

## BILLS OF SALE AMENDMENT ACT 1987

### No. 1 of 1987

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#### SCHEDULE 1

#### CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT





**BILLS OF SALE AMENDMENT ACT 1987**

**No. 1 of 1987**

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**AN ACT to amend the Bills of Sale Act 1900 and the Bills of Sale Amendment Act 1983.**

**[Royal Assent 15 April 1987]**

**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. 1987.

**2**—(1) This section and sections 1, 3, and 18 shall commence Commence- on the day on which this Act receives the Royal assent. ment.

(2) Section 6 shall be deemed to have commenced on 12th November 1984.

(3) Sections 14 and 20 shall be deemed to have commenced on 14th September 1983.

(4) Except as provided in subsections (1), (2), and (3), 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, No. 9 of 1982, No. 32 of 1983, No. 45 of 1984, and No. 51 of 1985.

Amendment of section 4 of Principal Act (Interpretation).

**4**—Section 4 (1) of the Principal Act is amended by omitting the definition of “registration” and substituting the following definition:—

“registration”, in relation to a bill of sale, means the lodging with the Commissioner of the original or a copy of the bill of sale, together with the statutory declaration or statutory declarations required by section 6 (1) to be lodged with that original or copy;

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

**5**—Section 5 (1) of the Principal Act is amended by omitting “either with or without notice, and either immediately after the making of such bill of sale or at any future time,” and substituting “at any time after the expiration of 14 days following the service by him of a notice on the grantor informing him that the grantee intends to do so,”.

Amendment of section 5A of Principal Act (Registered bill of sale void unless registered under *Motor Vehicles Securities Act 1984*).

**6**—Section 5A (1) of the Principal Act is amended by omitting “person making or giving” and substituting “grantee of”.

Amendment of section 6 of Principal Act (Provisional and full registration).

**7**—Section 6 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

(1) The grantor or grantee of a bill of sale shall, within 21 days after the date of the execution of the bill of sale, lodge or cause to be lodged with the Commissioner—

- (a) the original or a copy of the bill of sale and of any schedule or inventory annexed to or referred to in the bill of sale;
- (b) if a copy of the bill of sale is so lodged, a statutory declaration verifying that the copy is a true copy of the bill of sale; and
- (c) a statutory declaration by the grantor or grantee in the prescribed form verifying the particulars of the bill of sale.

**8**—Section 12 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

Amendment of section 12 of Principal Act (Commissioner to notify grantor and grantee of bill of sale of objection).

(1) On receipt of an objection lodged in accordance with section 11, the Commissioner shall send a copy of that objection to the grantor of the bill of sale to which the objection relates and to the grantee of that bill of sale, at the respective addresses of that grantor and that grantee contained in the documents lodged pursuant to section 6 (1).

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

Amendment of section 18 of Principal Act (Renewal of registration of bill of sale).

- (a) by omitting “, whether made or given before or after the commencement of this Act,”;
- (b) by omitting “two”, where twice occurring, and substituting “4”;
- (c) by omitting the sentence beginning with “Renewal”.

**10**—Section 19 of the Principal Act is amended as follows:—

Amendment of section 19 of Principal Act (Mode of renewal).

- (a) by omitting “some person filing with the Commissioner an affidavit” and substituting “the grantor or grantee lodging with the Commissioner a statutory declaration in the prescribed form”;
- (b) by omitting “, places of business or residence, and the business or occupation” and substituting “and places of business or residence”.

**11**—Section 20 of the Principal Act is repealed.

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

**12**—Section 21 of the Principal Act is repealed.

Repeal of section 21 of Principal Act (Swearing of affidavit).

**13**—Section 24 (1) of the Principal Act is amended by omitting “name, place of business or residence, and the business or occupation of the person by whom such bill of sale was made or given, and the name of the person or persons to whom or in whose favour the same was made or given,” and substituting “name and place of business or residence of the person by whom the bill of sale was made or given”.

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

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

- 14**—Section 25 (2) of the Principal Act is amended as follows:—
- (a) by omitting “ indexes ” and substituting “ index ”;
  - (b) by omitting “ respectively ”.

Amendment of section 26 of Principal Act (Receipt to be endorsed on copy of bill of sale).

- 15**—Section 26 of the Principal Act is amended as follows:—
- (a) by omitting “, hour, and time ”;
  - (b) by omitting “, and of the time when such registration took place ”.

Amendment of section 41 of Principal Act (Additional implied covenants in bills of sale by way of security).

- 16**—Section 41 (i) of the Principal Act is amended as follows:—
- (a) by omitting “ or times hereafter ” and substituting “ after the expiration of a period of 14 days following the service by the grantee of a notice of default on the grantor ”;
  - (b) by omitting “ and without the necessity of giving to the grantor any notice whatsoever or waiting any time whatsoever,”;
  - (c) by inserting “, after the expiration of a period of 14 days following the service of a further notice of default by the grantee on the grantor,” after “ thereof, and again ”.

Insertion in Principal Act of new sections 45A, 45B, and 45C.

- 17**—After section 45 of the Principal Act, the following sections are inserted:—

Grantor to be notified of intention of grantee to take proceedings against him.

