

BILL

No. 151

An Act to amend *The Personal Property Security Act, 1993* and to make consequential amendments to certain Acts

(Assented to)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Personal Property Security Amendment Act, 2018*.

SS 1993, c P-6.2 amended

2 *The Personal Property Security Act, 1993* is amended in the manner set forth in this Act.

Section 2 amended

3(1) Subsection 2(1) is amended:

(a) in clause (f) in the portion preceding subclause (i) by striking out “writings” and substituting “records”;

(b) by adding the following clause after clause (o):

“(0.01) ‘electronic chattel paper’ means chattel paper created, recorded, transmitted or stored in digital or other intangible form by electronic, magnetic or optical means”;

(c) by repealing clause (z) and substituting the following:

“(z) ‘licence’ means a right, whether or not exclusive:

(i) to manufacture, produce, sell, transport or otherwise deal with personal property;

(ii) to provide services; or

(iii) to acquire personal property;

that is transferrable by the licensee, with or without restriction, or the consent of the licensor, and includes a licence that is subject to cancellation and reissuance by the licensor to another party at the request of either the licensee or the secured party”;

(d) in clause (jj) in the portion after subclause (iv) by adding “and if the collateral is inventory, subsections (5), (6) and (7) apply” after “loan credit”; and

(e) by adding the following clause after clause (rr.1):

“(rr.2) ‘tangible chattel paper’ means chattel paper evidenced by a record consisting of information that is inscribed on a tangible medium”.

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(2) The following subsection is added after subsection 2(1.1):

“(1.2) A secured party has control of electronic chattel paper if the record comprising the chattel paper is created, stored, and transferred in a manner such that:

- (a) a single authoritative record of the electronic chattel paper exists that is unique, identifiable and, except as otherwise provided in clauses (d), (e), and (f), unalterable;
- (b) the authoritative record identifies the secured party as the transferee of the record;
- (c) the authoritative record is communicated to and securely maintained by the secured party or its designated custodian;
- (d) copies of or amendments to the authoritative record that add or change an identified transferee of the authoritative record can be made only with the consent of the secured party;
- (e) each copy of the authoritative record and any copy of a copy is readily identifiable as a copy that is not the authoritative record; and
- (f) any amendment of the authoritative record is readily identifiable as authorized or unauthorized”.

(3) Subsection 2(5) is repealed and the following substituted:

“(5) A purchase-money security interest in inventory:

- (a) secures any obligation arising out of a related transaction creating an interest mentioned in subclause (1)(jj)(i) or (ii); and
- (b) extends to other inventory in which the secured party holds or held a security interest pursuant to a related transaction that secures or secured an obligation mentioned in subclause (1)(jj)(i) or (ii).

“(6) For the purposes of subsection (5), a transaction is related to another transaction when the possibility of both transactions is provided for in the first transaction or an agreement between the parties entered into before the first transaction.

“(7) A purchase-money security interest does not lose its status because:

- (a) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;
- (b) collateral that is not subject to a purchase-money security interest also secures the purchase-money obligation; or
- (c) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

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- “(8) A payment made by a debtor to a secured party must be applied:
- (a) in accordance with any method of application to which the parties agree;
 - (b) in accordance with any intention of the debtor manifested at or before the time of the payment if the parties do not agree on a method; or
 - (c) if neither clause (a) nor (b) applies, in the following order:
 - (i) to obligations that are not secured, in the order in which those obligations were incurred;
 - (ii) to obligations that are secured, other than those secured by purchase-money security interests, in the order in which those obligations were incurred;
 - (iii) to obligations that are secured by purchase-money security interests, in the order in which those obligations were incurred”.

