

For Report

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MINISTER OF FINANCE

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COMMERCIAL LIENS ACT

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

PART 1 – DEFINITIONS AND APPLICATION

Definitions

1 In this Act:

“**acknowledgement**” means an acknowledgement under section 7 (1) (b) (ii) [*enforceability*];

“**authorization**” means an authorization under section 7 (1) (b) (i);

“**bailiff**” has the same meaning as in section 125 [*definitions in relation to collection agents and debt repayment agents*] of the *Business Practices and Consumer Protection Act*;

“**court**” means the Supreme Court;

“**creditor**” has the same meaning as in section 1 (1) [*definitions and interpretation*] of the *Personal Property Security Act*;

“**financing change statement**” has the same meaning as in section 1 (1) of the *Personal Property Security Act*;

“**financing statement**” has the same meaning as in paragraph (b) of the definition of “financing statement” in section 1 (1) of the *Personal Property Security Act*;

“**lien**” means a commercial lien under section 4 [*commercial lien*];

- “**lien holder**” means a person who holds a lien on goods for services;
- “**owner**”, except in section 12 [*perfection by registration*], includes a buyer under a transaction to which the *Personal Property Security Act* applies;
- “**registry**” means the registry established under section 42 [*personal property registry*] of the *Personal Property Security Act*;
- “**secured party**” means a person who has a security interest;
- “**security interest**” means an interest in goods that secures
- (a) payment of an obligation, or
 - (b) performance of an obligation;
- “**serial numbered goods**” has the meaning prescribed under the *Personal Property Security Act*;
- “**services**” means services described in section 2 [*application*];
- “**value**” has the same meaning as in section 1 (1) of the *Personal Property Security Act*.

Application

- 2 (1) Subject to subsection (2), this Act applies to the following services provided for consideration in relation to goods:
- (a) providing labour or materials for the purposes of restoring, improving or maintaining the condition or properties of goods;
 - (b) storing goods;
 - (c) transporting, carrying or towing goods;
 - (d) salvaging goods.
- (2) This Act does not apply in relation to the following:
- (a) prescribed services;
 - (b) prescribed goods.

No application to *Forestry Service Providers Protection Act*

- 3 This Act does not apply in relation to a contractor’s lien under section 2 [*contractor’s lien*] of the *Forestry Service Providers Protection Act*.

PART 2 – ESTABLISHING LIEN

Commercial lien

- 4 (1) A person has a commercial lien on goods for services that the person has provided in relation to those goods if the services are requested by a person who, when the services are requested or at any time the services are being provided,
- (a) is the owner of the goods or another person who has an interest in the goods,
 - (b) is in possession of the goods, or
 - (c) is legally entitled to possession of the goods.
- (2) A lien ceases to exist if
- (a) a lien holder made an agreement, with the person who requested services, to provide services, and
 - (b) the lien holder repudiates the agreement before completion of the services.

Attachment

- 5 A lien attaches to the goods on commencement of the services.

Amount secured

- 6 (1) If an amount is agreed on for the provision of the services, a lien secures,
- (a) before completion of the services, the market value of the services provided, and
 - (b) upon completion of the services, the amount agreed on for the provision of the services.
- (2) If no amount is agreed on for the provision of the services, a lien secures the market value of the services provided.

Enforceability

- 7 (1) Subject to subsection (4), a lien is enforceable only if
- (a) the goods are in the possession of the lien holder, or
 - (b) the person who requested the services in relation to the goods, the owner of the goods or another person with an interest in the goods has given the lien holder at any time and in accordance with subsection (2)
 - (i) a written authorization for the services, or
 - (ii) a written acknowledgement of the person's obligation to pay for the services.

- (2) An authorization or acknowledgement under subsection (1) (b) must
 - (a) be signed by the person who requested the services in relation to the goods, by the owner of the goods or by the other person with an interest in the goods, and
 - (b) include a description of the goods.
- (3) For the purposes of subsection (1), a lien holder does not have possession of goods that are in the apparent possession or control of
 - (a) the person who requested the services in relation to the goods,
 - (b) the owner of the goods or another person with an interest in the goods, or
 - (c) an agent of a person described in paragraph (a) or (b).
- (4) An acknowledgement under subsection (1) (b) (ii) is without prejudice to the right of the person who has given the acknowledgement, or any other person, to dispute the amount the lien holder is owed.
- (5) If a lien is not enforceable under subsection (1) at the time that a third party acquires an interest in the goods subject to the lien, the lien does not become enforceable against the third party if the requirements under subsection (1) are subsequently met.
- (6) For the purposes of subsection (5) and without limiting that subsection, a person described in section 21 (2) and (4) [*lien subordinate or unenforceable*] is a third party who acquires an interest in the goods.

Transferability

- 8** (1) If a debt secured by a lien is assigned, the lien holder may, in accordance with subsection (2), transfer the lien to the person to whom the debt is assigned.
- (2) A transfer under subsection (1) must be in writing and must be signed by the lien holder.

Effect of lien holder granting credit

- 9** The granting of credit by a lien holder for the debt to which a lien relates
 - (a) does not affect the attachment, perfection, enforceability or priority of the lien, and
 - (b) does not extinguish the lien.

Effect of lien holder taking security interest

- 10** A lien holder ceases to hold the lien if, to secure the amount secured by the lien, the lien holder takes a security interest in the goods that are subject to the lien.

PART 3 – PERFECTION OF LIEN

Perfection by possession

- 11** (1) Possession of goods by a lien holder or by a person acting on behalf of a lien holder perfects a lien on the goods.
- (2) For the purposes of subsection (1), a person described in that subsection does not have possession of goods if
- (a) the goods are in the apparent possession or control of
 - (i) the person who requested the services in relation to the goods,
 - (ii) the owner of the goods or another person with an interest in the goods, or
 - (iii) an agent of a person described in subparagraph (i) or (ii), or
 - (b) the goods are being held as a result of a seizure or repossession.

Perfection by registration

- 12** (1) In this section, “**owner**” includes a buyer, a lessee or a consignee under a transaction to which the *Personal Property Security Act* applies.
- (2) A lien is perfected if a financing statement that meets the following requirements is registered in the registry:
- (a) in the case of serial numbered goods, the financing statement describes the goods by the serial number;
 - (b) in the case of goods that are not serial numbered goods, the financing statement identifies by name the owner of the goods and, if the person who requested the services in relation to the goods is not the owner, the person who requested the services in relation to the goods;
 - (c) all other requirements of registration in the registry prescribed under the *Personal Property Security Act* have been met.
- (3) A lien holder may register a financing statement in relation to a lien that is enforceable in accordance with section 7 (1) (b) [*enforceability*] at any time after receiving an authorization or an acknowledgement.

Continuity of perfection

- 13** If the perfection of a lien is not continuous, the date of perfection to be considered in determining the priority of the lien is the lien’s most recent date of perfection.

Grace periods for perfection by registration

- 14** (1) If a lien is perfected by possession, giving control of the goods to the person who requested the services, the owner of the goods or another person with an interest in the goods does not affect the perfection of the lien if the lien holder registers a financing statement in respect of the goods, in accordance with section 12 [*perfection by registration*], within 15 days after the date the lien holder gives control of the goods.
- (2) If a lien holder does not have possession of the goods when a lien attaches to the goods, and the lien holder registers a financing statement respecting the goods in accordance with section 12 within 15 days after the date that services are completed, the lien is deemed to be perfected at the beginning of the 15-day period.

