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# Revised Statutes of Newfoundland 1990

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## CHAPTER W-1

### AN ACT RESPECTING WAREHOUSE RECEIPTS

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### Short title

1. This Act may be cited as the *Warehouse Receipts Act*.

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### Definitions

2. In this Act

- (a) "action" includes a counterclaim and a set-off;
- (b) "fungible goods" means goods of which a unit is, from its nature or by mercantile custom, treated as the equivalent of another unit;
- (c) "goods" includes personal property other than things in action and money;
- (d) "holder", as applied to
  - (i) a negotiable receipt, means a person who has possession of the receipt and a right of property in it, and
  - (ii) a non-negotiable receipt, means a person named in it as the person to whom the goods are to be delivered or his or her transferee;
- (e) "negotiable receipt" means a receipt in which it is stated that the goods specified in it will be delivered to bearer or to the order of a named person;
- (f) "non-negotiable receipt" means a receipt in which it is stated that the goods specified in it will be delivered to the holder of it;
- (g) "purchaser" includes a mortgagee and pledgee;
- (h) "receipt" means a warehouse receipt;
- (i) "to purchase" includes to take as mortgagee or as pledgee;
- (j) "warehouse receipt" means a written acknowledgement by a warehouse of the

receipt for storing of goods not his or her own; and

(k) "warehouser" means a person who receives goods for storing as a bailee for hire.

RSN1970 c392 s2

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### **Form of receipts**

**3.** (1) A receipt shall contain

- (a) the location of the warehouse or other place where the goods are stored;
- (b) the name of the person by whom or on whose behalf the goods are deposited;
- (c) the date of issue of the receipt;
- (d) a statement
  - (i) that the goods received will be delivered to the holder of it, or
  - (ii) that the goods received will be delivered to bearer or to the order of a named person;
- (e) the rate of storing charges;
- (f) a description of the goods or of the packages containing them;
- (g) the signature of the warehouser or his or her authorized agent; and
- (h) a statement of the amount of an advance made and of a liability incurred for which the warehouser claims a lien.

(2) Where a warehouser omits from a negotiable receipt the particulars set out in subsection (1) he or she is liable for damage caused by the omission.

(3) A receipt shall, notwithstanding the omission of the particulars set out in subsection (1), be considered to be a warehouse receipt.

(4) A warehouser may insert in a receipt issued by him or her another term or condition that

- (a) is not contrary to this Act; and
- (b) does not impair his or her obligation to exercise the care and diligence in regard to the goods that a careful and vigilant owner of similar goods would exercise in the custody of them in similar circumstances.

(5) A warehouse receipt, when delivered to the owner or bailor of the goods or mailed to him or her at his or her address last known to the warehouser, constitutes a contract between the owner or bailor and the warehouser.

(6) An owner or bailor may, by written notice given within 20 days after the delivery or mailing, notify the warehouser that he or she does not accept the contract and the owner or bailor shall remove the goods deposited, subject to the warehouser's lien for charges, and where notice is not given the warehouse receipt so delivered or mailed constitutes the contract.

RSN1970 c392 s3

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### Receipts

4. Words in a negotiable receipt limiting its negotiability are void.

RSN1970 c392 s4

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### Marking of duplicate receipts

5. (1) More than 1 receipt shall not be issued in respect of the same goods except in case of a lost or destroyed receipt, in which case the new receipt, where 1 is given,

(a) shall bear the same date as the original; and

(b) shall be plainly marked on its face "Duplicate".

(2) A warehouse is liable for damages caused by his or her failure to carry out subsection (1) to a person who purchases the subsequent receipt for valuable consideration, believing it to be an original, even where the purchase is after the delivery of the goods by the warehouse to the holder of the original receipt.

(3) A receipt upon which the word "Duplicate" is plainly marked is a representation and warranty by the warehouse that it is an accurate copy of a receipt properly issued and uncanceled at the date of the issue of the duplicate.

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### Marking of non-negotiable receipts

6. (1) A warehouse who issues a non-negotiable receipt shall mark plainly upon its face the words "non-negotiable" or "not negotiable".

