

UNEDITED

The Assignment of Book Debts Act

being

Chapter 356 of *The Revised Statutes of Saskatchewan, 1953*
(effective February 1, 1954).

FOR HISTORICAL REFERENCE ONLY

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 356

An Act to make Uniform the Law respecting Assignments of Book Debts

Short title

- 1 This Act may be cited as *The Assignments of Book Debts Act*.

R.S.S. 1953, c.356, s.1.

Interpretation

- 2 In this Act:

“assignee”

1. “**assignee**” means any person to whom an assignment of book debts is made;

“assignment”

2. “**assignment**” includes every legal and equitable assignment, whether absolute or by way of security, and every mortgage or other charge upon book debts;

“assignor”

3. “**assignor**” means any person making an assignment of book debts;

“book debts”

4. “**book debts**” means all accounts and debts, whether existing or future, which in the ordinary course of business would be entered in books, whether actually entered or not, and includes any part or class thereof;

“creditors”

5. “**creditors**” means creditors of the assignor, whether execution creditors or not, who become creditors before the registration of an assignment, and, for the purpose of enforcing the rights of such creditors but not otherwise, includes a creditor suing on behalf of himself and other creditors, an assignee for the general benefit of creditors, a trustee under the *Bankruptcy Act (Canada)* and a liquidator of a company under the *Winding-Up Act (Canada)* or under a provincial Act containing provisions for the winding-up of companies, without regard to the time when the creditor so suing becomes a creditor, or when the assignee, trustee or liquidator is appointed;

“proper officer”

6. “**proper officer**” means the officer in whose office assignments are required to be registered in any registration district;

“registered”

7. “**registered**” means filed in accordance with the provisions of this Act;

“registration district”

8. “**registration district**” means a district established under this Act for the registration of assignments;

“subsequent purchasers”

9. “**subsequent purchasers**” includes any person who, in good faith for valuable consideration and without notice, obtains by assignment an interest in book debts which have already been assigned;

“valuable consideration”

10. “**valuable consideration**” includes:

- (a) any consideration sufficient to support a simple contract;
- (b) an antecedent debt or liability.

R.S.S. 1940, c.289, s.2; R.S.S. 1953, c.356, s.2.

Non-application of Act**3** This Act does not apply to:

- (a) an assignment of book debts whether by way of specific or floating charge, made by a corporation engaged in a trade or business within the province and contained:
 - (i) in a trust deed or other instrument to secure bonds, debentures or debenture stock of the corporation or of any other corporation; or
 - (ii) in bonds, debentures or debenture stock of the corporation as well as in the trust deed or other instrument securing the same, or in a trust deed or other instrument securing bonds, debentures or debenture stock of any other corporation; or
 - (iii) in bonds, debentures or debenture stock or any series of bonds or debentures of the corporation not secured by a separate instrument;
- (b) an assignment of book debts due at the date of the assignment from specified debtors;
- (c) an assignment of debts growing due under specified contracts;
- (d) an assignment of book debts included in a transfer of a business made *bona fide* and for value;
- (e) an assignment of book debts, included in any authorized assignment under the *Bankruptcy Act (Canada)*;
- (f) an assignment of book debts included in an assignment of earnings under *The Farm Implement Act*.

R.S.S. 1940, c.289, s.3; R.S.S. 1953, c.356, s.3.

Registration

4(1) Save as herein provided, every assignment of book debts made by any person engaged in a trade or business shall be absolutely void, as against the creditors of the assignor and as against subsequent purchasers, unless the assignment is:

- (a) in writing;
 - (b) accompanied by an affidavit of an attesting witness or affidavits of attesting witnesses, of the execution thereof by the assignor, or by the assignors respectively, identifying the assignment and stating the date of execution by the assignor, or the respective dates of execution by the assignors, and a further affidavit of the assignee, or one of the several assignees, his or their agent, stating that the assignment was executed in good faith and for valuable consideration and not for the mere purpose of protecting the book debts therein mentioned against the creditors of the assignor or for the purpose of preventing such creditors from recovering any claims which they have against the assignor;
 - (c) registered, as provided in section 5, together with the affidavits, within thirty days of the execution of the assignment.
- (2) If there are two or more assignors, the date of execution of the assignment shall be deemed to be the date of the execution by the assignor who last executes it.

(3) Every assignment which is required to be in writing and to be registered under this Act shall, as against creditors and subsequent purchasers, take effect only from the time of the registration of the assignment.

