



WAREHOUSE LIENS ACT, 1990

No. 8 of 1990

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A.D. 1990

No. 8 of 1990

An Act to provide for a lien on goods stored in a warehouse.

[Assented to 5 April 1990]

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Warehouse Liens Act, 1990*.

Commencement

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

Repeal

3. The *Warehousemen's Liens Act, 1941*, is repealed.

Interpretation

4. In this Act—

“operator of a warehouse” means a person lawfully engaged in the business of storing goods as a bailee for fee or reward.

Note: For definition of divisional penalties see Appendix.

Non-derogation

5. This Act does not limit or derogate from any civil remedy at law or in equity.

Lien

6. Subject to this Act, an operator of a warehouse has a lien on goods deposited for storage in the warehouse (whether deposited before or after the commencement of this Act).

Charges covered by lien

7. The lien is for the amount of—

- (a) lawful charges for storage and preservation of the goods;
- (b) lawful claims for insurance, transportation, labour, weighing, packing and other expenses in relation to the goods;

and

- (c) reasonable costs incurred in selling the goods pursuant to this Act and in giving notice of intention to sell, and advertising the sale, in compliance with this Act.

Notice of interest in deposited goods

8. Where a person deposits goods of which the person is not the absolute owner for storage with the operator of a warehouse, the person must notify the operator in writing of the name and address, if known, of each person who has, to his or her knowledge, an interest in the goods.

Penalty: Division 8 fine.

Right of sale to satisfy lien

9. If an amount, due and owing to the operator of a warehouse in respect of goods subject to a lien under this Act, has been due and owing for a period of at least six months, the operator may sell the goods in accordance with this Act to satisfy the lien.

Notice of intention to sell

10. (1) The operator of the warehouse must give notice of an intention to sell—

- (a) to the person liable as debtor for the amount due and owing;
- (b) to any person who has served on the operator a written notice of a claim to be the owner of the goods or to have an interest in the goods;
- (c) to a person who holds an interest in the goods that is registered under any other Act and the existence of which is ascertainable by ordinary search of the relevant registers using the information known to the operator;

and

- (d) to any other person who has an interest in the goods of which the operator has become aware.

(2) The notice must contain—

- (a) a brief description of the goods;
- (b) a statement of the location of the warehouse where the goods are stored, the date of their deposit and the name of the person by whom they were deposited;
- (c) an itemized statement of the charges due and owing at the time of the notice showing the total amount due;
- (d) a demand that the charges as stated in the notice and any further charges that may accrue be paid on or before a specified day (being a day not less than one month after service of the notice);

and

- (e) a statement that unless the charges are paid by the specified day the goods will be sold in accordance with this Act.

(3) A notice required to be given under this section—

- (a) must be in writing;

(b) may be served—

(i) personally;

(ii) by post to the person's last known address;

or

(iii) if any person, or the address of a person, to whom it is to be given is unknown to the person giving notice—by advertisement published at least once a week for two consecutive weeks in a daily newspaper circulating generally throughout the State.

(4) Where a notice is served by advertisement, the notice is to be taken to have been given on the date on which the advertisement was last published.

(5) Where a notice required to be given under this section has been duly given but the provisions of subsection (2) have not been strictly complied with, a court before which the question arises may treat the notice as having complied with this section, if the court is satisfied—

(a) that there has been substantial compliance with the provisions;

and

(b) that in all the circumstances of the case it is just and equitable to do so.

Sale

11. (1) If the charges are not paid on or before the day specified in the notice, an advertisement of the sale of the goods must be published at least once a week for two consecutive weeks in a daily newspaper circulating generally throughout the State.

(2) The advertisement must describe the goods to be sold and set out the time and place of the sale.

(3) The sale cannot be held until at least 14 days after the date of the first publication of the advertisement.

(4) The sale must be by public auction unless the goods are of a class for which some other mode of sale has been prescribed.

