



ANNO VICESIMO SECUNDO

ELIZABETHAE SECUNDAE REGINAE

No. 18 of 1973

**An Act to amend the law relating to warehousing of
goods and to consequentially amend The Disposal
of Uncollected Goods Act of 1967 in a certain
particular**

[ASSENTED TO 13TH APRIL, 1973]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title. This Act may be cited as the *Warehousemen's Liens Act 1973*.

2. Interpretation. In this Act, unless the contrary intention appears—

“goods” includes personal property of every description (save a motor vehicle) that may be deposited with a warehouseman as bailee;

“Magistrates Court” means a Magistrates Court within the meaning of *The Justices Acts 1886 to 1968*;

“Magistrates Court District” or “District” means a district for the purposes of Magistrates Courts appointed under *The Justices Acts 1886 to 1968* or, pursuant to *The Decentralization of Magistrates Courts Acts 1965 to 1968*, deemed to be appointed such a district;

“motor vehicle” means a motor car, motor carriage, motor cycle, tractor or other vehicle propelled or designed to be propelled, wholly or partly by a volatile spirit, steam, gas, oil or electricity or by any means other than by human or animal power;

“warehouseman” means a person lawfully engaged in the business of storing goods as a bailee for reward.

3. Declaration of warehouseman's lien. Subject to the provisions of section 5, every warehouseman shall have a lien on goods deposited with him for storage, whether deposited by the owner of the goods or by his authority, or by any person entrusted with the possession of the goods by the owner or by his authority.

4. Charges covered by lien. 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 money advanced, interest, insurance, transportation, labour, weighing, coopering, 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.

5. Necessity of notice by warehouseman where goods deposited by person entrusted with possession. (1) Subject to subsection (4) the warehouseman shall within three months after the date of the deposit of the goods give notice of the lien—

- (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, containing the prescribed particulars, of his claim to be the owner of the goods or of an interest in them or to be entitled to some charge thereon or of whose interest in them the warehouseman has received notice as prescribed;
- (b) to the grantee or (where a transfer or assignment by the grantee has been registered under Part II of the *Bills of Sale and Other Instruments Act 1955-1971*) to the transferee or assignee of a bill of sale—
 - (i) which relates to the goods;

- (ii) which was granted by the person depositing the goods or by any other person of whose interest in the goods the warehouseman has knowledge;
 - (iii) which was registered in accordance with the said Part II prior to the date of the deposit of the goods; and
 - (iv) which has not ceased to have any effect as to the chattels comprised therein or subject thereto or in respect of which a satisfaction 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 given by the warehouseman under this section shall be in writing and contain—
- (a) a sufficient 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; and
 - (c) a statement that a lien is claimed by the warehouseman in respect of the goods under this Act; and
 - (d) such other particulars as are prescribed.

(3) Where the warehouseman fails to give the notice required by this section, his lien, as against the person to whom he has failed to give notice, shall be void as from the expiration of the period of three months from the date of the deposit of the goods.

(4) Nothing in this section requires notice of the lien to be given to the person by whom, or by whose authority, the goods were deposited with the warehouseman.

6. Power to sell goods. (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, in the manner provided in this section, any goods upon which he has a lien for charges which have become due.

(2) The warehouseman shall give written notice, containing the prescribed particulars, 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 prescribed notice of his claim to be the owner of the goods or of some interest therein or to be entitled to some charge thereon or of whose interest in them the warehouseman has received notice as prescribed;
- (c) to the grantee or (where a transfer or assignment by the grantee has been registered under Part II of the *Bills of Sale and Other Instruments Act 1955-1971*) to the transferee or assignee of a bill of sale—
 - (i) which relates to the goods;
 - (ii) which was granted by the person depositing the goods or by any other person of whose interest in the goods the warehouseman has knowledge;