**45A**—(1) Where a grantor makes default in the payment of any of the principal, interest, or other money secured by a bill of sale given by him or in the observance or performance of any covenant, condition, or agreement expressed or implied in that bill of sale that is required to be observed or performed by him, the grantee shall not institute proceedings in any court to recover possession of the grantor’s personal chattels assigned to him under that bill of sale until the expiration of the period of 14 days following the service by him on the grantor of a notice informing the grantor—

- (a) that he has made such a default; and
- (b) that the grantee intends, at the expiration of that period, to institute those proceedings against him.

(2) A grantee who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$500.

45B—(1) Where—

- (a) a person (in this section referred to as “the guarantor”) guarantees the payment of the principal, interest, and other money secured by a bill of sale by pledging his personal chattels as part of the security for the payment of that principal, interest, and other money;
- (b) the bill of sale contains a covenant, condition, or agreement required to be observed or performed by the guarantor that the grantee may, if the grantor makes default in the payment of that principal, interest, or other money, enter the premises at which the personal chattels so pledged are kept by the guarantor and take possession of them; and
- (c) the grantor makes default in the payment of that principal, interest, or other money, notwithstanding anything to the contrary in that covenant, condition, or agreement, the grantee shall not—
- (d) enter those premises and take possession of those personal chattels until the expiration of the period of 14 days following the service by him on the guarantor of a notice informing the guarantor—
- (i) that the grantor has made such a default; and
  - (ii) that the grantee intends, at the expiration of that period, to enter those premises and take possession of those personal chattels; or
- (e) institute proceedings in any court to recover possession of those personal chattels until the expiration of the period of 14 days following the service by him on the guarantor of a notice informing the guarantor—
- (i) that the grantor has made such a default; and

Guarantor to be notified of intention of grantee to take possession of his personal chattels or to take proceedings against him.

(ii) that the grantee intends, at the expiration of that period, to institute those proceedings against him.

(2) A grantee who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$500.

Service of notices under sections 45A and 45B.

45C—A notice required by section 45A or 45B to be served on a person by a grantee may be served by him on that person—

- (a) by delivering it to him personally;
- (b) by leaving it at that person's place of residence last known to the grantee with someone who apparently resides there, or at that person's place of business or employment last known to the grantee with someone who is apparently employed there, being in either case a person who has, or apparently has, attained the age of 16 years; or
- (c) by sending it by post to that person's place of residence, business, or employment last known to the grantee.

Amendment of section 46 of Principal Act (Regulations).

**18**—Section 46 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:—

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) prescribe forms and impose fees; and
- (b) prescribe the directions or requirements in accordance with which forms so prescribed, or any of them, shall or may be prepared or completed, and generally regulate the preparation and completion of those forms or any of them.

Consequential amendments to Principal Act.

**19**—The Principal Act is amended in the manner specified in Schedule 1.

Amendment of section 18 of *Bills of Sale Amendment Act 1983*.

**20**—Section 18 of the *Bills of Sale Amendment Act 1983*\* is amended by omitting paragraph (c).

\* No. 32 of 1983.



**21**—(1) In this section, “proclaimed day” means the day fixed by proclamation under section 2 (4). Transitional provisions.

(2) Where, immediately before the proclaimed day, a bill of sale is in force under the Principal Act, the grantor or grantee of the bill of sale shall, while it is in force on and after that day, renew the registration of the bill of sale as follows:—

- (a) he shall renew the registration for the first time after that day in accordance with section 18 of the Principal Act, as in force immediately before that day;
- (b) he shall renew the registration for any other time after that day in accordance with that section, as amended by this Act.

(3) Where, immediately before the proclaimed day, a bill of sale is in force under the Principal Act, the covenant implied in the bill of sale that is specified in section 41 (i) of the Principal Act shall be deemed to be implied in that bill of sale with the amendments to that covenant made by section 16 of this Act.

(4) The provisions of sections 45A, 45B, and 45C of the Principal Act, as inserted by this Act, apply to and in relation to a bill of sale that is in force immediately before the proclaimed day as if those sections had been in force when that bill of sale was made or given.

## SCHEDULE 1

## Section 19

## CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT

COLUMN 1 Section of Principal Act amended	COLUMN 2 Amendment
Section 7 (1)	Omit "filed" and substitute "lodged".
Section 24 (1)	(a) Omit "filing", wherever occurring, and substitute
	"lodging"; and
	(b) Omit "filed" and substitute "lodged".
Section 24 (2)	(a) Omit "filing of any affidavit" and substitute "lodg-
	ing of a statutory declaration";
	(b) Omit "the said affidavit" and substitute "that statu-
	tory declaration"; and
	(c) Omit "filed" and substitute "lodged".
Section 26	(a) Omit "filing" and substitute "lodging"; and
	(b) Omit "filed" and substitute "lodged".
Section 27	Omit "affidavit lodged or filed" and substitute "statutory
	declaration lodged".
Section 28	Omit "affidavit lodged or filed" and substitute "statutory
	declaration lodged".
Section 29	Omit "filed", wherever occurring, and substitute
	"lodged".
Section 30	Omit "filed", wherever occurring, and substitute
	"lodged".
Section 31	Omit "filed" and substitute "lodged".
Section 32	(a) Omit "file an affidavit" and substitute "lodge a
	statutory declaration";
	(b) Omit "residence, or the business or occupation" and
	substitute "residence";
	(c) Omit "or the true business or occupation,"; and
	(d) Omit "filing an affidavit" and substitute "lodging a
	statutory declaration".