New sections 5 to 7

4 Sections 5 to 7 are repealed and the following substituted:

“General rules

- 5(1) Subject to sections 6 and 7, the validity of the following is governed by the law of the jurisdiction where the collateral is situated when the security interest attaches:
- (a) a security interest in goods;
 - (b) a possessory security interest in an instrument, a negotiable document of title, money or tangible chattel paper.
- (2) Except as otherwise provided in sections 6 and 7, while collateral is situated in a jurisdiction, the law of that jurisdiction governs the following:
- (a) perfection, the effect of perfection or of non-perfection, and the priority of a security interest mentioned in subsection (1);
 - (b) the effect of perfection or of non-perfection and the priority of a non-possessory security interest in a negotiable document of title, tangible chattel paper, an instrument or money.
- (3) If goods are relocated to Saskatchewan, a security interest in the goods perfected in accordance with the applicable law pursuant to subsection (2) continues to be perfected in Saskatchewan if it is perfected pursuant to this Act:
- (a) not later than 60 days after the day on which the goods are brought into Saskatchewan;
 - (b) not later than 15 days after the day on which the secured party has knowledge that the goods have been brought into Saskatchewan; or
 - (c) before perfection ceases pursuant to the previously applicable law; whichever is earliest, but the security interest is subordinate to the interest of a buyer or lessee of the goods who acquires the interest without knowledge of the security interest and before it is perfected in Saskatchewan pursuant to sections 24 to 25.

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(4) A security interest that is not perfected pursuant to subsection (3) may be otherwise perfected in Saskatchewan pursuant to this Act.

“Goods removed from jurisdiction”

6(1) Subject to section 7, if the parties to a security agreement that creates a security interest in goods in one jurisdiction understand at the time the security interest attaches that the goods will be kept in another jurisdiction, and the goods are removed to the other jurisdiction for purposes other than transportation through the other jurisdiction not later than 30 days after the security interest attaches, the security interest:

- (a) is valid if it is valid pursuant to either the law of the jurisdiction where the goods are located when the security interest attaches or the law of the other jurisdiction; and
- (b) may be perfected pursuant to the law of either jurisdiction.

(2) If a security interest mentioned in subsection (1) is perfected in accordance with the law of the jurisdiction to which the goods are removed, the effect of perfection and the priority of the security interest are governed by that law:

- (a) before the goods are removed to that jurisdiction; and
- (b) while the goods are located in that jurisdiction.

“Intangibles, mobile goods, etc.”

7(1) In this section:

- (a) ‘**chief executive office**’ means the place from which the debtor conducts or manages the main part of its affairs;
- (b) ‘**minehead**’ includes a wellhead;
- (c) ‘**minerals**’ includes petroleum and gas;
- (d) ‘**organization**’ means a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity;
- (e) ‘**place of business**’ means a place from which a debtor conducts or manages its affairs;
- (f) ‘**public organic record**’ means a record that is available to the public for inspection and is:
 - (i) a record consisting of the record initially filed with or issued by a state or the United States of America to form or organize an organization and any record filed with or issued by the state or the United States of America that amends or restates the initial record;
 - (ii) an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

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- (iii) a record consisting of legislation enacted by the legislature of a state or the Congress of the United States of America that forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States of America that amends or restates the name of the organization;
 - (g) '**registered organization**' means an organization organized solely pursuant to the law of the United States of America or solely pursuant to the law of a state of the United States of America by the filing of a public organic record with, the issuance of a public organic record by or the enactment of legislation by the state or the United States of America and includes a business trust that is formed or organized pursuant to the law of a state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state;
 - (h) '**state**' means a state of the United States of America, the District of Columbia, Puerto Rico, the United States Virgin Islands or a territory or insular possession subject to the jurisdiction of the United States of America.
- (2) The validity of the following is governed by the law of the jurisdiction where the debtor is located when the security interest attaches:
- (a) a security interest in:
 - (i) an intangible;
 - (ii) goods that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others; or
 - (iii) electronic chattel paper; and
 - (b) a non-possessory security interest in an instrument, a negotiable document of title, money and tangible chattel paper.
- (3) If the debtor is located in a jurisdiction, the law of that jurisdiction governs:
- (a) perfection, the effect of perfection or of non-perfection, and the priority of a security interest mentioned in clause (2)(a); and
 - (b) perfection of a security interest mentioned in clause (2)(b).
- (4) For the purposes of this section, a debtor is located:
- (a) if the debtor is an individual, in the jurisdiction in which the debtor's principal residence is located;
 - (b) if the debtor is a corporation or an organization and is incorporated, continued, amalgamated or otherwise organized pursuant to a law of a province or territory of Canada by the filing of a record with or the issuance of a record by the province or territory that is available to the public for inspection or the enactment of legislation, in that province or territory;

