

The Bulk Sales Act

being

Chapter 198 of *The Revised Statutes of Saskatchewan, 1920*
(assented to November 10, 1920).

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER 198

An Act to regulate the Purchase, Sale and Transfer of Stocks of Goods in Bulk

SHORT TITLE

Short title

- 1 This Act may be cited as *The Bulk Sales Act*.

1913, c.34, s.1; R.S.S. 1920, c.198, s.1.

INTERPETATION

Interpretation

- 2 In this Act, unless the context otherwise requires, the expression:

“Court”

1. “**Court**” means the Court of King’s Bench for Saskatchewan;

“Judge”

2. “**Judge**” means a judge of the said court;

“Sale in bulk”

3. “**Sale in bulk**” includes any sale, transfer or conveyance of a stock, or part thereof, out of the usual course of business or trade of the vendor, a sale, transfer or conveyance of the entire stock in trade of the vendor and a sale, transfer or conveyance or attempted sale, transfer or conveyance of an interest in the vendor’s business or trade;

“Stock”

4. “**Stock**” means any stock of goods, wares and merchandise ordinarily the subject of trade and commerce, and the fixtures ordinarily used in connection with any business;

“Vendor”, “purchaser”

5. “**Vendor**” includes any person who barter or exchanges any stock in bulk for other property, real or personal, and “**purchaser**” includes the person who gives such other property in barter or exchange.

1913, c.34, s.2, amended; R.S.S. 1920, c.198, s.2.

APPLICATION OF ACT

Application

- 3 This Act shall only apply to sales, barter and exchanges by traders and merchants, defined as follows:

- (a) persons who, as their ostensible occupation or part thereof, buy and sell goods, wares and merchandise ordinarily the subject of trade and commerce;
- (b) commission merchants;
- (c) manufacturers.

1913, c.34, s.3; R.S.S. 1920, c.198, s.3.

Scope

4 Nothing in this Act contained shall apply to or affect any sale by executors, administrators, receivers, any public official acting under judicial process, or traders or merchants selling exclusively by wholesale.

1913, c.34, s.4; R.S.S. 1920, c.198, s.4.

DUTIES OF PURCHASER**Statement of creditors**

5 It shall be the duty of every person who bargains for, buys or purchases any stock of goods, wares, merchandise or fixtures in bulk, for cash or on credit, or who bargains for the barter or exchange of the same in bulk for any other property, real or personal, before closing the purchase, barter or exchange, and before paying to the vendor any part of the purchase price or giving any promissory note or notes or any security for the said purchase price or part thereof, or before executing any transfer, conveyance or incumbrance of such other property, to demand and receive from the vendor, whose duty it shall be to furnish the same to the purchaser, a written statement (form A) verified by the statutory declaration of the vendor or his duly authorised agent or, if the vendor is a corporation, by the statutory declaration of its president, vice president, secretary treasurer or manager, containing the names and addresses of all the creditors of the vendor together with the amount of the indebtedness or liability due, owing, payable or accruing due by said vendor to each of said creditors.

1913, c.34, s.5; R.S.S. 1920, c.198, s.5.

Waiver of creditors

6(1) Subject to the provisions of subsection (2), unless the vendor shall produce and deliver to the purchaser a written waiver of the provisions of this Act, other than the provisions contained in section 5 from his creditors representing not less than sixty per cent in number and amount of the claims as shown by said written statement verified as aforesaid, the purchaser shall:

(a) in the case of a sale, pay the whole of his purchase price and deliver all promissory notes or other documents securing the same or part thereof and convey any property given as part of the purchase price to a trust company authorised to carry on business as such in Saskatchewan for distribution *pro rata* among the creditors of the vendor as shown by said statement and such other creditors. of the vendor as file claims with such company subject to any preference provided by law or previous contract;

(b) in the case of barter or exchange, obtain the written consent thereto of creditors representing at least sixty per cent. in number and amount of the claims against such vendor, as shown by said written statement, and transfer to such trust company the property bargained to be exchanged for the vendor's stock in trust, the proceeds to be distributed *pro rata* among the creditors aforesaid and in the same manner as provided for the distribution of purchase money and the proceeds of promissory notes or other documents securing such purchase price or any part thereof.