(2) Where a warehouse does not comply with subsection (1), a holder of the receipt who purchases it for valuable consideration believing it to be negotiable may, at his or her option, treat the receipt as

(a) vesting in the purchaser rights attaching to a negotiable receipt; and

(b) imposing upon the warehouse the same liabilities he or she would have incurred had the receipt been negotiable,

and the warehouse is liable accordingly.

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### Duty to deliver

7. (1) A warehouse in the absence of lawful excuse shall deliver the goods referred to

(a) in the case of a negotiable receipt, to the bearer of it upon demand made by the bearer and upon the bearer

- (i) satisfying the warehouse's lien,
  - (ii) surrendering the receipt with the endorsements that are necessary for the negotiation of the receipt, and
  - (iii) acknowledging in writing the delivery of the goods; or
- (b) in the case of a non-negotiable receipt, to the holder of it upon the holder
- (i) satisfying the warehouse's lien, and
  - (ii) acknowledging in writing the delivery of the goods.

(2) Where a warehouse refuses or fails to deliver the goods in compliance with subsection (1) the burden lies upon the warehouse to establish the existence of a lawful excuse for the refusal or failure.

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### **Delivery on presentation**

**8.** Where a person is in possession of a negotiable receipt

- (a) that has been endorsed to him or her or endorsed in blank; or
- (b) by the terms of which the goods are deliverable to the person or his or her order or to bearer,

where delivery is made in good faith and without notice of a defect in the title of that person the warehouse is justified in delivering the goods to that person.

RSN1970 c392 s8

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### **Negotiable receipts must be cancelled**

**9.** (1) Where a warehouse delivers goods for which he or she has issued a negotiable receipt and fails to take up and cancel the receipt, the warehouse is liable, for failure to deliver the goods, to anyone who purchases the receipt in good faith and for valuable consideration, whether the purchaser acquired title to the receipt before or after delivery of the goods by the warehouse.

(2) Where a warehouse delivers part of the goods for which he or she has issued a negotiable receipt and fails

- (a) to take up and cancel the receipt; or
- (b) to place plainly upon it a statement of what goods or packages have been delivered,

the warehouse is liable, for failure to deliver all the goods specified in the receipt, to anyone who purchases the receipt in good faith and for valuable consideration, whether the purchaser acquired title to the receipt before or after the delivery of a portion of the goods.

RSN1970 c392 s9

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**Lost or destroyed receipts**

**10.** Where a negotiable receipt has been lost or destroyed, a judge of the Trial Division may, upon application after notice to the warehouse by the person lawfully entitled to possession of the goods and upon satisfactory proof of the loss or destruction of the receipt, order the delivery of the goods upon the giving of a bond with sufficient sureties to be approved in accordance with the practice of the court to indemnify the warehouse against liability, cost or expenses he or she may be under because of the original receipt remaining outstanding and the warehouse is entitled to his or her costs of the application.

RSN1970 c392 s10; 1986 c42 Sch A

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**Validity of claims**

**11.** Where a warehouse has information that a person other than the holder of a receipt claims to be the owner of or entitled to the goods he or she may refuse to deliver the goods until the warehouse has had a reasonable time, not exceeding 10 days, to

- (a) ascertain the validity of the adverse claim; or
- (b) begin interpleader proceedings.

RSN1970 c392 s11

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**Conclusiveness of negotiable receipt**

**12.** A negotiable receipt is, in the hands of a holder who has purchased it for valuable consideration, conclusive evidence of the receipt by the warehouse of the goods described as against the warehouse and persons signing the receipt on his or her behalf, notwithstanding that the goods or some part of them may not have been so received, unless the holder of the receipt has actual notice at the time of receiving it that the goods have not in fact been received.

