



ANNO QUINTO

GEORGII VI REGIS.

A.D. 1941.

No. 19 of 1941.

An Act to amend the law relating to the warehousing of goods.

[Assented to 30th October, 1941.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

Short title.

1. This Act may be cited as the " Warehousemen's Liens Act, 1941 ".

Commencement.

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpretation.
Cf. Vic. 4562,
1938, s. 2.
Cf. N.S.W., 19,
1935, s. 2.

3. In this Act, unless inconsistent with the context or subject matter—

" goods " includes personal property of any kind that may be deposited for storage with a warehouseman as bailee :

" warehouseman " means a person lawfully engaged in the business of storing goods as a bailee for hire or reward.

Declaration of
warehouse-
man's lien.
Cf. Vic. 4562,
1938, s. 3.
Cf. N.S.W. 19,
1935, s. 3.

4. Subject to the provisions of section 6, every warehouseman shall have a lien on goods deposited with him for storage.

Charges
covered by
lien.

Cf. Vic. 4562,
1938, s. 4.
Cf. N.S.W. 39,
1935, s. 4.

5. The lien shall be for the amount of the warehouseman's charges, that is to say—

(a) all lawful charges for storage and preservation of the goods ;

- (b) all lawful claims for insurance, transportation, labour, weighing, packing, cooping, and other expenses in relation to the goods ; and
- (c) all reasonable charges for any notice required to be given under the provisions of this Act, and for notice and advertisement of sale, and for sale of the goods where default is made in satisfying the warehouseman's lien.

6. (1) The warehouseman shall within three months after the date of the deposit of the goods give notice of the lien—

Necessity of notice by warehouseman.
Cf. Vic. 4562, 1938, s. 5.
Cf. N.S.W. 19, 1935, s. 5.

- (a) to any person who has before the expiration of two months after the date of the deposit of the goods served upon the warehouseman a notice in the prescribed form of his claim to be the owner of the goods or of some interest therein or of whose interest the warehouseman has received notice as prescribed ;
- (b) to the grantee, or (where a transfer by the grantee has been registered in accordance with the Bills of Sales Act, 1886-1940) to the transferee, of any bill of sale relating to the goods—
 - (i.) which was granted by the person depositing the goods or by any other person of whose interest in the goods the warehouseman has knowledge ;
 - (ii.) which was registered in accordance with the Bills of Sale Act, 1886-1940, prior to the date of the deposit of the goods ; and
 - (iii.) which has not become null and void or in respect of which a discharge has not been registered ; and
- (c) to any other person of whose interest in the goods the warehouseman at any time before the expiration of two months after the date of the deposit of the goods has knowledge.

(2) The notice shall be in the prescribed form and shall contain—

- (a) a brief description of the goods ;
- (b) a statement showing the location of the warehouse where the goods are stored, the date of their deposit with the warehouseman and the name of the person by whom they were deposited ;
- (c) a statement that a lien under this Act is claimed by the warehouseman in respect of the goods ; and
- (d) such other particulars as are prescribed.

(3) The notice may be given personally or by registered post.

(4) Where the warehouseman fails to give any notice required by this section, his lien shall be void as from the expiration of the period of three months from the date of the deposit of the goods.

Power to sell
goods.
Cf. Vic. 4562,
1938, s. 6.
Cf. N.S.W. 19,
1935, s. 6.

7. (1) In addition to all other remedies provided by law for the enforcement of liens or for the recovery of warehouseman's charges a warehouseman may sell by public auction any goods upon which he has a lien for charges which have become due: Provided that regulations made under this Act may prescribe a mode of sale other than sale by public auction in the case of goods of any particular kind.

(2) The warehouseman shall give written notice of his intention to sell—

- (a) to the person liable as debtor for the charges for which the lien exists ;
- (b) to any person who has served upon the warehouseman a notice in the prescribed form of his claim to be the owner of the goods or of some interest therein or of whose interest the warehouseman has received notice as prescribed ;
- (c) to the grantee, or (where a transfer by the grantee has been registered in accordance with the Bills of Sale Act, 1886-1940) to the transferee, of any bill of sale relating to the goods—
 - (i.) which was granted by the person depositing the goods or by any other person of whose interest in the goods the warehouseman has knowledge ;
 - (ii.) which was registered in accordance with the Bills of Sale Act, 1886-1940, prior to the date of the deposit of the goods ; and
 - (iii.) which has not become null and void or in respect of which a discharge has not been registered ; and
- (d) to any other person of whose interest in the goods the warehouseman has knowledge.

(3) The notice may be given personally or by registered post.

