



ANNO QUINTO

# GEORGII V REGIS.

A.D. 1914.

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## No. 1162.

An Act to further amend "The Insolvent Act, 1886."

[Assented to, October 29th, 1914.]

**B**E it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as "The Insolvent Act Further Amendment Act, 1914."

(2) "The Insolvent Act, 1886" (hereinafter called "the principal Act"), the Act No. 404 of 1887, being an Act to amend "The Insolvent Act, 1886," "The Insolvent Act Amendment Act, 1896," and this Act, may be cited together as "The Insolvent Acts, 1886 to 1914."

No. 385 of 1886.

No. 655 of 1896.

2. This Act is incorporated with the Acts mentioned in section 1 of this Act, and those Acts and this Act shall be read as one Act.

Incorporation with other Acts.

3. Section 175 of the principal Act is hereby amended by striking out all except the first eleven lines thereof and substituting the following for the provisions so struck out, namely:—

Amendment of section 175—Offences cognizable by the Court.

1. If the insolvent—

(a) has wilfully omitted to fully and truly discover to the trustee all his property, both real and personal, and when, how, and to whom, and for what consideration, he has disposed of any part thereof, except such part as has been disposed of in the ordinary way of his profession, business, or trade (if any), or laid out in the ordinary expense of his family; or  
(b) has

Failure to make full discovery.

32 & 33 Vict., c. 62, s. 11 (1).

S.A., 385, 1886, s. 242, u.

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Failure to make delivery.

32 & 33 Vict.,  
c. 62, s. 11 (2).

Failure to give up documents.

Ibid., s. 11 (3).

Omission in statement.

Ibid., s. 11 (6).

Failure to inform trustee of false debt.

Ibid., s. 11 (7).

False representation for obtaining consent of creditors.

Ibid., s. 11 (16).

Failure to account for loss.

Cf. Board of Trade Rpt., par. 187.

Concealment of property.

32 & 33 Vict., c. 62,  
s. 11 (4).

Concealment of debt.

Ibid., s. 11 (5).

Concealment, mutilation, or falsification of documents.

Ibid., s. 11 (9), (10),  
and (11).

Accounting by fictitious losses.

Ibid., s. 11 (12).

Obtaining property on credit by fraud.

32 & 33 Vict., c. 62,  
s. 11 (13).

Obtaining property on credit by false pretence of trading.

Ibid., s. 11 (14).

(b) has not delivered up to the trustee, or as the trustee has directed, all parts of his real and personal property which are, or have been, in his custody or under his control, and which he is required by law to deliver up; or

(c) has not delivered up to the trustee, or as the trustee has directed, all books, documents, papers, and writings in his custody or under his control relating to his property, or any part thereof, or his affairs; or

(d) has wilfully made any material omission in any statement relating to his affairs; or

(e) knowing or believing that a false debt has been proved by any person under the insolvency, has failed for a period of one month to inform the trustee thereof; or

(f) has been guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to any agreement with reference to his property or affairs or his insolvency; or

(g) has, in the opinion of the Court, failed to give a complete and satisfactory account of the loss, within a period of twelve months immediately preceding the filing of the petition for adjudication of insolvency, of any part of his property:

II. If the insolvent, after, or within the six months next preceding, the filing of the petition for adjudication of insolvency—

(a) has concealed any part of his property to the value of Ten Pounds or upwards; or

(b) has concealed any debt due to or from him; or

(c) has concealed, parted with, destroyed, mutilated, falsified, altered, or made any false entry in or omission from, any book or document affecting or relating to his property or affairs; or

(d) has attempted to account for any part of his property by fictitious losses or expenses:

III. If any insolvent, after, or within the six months next preceding, the filing of the petition for adjudication of insolvency—

(a) has, by any false representation or other fraud, obtained any property on credit and has not paid for it; or

(b) has obtained, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit, and has not paid for it; or