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- (c) if the debtor is a corporation incorporated, continued or amalgamated pursuant to a law of Canada by the filing of a record with or the issuance of a record by Canada that is available to the public for inspection or the enactment of legislation, in the jurisdiction where the registered office or head office of the debtor is located:
 - (i) as set out in the letters patent, articles or other constating instrument, or in or pursuant to the legislation, under which the debtor was incorporated, continued or amalgamated; or
 - (ii) as set out in the debtor's bylaws, if subclause (i) does not apply;
 - (d) if the debtor is a registered organization that is organized pursuant to the law of a state, in that state;
 - (e) if the debtor is a registered organization that is organized pursuant to a law of the United States of America:
 - (i) in the state that the law of the United States of America designates, if the law designates a state of location;
 - (ii) in the state that the registered organization designates, if the law of the United States of America authorizes the registered organization to designate its state of location, including by designating its main office, home office, or other comparable office; or
 - (iii) in the District of Columbia in the United States of America, if subclauses (i) and (ii) do not apply;
 - (f) if the debtor is a trustee acting for a trust that has only one trustee:
 - (i) if the trustee is an individual who has a principal residence in a province or territory of Canada, in that province or territory;
 - (ii) if the trustee is a corporation to which clause (b) or (c) would otherwise apply, in the jurisdiction determined by those clauses; or
 - (g) if none of clauses (a) to (f) apply:
 - (i) if the debtor has only one place of business, at that place of business;
 - (ii) if the debtor has more than one place of business, at its chief executive office.
- (5) For the purposes of this section, a debtor continues to be located in the jurisdiction specified in subsection (4) notwithstanding:
- (a) in the case of a debtor who is an individual, the death or incapacity of the individual; and
 - (b) in the case of any other debtor, the suspension, revocation, forfeiture or lapse of the debtor's status in its jurisdiction of incorporation, continuation, amalgamation or organization, or the dissolution, winding-up or cancellation of the debtor.

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(6) If a debtor relocates to Saskatchewan, a security interest perfected in accordance with the applicable law as provided in subsection (3) continues perfected in Saskatchewan if it is perfected pursuant to this Act at the earliest of the following:

- (a) not later than 60 days after the day on which the debtor relocates to Saskatchewan;
- (b) not later than 15 days after the day on which the secured party has knowledge that the debtor has relocated to Saskatchewan;
- (c) before the day that perfection ceases pursuant to the previously applicable law.

(7) Notwithstanding subsections (2) and (3) and section 6, the validity, the perfection and the effect of perfection or of non-perfection of a security interest in minerals or in an account resulting from the sale of the minerals at the minehead that:

- (a) is provided for in a security agreement executed before the minerals are extracted; and
- (b) attaches to the minerals on extraction or attaches to an account on the sale of the minerals;

are governed by the law of the jurisdiction in which the minehead is located".

Section 7.1 amended

5(1) Clause 7.1(3)(a) is amended by striking out "subsection 7(1)" and substituting "subsection 7(4)".

(2) Subsection 7.1(6) is amended in the portion preceding clause (a) by adding "in Saskatchewan" after "remains perfected".

(3) Subsection 7.1(7) is amended in the portion preceding clause (a):

- (a) by striking out "which" and substituting "that"; and**
- (b) by adding "in Saskatchewan" after "remains perfected".**

New sections 7.2 and 7.3

6 The following sections are added after section 7.1:

"Applicable law – location of debtor re security interest

7.2(1) In this section:

- (a) 'effective date'** means the date on which this section comes into force;
- (b) 'prior law'** means this Act as it existed immediately before the effective date, including the applicable law as determined pursuant to this Act as it existed immediately before the effective date;