(4) The notice shall contain—

- (a) a brief description of the goods ;
- (b) a statement showing the situation of the warehouse where the goods are stored, the date of their deposit with the warehouseman and the name of the person by whom they were deposited ;

- (c) an itemized statement of the warehouseman's charges showing the sum due at the time of the notice ;
- (d) a demand that the amount of the charges as stated in the notice and such further charges as may accrue shall be paid on or before a day mentioned, not less than one month from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination according to the due course of post if it is sent by post ; and
- (e) a statement that unless the charges are paid within the time mentioned the goods will be advertised for sale and sold by public auction, or (as the case may require) by such mode as is prescribed for goods of the kind in question, at a time and place specified in the notice.

(5) Where the charges are not paid on or before the day mentioned in the notice, an advertisement of the sale, describing the goods to be sold, and stating the time and place of the sale, shall be published at least twice with an interval between the advertisements of at least seven days in a newspaper circulating in the locality where the sale is to be held, and, if the said newspaper is not a daily newspaper, in a daily newspaper circulating in the City of Adelaide.

The sale shall be held not less than fourteen days from the date of the first publication of the advertisement.

(6) For the purpose of advertising in accordance with the provisions of this section, the warehouseman may without liability for damage take all reasonable steps (including the opening of sealed or closed boxes or packages) to ascertain the nature and description of the goods to be sold.

If pursuant to this subsection, any box or package is opened, the same shall be opened in the presence of two other persons who shall make and sign, and verify by statutory declaration, an inventory of the contents thereof.

(7) The local court of full jurisdiction nearest to the premises of the warehouseman may, on the application of any person having any interest in the goods made in the manner prescribed at any time after the service of the notice, make an order staying further proceedings under this section for such period and on such terms as it deems just.

(8) This section shall apply only to cases in which some part of the charges in arrear are in respect of a period more than twelve months prior to the date upon which the notice of intention to sell is given.

Provision for
payment of
charges before
sale.
Cf. Vic. 4562,
1938, s. 7.
Cf. N.S.W. 19,
1935, s. 9.

8. (1) If at any time before the goods are sold any person claiming any interest or right of possession in the goods or, as the case may be, in any of the goods pays to the warehouseman the amount necessary to satisfy his lien on the goods to which the claim relates, including the expenses incurred in serving notices and advertising and preparing for the sale up to the time of payment, no further proceedings for the sale of the goods in respect of which the payment is made shall be taken. If the person aforesaid claims an interest or right of possession in some only of the goods, the expenses payable by him as aforesaid shall be a part of the expenses which bears the same proportion to the total expenses as the amount otherwise necessary to satisfy the lien on the goods claimed bears to the total amount otherwise necessary to satisfy the lien on all the goods.

(2) If, after payment as aforesaid, any such goods are left deposited with the warehouseman for storage, the goods shall, for the purposes of this Act, be deemed to have been again deposited with the warehouseman at the date of the payment.

(3) If any payment is made as aforesaid by a person who has an interest in any such goods and the said person is not the person who is primarily liable for the charges for which the lien on the goods exists, the person by whom the payment was made may recover the amount of the payment, together with interest thereon at the rate of four pounds per centum per annum calculated from the date of payment, as a debt due to him from the said person so primarily liable.

Notices.
Cf. Vic. 4562,
1938, s. 8.
Cf. N.S.W. 19,
1935, s. 7.

9. (1) Where a notice of lien under the provisions of section 6, or a notice of intention to sell under the provisions of section 7 has been given, but such provisions have not been strictly complied with, then if any court before which any question respecting the notice is tried or inquired into considers that such provisions have been substantially complied with, or that it would be inequitable that the lien or sale should be deemed to be void by reason of such non-compliance, no objection to the sufficiency of the notice shall in any such case be allowed to prevail so as to release or discharge the goods from the lien or vitiate the sale.

(2) A notice given under this Act by registered post shall be deemed to be sufficiently addressed to the person to whom it is sent if it is addressed to him at the last address of such person known to the warehouseman.

(3) Regulations made under this Act may provide for the giving of notice by advertisement in cases where any person to whom notice may be given pursuant to section 6 or section 7 is unknown to the warehouseman, or where no address of any such person is known to the warehouseman, and for the ascertainment of the day upon which such notice shall be deemed to have been given, and for any other matter relating to such advertisement.

Any notice given by advertisement in accordance with such regulations shall for the purposes of this Act be deemed to have been given personally on the date ascertained pursuant to the regulations.