Validity of registration of financing statement

- 15** (1) The validity of the registration of a financing statement is not affected by a defect, irregularity, omission or error in the financing statement, or in the registration of the financing statement, unless the defect, irregularity, omission or error is seriously misleading.
- (2) Subject to subsection (5), the registration of a financing statement is invalid if
- (a) goods described in the financing statement are serial numbered goods, and
 - (b) there is a seriously misleading defect, irregularity, omission or error in the serial number of the goods in the financing statement.
- (3) Subject to subsection (5), the registration of a financing statement is invalid if
- (a) goods described in the financing statement are not serial numbered goods, and
 - (b) there is a seriously misleading defect, irregularity, omission or error in the name of a person identified in the financing statement in accordance with section 12 (2) (b).
- (4) If it is alleged that a defect, irregularity, omission or error is seriously misleading, it is not necessary to prove that anyone was actually misled by it.
- (5) Failure to provide a description in a financing statement in relation to any item or kind of goods does not affect the validity of the registration with respect to other goods described in the financing statement.

Application of *Personal Property Security Act*

- 16** (1) Subject to this section, if a financing statement is registered in the registry in accordance with this Part, the following provisions of the *Personal Property Security Act* apply in relation to the registration:
- (a) section 42 (5) [*refusal to provide services in certain circumstances*];
 - (b) section 43 (1) to (3) and (12) to (15) [*registration of financing statements*];
 - (c) section 44 [*duration of and amendments to registrations*];
 - (d) section 45 [*registration of transfers of security interests*];
 - (e) section 46 (1) and (2) (a), (b) and (d) [*registration documents*];
 - (f) section 47 [*registration not notice*];
 - (g) section 48 [*registry searches*];
 - (h) section 52 [*recovery of loss caused by error in registry*];
 - (i) section 54 [*general*];
 - (j) section 76.1 [*fees*].
- (2) In reading the provisions referred to in subsection (1),
- (a) a reference to “collateral” is to be read as a reference to “goods”,
 - (b) a reference to “security agreement” is to be read as a reference to “authorization or acknowledgement”,
 - (c) a reference to “security interest” is to be read as a reference to “lien”,
 - (d) a reference to “secured party” is to be read as a reference to “lien holder”,
 - (e) section 43 (15) is to be read as if “The secured party or person named as a secured party in a financing statement that is not a financing statement (transition) must give to each person named as debtor in the statement” is “The lien holder must give to each person required to be identified in a financing statement in accordance with section 12 (2) (b) of the *Commercial Liens Act*”,
 - (f) section 45 (1) is to be read as if “transfers the interest or a part of it” is “transfers the lien”,
 - (g) section 48 (1) (a) is to be read as if “debtor” is “person required to be identified in a financing statement in accordance with section 12 (2) (b) of the *Commercial Liens Act*”, and
 - (h) sections 52 (1) (a), 54 (5) and 76.1 (1) are to be read as if a reference to “this Act” is a reference to the *Commercial Liens Act*.

Amendment or discharge of registrations

- 17 (1) The lien holder identified in a registered financing statement must discharge the registration not later than one month after the date the amount secured by the lien is paid, unless before the expiry of that one-month period the registration lapses.
- (2) If a financing statement is registered in relation to a lien and
- (a) the amount secured by the lien is paid,
 - (b) the lien holder identified in the financing statement has agreed to release part or all of the goods described in the financing statement,
 - (c) the description of the goods contained in the financing statement includes an item or kind of goods that is not subject to the lien, or
 - (d) no lien exists in relation to the goods described in the financing statement,
- the owner of the goods described in the financing statement may give a written demand to the lien holder.
- (3) The demand under subsection (2) may require that,
- (a) in the case described in subsection (2) (a) or (d), the registration be discharged,
 - (b) in the case described in subsection (2) (b), the registration be amended or discharged, to reflect the terms of the agreement, or
 - (c) in the case described in subsection (2) (c), the goods description be amended to exclude items or kinds of goods that are not subject to the lien.
- (4) The lien holder must register a financing change statement amending or discharging the registration not later than 40 days after the date that the demand under subsection (2) is given.
- (5) If the lien holder fails to register a financing change statement amending or discharging the registration as required under subsection (4), the person who gave the demand may, on giving the registrar proof satisfactory to the registrar that the demand has been given to the lien holder, register a financing change statement amending or discharging the registration in accordance with the demand, unless in the meantime the lien holder registers an order of the court maintaining the registration.
- (6) The demand under subsection (2) must be given in accordance with section 60 (2) [*service of statements, notices and demands*].

- (7) On application to the court by the lien holder, the court may order that the registration
 - (a) be maintained on any conditions and for any period of time, subject to section 44 (1) of the *Personal Property Security Act*, as adopted by section 16 (1) (c) of this Act, or
 - (b) be discharged or amended.
- (8) No fee or expense may be charged and no amount may be accepted by a lien holder for compliance with a demand given under subsection (2), unless the charge was agreed to by the parties before the demand was given.

Transfer of owner's interest in goods with prior consent

- 18** (1) In this section, “**designated period**” means the period that
- (a) begins on the day that is 15 days after the date the owner transfers all or part of the owner's interest in the goods with the prior consent of the lien holder, and
 - (b) ends on the day before the date the lien holder amends the registration to name the transferee of the goods as the new owner.
- (2) If a lien on goods, other than serial numbered goods, has been perfected by registration and the owner transfers all or part of the owner's interest in the goods with the prior consent of the lien holder, the lien on the transferred goods is subordinate to
- (a) the interest of a buyer or lessee of the goods who acquires the interest, for value and without knowledge of the lien, in the transferred goods after the transfer and before the lien holder amends the registration to name the transferee of the goods as the new owner,
 - (b) a perfected security interest in the transferred goods that attaches and is perfected in the designated period,
 - (c) the interest of a person who causes the goods to be seized in the designated period under a legal process to enforce a judgment,
 - (d) the interest of a creditor entitled by law to participate in the distribution of the goods, or their proceeds, seized in the designated period under a legal process to enforce a judgment,
 - (e) the interest of a representative of creditors in the goods seized in the designated period under a legal process to enforce a judgment, but only for the purposes of enforcing the rights of a person described in paragraph (c),
 - (f) a trustee in bankruptcy appointed under the *Bankruptcy and Insolvency Act* (Canada), if the date of the bankruptcy is in the designated period, and
 - (g) a liquidator appointed under the *Winding-up and Restructuring Act* (Canada), if the date of the winding-up order is in the designated period.

