



ANNO DECIMO SEPTIMO

ELIZABETHAE II REGINAE

A.D. 1968

No. 56 of 1968

An Act to amend the Stamp Duties Act, 1923-1967.

[Assented to 19th December, 1968.]

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

Short titles.

1. (1) This Act may be cited as the "Stamp Duties Act Amendment Act (No. 3), 1968".

(2) The Stamp Duties Act, 1923-1967, as amended by this Act, may be cited as the "Stamp Duties Act, 1923-1968".

(3) The Stamp Duties Act, 1923-1967, is hereinafter referred to as "the principal Act".

Commencement.

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

**Repeal of ss. 31b, 31c and 31d and heading relating thereto and enactment of new headings and sections in their place—
Interpretation**

3. Sections 31b, 31c and 31d of the principal Act and the heading preceding section 31b are repealed and the following headings and sections are enacted and inserted in their place :—

Credit and Rental Business.

31b. (1) For the purposes of the provisions of this Act falling under the heading of "*Credit and Rental Business*", unless the contrary intention appears—

"bank" means The Savings Bank of South Australia, the State Bank of South Australia or a bank as

defined in section 5 of the *Banking Act* 1959 of the Commonwealth, as from time to time amended :

“credit arrangement” means an arrangement for the provision of credit in relation to the sale of goods or the provision of services where any amount in excess of the cash price is charged for or in relation to the goods or services pursuant to the arrangement, but does not include any such arrangement where the only amount in excess of the cash price that is charged is an amount that does not exceed the amount that would have been chargeable if the arrangement required the payment of interest at an annual rate of nine per centum (or a rate equivalent thereto) on the amount of credit provided under the arrangement and from time to time outstanding :

“credit business” means the business of making loans or entering into credit arrangements or discount transactions but does not include—

(a) the business of a pawnbroker licensed under the Pawnbrokers Act, 1888-1965 ;

or

(b) any business which is effected or evidenced by an instrument to which any provision of this Act falling under the heading of “*Instalment Purchase Agreements*” applies :

“discount transaction” means the purchase, acquisition, discounting or factoring of book debts or other things in action, not being marketable securities, for a consideration which is less than the amount of the book debt or the nominal or face value of the thing in action, but does not include the purchase, acquisition, discounting or factoring—

(a) by a corporation of any book debt or other thing in action from or of any other corporation which is, by virtue of subsection (5) of section 6 of the Companies Act, 1962-1966, as amended, deemed to be related to that first mentioned

corporation where the consideration is not less than ninety-six per centum of the amount of the book debt or the nominal or face value of the other thing in action ;

- (b) of any book debt or other thing in action which relates solely to an amount due to any person in the Commonwealth for goods exported by that person from the Commonwealth ;

or

- (c) of any bill of exchange or promissory note at a discount, the amount of which, in relation to the amount expended in the purchase, acquisition, discounting or factoring of the bill or note, is equivalent to a rate not exceeding nine per centum per annum on the amount so expended :

“goods” includes all chattels personal and any fixture severable from the realty, but does not include money, livestock or things in action :

“interest”, in relation to a loan or an amount of credit provided under a credit arrangement, includes any amount by whatsoever name called in excess of the principal amount of the loan or credit which amount has been or is to be paid or payable in consideration of or otherwise in respect of the loan or the granting of the credit, but does not include—

- (a) any sum lawfully agreed to be paid on account of duties or fees payable under any Act ;
- (b) any sum lawfully payable to a legal practitioner or licensed land broker for costs necessarily incurred by the lender or the person providing the credit in relation to the loan or the credit ;

or

- (c) any sum lawfully agreed to be paid in respect of the valuation of any land given as security for the repayment of the loan or of the amount of the credit to the extent only that such sum does not exceed the amount payable for such a valuation under the scale of fees, if any, for the time being fixed or recommended by the Commonwealth Institute of Valuers (Incorporated) :

“loan” includes—

- (a) any advance of money ;
- (b) money paid for or on account of or on behalf of or at the request of any person ;
- (c) a forbearance to require payment of money owing on any account whatsoever ;
- and
- (d) any transaction (whatever its terms or form) which in substance effects a loan of money,

but does not include any loan, advance, payment or forbearance or transaction where the interest payable in consideration or in respect thereof is at an annual rate not exceeding nine per centum or the equivalent thereof :

“principal”, in relation to a loan or an amount of credit provided under a credit arrangement, means the actual amount of the loan or the actual amount credited under the arrangement, as the case may be :

“rate of interest”, in relation—

- (a) to a loan or a credit arrangement, the repayment of which loan or of the amount of credit provided under which credit arrangement is *bona fide* secured on any interest in land, means the rate of interest the lender or person providing the credit agrees to accept so long as the borrower or person who has obtained the credit duly observes and performs all his covenants and agreements including those relating to the payment of interest when due ;

and

(b) to any other loan or credit arrangement, means the actual rate of interest paid or payable in relation to the loan or the amount of credit provided under the credit arrangement :

“registered person” means a person registered under section 31e of this Act :

“rental business” means the business of granting to any person rights to use any goods, other than books, whether pursuant to a lease, bailment, licence or otherwise, but does not include the business of granting to any person the right to use goods in conjunction with a lease of or licence to occupy or use any land.

