
3rd Session, 55th Legislature
New Brunswick
54-55 Elizabeth II, 2005-2006

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Nouveau-Brunswick
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BILL
40

**AN ACT TO AMEND THE
WAREHOUSEMAN'S LIEN ACT**

Read first time: April 6, 2006

Read second time:

Committee:

Read third time:

PROJET DE LOI
40

**LOI MODIFIANT LA LOI SUR
LE DROIT DE RÉTENTION DE L'ENTREPOSEUR**

Première lecture : le 6 avril 2006

Deuxième lecture :

Comité :

Troisième lecture :

HON. BRADLEY GREEN, Q.C.

L'HON. BRADLEY GREEN, c.r.

BILL 40

PROJET DE LOI 40

**An Act to Amend the
Warehouseman's Lien Act**

**Loi modifiant la Loi sur
le droit de rétention de l'entreposeur**

Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

Sa Majesté, sur l'avis et du consentement de l'Assemblée législative du Nouveau-Brunswick, décrète :

1(1) *The title of the English version of the Warehouseman's Lien Act, chapter W-4 of the Revised Statutes, 1973, is repealed and the following is substituted:*

1(1) *Le titre de la version anglaise de la Loi sur le droit de rétention de l'entreposeur, chapitre W-4 des Lois révisées de 1973, est abrogé et remplacé par ce qui suit :*

Storer's Lien Act

Storer's Lien Act

1(2) *If in any Act, other than this Act, or in any regulation, rule, order, by-law, agreement or other instrument or document, reference is made to the Warehouseman's Lien Act, it shall be read, unless the context otherwise requires, as a reference to the Storer's Lien Act.*

1(2) *Sauf indication contraire du contexte, les renvois à la loi intitulée Warehouseman's Lien Act dans une loi autre que la présente loi, ou dans un règlement, une règle, un décret, un arrêté, une entente ou un autre instrument ou document doivent s'entendre comme étant des renvois à la loi intitulée Storer's Lien Act.*

2 *Section 1 of the English version of the Act is amended*

2 *L'article 1 de la version anglaise de la Loi est modifié*

(a) *in the definition "goods" by striking out "warehouseman" and substituting "storer";*

a) *à la définition "goods", par la suppression de « warehouseman » et son remplacement par « storer »;*

(b) *by repealing the definition "warehouseman";*

b) *par l'abrogation de la définition "warehouseman";*

(c) by adding the following definition in alphabetical order:

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

3 Section 2 of the English version of the Act is amended

(a) in subsection (1) by striking out “warehouseman” and substituting “storer”;

(b) in subsection (2)

(i) in the portion preceding paragraph (a) by striking out “warehouseman’s” and substituting “storer’s”;

(ii) in paragraph (c) by striking out “warehouseman’s” and substituting “storer’s”.

4 Section 3 of the English version of the Act is amended

(a) in subsection (1) in the portion preceding paragraph (a) by striking out “warehouseman” and substituting “storer”;

(b) in subsection (2)

(i) in paragraph (b) by striking out “warehouseman” and substituting “storer”;

(ii) in paragraph (c) by striking out “warehouseman” and substituting “storer”;

(c) in subsection (3) by striking out “warehouseman” and substituting “storer”.

5 Section 4 of the English version of the Act is amended

(a) in subsection (1) by striking out “warehouseman’s charges, a warehouseman may” and substituting “storer’s charges, a storer may”;

(b) in subsection (2)

(i) in the portion preceding paragraph (a) by striking out “warehouseman” and substituting “storer”;

c) par l’adjonction de la définition suivante selon l’ordre alphabétique :

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

3 L’article 2 de la version anglaise de la Loi est modifié

a) au paragraphe (1), par la suppression de « warehouseman » et son remplacement par « storer »;

b) au paragraphe (2),

(i) au passage qui précède l’alinéa (a), par la suppression de « warehouseman’s » et son remplacement par « storer’s »;

(ii) à l’alinéa (c), par la suppression de « warehouseman’s » et son remplacement par « storer’s ».