- (iii) which was registered in accordance with the said Part II prior to the date of the deposit of the goods; and
 - (iv) which has not ceased to have any effect as to the chattels comprised therein or subject thereto or in respect of which a satisfaction has not been registered; and
 - (d) to any other person of whose interest in the goods the warehouseman has knowledge.
- (3) The notice shall contain—
- (a) a sufficient 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) 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 date mentioned, not less than thirty days from the giving of the notice in a manner prescribed; 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 at a time and place specified in the notice.
- (4) 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 sale, shall be published—
- (a) in a newspaper published in Brisbane and circulating throughout the State;
 - (b) in a newspaper, if any, published in the district in which are situated the premises where the goods are deposited with the warehouseman.
- (5) The sale shall be held not less than twenty-eight days from the date of the publication in pursuance of subsection (4) of the advertisement, or, where the advertisement is so published in more than one paper and on different days, the date of the last such publication.
- (6) A Magistrates Court constituted by a Stipendiary Magistrate sitting alone held in the district in which are situated the premises where the goods are deposited with the warehouseman may, on the application in the manner prescribed of any person having an interest in the goods, at any time after the giving of the notice by order stay further proceedings under this section for such period and on such terms as it deems just, and no proceedings under this section shall be taken by the warehouseman after due service of such order on the warehouseman, and during the period specified in the order.
- (7) This section shall apply only to cases in which some part of the charges in arrear are in respect of a period more than six months prior to the date upon which the notice of intention to sell is given.

7. Sufficiency of notices. Where a notice of lien under the provisions of section 5, or a notice of intention to sell under the provisions of section 6 has been given, but such provisions have not been strictly complied with, if any court before whom 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 shall 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.

8. Substituted service of notices. (1) Regulations made under section 20 may provide for the giving of notice by advertisement in cases where any person to whom notice may be given pursuant to section 5 or 6 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.

(2) 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.

9. Application of Act to goods accepted before commencement.

(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 6 shall be given before the expiration of ninety days from such commencement.

(2) In applying section 5 to a case in which the deposit was made before such commencement that section shall be read—

(a) as if in subsection (1) thereof—

(i) the words “after the commencement of this Act” were substituted for the words “after the date of the deposit of the goods”; and

(ii) 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

(b) as if in subsection (3) the words “from the commencement of this Act” were substituted for the words “from the date of the deposit of the goods”.

10. Notices. (1) A notice required or authorized by this Act to be given to any person shall be in writing.

(2) Any such notice may be given—

(a) by delivering it to the person to whom it is required or authorized to be given personally;

(b) by leaving it for him at his last known place of abode or business with some other person apparently an inmate thereof or employed thereat, and apparently of or over the age of sixteen years; or

(c) by sending it by registered post addressed to him at his last known place of abode or business.

11. Buyer of goods under Act to acquire good title. (1) The buyer of any goods sold by a warehouseman in the exercise of his powers under this Act shall acquire a good title to the goods.

(2) Upon any proceedings by or against the warehouseman in respect of any goods sold by him in the exercise of his powers under this Act, the burden of proving that the provisions of this Act relating to the sale of those goods have been complied with shall be upon the warehouseman.

12. Right of owner of goods sold under Act. Where the bailor of any goods is not the owner thereof and the goods are sold by the warehouseman in the exercise of his powers under this Act without notice by the warehouseman to the owner, the owner shall not be entitled to the return of the goods but shall have the same rights in respect of the proceeds of the sale of the goods as he would have had in respect of the goods if the property therein had not passed to the buyer by virtue of the provisions of this Act.

13. Provision for payment of charges before sale. (1) At any time before goods are sold by virtue of this Act any person claiming any interest or rights of possession in the goods may pay the warehouseman the amount necessary to satisfy the amount of the charges of the warehouseman including the reasonable and necessary expenses incurred in serving notices, in publication of advertisements and in preparing for sale up to the time of payment.

(2) The warehouseman shall deliver the goods to the person making the payment if he is the person entitled to the possession of the goods on payment of the warehouseman's charges thereon, otherwise the warehouseman shall retain possession of the goods according to the contract (express or implied) for the deposit of the goods.

