

South Australia



ANNO QUINQUAGESIMO
ELIZABETHAE II REGINAE
A.D. 2001

**RETAIL AND COMMERCIAL LEASES (MISCELLANEOUS)
AMENDMENT ACT 2001**

No. 43 of 2001

[Assented to 3 August 2001]

An Act to amend the Retail and Commercial Leases Act 1995.

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of s. 45—Procedure for obtaining consent to assignment
4. Insertion of s. 45A
 - 45A. Liability of lessee following assignment of lease

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Retail and Commercial Leases (Miscellaneous) Amendment Act 2001*.

(2) The *Retail and Commercial Leases Act 1995* is referred to in this Act as "the principal Act".

Commencement

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

Amendment of s. 45—Procedure for obtaining consent to assignment

3. Section 45 of the principal Act is amended by inserting in paragraph (a) "the use to which the proposed assignee proposes to put the shop and" after "about".

Insertion of s. 45A

4. The following section is inserted after section 45 of the principal Act:

Liability of lessee following assignment of lease

45A. (1) Subject to subsection (4), notwithstanding the provisions of a retail shop lease or of any other agreement (whether being a lease or agreement made before or after the commencement of this section), if the lessee assigns the retail shop lease, the lessee, and any guarantor of the lessee, will not be subject to any obligations or liabilities under the lease on or after the relevant date.

(2) Nothing in subsection (1) relieves the lessee, or a guarantor of the lessee, of any obligations or liabilities accrued in respect of the retail shop lease prior to the relevant date.

(3) In this section—

"relevant date" means—

- (a) the second anniversary of the date on which the lease was assigned;
or
- (b) the date on which the lease expires; or
- (c) if the lease is renewed or extended after the assignment, the date on which the renewal or extension commences,

whichever first occurs.

(4) Subsection (1) does not apply to the assignment of a retail shop lease in respect of a retail shop that is to continue as an ongoing business if—

- (a) the assignor did not provide a disclosure statement (an "assignor's disclosure statement") containing the information referred to in subsection (5)—
 - (i) to the proposed assignee, before requesting the consent of the lessor to the proposed assignment of the lease; and

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- (ii) to the lessor, at the time the request for consent to the proposed assignment is made by the lessee; or
 - (b) an assignor's disclosure statement provided to the proposed assignee and the lessor contained information that at the time it was provided was materially false or misleading.
- (5) The assignor's disclosure statement is a written document (in the form prescribed by the regulations) stating—
- (a) whether the assignor has provided the assignee with the lessor's disclosure statement in respect of the lease (together with details of any changes to the information contained in the disclosure statement since the statement was given); and
 - (b) whether there are any outstanding notices in respect of the lease and, if so, the details of any such notices; and
 - (c) whether there are any outstanding notices from any authority in respect of the retail shop and, if so, the details of any such notices; and
 - (d) whether there are any encumbrances on the lease and, if so, the details of any such encumbrances; and
 - (e) whether there are any encumbrances on, or whether any third party has an interest in, any fixtures and fittings within the retail shop and, if so, the details of any such encumbrances or interest; and
 - (f) whether the lessor has conferred any rent concessions or other benefits on the assignor during the term of the lease and, if so, the details of any such concessions or benefits; and
 - (g) the total (aggregate) annual sales figures in respect of the retail shop for the past three years, or such lesser period as the lease has been in operation; and
 - (h) details of any other information the assignor has provided to the assignee as to the trading performance of the retail shop during the past three years or for such lesser period as the lease has been in operation; and
 - (i) any other matters prescribed by the regulations.