(2) In this section and in any other provision of this Act falling under the heading of “*Credit and Rental Business*” a reference to interest, on a loan or on an amount of credit provided under a credit arrangement, at an annual rate per centum is a reference to interest at an annual rate per centum (or the equivalent thereof) on the amount or the balance, as the case may be, of the loan or credit from time to time outstanding.

(3) For the purposes of subsection (2) of this section—

(a) where the interest on the amount of a loan or credit provided under a credit arrangement is charged at a monthly rate per centum, the annual rate per centum which is the equivalent of that monthly rate shall be determined by multiplying the monthly rate by 12 ;

(b) where the interest on the amount of a loan or credit provided under a credit arrangement is charged at a weekly rate per centum, the annual rate per centum which is the equivalent of that weekly rate shall be determined by multiplying the weekly rate by 52 ;

and

(c) where the interest on the amount of a loan or credit provided under a credit arrangement is charged at a daily rate per centum, the annual rate per centum which is the equivalent of that daily rate shall be determined by multiplying the daily rate by 365.

(4) Where no annual rate of interest per centum, or the equivalent thereof, payable on the amount or the balance of the loan or credit from time to time outstanding is agreed between the borrower or the person obtaining the credit and the lender or person providing the credit, the amount or amounts paid or payable to the lender or person last referred to in respect both of the principal amount of the loan or credit and interest shall be appropriated to principal and interest, respectively, in the proportion that the total amount of the principal bears to the total amount of the interest payable on the loan or amount of credit and, for the purposes of subsection (2) of this section, the annual rate per centum at which such interest is charged, on the amount of the loan or credit, shall be determined as provided in subsections (5), (6), (7) and (8) of this section.

(5) For the purposes of this Act, and unless the contrary intention appears—

(a) the amount or the balance outstanding at any time of the amount of the loan or credit shall be taken to be the balance remaining after deducting from the principal or the balance of the principal amount of the loan or credit the total of the payments appropriated to principal as provided in subsection (4) of this section ;

(b) each amount taken to be outstanding by way of principal before a payment is due to be made on the date on which it falls due shall be multiplied by the number of months during which that amount is so taken to be outstanding and the aggregate sum of the amounts so produced shall be ascertained ;

and

(c) the total amount appropriated to interest as provided in subsection (4) of this section shall be divided by one-twelfth part of the aggregate sum referred to in paragraph (b) of this subsection and the quotient, multiplied by 100, shall be taken to be the annual rate of interest per centum on the amount of such loan or credit.

(6) Where the intervals between the dates on which successive payments are due are complete weeks or multiples of weeks or complete quarters or multiples of quarters or complete years or multiples of years, the calculation of the rate of interest as provided in subsections

(4) and (5) of this section shall be made by reference to weeks or quarters or years, as the case may require, and in such case subsection (5) shall have effect as if in paragraph (b) thereof the words "weeks", "quarters" or "years", as the case may require, were substituted for the word "months" and in paragraph (c) thereof the passage "one-fifty second part" or "one-fourth part" or "the whole", as the case may require, were substituted for the passage "one-twelfth part".

(7) Where any interval between the dates on which successive payments are due is not a number of complete months, subsection (5) of this section shall have effect, and the necessary calculations shall be made, as if one day were one-thirtieth part of a month.

(8) For the purposes of subsections (6) and (7) of this section—

"week" means any period of seven days :

"month" means a calendar month or any period equivalent thereto :

"quarter" means a period of three months or any period equivalent thereto :

"year" means a period of twelve months.

(9) For the purposes of the definition of "discount transaction" in subsection (1) of this section, the reference to the amount of the book debt or the nominal or face value of the thing in action does not include any amount payable as interest or appropriated to interest with respect to that book debt or thing in action.

Application
of provisions
dealing with
credit and
rental business.

31c. The provisions of this Act falling under the heading of "*Credit and Rental Business*" do not apply to or in relation to the transaction of any credit business with any bank other than—

(a) any loan which is not an overdraft on current account ;

and

(b) any purchase, acquisition, discounting or factoring of a bill of exchange or promissory note at a rate of discount exceeding nine per centum per annum of the amount expended on the purchase, acquisition, discounting or factoring of the bill or note.