(c) has,

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- (c) has, by fraud or false pretence, contracted any provable debt, or obtained from any creditor the forbearance of any provable debt; or
- (d) has pawned, pledged, or disposed of, otherwise than in the ordinary way of his trade, any property which he has obtained on credit and has not paid for; or
- (e) has, when unable to pay his provable debts as they became due, given an undue preference to any of his creditors:
- iv. If any insolvent, within the six months next preceding the filing of the petition for adjudication of insolvency, has, with intent to diminish the sum to be divided amongst his creditors in case of an adjudication of insolvency, made away with, mortgaged, or charged any part of his property of any kind whatsoever:
- v. If any insolvent, after the filing of the petition for adjudication of insolvency, prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs:
- vi. If any insolvent—
- (a) has carried on trade by means of fictitious capital; or
- (b) at the time when any of his provable debts was contracted, could not have had any reasonable or probable expectation (proof whereof shall lie on him) of being able to pay the same as well as all his other provable debts; or
- (c) has, with intent to conceal the true state of his affairs, wilfully omitted at any time to keep proper books or accounts; or
- (d) at any time within the three years next preceding the filing of the petition for adjudication of insolvency, has failed to keep such books of account as are usual and proper in the business carried on by him, and as sufficiently set forth his business transactions and disclose his financial position; or
- (e) has, within the six months next preceding the filing of the petition for adjudication of insolvency, incurred unjustifiable expense by bringing a frivolous or vexatious action; or
- (f) within the six months next preceding the filing of the petition for adjudication of insolvency, has put any of his creditors to any unnecessary expense by any vexatious or frivolous defence or delay to any action for the recovery of any provable debt, or is indebted in costs incurred in any action so vexatiously or frivolously defended;
- or
- (g) has,
- Contracting debts by fraud or false pretence.  
S.A., 385, 1886, s. 175, III.
- Disposing of property obtained on credit.  
32 & 33 Vict., c. 62, s. 11 (15).
- Giving fraudulent preference.  
N.Z., 12, 1908, s. 138 (w).
- Fraudulent disposal of property.  
S.A., 385, 1886, s. 175 XIII.
- Preventing production of documents, etc.  
32 & 33 Vict., c. 62, s. 11 (8).
- Trading on fictitious capital.  
N.Z., 12, 1908, s. 138 (a).
- Contracting debts without reasonable expectation.  
Ibid, s. 138 (b).
- Wilfully omitting to keep books.  
N.Z., 12, 1908, s. 138 (c).
- Failure to keep usual books.  
Ibid., s. 138 (d).
- Vexatious actions.  
Cf. 53 & 54 Vict., c. 71, s. 3 (3) (h).
- Vexatious defences.  
S.A., 385, 1886, s. 175, VIII.

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Concealing, &c.,  
property before  
or after judgment.  
N.Z., 12, 1908,  
s. 138 (g).

Payments out of  
regular course of  
business.

Ibid., s. 138 (i).

Penalty for abscond-  
ing with property.  
32 & 33 Vict., c. 62,  
s. 12.

Uncertificated  
insolvent obtaining  
credit.  
46 & 47 Vic., c. 52,  
s. 31.

Uncertificated  
insolvent trading  
under assumed  
name, &c.  
Cf. B.T. Rpt., par. 189.

Gaming extravagance  
or unjustifiable  
speculations.  
N.Z., 12, 1908, s. 138  
(h).  
B. T. Rpt., par. 187.  
Privy to offence.  
Cf. 32 & 33 Vic.,  
c. 62, s. 11 (9),  
(10), (11).

When concealment  
complete, S.A., 1883,  
1886, s. 175, vi. (part).

(g) has, with intent to defraud his creditors, concealed or removed any part of his property since, or within the two months next preceding, the date when any judgment or order for payment of money has been obtained against him unless such judgment or order has been satisfied; or

(h) within the three years next preceding the filing of the petition for adjudication of insolvency, has made payments out of the regular course of his business not being for the ordinary expenses of himself or his family, unless it is proved to the satisfaction of the Court that such payments were justifiable; or

VII. If any insolvent, after, or within the six months next preceding, the filing of the petition for adjudication of insolvency, quits South Australia and takes with him, or attempts, or makes preparation, to quit South Australia and take with him, any part of his property to the value of Twenty Pounds or upwards which ought by law to be divided among his creditors, unless the Court is satisfied that he had no intent to defraud his creditors:

VIII. If any insolvent, before his certificate has been awarded,—

(a) either alone or jointly with any other person obtains credit to the extent of Twenty Pounds or upwards from any person without informing him that he is an uncertificated insolvent; or

(b) trades upon credit under an assumed name, or in the name of any other person, or in the name of a firm, without disclosing his true name and the fact that he is an uncertificated insolvent to all those with whom he deals:

IX. If any insolvent has brought about, or contributed to, his insolvency by rash and hazardous speculations, or by gambling, drunkenness, or extravagance in living:

x. If any insolvent is privy to an act or omission which, if done or made by himself, would be an offence under this section.

In any proceedings for an offence under subdivision 11. of this section, the offence of concealing property or a debt shall be deemed to have been complete on the first concealment, and shall not be condoned by subsequent restitution or disclosure.

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

H. L. GALWAY, Governor.