

MOTOR VEHICLES SECURITIES ACT 1984

No. 43 of 1984

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MOTOR VEHICLES SECURITIES ACT 1984

No. 43 of 1984

AN ACT to provide for the registration of security interests in motor vehicles and trailers.

[Royal Assent 27 June 1984]

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 *Motor Vehicles Securities Act* Short title. 1984.

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

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

Interpretation.

3—In this Act, unless the contrary intention appears—

- “ approved dealer ” means a person who carries on a trade or business in which he sells, buys, or otherwise deals in vehicles and trailers and is registered as a second-hand dealer under the *Second-hand Dealers Act 1905*;
- “ hire-purchase agreement ” has the meaning assigned to that expression in the *Hire-Purchase Act 1959*;
- “ motor vehicle ” has the meaning assigned to that expression by the *Traffic Act 1925*;
- “ register ’ means the register kept under section 5;
- “ Registrar ” means the Registrar of Motor Vehicles appointed under regulation 3 of the *Traffic (Miscellaneous) Regulations 1968*;
- “ security interest ” means an interest created or otherwise arising by way of security for the payment of a debt in or under a mortgage, lease, hire-purchase agreement, charge, or lien;
- “ trailer ” has the meaning assigned to that expression by the *Traffic Act 1925*.

Application to register security interest.

4—(1) A person who holds a security interest in a motor vehicle or trailer registered in the State may make application for registration as the holder of that security interest.

(2) An application under subsection (1) shall—

- (a) be in a form approved by the Registrar;
- (b) be accompanied by the prescribed fee; and
- (c) be lodged with the Registrar.

(3) For the purposes of subsection (2), “ prescribed fee ” means—

- (a) in respect of a security interest created or otherwise arising before the commencement of this section, a fee of \$1; and
- (b) in respect of a security interest created or otherwise arising on or after the commencement of this section, a fee of \$10.

(4) On receipt of an application under subsection (1), the Registrar shall register the name of the applicant as the holder of a security interest in the motor vehicle or trailer specified in the application.

(5) A registration under this section does not take effect until midnight on the next business day following the day on which the registration is recorded by the Registrar.

5—(1) The Registrar shall keep a register in which shall be ^{Register.} entered—

- (a) the name of any person registered, pursuant to section 4 (4), as a holder of a security interest in a motor vehicle or trailer;
- (b) the type of security interest held by that person;
- (c) the date on which, and the time at which, that security interest was registered; and
- (d) such details of the motor vehicle or trailer as may be necessary to identify it.

(2) A register kept pursuant to subsection (1) may be incorporated with any record kept under section 11 of the *Traffic Act* 1925.

6—(1) Where a person is registered under section 4 as the holder of a security interest in a motor vehicle or trailer and the security interest is discharged or extinguished, that person shall, within 14 days after the date on which he knows, or ought reasonably to know, that he has ceased to be the holder of that security interest, make application for the cancellation of the registration of that security interest. ^{Cancellation of registration by holder of security interest.}

(2) An application under subsection (1) shall—

- (a) be in a form approved by the Registrar; and
- (b) be lodged with the Registrar.

(3) A person who fails to comply with the provisions of subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$1 000.

Cancellation of
entry in register.

7—Where an application is made under section 6, the Registrar shall—

- (a) cancel the registration of the security interest to which the application relates; and
- (b) note in the register the date on which, and the time at which, the registration was cancelled.

Change of
particulars.

8—(1) Where a person is registered under section 4 as the holder of a security interest in a motor vehicle or trailer and there is a change in the particulars of that registration, that person may make application for the variation of those particulars.

(2) An application under subsection (1) shall—

- (a) be in a form approved by the Registrar; and
- (b) be lodged with the Registrar.

(3) On receipt of an application under subsection (1), the Registrar shall—

- (a) vary the particulars of a registration as specified in that application; and
- (b) note in the register the date on which, and the time at which, the variation was made.

Registrar may
cancel
registration.

9—(1) Where a person is registered under section 4 as the holder of a security interest in a motor vehicle or trailer and it appears to the Registrar that—

- (a) the person, when the application for registration was made, was not the holder of that security interest; or
- (b) the security interest is discharged or extinguished and the person has failed to comply with section 6,

the Registrar may, by notice in writing sent by post, require the person to show cause within 14 days after the date on which the notice was sent why the registration of that security interest should not be cancelled.

(2) Where a person fails to show cause as required by a notice under subsection (1), the Registrar may cancel the registration of the security interest registered by that person.

(3) Where, pursuant to subsection (2), the Registrar cancels the registration of a security interest, he shall note in the register the date on which, and the time at which, the registration was cancelled.