31d. (1) Subject to subsection (3) of this section, a person shall not carry on any credit business or any rental business in South Australia (whether or not he also carries on any other business) or advertise or hold himself out in any way as carrying on any such business, whether the head office or principal place of business of that person is in South Australia or elsewhere, unless he is a registered person.

Persons carrying on credit or rental to be business registered.

Penalty : Five thousand dollars.

(2) Any person who, in the course of any business—

(a) undertakes negotiations in South Australia with the object of transacting any credit business ;
or

(b) enters into any discount transaction which relates to book debts or other things in action which are situated or enforceable in South Australia,

shall be deemed to carry on credit business in South Australia, and any person who, in the course of any business, undertakes negotiations in South Australia with the object of transacting any rental business shall be deemed to carry on rental business in South Australia, whether or not in either case he has an established place of business in South Australia.

(3) Subsection (1) of this section shall not apply to a person acting as an agent or employee of a registered person by reason only of the fact that he is so acting.

(4) A person who is convicted of an offence that is a contravention of subsection (1) of this section shall, in addition to any other penalty that may be imposed, be liable to pay a penalty equal to double the amount of duty that he should have paid if at the material time he had been a registered person and he had lodged with the Commissioner in relation to the business in respect of which he is convicted a statement as required by subsection (1) of section 31f of this Act.

31e. (1) The Commissioner shall register any person who applies in the prescribed form for registration under this section.

Registration.

(2) A registered person who ceases to carry on credit business or rental business, or both, in South Australia may by notice in the prescribed form given to the Commissioner cancel his registration under this section.

Statement to
be lodged by
registered
person.

31f. (1) Subject to this Act, and in particular to section 31i thereof, a registered person shall—

(a) not later than the twenty-first day of each month lodge with the Commissioner a statement in the prescribed form and verified in the prescribed manner setting out—

(i) the total amount of all loans, other than short term loans and housing loans, made by him during the last preceding month ;

(ii) an amount equal to one and one-half per centum of the total amount referred to in subparagraph (i) of this paragraph as set out in the statement ;

(iii) the sum of—

the total amount of all short term loans, other than housing loans, made by him in the last twelve months preceding the month in which the statement is required by this section to be lodged, where such loans were outstanding in whole or in part at the end of the last preceding month ;

and

the total amount of all such short term loans, other than housing loans, made within the month immediately preceding the month in which the statement is required by this section to be lodged and repaid within that month ;

(iv) an amount equal to one-eighth of one per centum of the sum of the total amounts referred to in subparagraph (iii) of this paragraph ;

(v) the total amount expended by him during the last preceding month in acquiring book debts and other things

in action in the course of discount transactions, other than short term discount transactions ;

(vi) an amount equal to one and one-half per centum of the total amount referred to in subparagraph (v) of this paragraph as set out in the statement ;

(vii) the sum of—

the total amounts expended by him in respect of short term discount transactions, whereby book debts or other things in action were purchased, acquired, discounted or factored by him during the last preceding twelve months, but to the extent only that they, at the end of the last preceding month, were not realized by collection, sale, disposal or any other form of realization ;

and

the total amount expended by him in respect of short term discount transactions whereby book debts or other things in action were purchased, acquired, discounted or factored by him during the last preceding month but to the extent only that they, at the end of that month, were fully realized by collection, sale, disposal or any other form of realization ;

(viii) an amount equal to one-eighth of one per centum of the sum of the total amounts referred to in subparagraph (vii) of this paragraph as set out in the statement ;

(ix) the sum of—

(A) the total amounts debited by him for the sale of goods or the provision of services during the last preceding month pursuant to,

and

- (B) such amounts previously debited by him after the commencement of the Stamp Duties Act Amendment Act (No. 3), 1968, for the sale of goods or the provision of services as have not been included in any such statement previously lodged by him with the Commissioner pursuant to this section where and to the extent to which they have become part of, a debt which was owing to him and was outstanding during the last preceding month and which was contracted pursuant to, any credit arrangement made by him with any person before or after the commencement of the Stamp Duties Act Amendment Act (No. 3), 1968, under which a debt owing to him in excess of four hundred dollars has become or remained outstanding during the last preceding month, less any amounts credited during the last preceding month in respect of goods returned or goods accepted in part consideration for goods supplied or goods and services not provided and in respect of which amounts have been debited and included in the statement or in any such statement previously lodged pursuant to this section ;
- (x) the total amount received by him as rent during the last preceding month in respect of his rental business ;
- (xi) an amount equal to one and one-half per centum of the sum of the total amounts referred to in subparagraphs (ix) and (x) of this paragraph as set out in the statement ;
- (xii) the total amount paid as duty pursuant to the item in the second schedule to this Act commencing "MORTGAGE, BOND, DEBENTURE, COVENANT"—

