

Reprint
as at 1 September 2017



Mercantile Law Act 1908

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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Enactments consolidated

An Act to consolidate certain enactments of the Parliament of New Zealand relating to trade and commerce

Title: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

1 Short Title

(1) The Short Title of this Act is the Mercantile Law Act 1908.

Enactments consolidated

(2) This Act is a consolidation of the enactments mentioned in the Schedule.

- (3) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

Application of Parts 2, 3, and 4

[Repealed]

- (4) *[Repealed]*

- (5) *[Repealed]*

Compare: 1889 No 11 s 2

Section 1(4) heading: repealed, on 1 September 2017, pursuant to section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 1(4): repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 1(5): repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

Part 1

Mercantile agents

[Repealed]

Part 1: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

2 Interpretation

[Repealed]

Section 2: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

Dispositions by mercantile agents

[Repealed]

Heading: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

3 Powers of mercantile agent with respect to disposition of goods

[Repealed]

Section 3: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

4 Effect of pledges of documents of title

[Repealed]

Section 4: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

5 Pledge for antecedent debt

[Repealed]

Section 5: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

6 Rights acquired by exchange of goods or documents

[Repealed]

Section 6: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

7 Agreements through clerks, etc

[Repealed]

Section 7: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

8 Provisions as to consignors and consignees

[Repealed]

Section 8: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

9 Effect of transfer of document of title to goods on vendor's lien, and right of stoppage *in transitu*

[Repealed]

Section 9: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

Miscellaneous

[Repealed]

Heading: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

10 Mode of transferring documents

[Repealed]

Section 10: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

11 Saving of rights of true owner

[Repealed]

Section 11: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

12 Saving for common-law powers of mercantile agent

[Repealed]

Section 12: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

Part 2

Bills of lading

[Repealed]

Part 2: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

13 Interpretation

[Repealed]

Section 13: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

13A Application of this Part

[Repealed]

Section 13A: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

13B Rights under shipping documents

[Repealed]

Section 13B: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

13C Liabilities under shipping documents

[Repealed]

Section 13C: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

14 Right of stoppage *in transitu*, or claims for freight, not affected

[Repealed]

Section 14: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

15 Bill of lading in hands of consignee, etc, conclusive evidence as against master, etc

[Repealed]

Section 15: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

16 When master may be exonerated from liability

[Repealed]

Section 16: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

Part 3 **Carriers**

[Repealed]

Part 3: repealed, on 2 December 1948, by section 11 of the Carriers Act 1948 (1948 No 66).

17 Carriers liable for neglect or default in carriage of goods, notwithstanding notice to contrary

[Repealed]

Section 17: repealed, on 2 December 1948, by section 11 of the Carriers Act 1948 (1948 No 66).

18 Exception of conditions for carrying adjudged by a court or Judge to be reasonable

[Repealed]

Section 18: repealed, on 2 December 1948, by section 11 of the Carriers Act 1948 (1948 No 66).

19 Special contracts not binding unless signed

[Repealed]

Section 19: repealed, on 2 December 1948, by section 11 of the Carriers Act 1948 (1948 No 66).

20 Carriers not liable in certain cases beyond limited amount unless value declared and extra payment made

[Repealed]

Section 20: repealed, on 2 December 1948, by section 11 of the Carriers Act 1948 (1948 No 66).

Part 4 **Delivery of goods, and lien for freight**

[Repealed]

Part 4: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

21 Interpretation

[Repealed]

Section 21: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

22 Power to shipowner to enter and land goods in default of entry and landing by owner of goods

[Repealed]

Section 22: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

23 If when goods are landed the shipowner gives notice for that purpose the lien for freight is to continue

[Repealed]

Section 23: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

24 Lien to be discharged on deposit with warehouse owner

[Repealed]

Section 24: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

25 Warehouse owner may at the end of 15 days, if no notice is given, pay deposit to shipowner

[Repealed]

Section 25: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

26 Course to be taken if notice to retain is given

[Repealed]

Section 26: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

27 After 90 days warehouse owner may sell goods by public auction

[Repealed]

Section 27: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

28 Notices of sale to be given

[Repealed]

Section 28: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

29 Money arising from sale, how to be applied

[Repealed]

Section 29: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

30 Warehouse owner's rent and expenses

[Repealed]

Section 30: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

31 Warehouse owner's protection

[Repealed]

Section 31: repealed, on 1 September 2017, by section 345(2) of the Contract and Commercial Law Act 2017 (2017 No 5).