4 L’article 3 de la version anglaise de la Loi est modifié

a) au paragraphe (1), au passage qui précède l’alinéa (a), par la suppression de « warehouseman » et son remplacement par « storer »;

b) au paragraphe (2),

(i) à l’alinéa (b), par la suppression de « warehouseman » et son remplacement par « storer »;

(ii) à l’alinéa (c), par la suppression de « warehouseman » et son remplacement par « storer »;

c) au paragraphe (3), par la suppression de « warehouseman » et son remplacement par « storer ».

5 L’article 4 de la version anglaise de la Loi est modifié

a) au paragraphe (1), par la suppression de « warehouseman’s charges, a warehouseman may » et son remplacement par « storer’s charges, a storer may »;

b) au paragraphe (2),

(i) au passage qui précède l’alinéa (a), par la suppression de « warehouseman » et son remplacement par « storer »;

(ii) *in paragraph (d) by striking out “warehouseman” and substituting “storer”;*

(c) *in subsection (3)*

(i) *in paragraph (b) by striking out “warehouseman” and substituting “storer”;*

(ii) *in paragraph (c) by striking out “warehouseman’s” and substituting “storer’s”.*

6 *Section 6 of the English version of the Act is amended*

(a) *in subsection (1) by striking out “warehouseman” wherever it appears and substituting “storer”;*

(b) *in subsection (2) by striking out “warehouseman” and substituting “storer”;*

(c) *in subsection (3) by striking out “warehouseman” and substituting “storer”.*

7 *Section 7 of the English version of the Act is amended*

(a) *in subsection (1) by striking out “warehouseman” and substituting “storer”;*

(b) *by repealing subsection (2) and substituting the following:*

7(2) The storer shall deliver the goods to the person making the payment if he or she is the person entitled to the possession of the goods on payment of the storer's charges; otherwise the storer shall retain possession of the goods according to the terms of the contract of deposit.

CONSEQUENTIAL AMENDMENT

Employment Standards Act

8 *Subsection 38.1(7) of the English version of the Employment Standards Act, chapter E-7.2 of the Acts of New Brunswick, 1982, is amended by striking out “Warehouseman’s Lien Act” and substituting “Storer’s Lien Act”.*

(ii) *à l’alinéa (d), par la suppression de « warehouseman » et son remplacement par « storer »;*

c) *au paragraphe (3),*

(i) *à l’alinéa (b), par la suppression de « warehouseman » et son remplacement par « storer »;*

(ii) *à l’alinéa (c), par la suppression de « warehouseman’s » et son remplacement par « storer’s ».*

6 *L’article 6 de la version anglaise de la Loi est modifié*

a) *au paragraphe (1), par la suppression de « warehouseman » chaque fois qu’il s’y trouve et son remplacement par « storer »;*

b) *au paragraphe (2), par la suppression de « warehouseman » et son remplacement par « storer »;*

c) *au paragraphe (3), par la suppression de « warehouseman » et son remplacement par « storer ».*

7 *L’article 7 de la version anglaise de la Loi est modifié*

a) *au paragraphe (1), par la suppression de « warehouseman » et son remplacement par « storer »;*

b) *par l’abrogation du paragraphe (2) et son remplacement par ce qui suit :*

7(2) The storer shall deliver the goods to the person making the payment if he or she is the person entitled to the possession of the goods on payment of the storer's charges; otherwise the storer shall retain possession of the goods according to the terms of the contract of deposit.

MODIFICATION CORRÉLATIVE

Loi sur les normes d’emploi

8 *Le paragraphe 38.1(7) de la version anglaise de la Loi sur les normes d’emploi, chapitre E-7.2 des Lois du Nouveau-Brunswick de 1982, est modifié par la suppression de « Warehouseman’s Lien Act » et son remplacement par « Storer’s Lien Act ».*

EXPLANATORY NOTES

Section 1

(1) The English version of the *Warehouseman's Lien Act* is now entitled the *Storer's Lien Act*.