R.S.S. 1940, c.289, s.4; R.S.S. 1953, c.356, s.4.

How registration effected

5(1) Registration of an assignment under this Act shall be effected by filing the assignment, together with the required affidavits, within thirty days from its execution, in the office of the proper officer of a registration district determined in accordance with the following rules:

- (a) where the assignor is a corporation incorporated under the laws of the province, in the registration district in which the head office or registered office is situated;
- (b) where the assignor is an extra-provincial corporation having a head office or registered office within the province, in the registration district in which the head office or registered office is situated;
- (c) where the assignor is an extra-provincial corporation not having a head office or registered office within the province, in the registration district of Regina;
- (d) where the assignor is not a corporation, in the registration district in which the assignor carries on business at the time of the execution of the assignment;
- (e) where the assignor is not a corporation and at the time of the execution of the assignment carries on business in different registration districts, in any such registration district, and by filing a duplicate original of the assignment and affidavits, or a copy thereof certified by the proper officer of that registration district, in each of the other registration districts.

(2) The proper officer shall cause every assignment or copy thereof filed in his office to be numbered and shall endorse thereon the time of registration thereof and shall enter in alphabetical order in a register kept by him the name of the assignor in each such instrument with the number endorsed thereon opposite to each name.

(3) Where the time for registration of an assignment or other document expires on a Sunday or other day on which the office in which the registration is to be made is closed, the registration shall, with respect to the time of registration, be valid if made on the next following day on which the office is open.

R.S.S. 1940, c.289, s.5; R.S.S. 1953, c.356, s.5.

Discharge

6(1) A registered assignment may be discharged in whole or in part by the registration in the office in which the same is registered of a certificate of discharge, signed by the assignee, his executors, administrators or assigns, and accompanied by an affidavit of an attesting witness of the due execution thereof.

(2) The proper officer in whose office a certificate of discharge, accompanied by the affidavit of execution, is registered shall note the fact of such discharge against each entry in the books of his office respecting the registration of the assignment and shall make a like notation upon the assignment or copy registered in his office.

(3) If there are two or more assignors residing in different registration districts affected by the discharge, the registration may be effected either by filing a duplicate or other original of the certificate of discharge and affidavit of execution in the office of the proper officer in each of the registration districts, or by filing the certificate of discharge and affidavit of execution in one of the registration districts and by filing a certificate of the entry of the discharge therein, signed by the proper officer of that registration district in the office of the proper officer of each of the other registration districts, and each proper officer shall make the like notations of the discharge in the records of his office as are provided by subsection (2).

(4) The proper officer in whose office the certificate of discharge is registered shall, on request, furnish a certificate of the entry of the discharge in the records of his office.

R.S.S. 1940, c.289, s.6; R.S.S. 1953, c.356, s.6.

Inspection of records

7 Upon payment of the prescribed fees every person shall have access to and be entitled to inspect the books of any proper officer containing records or entries of assignments or documents registered or filed under the provisions of this Act; and no person shall be required, as a condition of his right thereto, to disclose the name of the person in respect of whom such access or inspection is sought; and every proper officer shall, upon request accompanied by payment of the prescribed fees, produce for inspection any assignment or document so registered or filed in his office.

R.S.S. 1940, c.289, s.7; R.S.S. 1953, c.356, s.7.

Registration districts and offices

8(1) For the purpose of registration of assignments or other documents, each judicial district in the province shall be a registration district and the registration clerk whose office is situated within a registration district shall be the proper officer for the registration of assignments or documents in that registration district.

(2) In the event of the establishment of a new judicial district all assignments registered within such district shall continue to be as valid and effectual in all respects as they would have been if the new district had not been established.

R.S.S. 1940, c.289, s.8; R.S.S. 1953, c.356, s.8.

Taking of affidavits

9(1) Affidavits required by this Act may be taken and made before the proper officer of any registration district or before any person, whether within or outside the province, authorized to take affidavits in or concerning any cause, matter, or thing pending in any court in the province.

(2) A registered assignment or other document shall not be held to be defective or void solely on the ground that any affidavit required by this Act was taken and made before a solicitor for any of the parties to the assignment or other document, or before a partner of such solicitor, or before a clerk in the office of such solicitor.

R.S.S. 1940, c.289, s.9; R.S.S. 1953, c.356, s.9.

Affidavit in case of death of assignee

10 Any affidavit required by this Act to be made by an assignee may, in the event of his death, be made by his executor or administrator or by any of his next of kin or by the duly authorized agent of the executor or administrator.

