



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

FACTORS ACT

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For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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FACTORS ACT

Table of Contents

Section	Page
1. Definitions.....	5
2. Dispositions by mercantile agents.....	5
3. Pledge of goods.....	6
4. Rights of pledgee	6
5. Consideration necessary for validity of a sale.....	6
5.1. Application of sections 2 to 5.....	6
6. Acts of clerk in course of employment	6
7. Advances by consignee secured, where	6
8. Application of section 7	7
9. Seller continues in possession	7
10. Purchaser obtains possession of goods, sells to another.....	7
11. Unpaid seller's right of lien.....	7
12. Transfer of document of title.....	8
13. Scope of authority of agent	8
14. Application of Act.....	8



FACTORS ACT

CHAPTER F-1

1. Definitions

(1) In this Act

- (a) “**document of title**” includes any bill of lading, dock warrant, warehouse keeper’s receipt or certificate, any warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or delivery, the possessor of the document to transfer or receive goods thereby represented;
- (b) “**goods**” includes wares and merchandise;
- (c) “**mercantile agent**” means a mercantile agent having, in the customary course of his business as an agent, authority either to sell goods or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods;
- (d) “**pledge**” includes any contract pledging or giving a lien or security on goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability.

Possession deemed by custody

- (2) A person shall be deemed to be in possession of goods or of the documents of title to goods where the goods or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf. *R.S.P.E.I. 1974, Cap. F-1, s.1.*

2. Dispositions by mercantile agents

- (1) Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge or other disposition of the goods made by him, when acting in the ordinary course of business of a mercantile agent, shall, subject to this Act, be as valid as if he were expressly authorized by the owner of the goods to make the same, if the person taking under the disposition acts in good faith and has not at the time thereof notice that the person making the disposition has not authority to make the same.

Consent to possession terminated

- (2) Where a mercantile agent has, with the consent of the owner, been in possession of goods or of documents of title to goods, any sale, pledge or other disposition which would have been valid if the consent had continued, shall be valid notwithstanding the determination of the consent, if the person taking under the disposition acts in good faith and has not at the time thereof notice that the consent has been determined.

Consent of owner deemed

- (3) Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner.

Idem

- (4) For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary. *R.S.P.E.I. 1974, Cap. F-1, s.2.*

3. Pledge of goods

A pledge by a mercantile agent of the documents of title to goods shall be deemed to be a pledge of the goods. *R.S.P.E.I. 1974, Cap. F-1, s.3.*

4. Rights of pledgee

Where a mercantile agent pledges goods as security for a debt due from or liability incurred by the pledger to the pledgee before the time of the pledge, the pledgee acquires no further right to the goods than could have been enforced by the pledger at the time of the pledge. *R.S.P.E.I. 1974, Cap. F-1, s.4.*

5. Consideration necessary for validity of a sale

The consideration necessary for the validity of a sale, pledge or other disposition of goods by a mercantile agent, in pursuance of this Act, may be either a payment in cash or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security or of other valuable consideration, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, document, security or other valuable consideration when so delivered or transferred in exchange. *R.S.P.E.I. 1974, Cap. F-1, s.5.*

5.1. Application of sections 2 to 5

Sections 2 to 5 do not apply to a consignment to which the *Personal Property Security Act* R.S.P.E.I. 1988, Cap. P-3.1 applies. *1997,c.33, Schedule.*

6. Acts of clerk in course of employment

For the purposes of this Act an agreement made with a mercantile agent through a clerk or other person authorized in the ordinary course of business to make contracts of sale or pledges on his behalf shall be deemed to be an agreement with the agent. *R.S.P.E.I. 1974, Cap. F-1, s.6.*

7. Advances by consignee secured, where

Where the owner of the goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made in good faith to or for the use of such

person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person. *R.S.P.E.I. 1974, Cap. F-1, s.7.*

8. Application of section 7

Nothing in section 7 limits or affects the validity of any sale, pledge or disposition by a mercantile agent. *R.S.P.E.I. 1974, Cap. F-1, s.8.*

9. Seller continues in possession

- (1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge or other disposition thereof or under any agreement for sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale, has the same effect as if the person making the delivery or transfer was expressly authorized by the owner of the goods to make the same.

Not applicable where registration under PPSA

- (2) Subsection (1) does not apply to a sale, pledge or other disposition of goods or of documents of title to goods, other than negotiable documents of title to goods, that is out of the ordinary course of business of the person having sold the goods where, prior to the sale, pledge or disposition, the interest of the owner is registered in the Personal Property Registry in accordance with the regulations made under the *Personal Property Security Act* and the said Act applies to such registration. *R.S.P.E.I. 1974, Cap. F-1, s.9; 1997, c.33, Schedule.*

10. Purchaser obtains possession of goods, sells to another

- (1) Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods, or of the documents or title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof, or under any agreement for sale, pledge or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, has the same effect as if the person making the delivery or transfer was a mercantile agent in possession of the goods or documents of title with the consent of the owner.

Not applicable where possession under PPSA

- (2) Subsection (1) does not apply to a sale, pledge or other disposition of goods or of documents of title to goods by a person who has obtained possession of the goods pursuant to a security agreement under which the seller has a security interest as defined in the *Personal Property Security Act*. *R.S.P.E.I. 1974, Cap. F-1, s.10; 1997, c.33, Schedule.*

11. Unpaid seller's right of lien

Subject to this Act the unpaid seller's right of lien or retention or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made unless the seller has assented thereto; but where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods and that person transfers the document to a person who takes the same in good faith and for valuable consideration, then, if the last mentioned transfer was by way of sale, the unpaid seller's right of lien or retention or stoppage in transit is defeated; and if the last mentioned transfer was by way of pledge or

other disposition for value the unpaid seller's right of lien or retention or stoppage in transit can only be exercised subject to the right of the transferee. *R.S.P.E.I. 1974, Cap. F-1, s.11.*

12. Transfer of document of title

For the purposes of this Act the transfer of a document of title may be by endorsement, or where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery. *R.S.P.E.I. 1974, Cap. F-1, s.12.*

13. Scope of authority of agent

- (1) Nothing in this Act authorizes an agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability for so doing.

Rights of owner *re* goods before disposal by agent

- (2) Nothing in this Act prevents the owner of goods from recovering them from his agent at any time before the sale or pledge thereof, or prevents the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof on satisfying the claim for which the goods were pledged, and paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien.

Recovery of price from purchaser

- (3) Nothing in this Act prevents the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for them, or any part of that price, subject to any right of set off on the part of the buyer against the agent. *R.S.P.E.I. 1974, Cap. F-1, s.13.*

14. Application of Act

The provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act. *R.S.P.E.I. 1974, Cap. F-1, s.14.*