RSN1970 c392 s12

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**Description of goods**

**13.** Where goods are described in a receipt merely by a statement

- (a) of certain marks or labels on the goods or on the packages containing them;
- (b) that the goods are said by the depositor to be goods of a certain kind; or
- (c) that the packages containing the goods are said by the depositor to contain goods of a certain kind,

or by a statement of import similar to that of paragraph (a), (b) or (c), the statement does not impose liability on the warehouse in respect of the nature, kind or quality of the goods, but shall be considered to be a representation by the warehouse either

- (d) that the marks or labels were in fact on the goods or packages;
- (e) that the goods were in fact described by the depositor as stated; or

(f) that the packages containing the goods were in fact described by the depositor as containing goods of a certain kind.

RSN1970 c392 s13

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#### **Liability for goods**

**14.** A warehouse is liable for loss of or injury to goods caused by his or her failure to exercise the care and diligence in regard to them that a careful and vigilant owner of similar goods would exercise in the custody of them in similar circumstances.

RSN1970 c392 s14

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#### **Co-mingled goods**

**15.** Where authorized by agreement or by custom, a warehouse may mingle fungible goods with other goods of the same kind and grade and in that case

(a) the holder of the receipts for the mingled goods owns the entire mass in common; and

(b) each holder is entitled to that proportion of them that the quantity shown by the holder's receipt to have been deposited bears to the whole.

RSN1970 c392 s15

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#### **Levy upon goods**

**16.** Where goods are delivered to a warehouse by the owner or person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable receipt is issued for them, they cannot while in the possession of the warehouse be levied under an execution, unless the receipt is 1st surrendered to the warehouse.

RSN1970 c392 s16

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#### **Receipt must state charges**

**17.** Where a negotiable receipt is issued for goods, the warehouse has no lien on the goods except for charges for storing of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed.

RSN1970 c392 s17

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#### **Perishable goods**

**18.** (1) Where goods

(a) are of a perishable nature; or

(b) by keeping will deteriorate greatly in value or injure other property,

the warehouseman may give notice that is reasonable and possible under the circumstances

(c) to the holder of the receipt for the goods where the name and address of the holder are known to the warehouseman; or

(d) where the name and address of the holder are not known to him or her then to the depositor,

requiring him or her to satisfy the lien upon the goods and to remove them from the warehouse and, on the failure of the person to whom the notice is given to satisfy the lien and remove the goods within the time specified in the notice, the warehouseman may sell the goods at public auction or private sale without advertising.

(2) The notice referred to in subsection (1) may be given by sending it by registered mail addressed to the person to whom it is to be given at the person's last known place of address and the notice shall be considered to be given on the day following the mailing.

(3) Where the warehouseman after a reasonable effort is unable to sell the goods, he or she may dispose of them in a manner he or she thinks appropriate and shall not incur liability because of the disposal.

(4) The warehouseman shall from the proceeds of a sale made under this section,

(a) satisfy his or her lien; and

(b) hold the balance in trust for the holder of the receipt.

RSN1970 c392 s18

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#### **Effect of sale**

**19.** Notwithstanding section 9, where goods have been lawfully sold to satisfy a warehouseman's lien or have been lawfully sold or disposed of under section 18, the warehouseman is not liable for failure to deliver the goods to the holder of the receipt.

RSN1970 c392 s19

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#### **Negotiation of receipts**

**20.** (1) A negotiable receipt may be negotiated by delivery

(a) where by the terms of the receipt the warehouseman undertakes to deliver goods to the bearer; or

(b) where by the terms of the receipt the warehouseman undertakes to deliver goods to the order of a named person and that person or a subsequent endorsee has endorsed it in blank or to bearer.

(2) Where

(a) by the terms of a negotiable receipt goods are deliverable to bearer; or

(b) a negotiable receipt has been endorsed in blank or to bearer

the receipt may be negotiated by the bearer endorsing it to a named person, and in that case the receipt shall be negotiated by

- (c) the endorsement of the endorsee or a subsequent endorsee; or
- (d) delivery where it is again endorsed in blank or to bearer.

(3) Where by the terms of a negotiable receipt the goods are deliverable to the order of a named person, the receipt may be negotiated by the endorsement of that person.