14. Implied covenant in Bill of Sale. There shall be implied in every bill of sale or other encumbrance over or in respect of any goods in favour of the grantee or encumbrancee, a covenant that the amount of any payment made by him in relation to those goods in terms of section 13 may be added to or be deemed to be included in, the principal moneys secured by such bill of sale or other encumbrance.

15. Disposal of proceeds of sale. (1) Where, after goods have been sold by virtue of the provisions of this Act and the warehouseman has deducted the charges covered by his lien in relation to those goods, there remains a surplus of moneys in the hands of the warehouseman, the warehouseman shall within twenty-eight days after the sale pay those moneys to the Public Curator of Queensland unless they have previously been paid to the person entitled thereto.

(2) Where the warehouseman pays the surplus of any moneys to the person entitled thereto, he shall furnish to that person a record prepared by the warehouseman in relation to the goods containing the following particulars, that is to say—

- (a) a sufficient description of the goods;
- (b) the date and place of the sale and the name and principal place of business of the auctioneer by whom the goods were sold;
- (c) the amount of the proceeds of the sale; and

- (d) a statement of each item of the charges of the warehouseman in relation to the goods and the transaction to which each item relates.

(3) Any moneys paid to the Public Curator of Queensland under this section shall be held by him on behalf of the person for the time being entitled thereto, and such person shall be entitled to be repaid such sum less any prescribed charges. Any such sum lying unclaimed in the hands of the Public Curator of Queensland for a period of six years shall be deemed to be unclaimed moneys under and within the meaning of the *Public Curator Act 1915-1971* and shall be dealt with accordingly.

16. Right of owner to inspect goods. Where the bailor of the goods is not the owner thereof, then, at any time after notice of his lien has been given by the warehouseman, the owner of the goods, and any person who has served upon the warehouseman a notice of his claim to be the owner of the goods or of some interest therein, or to be entitled to some charge thereon, may, at a reasonable time and upon reasonable notice to the warehouseman, enter upon the premises of the warehouseman whereat the goods are kept under the bailment and inspect the goods.

17. Ambulatory operation of Act. Any provisions of this Act which apply to or in respect of any person by virtue of his rights or obligations in respect of any goods shall as respects a period during which those rights or obligations are vested in any other person apply to and in respect of that other person.

18. Saving of powers outside Act. The powers conferred on a person by this Act shall be in addition to and not in derogation of any powers exercisable by him independently of this Act and without limiting the generality hereof where in relation to goods deposited with him as bailee a warehouseman complies with the provisions of this Act he is not required to comply with the provisions of *The Disposal of Uncollected Goods Act of 1967* in that regard also.

19. Proceedings for offences. Proceedings for an offence against this Act may be taken by way of summary proceedings under *The Justices Acts 1886 to 1968*.

20. Regulations. (1) The Governor in Council may make regulations not inconsistent with this Act providing for all matters and things (whether general or to meet particular cases) which are authorized to be prescribed or are necessary or convenient for the administration of this Act or for carrying this Act into effect.

(2) The regulations may impose a penalty not exceeding \$100 for any breach thereof.

21. Amendment of Act No. 56 of 1967. (1) *The Disposal of Uncollected Goods Act of 1967* is amended as follows:—

- (a) Section 4 is renumbered as subsection (1);

(b) The following subsection is added to section 4 as so renumbered:—

“(2) This Act shall not apply to or with respect to a bailment of goods (other than motor vehicles) with a warehouseman within the meaning of section 2 of the *Warehousemen's Liens Act 1973* for storage unless the bailment is in addition to storage of the goods for some other treatment of, or in respect of, the goods of a kind or nature referred to in subsection (1) other than a kind or nature lawful charges or claims for which are covered, pursuant to section 4 of the *Warehousemen's Liens Act 1973*, by the lien conferred by that Act on the warehouseman in respect of the bailment.”.

(2) *The Disposal of Uncollected Goods Act of 1967* as amended by this section may be cited as the *Disposal of Uncollected Goods Act 1967-1973*.