(2) Transitional provision.

Section 2

(a) The existing definition is as follows:

“goods” includes personal property of every description that may be deposited with a warehouseman as bailee;

(b) The existing definition is as follows:

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

(c) A definition is added.

Section 3

(a) The existing provision is as follows:

2(1) Subject to the provisions of section 3, every warehouseman has 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.

(b)(i) and (ii) The existing provision is as follows:

2(2) The lien is for the amount of the warehouseman's charge, 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 goods where default is made in satisfying the warehouseman's lien.

Section 4

(a) The existing provision is as follows:

3(1) Where the goods on which a lien exists were deposited not by the owner nor by the owner's authority, but by a person entrusted, with the possession of the goods by the owner or by the owner's authority, the warehouseman shall, within two months after the date of the deposit, give notice of the lien to

(a) the owner of the goods, and

(b) any person with a security interest in the goods who has registered a financing statement in relation to the goods in the Personal Property Registry before the date of the deposit.

NOTES EXPLICATIVES

Article 1

(1) Le titre de la version anglaise de la *Loi sur le droit de rétention de l'entreposeur* est maintenant : *Storer's Lien Act*.

(2) Disposition transitoire.

Article 2

a) La définition actuelle se lit comme suit :

“goods” includes personal property of every description that may be deposited with a warehouseman as bailee;

b) La définition actuelle se lit comme suit :

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

c) Une définition est ajoutée.

Article 3

a) La disposition actuelle se lit comme suit :

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(a) the owner of the goods, and

(b) any person with a security interest in the goods who has registered a financing statement in relation to the goods in the Personal Property Registry before the date of the deposit.

(b)(i) and (ii) The existing provision is as follows:

3(2) The notice shall be in writing and 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 the 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.

(c) The existing provision is as follows:

3(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 is void as from the expiration of the period of two months from the date of the deposit of the goods.

Section 5

(a) The existing provision is as follows:

4(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 that have become due.

(b)(i) and (ii) The existing provision is as follows:

4(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 the owner of the goods and to any person with a security interest in the goods who has registered a financing statement in relation to the goods in the Personal Property Registry before the date of the deposit, and

(c) Repealed: 1993, c.36, s.14.

(d) to any other person known by the warehouseman to have or to claim an interest in the goods.

(c)(i) and (ii) The existing provision is as follows:

4(3) The notice 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) 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 be paid on or before a day mentioned, not less than twenty-one days from the delivery of the

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(b) a statement showing the location of the warehouse where the goods are stored, the date of the 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.

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notice if it is personally delivered, or from the time when the notice should reach its destination according to the due course of mail if it is sent by mail, 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.

Section 6

(a) The existing provision is as follows:

6(1) From the proceeds of the sale the warehouseman shall satisfy his lien, and shall pay over the surplus, if any, to the person entitled thereto; and the warehouseman shall, when paying over the surplus, deliver to the person to whom he pays it a statement of account showing how the amount has been computed.

(b) The existing provision is as follows:

6(2) If the surplus is not demanded by the person entitled thereto within ten days after the sale, or if there are different claimants or the right thereto is uncertain, the warehouseman shall pay the surplus into The Court of Queen's Bench of New Brunswick upon the order of a judge, which order may be made *ex parte* upon such terms and conditions as to costs and otherwise as the judge may direct, and may provide to what fund or name the amount shall be credited.

(c) The existing provision is as follows:

6(3) The warehouseman at the time of paying the amount into court shall file in the court a copy of the statement of account showing how the amount has been computed.

Section 7

(a) The existing provision is as follows:

7(1) At any time before the goods are sold, any person claiming an interest or right of possession in the goods may pay the warehouseman the amount necessary to satisfy his lien, including the expenses incurred in serving notices and advertisement and preparing for the sale up to the time of payment.

(b) The existing provision is as follows:

7(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 terms of the contract of deposit.

Section 8

Consequential amendment.

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Article 8

Modification corrélatrice.