Transfer of owner's interest in goods without prior consent or change of owner's name

- 19 (1) In this section, “**designated period**” means,
- (a) in the case of a transfer of all or part of the owner’s interest in the goods, the period that
 - (i) begins on the day that is 15 days after the date the lien holder has knowledge of information required to register a financing change statement showing the transferee as the new owner, and
 - (ii) ends on the day before the date the lien holder amends the registration to name the transferee of the goods as the new owner, and
 - (b) in the case of a change in the owner’s name, the period that
 - (i) begins on the day that is 15 days after the date the lien holder has knowledge of the new name, and
 - (ii) ends on the day before the date the lien holder amends the registration to indicate the new name of the owner.
- (2) If a lien on goods, other than serial numbered goods, is perfected by registration and the lien holder has knowledge of
- (a) information required to register a financing change statement showing the transferee as the new owner, if all or part of the owner’s interest in the goods has been transferred without the consent of the lien holder, or
 - (b) the new name of the owner, if there has been a change in the owner’s name,
- the lien on the goods transferred, if paragraph (a) applies, and on the goods, if paragraph (b) applies, is subordinate to
- (c) the interest of a buyer or lessee of the goods who acquires the interest, for value and without knowledge of the lien, in the transferred goods after the transfer and before the lien holder amends the registration to name the transferee of the goods as the new owner or to indicate the new name of the owner, as applicable,
 - (d) a perfected security interest in the goods that attaches and is perfected in the designated period,
 - (e) the interest of a person who causes the goods to be seized in the designated period under a legal process to enforce a judgment,
 - (f) the interest of a creditor entitled by law to participate in the distribution of the goods, or their proceeds, seized in the designated period under a legal process to enforce a judgment,

- (g) the interest of a representative of creditors in the goods seized in the designated period under a legal process to enforce a judgment, but only for the purposes of enforcing the rights of a person described in paragraph (e),
 - (h) a trustee in bankruptcy appointed under the *Bankruptcy and Insolvency Act* (Canada), if the date of the bankruptcy is in the designated period, and
 - (i) a liquidator appointed under the *Winding-up and Restructuring Act* (Canada), if the date of the winding-up order is in the designated period.
- (3) If the owner's interest in part or all of the goods is transferred without the consent of the lien holder and there are one or more subsequent transfers of the goods without the consent of the lien holder before the lien holder acquires knowledge of the name of the transferee who has possession of the goods, the lien holder is deemed to have complied with subsection (2) if the lien holder registers a financing change statement not later than 15 days after the date that the lien holder acquires knowledge of
- (a) the name of the transferee who has possession of the goods, and
 - (b) the information required to register a financing change statement.
- (4) For certainty, the lien holder need not register financing change statements with respect to any intermediate transferee.

PART 4 – PRIORITY OF LIEN

Priority of liens over other interests

- 20** (1) Except as provided in this Act or any other Act, a perfected lien has priority over an interest that is created after the lien attaches.
- (2) A lien, whether perfected or unperfected, has priority over
- (a) a security interest that attached before the lien attaches, and
 - (b) a writ of execution, or a charging order, issued before the lien attaches.

Lien subordinate or unenforceable

- 21** (1) In this section, “**seized under legal process**” includes
- (a) the seizure of goods subject to a lien under a writ of execution, and
 - (b) the issue of an equitable execution order or charging order affecting the goods.

- (2) If a lien is unperfected when the goods are seized under legal process to enforce a judgment, the lien is subordinate to the following interests:
 - (a) the interest of a person who causes the goods to be seized;
 - (b) the interest of a creditor entitled by law to participate in the distribution of the seized goods or their proceeds;
 - (c) the interest of a representative of creditors, but only for the purposes of enforcing the rights of a person described in paragraph (a).
- (3) A lien is subordinate to the following:
 - (a) the interest of a buyer or lessee of the goods who gives value and acquires the interest without knowledge of the lien and before the lien is perfected;
 - (b) a security interest that attaches after the lien attaches and that is perfected before the lien is perfected.
- (4) A lien is not enforceable against the following persons:
 - (a) a trustee in bankruptcy appointed under the *Bankruptcy and Insolvency Act* (Canada), if the lien is unperfected on the date of bankruptcy;
 - (b) a liquidator appointed under the *Winding-up and Restructuring Act* (Canada), if the lien is unperfected on the date of the winding-up order.

Exceptions to priority of liens

- 22**
- (1) In this section, “**consumer goods**” means goods that are used or acquired for use primarily for personal, family or household purposes.
 - (2) A buyer or lessee of goods sold or leased in the ordinary course of business of the seller or lessor takes the goods free of any perfected or unperfected lien, whether or not the buyer or lessee has knowledge of the lien.
 - (3) Subject to subsection (4), a buyer or lessee of goods that are acquired as consumer goods takes the goods free of any perfected or unperfected lien if the buyer or lessee
 - (a) gives value for the interest acquired, and
 - (b) has no knowledge of the lien.
 - (4) Subsection (3) does not apply to a lien on
 - (a) goods the purchase price of which exceeds the greater of \$1 500 and an amount prescribed under section 30 (4) (b) [*exception to buyer taking goods free of security interest*] of the *Personal Property Security Act*, or
 - (b) leased goods the market value of which exceeds the greater of \$1 500 and an amount prescribed under section 30 (4) (c) of the *Personal Property Security Act*.

- (5) A buyer or lessee of goods takes the goods free of a lien described in section 14 [*grace periods for perfection by registration*] of this Act if, during the 15-day period described in that section and before the lien is perfected by registration, the buyer or lessee
- (a) gives value for the interest acquired, and
 - (b) has no knowledge of the lien.

Priority among liens

- 23 Subject to section 7 [*enforceability*], priority among 2 or more liens, whether the liens are perfected or unperfected, is to be determined by the reverse order in which the services were provided.

PART 5 – DUTIES OF LIEN HOLDER

Division 1 – Care of Goods

Care of goods in lien holder's possession

- 24 (1) A lien holder must use reasonable care in the custody and preservation of goods in the possession of the lien holder, including taking necessary steps to preserve rights against other persons.
- (2) Unless otherwise agreed by the lien holder and the owner of the goods, if the goods are in the lien holder's possession,
- (a) reasonable expenses, including the costs of insurance and payment of taxes or other charges incurred in obtaining, maintaining possession of and preserving the goods, are secured by the lien,
 - (b) the risk of loss or damage to the goods, unless caused by the negligence of the lien holder, is on the owner to the extent of any inadequacy in insurance coverage,
 - (c) the lien holder may hold as additional security any increase or profits, except money, such as the young of an animal born while the animal is subject to the lien, and must apply any money received as increase or profits, unless remitted to the owner, immediately on its receipt to reduce the amount secured by the lien, and
 - (d) the lien holder must keep the goods identifiable, but fungible goods may be commingled.
- (3) Subject to subsection (1), a lien holder may use the goods as follows:
- (a) for the purposes of preserving the goods;
 - (b) in accordance with an order of the court in the manner directed.

Division 2 – Information About Goods

Demand for information from lien holder

- 25** (1) The owner of goods subject to a lien or another person with an interest in the goods, the person who requested services in relation to the goods, a creditor, a sheriff or an authorized representative of any of them may, by a demand in writing that contains an address for reply and is delivered to the lien holder,
- (a) if an address is in the records of the registry,
 - (i) at the lien holder’s most recent address in a registered financing statement that relates to the goods, or
 - (ii) at an address of the lien holder, whether or not in the records of the registry, that is more recent than the address referred to in subparagraph (i), or
 - (b) if no address is in the records of the registry, at the current address of the lien holder,
- require the lien holder to send to the person making the demand, or, if the demand is made by the owner, to any person at an address specified by the owner, any of the information specified in subsection (2).
- (2) The information that may be demanded under subsection (1) may be one or more of the following:
- (a) a copy of an authorization or acknowledgement held by the lien holder for services in relation to the goods;
 - (b) a statement in writing of the amount of the indebtedness and of the terms of payment of that indebtedness as of the date specified in the demand;
 - (c) a written approval or correction of an itemized list of goods attached to the demand indicating which items in the demand are the goods subject to the lien as of the date specified in the demand;
 - (d) a written approval or correction of the amount of the indebtedness and of the terms of payment of the indebtedness as of the date specified in the demand.
- (3) A lien holder must reply to a demand under subsection (1) within 10 days after the lien holder receives the demand.