(4) An endorsement under subsection (3) may be in blank, to bearer or to a named person and where the endorsement is to a named person the receipt may be again negotiated by endorsement in blank, to bearer or to another named person and subsequent negotiation may be made in a similar manner.

RSN1970 c392 s20

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### **Transfer of receipts**

**21.** The goods covered by a non-negotiable receipt may be transferred by the holder by delivery to a purchaser or donee of the goods of a written transfer executed by the holder but the transfer shall not affect or bind the warehouseman until he or she is notified in writing of it.

RSN1970 c392 s21

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### **Rights of transferee**

**22.** A person to whom the goods covered by a non-negotiable receipt is transferred acquires

- (a) as against the transferor
  - (i) the title to the goods, and
  - (ii) the right to deposit with the warehouseman the transfer or duplicate of it or to give written notice to the warehouseman of the transfer;

and

- (b) the benefit of the obligation of the warehouseman to hold possession of the goods for him or her according to the terms of the receipt upon
  - (i) deposit of the transfer of the goods, or
  - (ii) giving written notice of the transfer and upon the warehouseman having a reasonable opportunity of verifying the transfer.

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### **Negotiated receipt**

**23.** A person to whom a negotiable receipt is negotiated acquires

- (a) the title to the goods that the person negotiating the receipt to him or her had or

had ability to transfer to a purchaser in good faith for valuable consideration;

(b) the title to the goods that the depositor or person to whose order the goods were to be delivered by the terms of receipt had or had ability to transfer to a purchaser in good faith for valuable consideration; and

(c) the benefit of the obligation of the warehouser to hold possession of the goods for him or her according to the terms of the receipt as fully as if the warehouser had contracted directly with the person.

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#### **Receipt without endorsement**

**24.** Where a negotiable receipt is transferred for valuable consideration by delivery and the endorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him or her to endorse the receipt unless a contrary intention appears and the negotiation shall take effect as of the time when the endorsement is made.

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#### **Warranties on sale of receipt**

**25.** Unless a contrary intention appears, a person who for valuable consideration negotiates or transfers a receipt by endorsement or delivery, including one who assigns for valuable consideration a claim secured by a receipt, warrants

(a) that the receipt is genuine;

(b) that he or she has a legal right to negotiate or transfer it;

(c) that he or she has no knowledge of a fact that would impair the validity of the receipt;

(d) that he or she has a right to transfer the title to the goods; and

(e) that the goods are merchantable or fit for a particular purpose whenever that warranty would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented by it.

RSN1970 c392 s25

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#### **Endorser not a guarantor**

**26.** The endorsement of a receipt does not make the endorser liable for a failure on the part of the warehouser or previous endorsers of the receipt to fulfil their respective obligations.

RSN1970 c392 s26

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#### **Negotiation not impaired by fraud**

**27.** The validity of the negotiation of a receipt is not impaired by the fact that

- (a) the negotiation was a breach of duty on the part of the person making the negotiation; or
- (b) the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to the person making the negotiation,

where the person to whom the receipt was negotiated or a person to whom the receipt was subsequently negotiated paid value for it without notice of the breach of duty or fraud, mistake or duress.

RSN1970 c392 s27

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### **Subsequent negotiations**

**28.** Where a person who has sold, mortgaged or pledged

- (a) goods that are in a warehouse and for which a negotiable receipt has been issued; or
- (b) a negotiable receipt representing goods,

continues in possession of the negotiable receipt, the subsequent negotiation of it by that person under a sale or other disposition of it to a person receiving it in good faith for valuable consideration and without notice of the previous sale, mortgage or pledge has the same effect as if a previous purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

RSN1970 c392 s28

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### **Negotiation defeats vendor's lien**

**29.** Where a negotiable receipt has been issued for goods a seller's lien or right of stopping in transit shall not defeat the rights of a purchaser for value in good faith to whom the receipt has been negotiated, whether the negotiation is before or after the notification to the warehouse who issued the receipt of the seller's claim to a lien or right of stopping in transit, and the warehouse shall not deliver the goods to an unpaid seller unless the receipt is 1st surrendered for cancellation.

RSN1970 c392 s29

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