R.S.S. 1940, c.289, s.10; R.S.S. 1953, c.356, s.10.

Affidavit on behalf of corporation

11 Where the assignee is a corporation, every affidavit corporation required or permitted by this Act to be made or given by the corporation as such assignee may be made or given by any officer, employee or agent of the corporation.

R.S.S. 1940, c.289, s.11; R.S.S. 1953, c.356, s.11.

Affidavit of agent or officer

12 An affidavit made for the purposes of this Act by the agent of the assignee, or of an executor or administrator, or by an officer, employee or agent of a corporation, shall state that the deponent is aware of the circumstances connected with the assignment, and that he has a personal knowledge of the facts deposed to.

R.S.S. 1940, c.289, s.12; R.S.S. 1953, c.356, s.12.

No affidavit of execution by corporation

13 Where an assignment or certificate of discharge or other document has been executed by a corporation under the provisions of this Act, no affidavit of an attesting witness shall be required.

R.S.S. 1940, c.289, s.13; R.S.S. 1953, c.356, s.13.

Proof of execution otherwise than by affidavit

14 If, before the making of an affidavit of execution required by this Act, the attesting witness to an assignment, certificate of discharge or other document dies or leaves the province, or becomes incapable of making or refuses to make the affidavit, a judge of the Court of Queen's Bench in cases falling under clause (e) of subsection (1) of section 5, and in other cases the judge of the district court of the judicial district in which the proper registration office is situated, may make an order permitting the registration of the assignment, certificate of discharge or other document, upon such proof of its due execution and attestation as he by the order may require and allow. The order, or a copy thereof, shall be annexed to the assignment, certificate or discharge or other document and filed therewith; and the registration of the assignment, certificate of discharge or other document, under and in compliance with the terms of the order, shall have the like effect as the registration thereof with the affidavit of execution required by this Act.

R.S.S. 1940, c.289, s.14; R.S.S. 1953, c.356, s.14.

Rectification of omissions and mis-statements

15 Subject to the rights of other persons accrued by reason of any omission or mis-statement referred to in this section, a judge of the Court of Queen's Bench in cases falling under clause (e) of subsection (1) of section 5, and in other cases the judge of the district court of the judicial district in which the proper registration office is situated, on being satisfied that the omission to register an assignment within the time prescribed by this Act, or any omission or mis-statement in any document filed under this Act, was accidental or due to inadvertence or impossibility, or other sufficient cause, may, in his discretion, extend the time for registration or order the omission or mis-statement to be rectified, on such terms and conditions, if any, as to security, notice by advertisement or otherwise, or as to any other matter or thing, as the judge thinks fit to direct. The order, or a copy thereof, made under this section shall be annexed to the assignment or copy thereof on file or tendered for registration, and appropriate entries shall be made in the register.

R.S.S. 1940, c.289, s.15; R.S.S. 1953, c.356, s.15.

Defects and irregularities

16 No defect or irregularity in the execution or attestation of an assignment or other document; no defect, irregularity or omission in an affidavit accompanying an assignment or filed in connection with its registration; and no error of a clerical nature or in an immaterial or non-essential part of an assignment shall invalidate or destroy the effect of the assignment or the registration thereof, unless, in the opinion of the court or judge before whom a question relating thereto is tried, the defect, irregularity, omission or error has actually misled some person whose interests are affected by the assignment.

R.S.S. 1940, c.289, s.16; R.S.S. 1953, c.356, s.16.

Evidence of records

17 Copies of an assignment, certificate of discharge or other document registered or filed under this Act certified by the registration clerk shall be received as *prima facie* evidence for all purposes as if the original assignment or document were produced, and also as *prima facie* evidence of the execution of the original assignment or document according to the purport of such copy, and the clerk's certificate shall also be *prima facie* evidence of the date and hour of registration and filing.

R.S.S. 1940, c.289, s.17; R.S.S. 1953, c.356, s.17.

Fees

18 The fees payable for services under this Act shall be such as may be prescribed by the Lieutenant Governor in Council.

R.S.S. 1940, c.289, s.18; R.S.S. 1953, c.356, s.18

Uniform construction of Act

19 This Act shall be so interpreted and construed as to effect its general purposes of making uniform the law of the provinces that enact it.

R.S.S. 1940, c.289, s.19; R.S.S. 1953, c.356, s.19.