Failure to reply to demand under section 25

- 26** (1) If, without reasonable excuse, in relation to a demand under section 25 (1),
- (a) the lien holder fails to comply within 10 days after the date that the lien holder receives the demand, or
 - (b) the lien holder's reply to the demand under that section is incomplete or incorrect,

the person making the demand may, in addition to any other remedy provided for in this Act, apply to the court for an order requiring the lien holder to comply with the demand.

- (2) If a demand is made under section 25 (1) and the person receiving the demand no longer has an interest in the goods that are the subject of the demand, the person must, not later than 10 days after the date that the person receives the demand, disclose the name and address of
 - (a) the person's immediate successor in interest, and
 - (b) if known to the person, the current successor in interest.
- (3) If, without reasonable excuse, the person receiving the demand fails to comply with subsection (2), the person making the demand may, in addition to any other remedy provided for in this Act, apply to the court for an order requiring the person to whom the demand has been made to comply.

**Court order in relation to
reply to demand under section 25**

- 27** (1) On application under section 26 (1) or (3), the court may make an order requiring the lien holder or the person receiving a demand under section 25 to comply with the demand or to disclose the information required under section 26 (2).
- (2) The court may provide for the actual or possible failure of the lien holder or the person receiving the demand to comply with an order under subsection (1) by making one or more of the following orders, either on an application under section 26 (1) or (3) or as part of the order under subsection (1) of this section:
 - (a) any order the court considers necessary to ensure compliance with a demand under section 25 or the requirement to disclose the information under section 26 (2);
 - (b) in the case of non-compliance by the lien holder, an order that the lien of the lien holder with respect to which the demand was made is unperfected or extinguished and that any related registration be discharged.

- (3) On an application
 - (a) under section 26 (3), or
 - (b) under this subsection made by
 - (i) the lien holder referred to in section 26 (1), or
 - (ii) the person referred to in section 26 (2) as receiving the demand, the court, subject to section 58 (1) [*consequences of non-compliance with Act*], may, unless the demand is made by the owner of the goods subject to the demand, exempt the lien holder or person receiving the demand in whole or in part from complying with section 25 (3) or section 26 (2) or may extend the time for compliance.

Effect of reply to demand

- 28**
- (1) A lien holder who has replied to a demand referred to in section 25 (1) is estopped, for the purposes of this Act, against the person making the demand or against any other person who can reasonably be expected to rely on the reply from denying
 - (a) the accuracy of the information referred to in section 25 (2) (b) to (d) and contained in the reply to the demand, and
 - (b) that the copy of the authorization or acknowledgement referred to in section 25 (2) (a) that is provided in response to a demand under section 25 (1) is a true copy of that authorization or acknowledgement, but only to the extent that the person making the demand or the other person has in fact relied on
 - (c) the information referred to in paragraph (a), or
 - (d) the accuracy of the copy of the authorization or acknowledgement referred to in paragraph (b).
 - (2) A successor in interest referred to in section 26 (2) (b) is estopped, for the purposes of this Act, against the person making the demand referred to in section 25 (1) and any other person who can reasonably be expected to rely on the reply to the demand from denying
 - (a) the accuracy of the information referred to in section 25 (2) (b) to (d) and contained in the reply to the demand, and
 - (b) that the copy of the authorization or acknowledgement referred to in section 25 (2) (a) that is provided in response to a demand under section 25 (1) is a true copy of that authorization or acknowledgement, but only to the extent that the person making the demand or the other person has in fact relied on
 - (c) the information referred to in paragraph (a), or
 - (d) the accuracy of the copy of the authorization or acknowledgement referred to in paragraph (b).

- (3) A successor in interest is not estopped under subsection (2) if
 - (a) the person making the demand or other person who relied on the reply knows that the interest has been transferred to the successor in interest and knows that successor's identity and address, or
 - (b) before making the demand, a financing change statement has been registered in accordance with section 45 of the *Personal Property Security Act*, as adopted by section 16 (1) (d) of this Act, disclosing the successor in interest as the lien holder.

Payment for demand

- 29** The person to whom a demand is made under section 25 (1) may require payment in advance of a fee in an amount prescribed under section 18 (18) [*secured party fee*] of the *Personal Property Security Act* for each reply to a demand, but the owner is entitled to make a demand and receive a reply to it without charge once every 6 months.

PART 6 – RIGHTS AND REMEDIES ON DEFAULT

Definition for Part

- 30** In this Part, “**default**” means the failure to pay the amount secured by a lien after
 - (a) the amount becomes payable, and
 - (b) any period granted by the lien holder and set out in writing has expired.

Division 1 – Rights and Remedies

Rights and remedies available to lien holder and owner

- 31** (1) The rights and remedies in this Part are cumulative.
- (2) After default, except as provided in subsection (4), the lien holder has against the owner only
 - (a) the rights, remedies and obligations provided in this Part, and
 - (b) when the lien holder is in possession of the goods, the rights, remedies and obligations provided in section 24 [*care of goods in lien holder's possession*].
- (3) After default, the owner has against the lien holder the rights and remedies provided by any other enactment or rule of law consistent with this Act, and the rights and remedies provided in this Part and section 24.

- (4) Except as provided in sections 24, 37 [*disposition of goods by lien holder*], 41 [*distribution of amounts realized from disposition of goods*] and 43 (1) [*right to redeem goods*], no provision of the following sections, to the extent that it imposes obligations on the lien holder or gives rights to the owner, can be waived or varied by agreement, as a term of an authorization or acknowledgement or otherwise:
- (a) section 24 (1);
 - (b) section 33 (2) (b) [*seizure of goods by bailiff without removal from premises*];
 - (c) section 37;
 - (d) section 38 [*notice of disposition*];
 - (e) section 39 [*purchase of goods by lien holder*];
 - (f) section 41 [*distribution of amounts realized from disposition of goods*];
 - (g) section 42 [*lien holder proposal to take goods in satisfaction of lien*];
 - (h) section 43;
 - (i) section 44 [*court may resolve dispute*];
 - (j) section 45 [*payment into court by petitioner, release of goods and payment out of court*];
 - (k) section 46 [*payment into court by interlocutory application, release of goods and payment out of court*];
 - (l) section 47 [*supervisory jurisdiction of court*];
 - (m) section 50 [*rights, duties and obligations discharged in a commercially reasonable manner*];
 - (n) section 58 [*consequences of non-compliance with Act*].
- (5) A lien does not merge only because a lien holder has reduced the lien holder's claim to judgment.