(2) In case of a sale, if the actual cash to be paid by the purchaser in connection with any such bargain or purchase as is mentioned in section 5 exclusive of all deferred payments and goods and lands to be given or conveyed by the purchaser on account of the purchase price, is less than the amount of the total indebtedness of the vendor to his creditors as shown by the written statement required by that section, the purchaser shall obtain the written consent to such bargain or purchase of creditors representing at least sixty per cent in number and amount of the claims against the vendor as shown by the statement.

1913, c.34, s.6 (in part) (redrawn); R.S.S. 1920, c.198, s.6.

MEETINGS OF CREDITORS

Company to call meeting

7 It shall be the duty of the trust company immediately to inform itself by reference to the vendor and his records and books of account of the names and residences of the vendor's creditors and within ten days from the date when the purchase price is received to convene a meeting of the creditors with reference to the disposal of the estate by mailing prepaid and registered to every creditor known to it a circular calling a meeting of creditors to be held in its office or some other convenient place to be named in the notices not later than twenty days after the mailing of such notice; and shall also publish such notice by advertisement in *The Saskatchewan Gazette* in the first regular issue after the expiration of such period of ten days.

R.S.S. 1909, c. 142, s.17; 1915, c.43, s.22 (redrawn); R.S.S. 1920, c.198, s.7.

Meeting by request of creditors

8 In case of a request in writing signed by a majority of the creditors having claims duly proved of one hundred dollars and upwards computed according to the provisions of section 13 it shall be the duty of the trust company within two days after receiving such request to call a meeting of the creditors at a time not later than twelve days after receiving the request; in case of default the company shall be liable to a penalty of twenty-five dollars for every day after expiration of the time limited for the calling of the meeting until the meeting is called.

R.S.S. 1909, c.142, s.18 (redrawn); R.S.S. 1920, c.198, s.8.

Judge may give directions

9 In case a sufficient number of creditors do not attend the meeting mentioned in section 8 or fail to give directions with reference to the disposal of the estate a judge may give all necessary directions in that behalf.

R.S.S. 1909, c.142, s.19 (redrawn); R.S.S. 1920, c.198, s.9.

Voting

10 At any meeting of creditors the creditors may vote in person or by proxy authorised in writing; but no creditor whose vote is disputed shall be entitled to vote until he has filed with the trust company an affidavit in proof of his claim stating the amount and nature thereof.

R.S.S. 1909, c.142, s.20 (redrawn); R.S.S. 1920, c.198, s.10.

Scale of votes

11(1) Subject to the provisions of section 10 all questions discussed at meetings of creditors shall be decided by the majority of votes and for such purpose the votes of creditors shall be calculated as follows:

For every claim of or over one hundred dollars and less than two hundred dollars one vote;

For every claim of or over two hundred dollars and less than five hundred dollars two votes;

For every claim of or over five hundred dollars and less than one thousand dollars, three votes.

For every additional one thousand dollars or fraction thereof one vote.

(2) No person shall be entitled to vote on a claim acquired after the sale unless the entire claim is acquired but this shall not apply to persons acquiring notes, bills or other securities upon which they are liable.

(3) In case of a tie the trust company shall have a casting vote.

R.S.S. 1909, c.142, s.21 (redrawn); R.S.S. 1920, c.198, s.11.

CREDITORS' CLAIMS**Proof of claim**

12 Every person claiming to be a creditor shall furnish to the trust company particulars of his claim proved by affidavit and such vouchers as the nature of the case admits of.

R.S.S. 1909, c.142, s.22 (redrawn); R.S.S. 1920, c.198, s.12.

Limiting time for proof of claim

13 In case a person claiming to be a creditor does not within a reasonable time after receiving notice of the sale and of the name and address of the trust company furnish to the company satisfactory proofs of his claim as provided by this section and section 12 a judge may upon summary application by the company or by any other person interested in the estate (of which application at least three days' notice shall be given to the person alleged to have made default in proving a claim as aforesaid), order that, unless the claim is proved to the satisfaction of the judge within a time to be limited by the order, the person so making default shall no longer be deemed a creditor and shall be wholly barred of any right to share in the proceeds; and if the claim is not so proved within the time so limited or within such further time as the said judge may by subsequent order allow the same shall be wholly barred, and the trust company shall be at liberty to distribute the proceeds as if no such claim existed but without prejudice to the liability of the vendor therefor.