10. (1) From the proceeds of the sale the warehouseman shall satisfy his lien, and, subject to the provisions of the next two succeeding subsections, shall not less than ten nor more than fourteen days after the sale pay over the surplus, if any, to the person or persons entitled thereto ; and the warehouseman shall when paying over the surplus deliver to the person or persons to whom he pays the surplus or any part thereof a statement of account showing how the amount has been computed.

Disposition of
proceeds of
sale.
Cf. Vic. 4562,
1938, s. 9.
Cf. N.S.W. 19,
1935, s. 8.

(2) Where there are conflicting claims to such surplus or the rights of any claimant thereto are uncertain, the warehouseman shall within fourteen days after the sale pay such surplus into the local court of full jurisdiction nearest to the premises of the warehouseman.

Any moneys so paid into a local court may, upon order of a special magistrate made in court or in chambers, be applied as the special magistrate thinks fit.

(3) Where no claim to such surplus is made within ten days after the sale the warehouseman shall within fourteen days after the sale pay the surplus to the Treasurer who shall pay the same to the general revenue.

(4) The warehouseman at the time of paying such surplus into a local court or to the Treasurer shall furnish duplicate copies of the statement of account, showing how the amount has been computed, verified in the manner prescribed, and such other particulars relating to the transaction as are prescribed.

(5) If within six years after any moneys are paid to the Treasurer as aforesaid, any claimant makes any demand against the Treasurer for any money so paid, the Treasurer, upon being satisfied that the claimant is the owner of the money

demanded by him, shall order and direct payment thereof to him. Any such payment shall, without any further appropriation than this Act, be made out of the general revenue. When any moneys so paid to any claimant are afterwards claimed by any other person, the Treasurer shall not be responsible for the payment of the same, but such person may have recourse against the claimant to whom the moneys were paid by the Treasurer.

(6) Any warehouseman who fails to pay any moneys into a local court or to the Treasurer as required by this section shall be guilty of an offence and liable to a penalty of not more than two pounds for every day during which such default continues.

Application of Act.
 Cf. Vic. 4562, 1938, s. 10.
 Cf. N.S.W., 19, 1935, s. 10.

11. (1) The provisions of this Act shall apply to cases in which the goods were deposited for storage before as well as to cases in which the goods are deposited after the commencement of this Act but no notice pursuant to section 7 shall be given before the expiration of three months from such commencement.

(2) In applying section 6 to a case in which the deposit was made before such commencement that section shall be read as if, in subsection (1) thereof, the words "after the commencement of this Act" were substituted for the words "after the date of the deposit of the goods"; and as if in subsection (1) thereof, the words "prior to the commencement of this Act" were substituted for the words "prior to the date of the deposit of the goods"; and as if, in subsection (4) thereof, the words "from the commencement of this Act" were substituted for the words "from the date of the deposit of the goods".

Regulations.
 Cf. Vic. 4562, 1938, s. 11.
 Cf. N.S.W., 19, 1935, s. 11.

12. The Governor may make regulations for or with respect to—

- (a) prescribing the form of notice to be served upon a warehouseman by any person claiming to be the owner of any goods deposited with such warehouseman or to be the owner of some interest in such goods;
- (b) prescribing the cases where notice of interests of other persons shall be given to the warehouseman by the person depositing goods with him and the form of and particulars to be contained in such notice;
- (c) prescribing the form of and the particulars to be contained in notices given by the warehouseman under section 6;

- (d) prescribing a mode of sale under section 7, other than sale by public auction, in the case of goods of any particular kind ;
- (e) prescribing the manner of verification of and the particulars to be contained in statements of account furnished to a local court of full jurisdiction or the Treasurer under this Act ;
- (f) prescribing penalties (not exceeding ten pounds) for breaches of the regulations ; and
- (g) generally, prescribing any matter or thing authorized to be prescribed or necessary or expedient to be prescribed for carrying this Act into effect.

13. The power conferred by section 28 of the Local Courts Act, 1926-1936, shall include power to frame rules and forms to regulate applications to local courts of full jurisdiction under section 7 and payments into court pursuant to section 9 and otherwise to regulate proceedings under the said sections 7 and 9 and to carry the said sections 7 and 9 into effect. Rules of Court.

14. Nothing in this Act shall be construed as abrogating limiting or in any manner affecting— Certain liens, rights, etc., not to be affected by Act.
Cf. Vic. 4562, 1938, s. 12.

- (a) any lien or power of sale or other right (whether arising under contract or by operation of law) which a warehouseman may have apart from this Act in respect of any goods stored by him ; or
- (b) the enforcement of any such lien or the exercise of any such power or right.

15. All proceedings for offences against this Act shall be disposed of summarily. Proceedings for offences.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. M. BARCLAY-HARVEY, Governor.