Division 2 – Seizure of Goods Subject to Lien by Bailiff

Seizure by bailiff

- 32** (1) Subject to this section, a lien holder may cause goods to be seized after default if
- (a) the lien holder causing the goods to be seized holds a lien on the goods, and
 - (b) the lien has attached to the goods, whether the lien is perfected or unperfected.
- (2) Goods to which a lien has attached may be seized only by a bailiff.

- (3) A bailiff may only seize goods to which a lien has attached, if authorized by a lien holder who has
 - (a) signed a direction of seizure, and
 - (b) delivered the direction to the bailiff who is to seize the goods.
- (4) A direction of seizure referred to in subsection (3) must include a description of the goods to be seized and any other prescribed information or records.
- (5) A seizure of goods by a bailiff under this section does not affect the interest of a person who has priority over the rights of the lien holder.

**Seizure of goods by bailiff
without removal from premises**

- 33**
- (1) In seizing goods under section 32, the bailiff may seize the goods without removing the goods from the premises where the goods are located by posting a notice of seizure on the goods or in a conspicuous place in close proximity to the goods, if
 - (a) the lien is perfected by registration in accordance with section 12 [*perfection by registration*], and
 - (b) the bailiff determines that the goods cannot be readily moved or adequate alternative storage facilities are not readily available.
 - (2) If subsection (1) applies, the lien holder
 - (a) may dispose of the goods in accordance with section 37 [*disposition of goods by lien holder*], and
 - (b) must not cause the person in possession of the premises described in subsection (1) of this section any greater inconvenience and cost than is necessarily incidental to the disposal.

Bailiff may appoint bailee

- 34**
- (1) If a lien is perfected by registration of a financing statement in accordance with section 12, the bailiff may, at any time after seizing goods, designate any person as bailee of the bailiff if the person signs an undertaking that includes the following:
 - (a) a term that the person undertakes to hold the goods in the person's possession as bailee for the bailiff;
 - (b) a term that the person undertakes to deliver the goods to the bailiff in accordance with the bailiff's demand;
 - (c) prescribed terms or information, if any.
 - (2) A bailiff continues to hold seized goods that are held by a bailee under an undertaking in accordance with subsection (1).

Giving possession of seized goods to lien holder

- 35** A bailiff may give possession or control of the seized goods to
- (a) the lien holder, or
 - (b) a person designated in writing to act on behalf of the lien holder.

Release of possession of seized goods

- 36** (1) A bailiff must deliver a written notice to the lien holder named in a direction of seizure, indicating that the seized goods are to be released at a date specified in the notice unless before that date
- (a) the lien holder, or a person designated in writing to act on behalf of the lien holder, takes possession of the seized goods, and
 - (b) all of the bailiff's fees and expenses associated with the seizure of goods are paid.
- (2) The notice referred to in subsection (1) may be delivered before or after the goods are seized.
- (3) The bailiff may release the seized goods if, before the date specified in the notice referred to in subsection (1),
- (a) the lien holder, or a person designated in writing to act on behalf of the lien holder, does not take possession of the seized goods described in the direction of seizure, or
 - (b) the bailiff's fees and expenses associated with the seizure of goods are not paid.
- (4) If the bailiff releases the seized goods described in the direction of seizure in accordance with subsection (3), the lien ceases to exist.

**Division 3 – Lien Holder Disposal or
Taking of Goods Subject to Lien**

Disposition of goods by lien holder

- 37** (1) If the amount secured by the lien is not paid within 30 days after the date of default, a lien holder may dispose of the goods, in whole or in part,
- (a) in their existing condition or after repairing or processing the goods, and
 - (b) in accordance with this section and section 38.
- (2) The proceeds of a disposition under subsection (1) must be applied in the following order to
- (a) the reasonable expenses of seizing, holding, repairing, processing or preparing for disposition and disposing of the goods and any other reasonable expenses of enforcing the lien, and
 - (b) the satisfaction of the obligations secured by the lien.

- (3) Any surplus from a disposition of goods under subsection (2) must be dealt with in accordance with section 41 [*distribution of amounts realized from disposition of goods*].
- (4) Goods may be disposed of
 - (a) by private sale,
 - (b) by public sale, including public auction or closed tender,
 - (c) as a whole or in commercial units or parts, and
 - (d) by lease, if the owner consents in writing.
- (5) The payment for goods disposed of under this section may be deferred, if the owner consents in writing.

Notice of disposition

- 38**
- (1) Not less than 20 days before the disposition of the goods in accordance with section 37, the lien holder, subject to subsection (4), must give a notice of disposition in accordance with section 60 (3) [*service of statements, notices and demands*] to all of the following:
 - (a) the owner of the goods;
 - (b) any creditor or person with a security interest in the goods
 - (i) who has registered, before the date that the notice of disposition is given to the owner, a financing statement using the name of the owner or according to the serial number of the goods if the goods are serial numbered goods, or
 - (ii) whose security interest is perfected by possession at the time the goods were seized in accordance with section 32 [*seizure by bailiff*];
 - (c) a lien holder with an interest in the goods
 - (i) who has registered, before the date that the notice of disposition is given to the owner, a financing statement using the name of the owner or according to the serial number of the goods if the goods are serial numbered goods, or
 - (ii) whose lien is perfected by possession at the time the goods were seized in accordance with section 32;
 - (d) any other person with an interest in the goods who has given notice to the lien holder, in writing and in accordance with section 60 (4), of the person's interest in the goods before the date that the notice of disposition is given to the owner.
 - (2) Subject to subsection (3), the notice of disposition referred to in subsection (1) must contain
 - (a) a description of the goods,
 - (b) the amount required to satisfy the obligation secured by the lien,

- (c) the amount of the applicable expenses referred to in section 37 (2) (a) or, if the amount of the expenses has not been determined, a reasonable estimate,
 - (d) a statement that, on payment of the amounts due under paragraphs (b) and (c), any person entitled to receive the notice may redeem the goods,
 - (e) a statement that, unless the goods are redeemed, the goods will be disposed of and the person who is obligated to pay for the services may be liable for a deficiency, and
 - (f) the date, time and place of any sale by public auction, or the place to which closed tenders may be delivered and the date after which closed tenders will not be accepted or after which any private disposition of the goods is to be made, if applicable to the manner of disposal.
- (3) If the notice required by subsection (1) is given to a person other than the owner, it need not contain the information specified in subsection (2) (e).
- (4) The notice referred to in subsection (1) is not required if any of the following circumstances apply:
- (a) the goods are perishable;
 - (b) the lien holder believes on reasonable grounds that the value of the goods at the time of default will decline substantially if the goods are not disposed of immediately after default;
 - (c) the goods are of a type that is to be disposed of by sale on an organized market that handles large volumes of transactions between many different sellers and many different buyers;
 - (d) the cost of care and storage of the goods is disproportionately large relative to the value of the goods;
 - (e) for any other reason, the court, on an application made without notice to any person, is satisfied that a notice is not required;
 - (f) after default, each person entitled to receive a notice of disposition consents in writing to a disposition of the goods without compliance with the notice requirements of subsection (1).

Purchase of goods by lien holder

- 39** The lien holder may purchase the goods or any part of the goods at a public sale, as referred to in section 37 (4) (b) [*disposition of goods by lien holder*], but only for a price that bears a reasonable relationship to the market value of the goods.