R.S.S. 1909, c.142, s.23 (redrawn); R.S.S. 1920, c.198, s.13.

Creditor may prove claim not due

14 A person whose claim has not accrued due shall nevertheless be entitled to prove the same and vote at meetings of creditors but in ascertaining the amount of any such claim a deduction for interest shall be made for the time which has to run until the claim becomes due.

R.S.S. 1909, c.142, s.24 (redrawn); R.S.S. 1920, c.198, s.14.

Set off

15 The law of set off shall apply to all claims made against the vendor.

R.S.S. 1909, c.142, s.25 (redrawn); R.S.S. 1920, c.198, s.15.

Creditors to value securities

16 Every creditor in his proof of claim shall state whether he holds any security for his claim or any part thereof; and if such security is on the property of the vendor or on the property of a third party for whom such vendor is only secondarily liable, he shall put a specified value thereon; and the trust company under the authority of the creditors may either consent to the right of the creditor to rank for the claim after deducting such valuation or may require from the creditor an assignment of the security at an advance of ten per cent, upon the specified value to be paid out of the purchase price; and in such case the difference between the value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect of the proceeds.

R.S.S. 1909, c.142, s.28 (redrawn); R.S.S. 1920, c.198, s.16.

Right to revalue

17 If a creditor holds a claim based upon negotiable instruments upon which the vendor is only indirectly or secondarily liable and which has not matured such creditor shall be considered to hold security within the meaning of section 16 and shall put a value on the liability of the party primarily liable thereon as being his security for the payment thereof; but after the maturity of such negotiable instrument and its nonpayment he shall be entitled to amend and revalue his claim.

R.S.S. 1909, c.142, s.29 (redrawn); R.S.S. 1920, c.198, s.17.

When creditor holding security fails to value same

18 In case a person claiming to be entitled to rank as a creditor holds security for his claim or any part thereof of such a nature that he is required by this Act to value the same and he fails to value such security, a judge may, upon summary application by the trust company or by any other person interested in the purchase price, of which application three days' notice shall be given to such claimant, order that, unless a specified value shall be placed on such security and notified in writing to the trust company within a time to be limited by the order, such claimant shall in respect of the claim or the part thereof for which the security is held, in case the security is held for part only of the claim, be wholly barred of any right to share in the proceeds; and if a specified value is not placed on such security and notified in writing to the trust company according to the exigency of the said order or within such further time as the said judge may by subsequent order allow, the said claim or the said part, as the case may be, shall be wholly barred as against such purchase price but without prejudice to the liability of the vendor therefor.

R.S.S. 1909, c.142, s.30 (redrawn); R.S.S. 1920, c.198, s.18.

Contestation of claim

19(1) At any time after the trust company receives from any person claiming to be a creditor proof of his claim, notice of the contestation of the claim may be served by the trust company upon the claimant; within thirty days after the receipt of the notice or such further time as a judge may on application allow, the claimant shall apply for and may, if a judge sees fit obtain an originating summons to decide the validity of such claim under the practice regarding originating summonses in the Court of King's Bench, and such summons shall be served on the trust company, and on the return of the said summons the judge shall proceed to determine the validity of the said claim or to have it determined and may give such directions in respect thereto as he may see fit, and, in default of such action being brought within the time aforesaid and proceeded with according to the practice in said court, the claim to rank on the purchase price shall be forever barred.

(2) The notice by the trust company shall contain the name and place of business of a solicitor upon whom service of the summons may be made; and service upon such solicitor shall be deemed sufficient service of the summons on the company.

R.S.S. 1909, c.142, s.31 (redrawn); R.S.S. 1920, c.198, s.19.

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Procedure where debtor disputes claim

20(1) In the case the trust company is satisfied with the proof adduced in support of a claim but the vendor disputes the same such vendor shall do so by notice in writing to the company stating the grounds upon which he disputes the claim; and such notice shall be given within ten days of such vendor being notified in writing by the company that it is satisfied with the proof adduced as aforesaid, and not afterwards unless by special leave of a judge.