(A) in respect of every instrument executed during the last preceding three months ;

or

(B) by reason of the provisions of subsection (2) of section 79 of this Act, in respect of every instrument deemed to be a new and separate instrument bearing a date on a day within the last preceding three months—

which secures the repayment of the loans the amounts of which were included in the total amounts of loans referred to in subparagraph (i) or (iii) and in respect of which an amount has not been included under this subparagraph in any statement previously lodged by him with the Commissioner, but to the extent only to which the amounts so paid as duty are attributable to the loans the amounts of which are so included in the total amount of loans referred to in those subparagraphs ;

and

(b) at the time of lodging the statement with the Commissioner pay to the Commissioner as duty on that statement a sum equal to the difference between the sum of the amounts referred to in subparagraphs (ii), (iv), (vi), (viii) and (xi) and the amount referred to in subparagraph (xii) of paragraph (a) of this subsection, as set out in the statement.

(2) Where—

(a) a registered person has been carrying on rental business but not any credit business ;

and

(b) the total amount received by him during the last preceding period of twelve months in respect of that rental business did not exceed two thousand dollars,

the registered person may, in lieu of lodging a statement with the Commissioner under subsection (1) of this section, by notice in writing given to the Commissioner, elect to

lodge with the Commissioner, not later than the thirty-first day of March in each year, a statement showing the total amount received by him in the period commencing on the first day of February in the last preceding year and ending on the thirty-first day of January in the year in which the statement is lodged in respect of his rental business (not including any amount previously included in a statement lodged with the Commissioner pursuant to paragraph (a) of subsection (1) of this section) and to pay to the Commissioner as duty on that statement an amount equal to one and one-half per centum of such total amount.

(3) The registered person who has given to the Commissioner a notice of election under subsection (2) of this section shall be liable to pay and shall pay to the Commissioner at the time of lodging the statement the amount of duty on the statement in accordance with the notice of election, but where the total amount so received by the registered person in that period does not exceed two thousand dollars, the registered person shall not be liable to pay to the Commissioner any duty on that statement.

(4) Any election made by a registered person pursuant to subsection (2) of this section may be cancelled with effect from and in relation to the period of twelve months commencing on the first day of February next following by notice in writing under the hand of the registered person given to the Commissioner or by notice in writing under the hand of the Commissioner given to the registered person if the Commissioner is satisfied that the total amount received by the registered person who has made the election was in excess of three thousand dollars in any period of twelve months.

(5) For the purposes of this section—

(a) “housing loan” means a loan—

(i) which the borrower has declared by statutory declaration in the prescribed form to have been obtained for the purpose of defraying the whole or part of the cost of the construction, alteration, renovation or acquisition of or any addition to a house or flat that is occupied or is intended to be occupied by the borrower for residential purposes, or of defraying the whole or part of the cost of the construction, alteration or renovation of any improvements on or to any land occupied or intended to be occupied by the borrower for

residential purposes or of defraying the whole or part of the cost of land on which the borrower intends to have constructed a house or flat to be occupied by him for residential purposes ;

and

(ii) the repayment of which is secured by a mortgage of that house or flat or of the land on which it is or is being constructed, altered or renovated or on which the addition is or improvements are constructed, altered or renovated or on which the house or flat is intended to be constructed :

“short term discount transaction” means a discount transaction which the registered person has elected in the prescribed manner to treat as a short term discount transaction :

“short term loan” means—

(i) any loan which the registered person has elected in the prescribed manner to treat as a short term loan ;

or

(ii) any loan which is a loan upon an account current ;

(b) the amount of a loan upon an account current with a registered person in relation to any statement is the maximum amount of the principal appearing in the account as due to the registered person at any particular time during the last preceding month ;

and

(c) a loan referred to in paragraph (b) of this subsection shall be deemed to have been made and repaid in that last preceding month.

(6) A registered person who contravenes or fails to comply with any of the requirements of this section shall be liable to a penalty not exceeding five hundred dollars and shall be liable to pay a penalty equal to double the amount of any duty that would have been payable if that requirement had not been contravened or had been complied with, as the case may be.

31g. The amounts to be shown in any statement required to be lodged under section 31f of this Act include—

Amounts to be included in statement.

(a) in relation to loans, the amount of loans made by or on behalf of the registered person to persons resident or domiciled in South Australia or in

respect of which any of the negotiations have taken place in South Australia ;

- (b) in relation to discount transactions, the amount of the consideration given by the registered person for book debts or other things in action situated or enforceable in South Australia ;
 - (c) in relation to credit arrangements, the amount of credit provided by or on behalf of the registered person with respect to goods sold or services supplied in South Australia ;
 - (d) in relation to rental business, amounts received by or on behalf of the registered person in respect of the use of goods where—
 - (i) the right to use the goods was granted in South Australia ;
 - (ii) any of the negotiations by or on behalf of the registered person with respect to the grant of the right to use the goods were undertaken in South Australia ;
- or
- (iii) the goods were delivered in South Australia to the person to whom the right to use those goods was granted.