Part 5

Unpaid vendors of warehoused goods

32 Interpretation

In this Part, if not inconsistent with the context,—

bonded warehouse means a building approved and appointed by the Minister of Customs for the warehousing of goods without payment of duty on the first entry thereof

free warehouse means a building licensed by the Minister of Customs to be used exclusively for the storage of any goods not liable to the payment of Customs duties, or whereon such duties have been paid previously to storage

goods includes wares and merchandise of every description

pledge means any deposit and delivery of warrants or certificates with intent that the holder thereof may dispose of the goods to which such warrants or certificates relate in the event of the terms of the deposit not being fulfilled by the persons making the same

pledgee means the person in whose favour the deposit of the warrants or certificates is made

sale means any absolute disposition of goods, whether for payment to be made in cash or upon credit

subpurchaser means any person purchasing from or under the person to whom the original bonder or storer of goods in a bonded or free warehouse sold the same and delivered the warrants or certificates relating thereto

warehouse keeper means the person having the management of any bonded or free warehouse, whether the warehouseman himself or a person employed by him

warehouse keeper's book means the book wherein the warehouse keeper enters a list of all goods received in and delivered out of the warehouse managed by him or her

warehouseman means the person for whose immediate benefit and under whose control the storage of goods in a bonded or free warehouse is carried on

warrants or **certificates** means any receipt or undertaking issued by or on behalf of the warehouseman, and signed by him or on his behalf, acknowledging the receipt in a specified warehouse of goods to be held on behalf of a person named and described, giving the particulars of the goods stored, the marks or brands (if any) thereon, the terms upon which the goods are stored, and con-

taining an undertaking on the part of the warehouseman to deliver the same to the endorsee, holder, or bearer of the warrant or certificate.

Compare: 1880 No 12 s 85

33 Unpaid vendor's lien determined on delivery of bond warrants to bona fide holder for value

In all cases where warrants or certificates for goods liable to the payment of Customs duties are issued, importing a receipt of such goods by or on behalf of any bonded warehouseman and an undertaking to deliver the same to the holder of the warrants or certificates on presentation and demand, and on payment of the duties, rents, and charges lawfully demandable, and such warrants or certificates are delivered over on a sale of the goods by the person to whom the said warrants or certificates are issued by or on behalf of the warehouseman, the rights, legal and equitable, of such person, as an unpaid vendor, to stop the actual delivery of the goods comprised in and affected by such warrants or certificates shall be deemed at an end when such warrants or certificates are delivered over bona fide and for value, on either a sale or pledge of the said goods by any person purchasing from the original bonder thereof.

Compare: 1880 No 12 s 86

34 Possession of warrants prima facie evidence of ownership

On a sale or pledge of goods stored in any bonded warehouse, the possession of warrants or certificates importing a receipt and undertaking to deliver as aforesaid shall be deemed prima facie evidence of the ownership of the holder of the said warrants or certificates in the goods and merchandise affected thereby.

Compare: 1880 No 12 s 87

35 Holder of warrant entitled to delivery

Any holder of a warrant or certificate importing the obligations aforesaid shall be entitled, on request and on compliance with the terms of the contract implied by such warrants or certificates between the warehouseman and the original bonder of the goods, to have delivery thereof, or to have his or her name entered upon the books of the warehouse keeper as the owner of the said goods.

Compare: 1880 No 12 s 88

36 Registered holder of warrant deemed to be owner

Save in the event of fraud being proved in the procurement of the entry of the name of the holder of the certificates or warrants in the warehouse keeper's books, the person whose name is so entered shall be conclusively deemed the then owner in possession of the said goods, subject to the provisions hereinafter contained.

Compare: 1880 No 12 s 89

37 The registered transferee of warrant to lose his or her right of lien if warrant afterwards delivered over bona fide and for value

In the event of any transfer being entered in the books of the warehouse keeper, and the then owner of bonded goods delivers over the warrants or certificates relating to or affecting the same to any other person on a sale or pledge of the said goods, and such warrants or certificates are afterwards delivered over bona fide and for value to any subpurchaser or pledgee by the person receiving the same from the owner whose name is entered as aforesaid, the rights legal and equitable of the said owner as an unpaid vendor to stop the actual delivery of the goods comprised in and affected by such warrants or certificates shall be deemed at an end as from the time of the bona fide delivery of the warrants or certificates to the first subpurchaser or pledgee for value.