(2) If upon receiving such notice of dispute the company does not deem it proper to require the claimant to take proceedings to establish his claim it shall notify the vendor in writing of this fact and the vendor may thereupon and within ten days of his receiving such notice apply to a judge for an order requiring the company to serve a notice of contestation; the judge shall only make such order if after notice to the company the judge is of the opinion that there are good grounds for contesting the claim; in case the vendor does not make an application as aforesaid the decision of the company shall as against him be final and conclusive as far as regards the distribution of the assigned purchase money.

(3) If proceedings are brought by the claimant against the company the vendor may intervene either personally or by counsel for the purpose of contesting the claim.

R.S.S. 1909, c.142, s.32 (redrawn); R.S.S. 1920, c.198, s.20.

DIVIDENDS

When paid

21 As large a dividend as can with safety be paid shall be paid by the trust company within six months from the date of the receipt of the purchase money and earlier if required by the creditors; and thereafter a further dividend shall be paid every six months and more frequently if required by the creditors until the proceeds of the sale are disposed of.

R.S.S. 1909, c.142, s.33 (redrawn); R.S.S. 1920, c.198, s.21.

Notice of

22 So soon as a dividend sheet is prepared notice thereof shall be given by letter posted to each creditor inclosing an abstract of receipts and disbursements showing what interest has been received by the trust company for moneys in its hands together with a copy of the dividend sheet noting thereon the claims objected to and stating whether any reservation has or has not been made therefor; and after the expiry of eight days from the day of mailing such notice abstract and dividend sheet as aforesaid dividends on all claims not objected to within that period shall be paid.

R.S.S. 1909, c.142, s.34 (redrawn); R.S.S. 1920, c.198, s.22.

EXAMINATION OF VENDORS AND OTHERS

Assignor or employees

23 Where there has been a resolution passed by a majority vote of the creditors present or represented at a meeting of the creditors of the vendor regularly called, the trust company may without an order examine the vendor or any person who is or has been an agent, clerk, servant, officer or employee of any kind of the vendor upon oath before any person authorised to hold examinations for discovery in the court or appointed for the purpose by a judge as to the property and means he still has of discharging his debts and liabilities and as to any and what debts are owing to him.

R.S.S. 1909, c. 142, s. 49 (redrawn); R.S.S. 1920, c.198, s.23.

Procedure

24 The rules and procedure from time to time in force in the court for the examination of judgment debtors shall as far as may be apply to an examination under this Act of a vendor in all respects as if the vendor were a judgment debtor.

R.S.S. 1909, c.142, s.50 (redrawn); R.S.S. 1920, c.198, s.24.

Non-attendance of vendor

25 In case such vendor does not attend as required by any appointment or appointment and order, as the case may be, served on him and does not allege a sufficient excuse for not attending or if attending refuses to disclose his property or his transactions respecting the same or does not make satisfactory answers respecting the same, or if it appears from such examination of the vendor that such vendor has concealed or made away with any part of his property in order to defeat or defraud his creditors or any of them any judge may on summary proceedings before him order the vendor to be committed to gaol for any term not exceeding twelve months.

R.S.S. 1909, c.142, s.51 (redrawn); R.S.S. 1920, c.198, s.25.

Service of appointment

26 Any person liable to be examined under section 23 may be served with an appointment signed by the examiner mentioned in such section or a copy thereof, and where the examination is to take place under an order also with a copy of the order; such service to be made at least forty-eight hours before the time appointed for the examination; and the person to be examined is to be paid the same fees as a witness.

R.S.S. 1909, c.142, s.52; R.S.S. 1920, c.198, s.26.

Conduct examination

27 The examination under section 23 shall be conducted in the same manner as in the case of an oral examination of an opposite party in a suit or action.

R.S.S. 1909, c.142, s.53; R.S.S. 1920, c.198, s.27.

Compelling attendance and production of books

28 Any person liable to be examined under section 23 may be compelled to attend and testify and produce books and documents in the same manner and subject to the same rules of examination and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined as in the case of a witness in an action in the court.

R.S.S. 1909, c.142, s.54; R.S.S. 1920, c.198, s.28.