10—A person shall not, in any application under this Act, make a statement which to his knowledge is false or misleading in a material respect. False or misleading statements.

Penalty: \$1 000.

11—(1) A person may, by inquiry, require the Registrar to state whether or not there is an entry in the register in respect of a security interest in a specified motor vehicle or trailer. Certificate of entry in register.

(2) A person may make application for a certificate containing the particulars of an entry in the register, if any, in respect of a security interest in a motor vehicle or trailer specified in the application.

(3) An application under subsection (2) shall—

- (a) be in a form approved by the Registrar;
- (b) be accompanied by such fee as is prescribed under regulation 6 (1) of the *Traffic (Miscellaneous) Regulations 1968*; and
- (c) be lodged with the Registrar.

(4) On receipt of an application made by a person under subsection (2), the Registrar shall issue the person with a certificate containing—

- (a) the particulars of the entry in the register in respect of the security interest in a motor vehicle or trailer specified in the application;
- (b) where there is no such entry, a statement to that effect; and
- (c) the date on which, and the time at which, the certificate was issued.

12—A person who—

- (a) forges or causes to be forged a document which purports to be a certificate issued under section 11;
- (b) without lawful excuse, has in his possession such a document which he knows to be forged or which contains a representation which he knows or believes to be false; or
- (c) fraudulently alters or causes to be altered a certificate issued under section 11,

Forged &c., certificates.

is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$1 000.

Purchaser not deemed to have notice of security interest of approved dealer in certain circumstances.

13—Where—

- (a) the Registrar issues a certificate under section 11 to an approved dealer in respect of a motor vehicle or trailer of which he is the owner within the meaning of the *Traffic Act 1925*; and
- (b) a security interest in that motor vehicle or trailer is entered in the register during the period of 60 days commencing on the date on which the certificate is issued,

a person who, during that period, purchases an interest in that motor vehicle or trailer for value in good faith is, notwithstanding section 16 (b), not deemed to have notice of that security interest at the time he pays the purchase price or the first part of the purchase price by reason only of the fact that it is entered in the register.

Extinguishing of security interest.

14—(1) Where a person is the holder of a security interest in a motor vehicle or trailer and a purchaser purchases an interest in that motor vehicle or trailer for value in good faith and without notice of a security interest in that motor vehicle or trailer at the time he pays the purchase price or the first part of the purchase price—

- (a) the security interest in that motor vehicle or trailer is extinguished; and
- (b) the purchaser acquires the interest purchased in that motor vehicle or trailer free from the security interest.

(2) The onus of proving that an interest in a motor vehicle or trailer is acquired free from a security interest in that motor vehicle or trailer is on the person who asserts that the interest in the motor vehicle or trailer is so acquired.

(3) In any proceedings before a court, a document purporting to be a certificate under the hand of the Registrar relating to an entry in the register or to the absence of such an entry shall be admissible and be evidence of the matters specified in the certificate.

Purchase not deemed to be without notice of security interest in certain circumstances.

15—For the purpose of sections 13 and 14, a purchase of an interest in a motor vehicle or trailer by a purchaser is not a purchase for value in good faith and without notice of a security interest in that motor vehicle or trailer where—

- (a) the purchaser and the seller are related corporations within the meaning of the *Companies (Tasmania) Code*; or

- (b) either the purchaser or the seller is a corporation and the other is a natural person who, within the meaning of the *Companies (Tasmania) Code*, is a director or officer of that corporation,

unless the person who asserts that it is such a purchase proves beyond reasonable doubt that it is such a purchase.

16—For the purposes of this Act, a person has notice of a security interest in a motor vehicle or trailer where— Notice of security interest.

- (a) he has actual notice of the security interest;
- (b) another person who holds the security interest in that motor vehicle or trailer is registered under section 4 as the holder of that security interest and that registration has taken effect pursuant to section 4 (5); or
- (c) he has been put on inquiry as to the existence of the security interest and has abstained from inquiry when he might reasonably have expected the inquiry to reveal the security interest.

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

(2) Regulations under subsection (1) may be made subject to such conditions, or be made so as to apply differently according to such factors, as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.

(3) Regulations under subsection (1) may provide that it is an offence, punishable on summary conviction, for a person to contravene or fail to comply with, any of the regulations and may provide in respect of any such offence for the imposition of a penalty not exceeding \$500 and, in the case of a continuing offence, a further penalty not exceeding \$10 for each day during which the offence continues.

(4) A regulation under subsection (1) may authorize any matter or thing to be from time to time determined, applied, or regulated by any person or body specified in the regulation.