(5) If it is necessary for any sealed or closed packages containing goods to be opened for the purposes of the advertisement or sale—

(a) the packages must be opened in the presence of two persons other than the operator of the warehouse;

(b) an inventory of the contents of the packages must be made;

and

(c) the inventory must be verified by statutory declaration by those two other persons.

Stay of proceedings for sale

12. (1) Where action has been instituted under this Act for the sale of goods, any person with an interest in the goods may apply—

(a) if the value of the goods is within the jurisdictional limit of local courts of limited jurisdiction—to the local court of limited jurisdiction nearest to the warehouse in which the goods are stored;

or

(b) in any other case—to the local court of full jurisdiction nearest to the warehouse in which the goods are stored,

for an order prohibiting the taking of further action under this Act for the sale of the goods.

(2) The court, in granting an application under subsection (1), may order that no further action be taken under this Act for sale of the goods for such period and on such conditions as the court considers appropriate and specifies in the order.

Payment of charges before sale

13. (1) If, at any time before goods are sold pursuant to this Act, the amount necessary to satisfy the lien on the goods is paid to the operator of the warehouse, no further proceedings for the sale of those goods may be taken.

(2) If, after the lien is satisfied by payment, the goods remain deposited with the operator of the warehouse, the goods are to be regarded as again deposited for storage as at the date of payment.

(3) If the payment is made by a person who is not primarily liable for the charges for which the lien on the goods exists, that person may recover the amount of the payment, together with interest at the rate of 10 per cent (or, if some other percentage is prescribed, that percentage) per annum calculated from the date of payment, as a debt from the person primarily liable for the charges.

Disposition of proceeds of sale

14. (1) The lien may be satisfied from the proceeds of the sale.

(2) The surplus (if any) must, not less than 10 nor more than 21 days after the sale, be paid as follows:

(a) if no written claim to the surplus is lodged with the operator of the warehouse within 10 days after the sale, it must be paid to the Treasurer;

(b) if a claim is so lodged, it must be paid to the claimant unless the validity of the claim is uncertain or disputed or there are conflicting claims, in which case it must be paid—

(i) if the amount of the surplus is within the jurisdictional limit of local courts of limited jurisdiction—to the local court of limited jurisdiction nearest to the warehouse in which the goods were stored;

or

(ii) in any other case—to the local court of full jurisdiction nearest to the warehouse in which the goods were stored.

(3) The operator of the warehouse must provide to the person or court to whom the surplus is paid—

(a) a statement of account, verified by statutory declaration, showing how the amount of surplus has been computed;

and

(b) copies of receipts for all charges covered by the lien on the goods.

(4) The operator of the warehouse is not liable to any person who does not lodge a written claim against the surplus with the operator within 10 days of the sale for any amount of surplus distributed.

(5) A court into which money is paid under this section may order that the money be applied as the court considers appropriate and specifies in the order.

(6) If a written claim against the surplus paid to the Treasurer under this section is lodged with the Treasurer within 6 years of that payment and the Treasurer is satisfied as to the validity of the claim, the Treasurer must pay the amount of the claim to the claimant.

(7) The Treasurer is not liable to any other person who later claims an amount distributed under subsection (6).

(8) Nothing in this section prejudices the right of any person to follow an amount of surplus into the hands of any claimant who has received it.

(9) An operator of a warehouse who fails to pay the surplus to the Treasurer or into court as required by this section is guilty of an offence.

Penalty: A division 11 fine for each day during which the default continues.

False or misleading information

15. A person must not, in furnishing any information for the purposes of this Act, make a statement that is false or misleading in a material particular.

Penalty: Division 7 fine.

Summary offences

16. Offences against this Act are summary offences.

Regulations

17. (1) The Governor may make such regulations as are necessary or expedient for the purposes of, or as are contemplated by, this Act.

(2) In particular, the regulations may prescribe forms for the purposes of this Act.

APPENDIX

DIVISIONAL PENALTIES

At the date of assent to this Act divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	—	\$500
10	—	\$200
11	—	\$100
12	—	\$50

Note: This appendix is provided for convenience of reference only.

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

D. B. DUNSTAN, Governor