Examination evidence and production of documents

29(1) In case any person has or is believed or suspected production of to have in his possession or power any of the vendor's property or any book, document or paper of any kind relating in whole or in part to the vendor his dealings or property, such person may upon resolution passed by a majority vote of the creditors present or represented at a regularly called meeting of the creditors of the vendor (exclusive of such person if he is a creditor) be required by the trust company to produce such books, documents or papers for the information of such trust company or to deliver over to it any such property of the vendor.

(2) In case such person fails to produce the said book, document or other paper or to deliver over such property within four days of his being served with a copy of the said resolution and a request of the company in that behalf, or in case the company is not satisfied that full production or delivery has been made, the company may without an order examine the said person before any of the officers mentioned in section 23 touching any such property or document or other paper which he is supposed to have received or touching his receipt thereof.

(3) Any such person may be compelled to attend and testify and to produce upon his examination any book, document or other paper which under this section he is liable to produce, in the same manner and subject to the same rules of examination and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined as in the case of a witness in an action in the court.

R.S.S. 1909, c.142, s.55 (redrawn); R.S.S. 1920, c.198, s.29.

GENERAL**Fees**

30(1) The fees or commission of any trust company for services under this Act shall not exceed three per cent of the total amount of creditors' claims paid by it and shall together with any disbursements be paid by deduction from the moneys to be received by the said creditors and shall in no event be charged to the debtor.

No preference or priority

(2) From and after the furnishing of the statement and declaration mentioned in section 5 no preference or priority shall be obtainable by any creditor by attachment, garnishee process or otherwise.

1913, c.34, s.6 (in part) (redrawn); R.S.S. 1920, c.198, s.30.

Sale void against creditors unless Act complied with

31 In case the provisions of this Act have not been complied with then such sale, barter or exchange shall be deemed fraudulent and void as against the creditors of the vendor; and every payment made on account of the purchase price, and every delivery of any note or notes or other security therefor, and every transfer, conveyance and incumbrance of property by the purchaser, shall be fraudulent and void, as between the purchaser and the creditors of the vendor, unless all creditors of the vendor are paid in full:

Provided, however, that notwithstanding such sale, barter or exchange shall be void as against the creditors of the vendor, so as to render the goods, wares, merchandise and fixtures liable to satisfy their claims, the purchaser shall nevertheless continue to be indebted to the vendor in the full amount of the purchase price in the case of a sale, and in the full value of such goods, wares, merchandise and fixtures in the case of barter or exchange, so that such indebtedness may be attached by the creditors of the vendor; and the purchaser shall also be a trustee of such goods, wares, merchandise and fixtures for the benefit of the creditors of the vendor, and shall be personally liable to account to them for all and any moneys or security realised, or taken by him from, out of, or on account of the sale or other disposition by him of such goods, wares, merchandise and fixtures, or any part thereof.

1913, c.34, s.7; R.S.S. 1920, c.198, s.31.

Burden of proof on purchaser

32 In any action, issue or proceeding wherein a sale in bulk is attacked, the burden of proof that the provisions of this Act have been complied with by the purchaser shall rest upon him.

1913, c.34, s.8; R.S.S. 1920, c.198, s.32.

SCHEDULE**FORM A**

(Sections 5 and 80)

Statement showing names and addresses of all creditors
of _____.

Names of creditors	Post office address	Nature of indebtedness	Amount	When due

STATUTORY DECLARATION

I, _____ of _____ in the province of Saskatchewan, do solemnly declare that the above is a true and correct statement of the names and addresses of all _____ creditors and shows correctly the amount of the indebtedness and liability due, owing, payable or accruing due or to become due and payable by _____ to each of said creditors (*if the declaration is made by an agent add, "I am the duly authorised agent of the vendor, and have a personal knowledge of the matters herein declared to."*) or, (*if the vendor is a corporation*):

I, _____ of _____ in the Province of Saskatchewan, do solemnly declare that the above is a true and correct statement of the names and addresses of all the creditors of the _____ company and shows correctly the amount of the indebtedness or liability due, owing, payable or accruing due, or to become due and payable by such company to each of the said creditors, and that I am the _____ of the said company, and have a personal knowledge of the matters herein declared to.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of *The Canada Evidence Act*.

Declared before me at the _____
 of _____ in the Province
 of Saskatchewan, this _____
 day of _____ A.D. 19 ____.

}

.....
*A Commissioner for Oaths in and
 for the Province of Saskatchewan.*