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- (c) '**prior security agreement**' means:
 - (i) a security agreement entered into before the effective date; and
 - (ii) a security agreement mentioned in subclause (i) that is amended, renewed or extended by an agreement entered into on or after the effective date except to the extent that the amendment, renewal or extension adds collateral that was not described in that security agreement;
- (d) '**prior security interest**' means a security interest in investment property that arises pursuant to a prior security agreement.
- (2) For the purpose of ascertaining the location of the debtor in order to determine the law governing the validity of a prior security interest, prior law continues to apply and subsection 7(4) does not apply.
- (3) Subject to subsections (6) and (7), subsection 7(4) applies for the purpose of ascertaining the location of the debtor in order to determine the law applicable to the perfection of a security interest mentioned in subsection 7(3), whether attachment occurs before, on or after the effective date.
- (4) A prior security interest that is a perfected security interest pursuant to prior law immediately before the effective date continues to be perfected without any further act if it is a perfected security interest pursuant to the applicable law as determined by this Act on or after the effective date.
- (5) A prior security interest that is a perfected security interest pursuant to prior law immediately before the effective date but is not a perfected security interest pursuant to the applicable law as determined by this Act on or after the effective date continues perfected until the beginning of the earlier of the following days:
 - (a) the day perfection ceases pursuant to prior law;
 - (b) December 31, 2020.
- (6) If a prior security interest mentioned in subsection (5) is perfected in accordance with the applicable law as determined pursuant to this Act, on or after the effective date but before the earlier of the days mentioned in clauses (5)(a) and (b), the security interest is deemed to be continuously perfected from the day of its perfection pursuant to prior law.
- (7) Subject to subsections (8), (9), and (10), subsection 7(4) applies for the purpose of ascertaining the location of the debtor in order to determine the law governing the effect of perfection or of non-perfection, and the priority, of a security interest mentioned in clause 7(3)(a) and the perfection of a security interest mentioned in clause 7(3)(b) whether attachment occurs before, on or after the effective date.
- (8) Subject to subsection (11), for the purpose of ascertaining the location of the debtor in order to determine the law governing the effect of perfection or of non-perfection, and the priority, of a prior security interest, in relation to an interest, other than a security interest, in the same collateral arising before the effective date, prior law continues to apply and subsection 7(3) does not apply, regardless of whether the prior security interest is perfected on or after the effective date in accordance with the applicable law as determined pursuant to this Act.

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(9) Subject to subsections (10) and (11), for the purpose of ascertaining the location of the debtor in order to determine the law governing the priority of a prior security interest in relation to any other prior security interest in the same collateral, prior law continues to apply and subsection 7(4) does not apply.

(10) Subject to subsection (11), if a prior security interest is not a perfected security interest pursuant to prior law immediately before the effective date but is subsequently perfected in accordance with the applicable law as determined pursuant to this Act, subsection 7(4) applies for the purpose of ascertaining the location of the debtor in order to determine the law governing the priority of the prior security interest in relation to any other security interest in the same collateral.

(11) Subsections (8), (9) and (10) do not apply to a prior security interest that is a non-possessory security interest in an instrument, a negotiable document of title, money or a tangible chattel paper.

“Applicable law – location of debtor re security interest in investment property”

7.3(1) In this section:

- (a) ‘**effective date**’ means the date on which this section comes into force;
- (b) ‘**prior law**’ means this Act as it existed immediately before the effective date, including the applicable law as determined pursuant to this Act as it existed immediately before the effective date;
- (c) ‘**prior security agreement**’ means, for the purposes of this section:
 - (i) a security agreement entered into before the effective date; and
 - (ii) a security agreement mentioned in subclause (i) that is amended, renewed or extended by an agreement entered into on or after the effective date;
- (d) ‘**prior security interest**’ means a security interest in investment property that arises pursuant to a prior security agreement.

(2) Subject to subsections (3), (4) and (5) and section 74.1, section 7.1 applies for the purpose of determining the law governing the validity, the perfection, the effect of perfection or of non-perfection and the priority of all security interests in investment property, whether attachment occurs before, on or after the day on which section 1 of *The Securities Transfer Act* came into force.

(3) For the purpose of determining the law governing the validity of a prior security interest, prior law continues to apply.

(4) A prior security interest that was perfected by registration and that is a perfected security interest pursuant to prior law immediately before the effective date continues to be perfected without any further act if it is a perfected security interest pursuant to the applicable law as determined by this Act on or after the effective date.

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(5) A prior security interest that was perfected by registration and that is a perfected security interest pursuant to prior law immediately before the effective date but that is not a perfected security interest pursuant to the applicable law as determined by this Act on or after the effective date continues perfected until the beginning of the earlier of the following days:

- (a) the day perfection ceases pursuant to prior law;
- (b) December 31, 2020.

(6) If a prior security interest mentioned in subsection (5) is perfected in accordance with the applicable law as determined pursuant to this Act on or after the effective date but before the earlier of the days mentioned in clauses (5)(a) and (b), the security interest is deemed to be continuously perfected from the day of its perfection pursuant to prior law".