Manner of denoting duty on statement.

31h. The duty paid by a registered person on a statement lodged with the Commissioner under section 31f of this Act shall be denoted by cash register imprint on the statement or in such other manner approved by the Auditor-General as shall be notified by the Commissioner in the *Gazette*.

Matters not required to be included in statement.

31i. (1) Nothing contained in section 31f of this Act shall require a registered person to include in a statement required by that section to be lodged with the Commissioner any amount in respect of—

- (a) a transaction entered into by him in the course of any business carried on by him as a pawnbroker licensed under the Pawnbrokers Act, 1888-1965 ;
- (b) a transaction effected or evidenced by an instrument to which any provision of this Act falling under the heading of "*Instalment Purchase Agreements*" applies ;
- (c) a loan or discount transaction or grant of the right to use any goods made or entered into before the commencement of the Stamp Duties Act Amendment Act (No. 3), 1968 ;

(d) that part of the amount of any loan the repayment of which is secured—

(i) upon an interest in a loan or upon book debts or other things in action acquired in a discount transaction the amount of which loan or discount transaction was included by the borrower in a statement lodged with the Commissioner pursuant to that section ;

(ii) upon an interest in an instalment purchase agreement as defined in section 31m of this Act in respect of which duty has been paid under the item in the second schedule to this Act entitled "INSTALMENT PURCHASE AGREEMENT" ;

or

(iii) upon an interest in a lease, bailment, licence or other agreement which confers on any person the right to use any goods in respect of which amounts are or have been included in statements lodged with the Commissioner pursuant to that section,

which is equal to the value of the interest upon which the repayment is secured ;

(e) any discount transaction to the extent that the discount transaction relates—

(i) to a book debt or other thing in action the amount of which was included in a statement lodged with the Commissioner pursuant to that section ;

or

(ii) to an instalment purchase agreement as defined in section 31m of this Act in respect of which duty has been paid under the item in the second schedule to this Act entitled "INSTALMENT PURCHASE AGREEMENT" ;

(f) an amount not exceeding forty per centum of the amount received for or in relation to the use of goods under a lease, bailment, licence or other agreement providing for the registered person to be responsible for servicing the goods under such lease, bailment, licence or agreement, being an amount equivalent to the cost of servicing such goods, or such higher amount in respect of any particular goods as is fixed by the Commissioner, on the application of the registered person, where in the opinion of the Commissioner or some person nominated by him in that behalf, such higher amount is properly attributable to the cost of servicing such goods ;

(g) the grant by a corporation to another corporation which is, by virtue of subsection (5) of section 6 of the Companies Act, 1962-1966, as amended, deemed to be related to that first mentioned corporation of the right to the use of goods beneficially owned by that first mentioned corporation ;

or

(h) any business transacted by him outside South Australia where—

(i) no negotiations leading to the transaction of the business took place in South Australia ;

and

(ii) the amounts obtained or the goods obtained by the other party to the transaction were obtained for the purpose of being wholly expended or wholly used outside South Australia.

(2) A registered person shall supply to the Commissioner such particulars of the matters referred to in this section as are prescribed or as are in any particular case required by the Commissioner.

Registered
person to
keep records.

31j. (1) A registered person shall keep or cause to be kept in South Australia sufficient books and records to enable all amounts required to be set out in a statement to be lodged by him with the Commissioner under section 31f of this Act to be accurately calculated.

Penalty : Five hundred dollars.

(2) A registered person shall keep the books and records referred to in subsection (1) of this section together with all working papers used in making the calculations referred to in that subsection available for inspection for a period of three years from the month or year, as the case may be, to which each statement in which such amounts are set out relates or for such lesser period as the Commissioner may in any particular case allow.

Penalty : Five hundred dollars.

31k. (1) Where the Commissioner is satisfied that—

(a) it is not reasonably practicable to calculate precisely any amount which is to be set out in the statement of any registered person required to be lodged under section 31f of this Act, he may agree to accept from that person statements in which that amount is calculated in such a manner or on such a basis as he thinks fit ;

Calculation
by other
methods.

or

(b) in the circumstances of a particular case it is not reasonable to require statements to be lodged by the registered person in each month, he may agree to accept statements at such times and relating to such periods as he thinks fit.