**Buyer or lessee of goods
acquires goods without lien**

40 If a lien holder disposes of goods to a buyer or lessee who in good faith acquires an interest for value and who takes possession of the goods, the buyer or lessee acquires the goods free from

- (a) the interest of the owner,
- (b) an interest subordinate to that of the owner, and
- (c) an interest subordinate to that of the lien holder,

whether or not the requirements of sections 37 and 38 [*notice of disposition*] have been complied with by the lien holder, and all obligations secured by the subordinate interests are, as regards to the buyer or lessee, deemed performed for the purposes of section 17 (2) (a) [*amendment or discharge of registrations*] of this Act and section 50 (3) (a) [*amendment or discharge of registrations*] of the *Personal Property Security Act*.

**Distribution of amounts realized
from disposition of goods**

41 (1) If a lien holder has disposed of the goods in accordance with sections 37 and 38, any surplus from the disposition must, unless otherwise provided by law or by the agreement of all interested parties, be accounted for and paid in the following order to

- (a) a person who has a subordinate lien or security interest in the goods
 - (i) who has registered, before the distribution under this section, a financing statement, using the name of the owner or according to the serial number of the goods if the goods are serial numbered goods, or
 - (ii) whose interest was perfected by possession at the time the goods were seized,
- (b) any other person with an interest in the goods if that person has given a notice of that person's interest to the lien holder, in writing and in accordance with section 60 (4) [*service of statements, notices and demands*], before the distribution, and
- (c) the owner of the goods.

(2) The priority of the claim of a person referred to in subsection (1) (a), (b) or (c) is not prejudiced by payment to anyone in accordance with this section.

(3) The lien holder must give a written accounting of the following information to a person referred to in subsection (1) (a), (b) or (c) within 30 days after receipt of a demand, in writing and in accordance with section 60 (4), for an accounting:

- (a) the amount received from the disposition of the goods;
- (b) the manner in which the goods were sold;

- (c) the amount of expenses as provided in sections 24 [*care of goods in lien holder's possession*] and 37 (2) (a) [*reasonable expenses of seizing and holding goods*];
 - (d) the distribution of the amount received from the disposition;
 - (e) the amount of any surplus.
- (4) If there is a question as to who is entitled to receive payment under subsection (1),
- (a) the lien holder may pay the surplus into court, and
 - (b) the surplus must not be paid out of court except on an application under section 47 [*supervisory jurisdiction of court*] by a person claiming an entitlement to the surplus.
- (5) Unless otherwise agreed or unless otherwise provided in this or any other enactment, the person who is obligated to pay for the services is liable to pay any deficiency to the lien holder.

**Lien holder proposal to take goods
in satisfaction of lien**

- 42** (1) After default, a lien holder may propose to take the goods in satisfaction of the amount secured by the lien on the goods and must give notice of the proposal in accordance with this section and section 60 (3) to all of the following:
- (a) the owner of the goods;
 - (b) a creditor or person with a security interest in the goods whose interest is subordinate to that of the lien holder and
 - (i) who has registered, before the date that the notice is given to the owner, a financing statement using the name of the owner or according to the serial number of the goods if the goods are serial numbered goods, or
 - (ii) whose security interest is perfected by possession at the time the goods were seized;
 - (c) another lien holder with a lien on the goods whose lien is subordinate to that of the lien holder and
 - (i) who has registered, before the date that the notice is given to the owner, a financing statement using the name of the owner or according to the serial number of the goods if the goods are serial numbered goods, or
 - (ii) whose lien is perfected by possession at the time the goods were seized in accordance with section 32 [*seizure by bailiff*];

- (d) any other person with an interest in the goods who has given a written notice to the lien holder, in writing and in accordance with section 60 (4), of an interest in the goods before the date that the notice is given to the owner.
- (2) If any person who is entitled to a notice under subsection (1) and whose interest in the goods would be adversely affected by the lien holder's proposal gives to the lien holder a notice of objection, in writing and in accordance with section 60 (4), within 15 days after the date that notice under subsection (1) of this section is given, the lien holder must dispose of the goods under section 37 [*disposition of goods by lien holder*].
- (3) If no notice of objection is given, the lien holder is, at the expiry of the 15-day period referred to in subsection (2), deemed to have irrevocably elected to retain the goods in satisfaction of the amount secured by the lien on the goods and is entitled to hold or dispose of the goods free from all rights and interests of the owner and from the rights and interests of any person entitled to receive a notice under
 - (a) subsection (1) (b) or (c), or
 - (b) subsection (1) (d), if that person's interest is subordinate to that of the lien holder,who has been given the notice, and all obligations of any person referred to in subsection (1) (b), (c) or (d) who has been given the notice are deemed performed for the purposes of section 17 (2) (a) [*amendment or discharge of registrations*] of this Act and section 50 (3) (a) [*amendment or discharge of registrations*] of the *Personal Property Security Act*.
- (4) The lien holder may request that a person referred to in subsection (1), other than the owner, provide the lien holder with proof of that person's interest and, unless the person provides the proof not later than 10 days after the date of the lien holder's request, the lien holder may proceed as if no objection had been received from the person.
- (5) On application by a lien holder, the court may determine that an objection to the proposal of a lien holder is ineffective on the grounds that
 - (a) the person made the objection for a purpose other than the protection of an interest in the goods or proceeds of a disposition of the goods, or
 - (b) the market value of the goods is less than the total amount owing to the lien holder and the costs of disposition.
- (6) If a lien holder disposes of the goods to a buyer or lessee who acquires an interest for value and in good faith and who takes possession of it, the buyer or lessee acquires the goods free from
 - (a) the interest of the owner,
 - (b) an interest subordinate to that of the owner, and

(c) an interest subordinate to that of the lien holder, whether or not the requirements of this section have been complied with by the lien holder, and all obligations secured by the subordinate interests are deemed performed for the purposes of section 17 (2) (a) *[amendment or discharge of registrations]* of this Act and section 50 (3) (a) *[amendment or discharge of registrations]* of the *Personal Property Security Act*.

Right to redeem goods

- 43** (1) In accordance with this section, a person entitled to receive a notice of disposition under section 38 (1) *[notice of disposition]* may redeem the goods, unless the person has otherwise agreed in writing after default.
- (2) The person may only redeem the goods under subsection (1)
- (a) before the lien holder has disposed of the goods or contracted for disposition of the goods under section 37 *[disposition of goods by lien holder]*, or
 - (b) before the lien holder is deemed to have irrevocably elected to retain the goods under section 42 *[lien holder proposal to take goods in satisfaction of lien]*.
- (3) To redeem the goods under subsection (1), the person must tender to the lien holder
- (a) the amount secured by the lien on the goods, and
 - (b) an amount equal to the reasonable expenses incurred by the lien holder in seizing, holding, repairing, processing or otherwise preparing the goods for disposition.

Division 4 – Court Proceedings

Court may resolve dispute

- 44** (1) A person claiming to be the owner of goods subject to a lien, a person claiming to be a lien holder or another person claiming an interest in goods subject to a lien may make an application to the court, by way of a petition proceeding, to have a dispute resolved if the dispute concerns any of the following:
- (a) the validity of the lien;
 - (b) the amount secured by the lien;
 - (c) the right of the lien holder to take or retain possession of the goods.
- (2) In a petition proceeding to resolve a dispute in respect of subsection (1) (a), (b) or (c), the court may make, in addition to the orders available to the court in this Division, any other order the court considers appropriate in the circumstances.