New section 8.2**7 The following section is added after section 8.1:****"Change in applicable law re perfection**

8.2 If a security interest is perfected and the rights of a competing claimant arose before a change in the applicable law in accordance with subsections 6(1) and (2), subsection 7(3), and section 7.1, perfection, the effect of perfection or of non-perfection, and priority continue to be governed by the previously applicable law".

Section 10 amended**8 Subsection 10(1) is amended:**

- (a) **by striking out "or" after clause (c); and**
- (b) **by adding the following after clause (c):**
"(c.1) the collateral is electronic chattel paper and the secured party has control pursuant to subsection 2(1.2); or".

New section 13**9 Section 13 is repealed and the following substituted:****"After-acquired property**

13 If a security agreement provides for a security interest in after-acquired property, the security interest attaches in accordance with section 12 without specific appropriation by the debtor".

Section 20 amended**10(1) Subsection 20(2) is amended:**

- (a) **in clause (a) by striking out "date" and substituting "time"; and**
- (b) **in clause (b):**
 - (i) **by striking out "Winding-up Act (Canada)" and substituting "Winding-up and Restructuring Act (Canada)"; and**
 - (ii) **by striking out "on the day" and substituting "at the time".**

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(2) The following subsection is added after subsection 20(2):

“(2.1) If registration of a security interest lapses as a result of a failure to renew the registration or is discharged without authorization or in error and the secured party registers the security interest not later than 30 days after the lapse or discharge, the lapse or discharge does not affect the priority status of the security interest that existed before the lapse or discharge in relation to:

- (a) a trustee in bankruptcy if the bankruptcy of the debtor occurred after the lapse or discharge and before the re-registration; or
- (b) an enforcement charge that, immediately before the lapse or discharge, had a subordinate priority position”.

(3) Subsection 20(3) is repealed and the following substituted:

“(3) A security interest in goods or an intangible is subordinate to the interest of a transferee who acquires an interest for value pursuant to a transaction that is not a security agreement before the security interest is perfected”.

(4) Subsection 20(4) is repealed.**New section 21.1****11 The following section is added after section 21:****“Priority re purchase-money security interests****21.1(1)** A purchase-money security interest in:

- (a) collateral, other than an intangible, that is perfected not later than 15 days after the earlier of:
 - (i) the day on which the debtor obtains possession of the collateral; and
 - (ii) the day on which another person, at the request of the debtor, obtains possession of the collateral; or
- (b) an intangible that is perfected not later than 15 days after the day on which the security interest attaches;

has priority over the interest of a person mentioned in subsection 20(2).

(2) For the purposes of this section, if goods are shipped by common carrier to a debtor or to a person designated by the debtor, the debtor does not obtain possession of the goods until the debtor or a third party at the request of the debtor obtains actual possession of the goods or a document of title to the goods, whichever is earlier”.

Section 24 amended**12 Clause 24(1)(a) is amended by adding “tangible” before “chattel paper”.**

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New section 24.2

13 The following section is added after section 24.1:

“Perfection of security interest in electronic chattel paper

24.2(1) A security interest in electronic chattel paper may be perfected by control of the collateral pursuant to subsection 2(1.2).

(2) A security interest in electronic chattel paper is perfected by control only when the secured party has control as provided in subsection 2(1.2)”.

Section 30 amended

14(1) The following subsections are added after subsection 30(2):

“(2.1) A buyer mentioned in subsection (2) who has paid all or substantially all of the contract price of goods acquires an equitable interest in goods falling within the description of the goods in the contract immediately on the seller acquiring goods or a right to goods of that description.

“(2.2) Subsections (2) and (2.1) apply to a contract to sell, including a contract to sell in which the seller retains title or ownership of the goods to secure performance of the obligations of the buyer”.

(2) Subsection 30(3) is repealed and the following substituted:

“(3) A buyer or lessee of goods that are acquired as consumer goods takes free of a perfected or unperfected security interest in the goods if the buyer or lessee gave value for the interest acquired”.

(3) Clause 30(4)(b) is repealed and the following substituted:

“(b) goods the purchase price of which exceeds \$1500 or the prescribed amount or, in the case of a lease, the market value of which exceeds \$1500 or the prescribed amount”.

