

South Australia

# Warehouse Liens and Storage Act 1990

An Act to provide for a lien on goods stored in a warehouse; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

### 1—Short title

This Act may be cited as the *Warehouse Liens and Storage Act 1990*.

### 4—Interpretation

In this Act—

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

**Note—**

For definition of divisional penalties (and divisional expiation fees) see Appendix.

## **5—Non-derogation**

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

## **6—Lien**

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).

## **7—Charges covered by lien**

The lien is for the amount of—

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

## **8—Notice of interest in deposited goods**

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.

## **9—Right of sale to satisfy lien**

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.

## **10—Notice of intention to sell**

- (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; and
  - (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; and
  - (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; and
  - (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; and
  - (c) an itemised statement of the charges due and owing at the time of the notice showing the total amount due; and
  - (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; or
    - (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.

## **11—Sale**

- (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; and
  - (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.

## **12—Stay of proceedings for sale**

- (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.

## **13—Payment of charges before sale**

- (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.

## **14—Disposition of proceeds of sale**

- (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.

#### **14A—Intermingled goods**

- (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.
- (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

- (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
  - (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.
- (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.
- (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.
- (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).
- (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*.

## 15—False or misleading information

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.

## 16—Summary offences

Offences against this Act are summary offences.

## 17—Regulations

- (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.

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Formerly

*Warehouse Liens Act 1990*

### Legislation repealed by principal Act

The *Warehouse Liens and Storage Act 1990* repealed the following:

*Warehousemen's Liens Act 1941*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1990	8	<i>Warehouse Liens Act 1990</i>	5.4.1990	1.11.1990 ( <i>Gazette 4.10.1990 p1082</i> )
<b>2008</b>	<b>49</b>	<b><i>Statutes Amendment (Bulk Goods) Act 2008</i></b>	<b>4.12.2008</b>	<b>Pt 3 (ss 7—10)—12.12.2008 (<i>Gazette 11.12.2008 p5476</i>)</b>

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 49/2008 s 7	12.12.2008
s 1	amended by 49/2008 s 8	12.12.2008
<i>ss 2 and 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 4		
bulk	inserted by 49/2008 s 9	12.12.2008
operator of a warehouse	substituted by 49/2008 s 9	12.12.2008
s 14A	inserted by 49/2008 s 10	12.12.2008

## Appendix—Divisional penalties and expiation fees

At the date of publication of this version divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
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	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

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