a) prescribed goods are subject to a registered security interest; and

(b) a person ("the third party") honestly, for value and without notice of the security interest purports to acquire an interest in the goods under a short-term goods lease from the owner or apparent owner of the goods,

the third party acquires an interest that is valid against the holder of the security interest and has priority over that security interest.

(2b) Where—

(a) a certificate is issued under section 9 stating that there are no registered security interests in the prescribed goods to which the certificate relates; and

(b) a security interest in those goods is then registered before the end of the day after the day on which the certificate was issued,

the registration of that security interest will, for the purposes of this Act, be taken to come into effect only at the end of the day after the day on which the certificate was issued.;

(d) by inserting after subsection (3) the following subsections:

(3a) Where—

(a) prescribed goods are subject to a security interest; and

(b) a person ("the third party") purports to acquire title to the goods from the owner or apparent owner of the goods; and

- (c) at the time of the purported acquisition the owner or apparent owner is not in receipt of the full purchase price or other consideration; and
- (d) the security interest is discharged under subsection (1),

the holder of the security interest is, to the extent of the amount that was owed under the security interest, subrogated to the rights that, but for subrogation, the owner would have had to recover the purchase price or other consideration or the balance of the purchase price or other consideration from the third party.

(3b) If the holder of a security interest is subrogated under subsection (3a) to rights of the owner of goods, the third party obtains a good discharge for any payment made or consideration given in respect of the goods by the third party before the third party receives notice from the holder of the security interest of rights of the holder under that subsection.;

- (e) by inserting in the definition of "interest" in subsection (7) "but does not include a security interest" after "goods" second occurring;
- (f) by inserting at the end of subsection (7) the following definition:

"short-term goods lease" means a goods lease for a term of four months or less or an indefinite term.

Substitution of s. 12

6. Section 12 of the principal Act is repealed and the following section is substituted:

Order of priority

12. (1) Subject to this section, a registered security interest has priority over an unregistered security interest in the same prescribed goods.

(2) Subject to this section, registered security interests in the same prescribed goods rank in priority in order of registration.

(3) A repairer's lien on prescribed goods (whether or not registered) has priority over a security interest in the goods (whether or not the security interest is registered and whether the security interest came into existence before or after the repairer's lien arose).

(4) If the holder of a security interest in prescribed goods (whether or not registered) takes possession of the goods, that security interest has priority over any registered security interest in the same goods that was registered after possession of the goods was taken.

(5) The holder of a registered security interest may, by application made in accordance with section 10, postpone that security interest to a security interest subsequently registered.

(6) The Registrar must vary the particulars of registration of a security interest so as to record the postponement of the security interest under subsection (5).

(7) The order of priority of security interests established by this section is subject to—

- (a) any express provision to the contrary in the *Corporations Law*;
- (b) any agreement between the holders of the security interests.

(8) In this section—

"repairer's lien" means a lien on goods in possession of a person as security for payment for services rendered or materials supplied in respect of those goods by that person in the ordinary course of business.

Transitional provision

7. (1) The amendments made to the principal Act by this Act (other than the substitution of section 8B of the principal Act by section 4 of this Act) do not apply in relation to a security interest that came into existence before the commencement of this Act.

(2) Section 8B of the principal Act as substituted by section 4 of this Act applies in relation to a security interest whether it came into existence before or after the commencement of this Act.

Further amendments of principal Act

8. The principal Act is further amended as set out in the Schedule.

SCHEDULE
Further Amendments of Principal Act

Provision Amended	How Amended
Long title	Strike out "to amend the Bills of Sale Act 1886, the Consumer Transactions Act 1972, the Mercantile Law Act 1936 and the Sale of Goods Act 1895;".
Section 2	Strike out this section.
Section 4(1)	Strike out "shall" and substitute "must".
Section 4(2)	Strike out "shall" and substitute "must"
Section 5(2)	Strike out "shall" and substitute "must".
Section 6(2)	Strike out "shall" and substitute "must".
Section 7(1)(b)	Strike out "shall" and substitute "must".
Section 7(2)	Strike out "shall" and substitute "must".
Section 7(3)	Strike out the penalty provision at the foot of this subsection and substitute: Maximum penalty: \$2 500.
Section 8(4)	Strike out "shall" and substitute "must".
Section 9(2)	Strike out "shall" and substitute "must".
Section 11(5)	Strike out "corporation" wherever occurring and substitute, in each case, "body corporate".
Section 11(7) Definition of "director" or "officer"	Strike out the definitions and substitute: "director" has the same meaning as in the <i>Corporations Law</i> ; "officer" has the same meaning as in the <i>Corporations Law</i> ;
Section 11(7) Definition of "related corporation"	Strike out the definition and substitute: "related body corporate" has the same meaning as in the <i>Corporations Law</i> ;
Section 14(2)	Strike out "shall" twice occurring and substitute, in each case, "must".
Section 14(3)	Strike out "shall" and substitute "must".
Section 17	Strike out from the penalty provision at the foot of this section "Penalty:" and substitute "Maximum penalty:".
Section 17A	Strike out from the penalty provision at the foot of this section "Penalty:" and substitute "Maximum penalty:".
Section 18	Strike out from the penalty provision at the foot of this section "Penalty:" and substitute "Maximum penalty:".
Section 19(1)	Strike out from the penalty provision at the foot of this subsection "Penalty:" and substitute "Maximum penalty:".

Section 20

Strike out this section.

Schedule 1

Strike out this schedule.

Schedule 2

Strike out this schedule.