(4) Subsections 30(5) and (6) are repealed and the following substituted:

“(5) A buyer or lessee of goods for value takes free of a security interest that is temporarily perfected pursuant to subsection 26(1), 28(3) or 29(4) or a security interest the perfection of which is continued pursuant to section 51 during any of the 15-day periods mentioned in those subsections.

“(6) If goods are sold or leased, the buyer or lessee takes free from any security interest in the goods that is perfected pursuant to section 25 if the goods were not described by serial number entered into the field labelled for the receipt of serial numbers”.

(5) Subsection 30(7) is amended by adding “consumer goods or” before “equipment”.

(6) The following subsection is added after subsection 30(8):

“(8.1) The priority that a security interest has pursuant to another provision of this Act applies to advances, including future advances, made after the interest of a buyer or lessee arises”.

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New section 31

15 Section 31 is repealed and the following substituted:

“Protection of transferees of negotiable collateral

31(1) In this section, ‘**transferee**’ does not include a person who acquires a security interest in the money, the account or the instrument.

(2) A transferee of money takes free from a perfected or unperfected security interest in the money if the transferee took possession and:

(a) acquired the money without knowledge that it was subject to the security interest; or

(b) gave value, whether or not the transferee acquired the money with knowledge that it was subject to the security interest.

(3) Subject to subsection (5), a transferee of funds received by transfer from a deposit account takes free from a perfected or unperfected security interest in the account if the transferee:

(a) acquired the funds without knowledge that the account was subject to the security interest; or

(b) gave value, whether or not the transferee acquired the funds with knowledge that the account was subject to the security interest.

(4) A transferee of an instrument drawn by a debtor and payable to the transferee takes free of a perfected or unperfected security interest in the instrument and in the account on which the instrument is drawn if the transferee took possession of the instrument and:

(a) acquired the instrument without knowledge of the security interest in the instrument or the account; or

(b) gave value, whether or not the transferee had knowledge of the security interest in the instrument or the account.

(5) A deposit-taking institution that receives payment of a debt by means of a transfer from or debit to a deposit account of the debtor held by the institution takes free of a security interest in the account only if the payment:

(a) is authorized by the debtor at or after the time the debt is payable by the debtor to the institution and the authorization of payment is not made by the deposit-taking institution as agent of the debtor;

(b) is effected through the use of a post-dated cheque drawn by the debtor; or

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- (c) is made pursuant to a written authorization that is:
 - (i) executed by the debtor as part of a loan pursuant to which the debtor became indebted to the deposit-taking institution;
 - (A) sets out specific amounts to be debited to or transferred from the deposit account at specified times or intervals; or
 - (B) authorizes debits to or transfers from the deposit account when the credit in the deposit account exceeds an amount specified in the written authorization; and
 - (ii) not made by the deposit-taking institution as agent of the debtor.
- (6) Nothing in subsection (5) detracts from the rights of an account debtor provided in section 41.
- (7) A purchaser of an instrument or a negotiable document of title has priority over a perfected or unperfected security interest in the instrument or document of title if the purchaser:
 - (a) gave value for the instrument or document of title;
 - (b) acquired the instrument or document of title without knowledge that it is subject to a security interest; and
 - (c) took possession of the instrument or document of title.
- (8) For the purposes of subsection (7), a purchaser of an instrument or a negotiable document of title who acquired it pursuant to a transaction entered into in the ordinary course of the transferor's business has knowledge only if the purchaser acquired the interest with the knowledge that the transaction violates the terms of the security agreement that creates or provides for the security interest.
- (9) Subject to subsection (10), a purchaser of chattel paper who takes possession of the tangible chattel paper, or who obtains control of electronic chattel paper as provided in subsection 2(1.2), in the ordinary course of the purchaser's business and for new value has priority over any security interest in the chattel paper if the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.
- (10) When the rights arising pursuant to tangible chattel paper are transferred to a purchaser as electronic chattel paper and the tangible chattel paper is transferred to another purchaser who takes possession of it for new value and in the ordinary course of that purchaser's business, the interest of the purchaser of the tangible chattel paper has priority over the interest of the purchaser of the electronic chattel paper if the tangible chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser of the tangible chattel paper".