(2) Where, pursuant to subsection (1) of this section, the Commissioner agrees to accept from a registered person a statement—

(a) in which an amount is calculated in a manner or on a basis different from that required under section 31f of this Act ;

or

(b) at a time or relating to a period otherwise than in accordance with that section,

the registered person shall at the time of lodging that statement with the Commissioner pay to the Commissioner the amount of duty that would be payable on that statement if it were lodged by him with the Commissioner in accordance with that section.

(3) The Commissioner may by notice in writing served personally or by post on a registered person cancel any agreement made pursuant to subsection (1) of this section and upon the day specified in the notice as the day on which the agreement is cancelled, that agreement shall have no further force or effect in relation to that registered person.

Registered person not to add duty to amount payable in respect of credit business.

31. (1) Except as provided in this section, a registered person or any person acting on his behalf shall not add the amount of any duty or of any part of the duty payable by the registered person as such under this Act to any amount payable by any other person with whom he has entered into or is conducting any credit business or rental business, whether by agreement or otherwise, or otherwise demand or recover or seek to recover any such first mentioned amount from that other person.

Penalty : Two hundred dollars.

(2) In the event of a contravention of subsection (1) of this section—

(a) the court by which the defendant is convicted shall, in addition to imposing a penalty for the offence, order the defendant to refund to the other person referred to in that subsection any such amount which has been paid by that other person ;

or

(b) the other person referred to in that subsection may recover any such amount from the registered person or person to whom he paid it by action in a court of competent jurisdiction as if it were a debt due to him from that person.

(3) Where the amount of any loan has been included in a statement lodged with the Commissioner pursuant to section 31f and the loan is repaid prior to the date agreed upon, the stamp duty paid on the statement may be apportioned upon such basis as is agreed between the lender and the borrower and, in the absence of agreement, the borrower shall pay to the lender such proportion of the stamp duty as bears to the total stamp duty paid the same proportion as the amount of the rebate of interest received by the borrower as a result of the early termination of the contract bears to the total amount of the interest provided in the contract.

Instalment Purchase Agreements.

Interpretation.

31m. For the purposes of the provisions of this Act falling under the heading of *Instalment Purchase Agreements* and the second schedule to this Act, unless the contrary intention appears—

“credit purchase agreement” means an agreement for the purchase of goods under which—

(a) irrespective of the time at which the property in the goods passes or is to pass to the purchaser, the purchase price or any part thereof is paid or payable by not less than six instalments which are to be paid over a period of not less than six months ;

and

(b) any of the instalments are to be paid after the goods have been delivered to the purchaser,

whether such instalments are paid or payable by cash or by cheque, bill of exchange or promissory note payable on demand, or otherwise :

“goods” includes all chattels personal and any fixture severable from the realty, but does not include money, livestock or things in action :

“hire-purchase agreement” means an agreement for the bailment of goods under which—

(a) the bailee may buy the goods ;

(b) the property in the goods may pass to the bailee ;

or

(c) any provision for credit of payments is to be made in the event of a subsequent purchase of the goods,

and where, by virtue of two or more agreements (none of which by itself constitutes a hire-purchase agreement as herein defined) there is such a bailment of goods, the agreements shall be deemed to be and treated as a single agreement :

“instalment purchase agreement” means a credit purchase agreement, a hire-purchase agreement or a rental agreement :

“purchase price”—

(a) in relation to a credit purchase agreement or a hire-purchase agreement, means the total amount payable under the agreement by the purchaser on any account whatsoever in respect of the goods, the subject-matter of the agreement, less the amount of the deposit or other money or consideration paid or given to the vendor at or before the making of the

agreement and less the total amount payable under the agreement for or by way of interest or insurance or other charge ;

or

(b) in relation to a rental agreement, means the price at which the goods, the subject-matter of the agreement, might have been purchased for cash at the time of entering into the rental agreement :

“purchaser” means the person to whom goods are bailed or sold or agreed to be bailed or sold under an instalment purchase agreement :

“rental agreement” means an agreement for the bailment of goods under which the bailee may, after a specified number of instalments of rent (being not less than two instalments) have been paid in respect thereof,

(a) continue the bailment ;

or

(b) from time to time renew the bailment at a nominal rent or without any further payment or on the payment of a nominal periodical or other amount :

“vendor” means the person by whom goods are bailed or sold or agreed to be bailed or sold under an instalment purchase agreement.

Duty on
instalment
purchase
agreements.

31n. (1) Subject to this Act, there shall be chargeable upon every instrument constituting or evidencing an instalment purchase agreement entered into after the commencement of the Stamp Duties Act Amendment Act (No. 3), 1968, the duty specified in the second schedule to this Act under the item entitled “INSTALMENT PURCHASE AGREEMENT”.

(2) Except as provided in subsection (3) of this section, the duty shall be denoted by impressed stamp or adhesive stamps and shall be paid by the vendor who shall cancel the stamp in accordance with this Act.