- (3) If the court determines that the lien is not valid, the court may order the lien holder to pay to a petitioner or an applicant, as applicable, any pecuniary loss incurred by the petitioner or the applicant as a result of making a payment into court under this Division.

**Payment into court by petitioner, release of goods
and payment out of court**

- 45**
- (1) In this section, “**payment**”, in respect of a payment into court, includes a prescribed type of security.
 - (2) In a petition proceeding under ~~section 45~~section 44, the petitioner
 - (a) may make a payment into court of the amount claimed, in writing by the lien holder, for the services provided by the lien holder, and
 - (b) must include the payment when filing the petition.
 - (3) If a petitioner makes a payment into court in accordance with subsection (2), and the lien holder is served notice of the payment in accordance with the Supreme Court Civil Rules and subsection (4),
 - (a) the lien is discharged and replaced by a charge on the payment, in favour of the lien holder, that is security in place of the lien, and
 - (b) the lien holder must release the goods to the petitioner.
 - (4) A notice of the payment served in accordance with ~~subsection (2)~~subsection (3) must include the following information, in accordance with the regulations, if any:
 - (a) the amount of the payment;
 - (b) the form of the payment into court;
 - (c) any other prescribed information.
 - (5) The lien holder may make an application to the court for an order for payment out of court of the payment secured by the charge.
 - (6) The charge is discharged if ~~at the~~ lien holder does not file, by one of the following dates, an application for an order for the payment out of court of the payment secured by the charge:
 - (a) the date that is 60 days after the date the lien holder was served in accordance with subsection (3);
 - (b) if applicable, the date set by the court under section 47 (2) (b) (i) [*supervisory jurisdiction of court*].
 - (7) If an order provides for payment out of court to the lien holder of the payment secured by the charge and the payment held by the court is more than the amount secured by the charge, the order may direct that the surplus amount is paid out of court to the petitioner.

- (8) If a charge is discharged, the petitioner may make an application for an order for payment out of court, in the form determined by the court, of the payment.
- (9) If a financing statement was registered in the registry in respect of the lien and the lien is discharged in accordance with this section, the lien holder must discharge the registration.
- (10) The court may make an order for any form of payment out of court under this section, including security.

**Payment into court by interlocutory application,
release of goods and payment out of court**

- 46**
- (1) In a petition proceeding under section 44, the petitioner or any person entitled to service of the petition in accordance with the Supreme Court Civil Rules may make an application for an order to make a payment into court of the amount claimed, in writing by the lien holder, for the services provided by the lien holder.
 - (2) The court may make an order for any form of payment into or out of court under this section, including security.
 - (3) If a payment is made into court in accordance with an order and the lien holder is served with the order and a notice of the payment, in accordance with the Supreme Court Civil Rules and subsection (4),
 - (a) the lien is discharged and replaced by a charge on the payment, in favour of the lien holder, that is security in place of the lien, and
 - (b) the lien holder must release the goods to the applicant.
 - (4) A notice of the payment served in accordance with subsection (3) must include the following information, in accordance with the regulations, if any:
 - (a) the amount of the payment;
 - (b) the form of the payment into court;
 - (c) any other prescribed information.
 - (5) The lien holder may make an application to the court for an order for the payment out of court of the payment secured by the charge.
 - (6) The charge is discharged if ~~at the~~ lien holder does not file, by one of the following dates, an application for an order for the payment out of court of the payment secured by the charge:
 - (a) the date that is 60 days after the date the lien holder was served in accordance with ~~subsection (2)~~subsection (3);
 - (b) if applicable, the date set by the court under ~~section 47 (2) (e)~~section 47 (2) (b) (ii).
 - (7) If an order provides for payment out of court to the lien holder of the payment secured by the charge and the payment held by the court is more than the

amount secured by the charge, the order may direct that the surplus amount is paid to the applicant that made the payment into court.

- (8) If a charge is discharged, the applicant may make an application for an order for payment out of court of the payment.
- (9) If a financing statement was registered in the registry in respect of the lien and the lien is discharged in accordance with this section, the lien holder must discharge the registration.

Supervisory jurisdiction of court

- 47 (1) The owner of goods subject to a lien, a lien holder or another person with an interest in goods subject to a lien, a creditor of the owner, a secured party or a sheriff may make an application to the court and the court may make one or more of the following orders:
- (a) an order, including a binding declaration of right and injunctive relief, that is necessary to ensure compliance with this Part or section 24 [*care of goods in lien holder's possession*];
 - (b) an order giving directions to a person with respect to the exercise of the person's rights or the discharge of the person's obligations under this Part or section 24;
 - (c) an order relieving a person from compliance with the requirements of this Part or section 24, but only on terms that are just and reasonable to all parties affected;
 - (d) an order staying enforcement of rights provided in this Part or section 24;
 - (e) an order necessary to ensure protection of the interest of any person in the goods;
 - (f) an order determining entitlement to the goods;
 - (g) an order determining entitlement to a surplus paid into court under section 41 (4) [*court application to determine question on entitlement to goods or surplus*].
- (2) If an act or thing must be done not later than or before a set time, the court may do any of the following:
- (a) on application made before or after the time has expired, extend or abridge, conditionally or otherwise, the time for compliance under section 43 (15) [*copy of statement to be provided to debtors*] of the *Personal Property Security Act*, as adopted by section 16 [*application of Personal Property Security Act*] of this Act;
 - (b) on application made before the time has expired, extend or abridge, conditionally or otherwise, the time for compliance under the following sections:
 - (i) section 45 (6) (a) [*timeline for discharge of charge*];

(ii) section 46 (6) (a) [*timeline for discharge of charge*].

PART 7 – MISCELLANEOUS

Division 1 – Application of Common Law in Relation to Liens

Common law liens abolished

- 48** The following common law possessory liens that establish a lien for services provided in relation to goods are abolished:
- (a) the repairer’s lien, also known as the artificer’s lien or the artisan’s lien;
 - (b) the common carrier’s lien.

Principles of common law and equity supplement this Act

- 49** The principles of the common law and equity, except insofar as they are inconsistent with the provisions of this Act, supplement this Act and continue to apply.

Rights, duties and obligations discharged in a commercially reasonable manner

- 50** All rights, duties or obligations arising under an authorization, an acknowledgement, this Act or any other law applicable to liens must be exercised or discharged in good faith and in a commercially reasonable manner.

Knowledge of interest not bad faith

- 51** A person does not act in bad faith only because the person acts with knowledge of the interest of another person.

Division 2 – Liens That Attach Outside of British Columbia

Perfection of lien under law of another province

- 52** For the purposes of sections 53 (1), 54 and 55 (1), a lien is perfected under the law of a province when
- (a) the lien holder has complied with the law of a province with respect to the creation and continuance of a lien, and
 - (b) the lien has a status in relation to the interests of secured parties, buyers, judgment creditors or a trustee in bankruptcy of the owner, similar to that of an equivalent lien created and perfected under this Act.

