

Legislative Council—No 42

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South Australia

Statutes Amendment (Bulk Goods) Bill 2008

A BILL FOR

An Act to amend the *Sale of Goods Act 1895* and the *Warehouse Liens Act 1990*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Bulk Goods) Act 2008*.

2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Sale of Goods Act 1895*

10 4—Amendment of section A2—Interpretation

Section A2(1)—after the definition of *action* insert:

bulk, in relation to goods, means a mass or collection of goods that are—

- (a) of the same kind; and
- (b) contained in a defined space or area; and
- 15 (c) interchangeable with other goods of the same kind of the same number or quantity;

5—Amendment of section 16—Goods must be ascertained

Section 16—delete "Where" and substitute:

Subject to section 20A, where

6—Insertion of section 20A

5 After section 20 insert:

20A—Contracts of sale for goods forming part of bulk

- 10 (1) This section applies to a contract of sale for a specified quantity of unascertained goods if—
- (a) the goods, or some of them, form part of a bulk that is identified either in the contract or by subsequent agreement between the parties; and
 - (b) the buyer has paid for some or all of the goods that form part of the bulk.
- 15 (2) Unless the parties otherwise agree—
- (a) property in an undivided share in the bulk is transferred to the buyer; and
 - (b) the buyer becomes an owner in common of the bulk, as soon as both of the conditions referred to in subsection (1) have been met.
- 20 (3) Unless the parties otherwise agree, the buyer's undivided share in the bulk at any time is the share that, at that time, is equivalent to the quantity of goods paid for and due to the buyer out of the bulk divided by the quantity of goods in the bulk.
- 25 (4) If at any time the aggregate of all buyers' undivided shares in the bulk exceeds the whole of the bulk, those shares are to be reduced proportionately so that the aggregate is equal to the bulk.
- (5) If a buyer has paid for only some of the goods due to the buyer out of the bulk, any delivery to the buyer out of the bulk is to be attributed to the goods for which payment has been made.
- 30 (6) Part payment for any goods will be taken to be payment for a corresponding part of the goods.
- (7) A person who has become an owner in common of the bulk will be taken to have consented to—
- 35 (a) delivery of goods out of the bulk to another owner in common of the bulk, being goods that are due under a contract to that other owner; and
 - (b) any dealing with, or removal, delivery or disposal of, goods in the bulk by another owner in common of the bulk (but only to the extent of that other owner's undivided share in the bulk).
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(8) No cause of action lies against a person by reason of that person's having acted in accordance with subsection (7)(a) or (b) in reliance on the consent that exists by virtue of that subsection.

(9) Nothing in this section—

5 (a) imposes an obligation on a buyer of goods out of the bulk to compensate any other buyer of goods out of the bulk for any shortfall in the quantity of goods received by that other buyer; or

10 (b) affects a contract or other arrangement between buyers of goods out of the bulk for adjustments between themselves; or

(c) affects the rights of a buyer under a contract to which this section applies.

15 (10) This section does not apply to a contract of sale entered into before the commencement of the *Statutes Amendment (Bulk Goods) Act 2008*.

Part 3—Amendment of *Warehouse Liens Act 1990*

7—Amendment of long title

After "warehouse" insert:

20 ; and for other purposes

8—Amendment of section 1—Short title

Section 1—delete "*Warehouse Liens Act, 1990*" and substitute:

Warehouse Liens and Storage Act 1990

9—Amendment of section 4—Interpretation

25 Section 4, definition of *operator of a warehouse*—delete the definition and substitute:

bulk, in relation to goods, means a mass or collection of goods that are—

(a) of the same kind; and

(b) contained in a defined space or area; and

30 (c) interchangeable with other goods of the same kind of the same number or quantity;

operator of a warehouse means—

(a) in section 14A—a person lawfully engaged in the business of storing goods for fee or reward;

35 (b) in any other case—a person lawfully engaged in the business of storing goods for fee or reward as a bailee.

10—Insertion of section 14A

After section 14 insert:

14A—Intermingled goods

- 5 (1) This section applies to goods that have been deposited with an operator of a warehouse by their owner (the *depositor*), or by his or her authority, and that have become intermingled with other goods of the same kind owned by, or deposited with, the operator of a warehouse so as to form a bulk.
- 10 (2) As from the time the goods become part of the bulk, unless the parties otherwise agree—
- (a) the depositor's property in the goods becomes property in an undivided share in the bulk; and
- (b) the depositor becomes an owner in common of the bulk; and
- 15 (c) subject to paragraph (d)—the depositor and the operator of the warehouse each have, in relation to the depositor's undivided share in the bulk, the same obligations as they would have had in relation to the goods had they not become part of the bulk; and
- 20 (d) the obligation of the operator of the warehouse to deliver the goods to, or to the order of, the depositor becomes an obligation to deliver an equivalent quantity of goods out of the bulk to, or to the order of, the depositor.
- 25 (3) Unless the parties otherwise agree, the depositor's undivided share in the bulk at any time is the share that, at that time, is equivalent to the quantity of goods that have been deposited by the depositor less the quantity of goods that have been delivered out of the bulk to, or to the order of, the depositor.
- 30 (4) If at any time the aggregate of all depositors' undivided shares in the bulk exceeds the whole of the bulk, those shares are to be reduced proportionately so that the aggregate is equal to the bulk.
- 35 (5) A person who has become an owner in common of the bulk will be taken to have consented to—
- (a) any delivery of goods out of the bulk to another owner in common of the bulk, being goods to which this section applies; and
- (b) any dealing with, or removal, delivery or disposal of, goods in the bulk by another owner in common of the bulk (but only to the extent of that other owner's undivided share in the bulk).
- 40 (6) No cause of action lies against a person by reason of that person's having acted in accordance with subsection (5)(a) or (b) in reliance on the consent that exists by virtue of that subsection.

- (7) This section does not apply to goods deposited with the operator of a warehouse before the commencement of the *Statutes Amendment (Bulk Goods) Act 2008*.