(3) Where the vendor is a person not bound by the provisions of this section, the liability to pay the duty on the agreement shall fall on the purchaser and such duty shall be denoted by impressed stamp or adhesive stamp within fifteen days after the making of the agreement or the execution of the instrument constituting or evidencing the agreement, as the case may be, and either party may cancel the adhesive stamps in accordance with this Act.

31o. (1) The Commissioner may by instrument in writing declare any person carrying on business as a vendor to be an approved vendor for the purposes of this Act and may by subsequent instrument in writing served on such person revoke any such declaration.

Declaration of approved vendors and provision for payment of duty on monthly returns.

(2) For the purposes of this Act, where a declaration of a person as an approved vendor under subsection (1) of this section has not been revoked as provided by that subsection, that person shall, for the purposes of this Act, be an approved vendor.

(3) A person who is or has been an approved vendor shall not be liable for the payment of duty denoted by impressed stamp or adhesive stamps as provided by section 31n of this Act in respect of instalment purchase agreements entered into while he is or was an approved vendor, but he shall be liable for the payment of duty in respect of all such agreements in accordance with and shall comply with the provisions of this section.

(4) A person who enters into an instalment purchase agreement while he is an approved vendor shall—

(a) lodge with the Commissioner, not later than the fourteenth day of each month, a statement in the prescribed form verified by statutory declaration setting out the sum of the purchase prices of all instalment purchase agreements, if any, entered into by him during the last preceding month and the sum of the purchase prices of all instalment purchase agreements, if any, entered into by him during the last preceding month which are exempt from duty under the item in the second schedule to this Act entitled "INSTALMENT PURCHASE AGREEMENT";

(b) at the time of lodging the statement with the Commissioner pay to the Commissioner as duty on that statement a sum equal to one and one-half per centum of the difference between the sums set out in the statement;

and

(c) keep or cause to be kept in South Australia sufficient books and records to enable all amounts required to be set out in the statements to be lodged by him with the Commissioner under this section to be accurately calculated.

Penalty : Five hundred dollars.

(5) The person referred to in subsection (4) of this section shall keep the books and records referred to in that subsection together with all working papers used in making such calculations available for inspection for a period of at least three years from the month to which each statement in which such amounts are set out relates or for such lesser period as the Commissioner may in any particular case allow.

Penalty : Five hundred dollars.

(6) The duty paid by an approved vendor under paragraph (b) of subsection (4) of this section shall be denoted by cash register imprint on the statement or in such other manner approved by the Auditor-General as shall be notified by the Commissioner in the *Gazette*.

Vendor not
to add duty
to purchase
price.

31p. (1) Except as provided in this section, a vendor of any goods or other person acting on his behalf shall not add the amount of any duty or of any part of the duty payable by the vendor as such under this Act to any amount payable by the purchaser of the goods, whether by agreement or otherwise, or otherwise demand or recover or seek to recover any such amount from the purchaser.

Penalty : Two hundred dollars.

(2) In the event of a contravention of subsection (1) of this section—

(a) the court by which the defendant is convicted shall, in addition to imposing a penalty for the offence, order the defendant to refund to the purchaser any such amount which has been paid by the purchaser ;

or

(b) the purchaser may recover any such amount from the vendor or person to whom he paid it by action in a court of competent jurisdiction as if it were a debt due to him from that vendor or person.

(3) Where a purchaser under an instalment purchase agreement completes the purchase or terminates the bailment of the goods before the last day on which the last instalment is payable under the agreement, the stamp duty paid on the agreement may be apportioned between the vendor and the purchaser on such basis as may be agreed between the vendor and purchaser but, in the absence of

such agreement, the purchaser shall pay to the vendor such proportion of the stamp duty as bears to the total stamp duty paid on the instrument constituting or evidencing the agreement the same proportion as the amount of the rebate of interest, insurance and other charges received by the borrower as a result of the early termination of the agreement bears to the total amount of the interest, insurance and other charges provided in the agreement.

31q. (1) The vendor of any goods under an instalment purchase agreement, whether he is an approved vendor or not, shall, where the purchase price of the goods exceeds twenty dollars, at or before the time of the making of the agreement, prepare an original instrument in relation to the agreement in accordance with this section. Preparation
instrument.

(2) The original instrument—

(a) if the instalment purchase agreement is in writing, shall be the agreement as in writing ;

and

(b) in any other case, shall be a memorandum in writing of the agreement prepared for the purposes of this section.