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Section 34 amended

16 The following subsections are added after subsection 34(12):

“(13) A purchase-money security interest is deemed for priority purposes to have been assigned to the secured party who provided value to the debtor pursuant to the refinancing agreement if:

- (a) refinancing of an obligation mentioned in subclause 2(1)(jj)(i) or (ii) occurs pursuant to a refinancing agreement between the debtor and a secured party other than the secured party who provided the credit or value mentioned in those subclauses; and
- (b) either:
 - (i) the original registration relating to the purchase-money security interest securing the obligation is amended to identify the secured party named in the refinancing agreement as a secured party; or
 - (ii) before expiry or discharge of the original registration relating to the security interest, a registration relating to the purchase-money security interest is effected disclosing the secured party named in the refinancing agreement as the secured party, or the security interest is otherwise perfected.

“(14) A purchase-money security interest that is deemed to have been assigned as provided in subsection (13) has the same priority it had immediately before the deemed assignment with respect to a competing security interest but, if subclause (13)(b)(ii) applies, is subordinate to advances made or contracted for by the holder of a perfected competing security interest after expiry or discharge of the original registration relating to the purchase-money security interest and before written notice of the deemed assignment is given to the holder”.

Section 35 amended

17(1) Clause 35(1)(a) is repealed and the following substituted:

“(a) priority between conflicting perfected security interests in the same collateral is determined by the earliest of the following occurrences:

- (i) the registration of a financing statement without regard to the date of attachment of the security interest;
- (ii) possession of the collateral pursuant to section 24 without regard to the date of attachment of the security interest;
- (iii) control pursuant to subsection 2(1.2);
- (iv) perfection pursuant to section 5, 7, 26, 29 or 74”.

(2) Subsection 35(4) is repealed and the following substituted:

“(4) A security interest in goods that are consumer goods or equipment and are of a kind prescribed as serial numbered goods is not registered or perfected by registration for the purposes of subsection (1), (7) or (8) or subsection 34(2) unless a financing statement relating to the security interest that includes a description of the goods by serial number is registered with the serial number entered into the field labelled for the receipt of serial numbers”.

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(3) The following subsections are added after subsection 35(9):

“(10) The priority that a security interest has pursuant to another provision of this Act applies to advances, including future advances, made after the interest of the buyer or lessee arises.

“(11) The priority status of a security interest in relation to another security interest in the same collateral as provided in this or any other Act is not affected by enforcement measures taken by the holder of the other security interest.

“(12) A security interest, other than a purchase-money security interest, is subordinate to the interest of a person who is a beneficiary of a sum deemed to be held in trust pursuant to section 43 of *The Pension Benefits Act, 1992*.

“(13) Sums deemed to be held in trust pursuant to section 43 of *The Pension Benefits Act, 1992* are an obligation of the employer secured by a security interest, other than a purchase-money security interest, in the personal property of the employer that is perfected without registration”.

Section 38 amended

18 Subsection 38(5) is amended by striking out “exists” and substituting “does not exist”.

Section 41 amended

19 Subsections 41(1) and (2) are repealed and the following substituted:

“(1) In this section:

(a) ‘**account debtor**’ means a person who is obligated pursuant to an intangible or chattel paper;

(b) ‘**assignee**’ includes a secured party who has a security interest in an intangible or chattel paper as original collateral or as proceeds, and a receiver.

“(2) Unless the account debtor has made an enforceable agreement not to assert rights, defences or claims arising out of the contract or a closely connected contract, the rights of an assignee of an intangible or chattel paper are subject to:

(a) the terms of the contract between the account debtor and the assignor that confer on the account debtor a right of contractual set-off or account combination;

(b) any defence or claim arising out of the contract or a closely connected contract if the account debtor meets the requirements for set-off or abatement of price; and

(c) any other defence or claim of the account debtor against the assignor, including set-off, that accrues before the account debtor has knowledge of the assignment.

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“(2.1) Notwithstanding clause (2)(a), the rights of an assignee who acquires a security interest in an account as proceeds of original collateral are not subject to an account debtor’s right of contractual set-off or account combination if:

(a) the assignee gives a notice to the account debtor before the security interest in the account as proceeds arises that:

(i) states that the assignee expects to acquire an interest in the account as proceeds of its original collateral; and

(ii) provides details of the instrument, money or transfer of funds that will give rise to the account sufficient to permit the account debtor to reasonably ascertain the account transaction to which it relates; and

(b) the assignee’s security interest in the account as proceeds is continuously perfected.