Compare: 1880 No 12 s 90

38 Warrants of free goods put on the same footing as bond warrants

Where goods are stored in any free warehouse, and warrants or certificates, importing on behalf of the warehouseman a receipt of the goods and an undertaking to deliver the same on presentation and demand and on payment of the rents and charges lawfully demandable, are delivered to and accepted by the person originally warehousing such goods, the respective rights and liabilities of the warehouseman and warehouse keeper, and of the persons to whom the said warrants or certificates were originally issued, or are afterwards delivered or redelivered upon a resale or pledge bona fide and for value of the goods, or in whose name the ownership may be transferred in the books of the warehouse keeper, or who afterwards acquires possession bona fide and for value of the said warrants or certificates, shall be the same in all respects as is hereinbefore provided with regard to goods liable to the payment of Customs duties and stored in a bonded warehouse.

Compare: 1880 No 12 s 91

39 Provisions same in respect of bonded and free warehouses

The provisions herein relative to the rights of or incident to the ownership of goods stored in a bonded warehouse shall be as applicable to the ownership of goods stored in a free warehouse as if such provisions had been respectively repeated and expressly applied thereto.

Compare: 1880 No 12 s 92

40 Vendor's lien not prejudiced save as against bona fide subpurchaser or pledgee for value

Nothing herein shall in any way prejudice the rights of an unpaid vendor of goods to stop delivery thereof until payment of the price payable to him or her whenever such rights may be lawfully exercised without detriment or injury to

any subpurchaser or pledgee bona fide and for value, or to the rights of any trustee in bankruptcy claiming under the purchaser from the unpaid vendor.

Compare: 1880 No 12 s 93

41 Goods not to be transferred in books of warehouseman except on production of warrant

- (1) No entry shall be made in the books of any warehouseman or keeper of any bonded or free warehouse transferring the ownership or possession of any goods, unless the person applying for such entry to be made produces and delivers up the warrants or certificates originally issued.
- (2) Thereupon the warehouseman or the keeper of his warehouse may cancel the said warrants or certificates and issue others in lieu thereof, and such new warrants or certificates may in like manner be cancelled and others issued in substitution thereof.

Compare: 1880 No 12 s 94

42 Special contracts restraining negotiability of warrants permitted

- (1) Notwithstanding anything herein, the person originally storing goods in any bonded or free warehouse, and the warehouseman thereof, may enter into a special contract restraining the negotiability of the warrants or certificates issued in respect of the said goods, or providing some special method of transfer of the property in and possession of such goods.
- (2) In every such case the terms of such special contract shall be incorporated in and made to appear upon the face of the said warrants or certificates, so that the holder thereof may have his or her attention expressly directed thereto.

Compare: 1880 No 12 ss 95, 96

43 Warehouseman's lien not prejudiced by sale or transfer of goods

No transfer of the ownership or possession of the goods stored in any bonded or free warehouse shall in any way prejudicially affect the lien or rights of the warehouseman in respect of any rent or charges previously incurred or become payable on account of the goods the ownership or possession whereof may be so transferred as aforesaid.

Compare: 1880 No 12 s 97

Part 6
Book purchasers protection

[Repealed]

Part 6: repealed, on 17 June 2014, pursuant to section 41(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

44 When agreement for purchase of books to be void

[Repealed]

Section 44: repealed, on 17 June 2014, by section 41(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

Schedule
Enactments consolidated

Book Purchasers Protection Act 1891 (1891 No 21)

Mercantile Agents Act 1890 (1890 No 11): except sections 10 and 11

Mercantile Law Act 1880 (1880 No 12): except sections 4, 41, 43, 45 to 51, 59 to 77,
and 81 to 83

Mercantile Law Act Amendment Act 1889 (1889 No 11)

Reprints notes

1 *General*

This is a reprint of the Mercantile Law Act 1908 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Contract and Commercial Law Act 2017 (2017 No 5): section 345(2)

Fair Trading Amendment Act 2013 (2013 No 143): section 41(2)

Constitution Act 1986 (1986 No 114): section 29(2)

Carriers Act 1948 (1948 No 66): section 11