(3) An instrument to which this section relates shall not be prepared in accordance with this section unless it clearly and truly sets out—

(i) the names of the parties thereto ;

(ii) the full name and address of the vendor, identified as the vendor or owner of the goods, the subject-matter of the agreement ;

(iii) a description of the goods sufficient to indicate their nature ;

(iv) the total amount payable under the agreement by the purchaser on any account whatsoever in respect of the goods ;

(v) the amount of the deposit or other money or consideration paid or given to the vendor at or before the making of the agreement ;

(vi) the total amount payable under the agreement for or by way of interest or insurance or any other charge ;

and

(vii) the purchase price of the goods.

(4) An instrument to which this section relates—

(a) shall, not later than seven days after the agreement to which it relates is entered into, be stamped by the vendor as required by this Act ;

or

(b) where the vendor is an approved vendor, shall be endorsed on the front or first page thereof “Approved vendor : duty payable on monthly return”.

(5) The vendor or, if the vendor’s rights under the agreement are assigned to any other person, that other person shall keep every such original instrument readily available for inspection throughout the period during which goods are bailed or any rent or instalments of purchase price or other moneys are payable under the agreement and shall at any reasonable time during that period on demand produce it for inspection by the Commissioner or by an officer authorized in writing by the Commissioner for the purpose, whether generally or in a particular case.

(6) A person who contravenes or fails to comply with any of the provisions of this section shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

Duty on assignment of a hire-purchase agreement.

31r. Notwithstanding anything in this Act, the duty payable on the assignment of any of the rights, powers and liabilities of the owner under a hire-purchase agreement shall be at the rate of ten cents for every one hundred dollars or part of one hundred dollars comprised in the consideration for the assignment.

Duplicates and counterparts not separately chargeable.

31s. Notwithstanding anything in this Act, a duplicate or counterpart of an original instrument constituting or evidencing an instalment purchase agreement, which original instrument is chargeable with duty under this Act, shall not be chargeable with duty as an original instrument or as a duplicate or counterpart thereof.

Transitional provision.

31t. Notwithstanding the repeal by the Stamp Duties Act Amendment Act (No. 3), 1968, of sections 31b, 31c and 31d of this Act and the item in the second schedule to this Act entitled “HIRE-PURCHASE AGREEMENT”, as in force prior to the commencement of that Act, the provisions of those sections and that item shall continue to apply to and in relation to every hire-purchase agreement, as defined therein, entered into before the commencement

of that Act and the duty expressed therein to be chargeable thereon shall be payable, and shall be recoverable by the Commissioner, as if they are still in force and have not been repealed.

4. Section 75a of the principal Act is repealed.

Repeal of
s. 75a of
principal Act.

5. The following section is enacted and inserted in Part III of the principal Act under the heading "*Money-Lending Transactions*":—

Enactment of
s. 75aa of
principal Act—

75aa. Notwithstanding the repeal by the Stamp Duties Act Amendment Act (No. 3), 1968, of section 75a of this Act and the item in the second schedule to this Act commencing "CONTRACT or NOTE or MEMORANDUM of a Contract", as in force prior to the commencement of that Act, the provisions of those sections and that item shall continue to apply to and in relation to every contract or note or memorandum of a contract for the repayment of money lent by a money-lender before the commencement of that Act and the duty expressed therein to be chargeable thereon shall be payable, and shall be recoverable by the Commissioner, as if they are still in force and have not been repealed.

Transitional
provision.

6. The following section is enacted and inserted in the principal Act after section 110 thereof:—

Enactment of
s. 110a of
principal Act—

110a. An offence against this Act or any provision thereof may be prosecuted either summarily, or upon information in the Supreme Court, but a person shall not be liable to be punished more than once in respect of the same offence.

Offences.

7. Section 112 of the principal Act is amended by inserting after subsection (3) the following subsection:—

Amendment of
principal Act,
s. 112—
Regulations.

(4) Regulations made under this section may prescribe any matters necessary or convenient to be prescribed or which are required or, expressly or by implication, authorized or permitted to be prescribed for the purposes of this Act.

8. The second schedule to the principal Act is amended—

Amendment of
second schedule
to principal
Act.

(a) by striking out the whole of the item commencing "CONTRACT or NOTE or MEMORANDUM of a Contract";

and

(b) by striking out the whole of the item entitled "HIRE-PURCHASE AGREEMENT" and inserting in its place the following item and Exemptions:—

INSTALMENT PURCHASE AGREEMENT—

Duty payable on each instrument constituting or evidencing an instalment purchase agreement—

1½% of the purchase price as set out in the original instrument within the meaning of section 31q of this Act.

Exemptions—

1. Any instalment purchase agreement where the purchase price does not exceed \$20.
2. Any instalment purchase agreement under which the purchaser is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods to which the agreement relates.
3. Any rental agreement for the bailment of goods together with—
 - (a) real property ;
 - (b) any estate or interest in real property ;or
 - (c) any business or interest in a business.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

J. W. HARRISON, Governor.