“(2.2) Subsection (2.1) does not operate in favour of the assignee if the account debtor acquires, in addition to its rights, defences and claims as account debtor on the account, a security interest in the account that, pursuant to this Part, has priority over the security interest of the assignee.

“(2.3) A notice mentioned in subsection (2.1) may be given in accordance with section 68, but only if notice is given to a deposit-taking institution with respect to a deposit account, notice must be given at the branch of account.

“(2.4) For purposes of subsection (2.3), the branch of account:

(a) is the branch of the deposit-taking institution the address or name of which appears on the specimen signature card or other signing authority signed by the assignor with respect to the deposit account or that is designated by agreement between the deposit-taking institution and the assignor at the time of opening of the deposit account;

(b) if no branch has been identified or agreed on pursuant to clause (a), is the branch that is designated as the branch of account by the deposit-taking institution by notice in writing to the assignor; or

(c) if neither clause (a) nor (b) applies, is located at the mailing address identified in written communications between the deposit-taking institution and the assignor relating to the deposit account”.

Section 43 amended

20(1) Subsection 43(7) is repealed and the following substituted:

“(7) A registration is invalid if a search of the records of the Registry using the name, as prescribed, of any of the debtors required to be included in the financing statement does not disclose the registration.

“(7.1) For the purposes of subsections 30(6) and 35(4), a registration is invalid if a search of the records of the Registry by serial number does not disclose the registration.

“(7.2) A registration disclosed other than as an exact match as a result of a search of the records of the Registry using the name of a debtor or serial number as prescribed does not mean that the registration is, by that fact alone, valid”.

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(2) Subsection 43(8) is amended by striking out “subsection (6) or (7)” and substituting “subsection (6), (7) or (7.1)”.

Section 49 amended

21 Subsection 49(11) is amended by striking out “Subsections 50(7) to (9) apply,” and substituting “Subsection 50(7) applies.”.

Section 50 amended

22 Section 50 is amended:

- (a) by repealing subsection (8); and**
- (b) by repealing subsection (9).**

Section 58 amended

23 The following subsection is added after subsection 58(2):

“(3) Notwithstanding any other provision in this Part, if the collateral is a licence, the licence may be retained, held or disposed of pursuant to this section only in accordance with:

- (a) the terms and conditions of the licence; and**
- (b) the terms and conditions that, by law or contract, apply to the licence”.**

Section 59 amended

24(1) Clause 59(6)(b) is amended in the portion preceding subclause (i) by striking out “whose interest is subordinate to that of the secured party”.

(2) Subsection 59(18) is repealed.

New section 74.2

25 The following section is added after section 74.1:

“Transitional re 2018 amendments

74.2(1) In this section:

- (a) ‘prior interest’ means an interest to which prior law applied;**
- (b) ‘prior law’ means this Act as it existed on the day before the coming into force of *The Personal Property Security Amendment Act, 2018*;**
- (c) ‘prior security interest’ means a security interest that arises pursuant to a security agreement entered into before the coming into force of *The Personal Property Security Amendment Act, 2018*;**
- (d) ‘revised law’ means this Act as amended by *The Personal Property Security Amendment Act, 2018*.**

(2) The order of priorities between an interest that arises after the coming into force of *The Personal Property Security Amendment Act, 2018* and a prior security interest or prior interest is determined by the revised law.

(3) Prior law applies to the order of priorities between:

- (a) prior security interests; or**
- (b) a prior security interest and a prior interest”.**

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RSS 1978, c S-1 amended

26 Section 20 of *The Sale of Goods Act* is amended in Rule V by adding the following subsections after subsection (1):

“(1.1) In subsection (1.2), ‘contract to sell’ includes an agreement to sell in which the seller retains title or ownership to secure performance of the obligations of the buyer.

“(1.2) If there is a contract to sell unascertained or future goods, the buyer who has paid all or substantially all of the contract price of the goods acquires an equitable interest in goods falling within the description of the goods in the contract immediately on the seller acquiring goods or a right to goods of that description”.

SS 2010, c 26 amended

27 Sections 4 to 8 of *The Personal Property Security Amendment Act, 2010* are repealed.

Coming into force

28 This Act comes into force on proclamation.

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