Liens registered outside of British Columbia

- 53** (1) A person who, under the law of another province, holds a lien on goods for services that the person provided in relation to those goods holds a lien on goods within the meaning of this Act if

- (a) the services were requested by a person who, when the services are requested or at any time the services are being provided,
 - (i) is the owner of the goods or another person with an interest in the goods,
 - (ii) is in possession of the goods, or
 - (iii) is legally entitled to possession of the goods, and
 - (b) the lien is perfected in accordance with section 52 and by registration in a public registry for liens in the other province.
- (2) Registration of a lien in a public registry for liens in another province does not constitute perfection of the lien for the purposes of this Act.

**Validity, perfection, effect of perfection or non-perfection
and priority governed by law of province where lien attaches**

- 54** Subject to sections 52, 55 (1) and 56, the validity, the perfection, the effect of perfection or non-perfection and the priority of a lien are governed by the law of the province in which the goods are located when the lien attaches.

Temporary perfection in British Columbia

- 55** (1) Subject to section 56 and despite sections 53 (2) and 54, a lien that is perfected in accordance with section 52 under the law of the province in which the goods are located at the time the lien attaches but before the goods are brought into British Columbia remains perfected in British Columbia if it is perfected in British Columbia on the earliest of the following:
- (a) a date that is not later than 60 days after the date that the goods are brought into British Columbia;
 - (b) a date that is not later than 15 days after the date that the lien holder has knowledge that the goods have been brought into British Columbia;
 - (c) a date that is before the date that perfection ceases under the law of the province in which the goods were located when the lien attached.
- (2) A lien perfected in accordance with subsection (1) is subordinate to the interest of a buyer or lessee of the goods who acquires the buyer's or lessee's interest in the goods without knowledge of the lien and before the lien is perfected in British Columbia under section 12 [*perfection by registration*].
- (3) A lien that is not perfected in accordance with subsection (1) may be perfected by registration under section 12.

**Procedural issues governed by law of province
where enforcement rights exercised**

- 56** Despite sections 54 and 55 (1), procedural issues involved in the enforcement of the rights of a lien holder against goods subject to a lien are governed by the law of the province in which the enforcement rights are exercised.

Internal law of province

- 57 For the purposes of sections 54 and 55, a reference to the law of a province is to be read as a reference to the internal law of that province, excluding its conflict of law rules.

Division 3 – General

Consequences of non-compliance with Act

- 58 (1) A person to whom a duty or obligation is owed under this Act has a cause of action against any person who, without reasonable excuse, fails to discharge the duty or perform the obligation.
- (2) Subject to subsection (4), in an action under subsection (1), the plaintiff is entitled to recover damages from the defendant for losses that are reasonably foreseeable as being liable to result from the failure to discharge the duty or perform the obligation.
- (3) The damages prescribed under section 69 (4) [*consequences of non-compliance with Act*] of the *Personal Property Security Act* apply in respect of an action brought under subsection (1) of this section in the following circumstances:
- (a) where the plaintiff is the owner and the cause of action is for failure to comply with the following provisions:
 - (i) section 43 (15) [*registration of financing statements*] of the *Personal Property Security Act* as adopted by section 16 [*application of Personal Property Security Act*] of this Act;
 - (ii) section 17 (1) to (5) or (7) [*amendment or discharge of registrations*];
 - (iii) section 24 [*care of goods in lien holder's possession*];
 - (iv) section 25 (3) [*demand for information from lien holder*];
 - (v) section 26 (2) [*failure to reply to demand under section 25*];
 - (vi) section 29 [*payment for demand*];
 - (vii) section 32 (1), (2) or (3) [*seizure by bailiff*];
 - (viii) section 33 (2) (b) [*lien holder must not cause greater inconvenience than necessarily incidental*];
 - (ix) section 37 [*disposition of goods by lien holder*];
 - (x) section 38 [*notice of disposition*];
 - (xi) section 41 (1) or (2) [*process of lien holder disposing of goods subject to a lien*];
 - (xii) section 42 [*lien holder proposal to take goods in satisfaction of lien*];
 - (xiii) section 45 (9) or 46 (9) [*lien holder to discharge registration*];

- (b) where the plaintiff is a person required to be identified in a financing statement in accordance with section 12 (2) (b) [*perfection by registration*], and the cause of action is for failure to comply with section 43 (15) of the *Personal Property Security Act* as adopted by section 16 of this Act.
- (4) If
- (a) damages have been prescribed under the *Personal Property Security Act* and apply in respect of a cause of action referred to subsection (3) of this section, and
 - (b) the court finds that the defendant is liable in respect of the cause of action,
- the court must award the prescribed damages to the plaintiff, unless the actual damages exceed the prescribed damages, in which case the court may award the actual damages.
- (5) A defendant is not liable for both prescribed damages and actual damages.
- (6) In an action for a deficiency, the defendant may raise as a defence the failure on the part of the lien holder to comply with obligations referred to in subsection (7), but non-compliance limits the right to the deficiency only to the extent that the non-compliance has affected the ability of the defendant to protect the defendant's interest in the goods or has made the accurate determination of the deficiency impracticable.
- (7) If a lien holder fails to comply with obligations under the following sections, subsection (8) of this section applies:
- (a) section 24 [*care of goods in lien holder's possession*];
 - (b) section 25 (3) [*demands about goods*];
 - (c) section 29 [*payment for demand*];
 - (d) section 37 [*disposition of goods by lien holder*];
 - (e) section 38 [*notice of disposition*];
 - (f) section 39 [*purchase of goods by lien holder*];
 - (g) section 41 (1) or (2) [*process of lien holder disposing of goods subject to a lien*].
- (8) If a lien holder fails to comply with any of the obligations under the sections set out in subsection (7) of this section, the onus is on the lien holder to show that the failure
- (a) did not affect the owner's ability to protect the owner's interest in the goods by redemption of the goods or otherwise, or
 - (b) did not make the accurate determination of the deficiency impracticable.

- (9) Except as otherwise provided in this Act, a provision in an authorization, acknowledgement or any other agreement that purports to exclude a duty or onus imposed by this Act or that purports to limit the liability of or the amount of damages recoverable from a person who has failed to discharge a duty or obligation imposed by this Act is void.

Establishing when knowledge occurs

59 For the purposes of this Act,

- (a) a natural person knows or has knowledge when information is acquired by the person under circumstances in which a reasonable person would take cognizance of it,
- (b) a partnership knows or has knowledge when information has come to the attention of one of the general partners or a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it,
- (c) a corporation knows or has knowledge when information has come to the attention of
 - (i) a managing director or officer of the corporation, or
 - (ii) a senior employee of the corporation with responsibility for matters to which the information relates,under circumstances in which a reasonable person would take cognizance of it or when the information in writing has been delivered to the corporation's registered office or attorney for service,
- (d) the members of an association know or have knowledge when information has come to the attention of
 - (i) a managing director or officer of the association,
 - (ii) a senior employee of the association with responsibility for matters to which the information relates, or
 - (iii) all members,under circumstances in which a reasonable person would take cognizance of it, and
- (e) the government knows or has knowledge when information has come to the attention of a senior employee of the government with responsibility for matters to which the information relates under circumstances in which a reasonable person would take cognizance of it.

Service of statements, notices and demands

- 60** (1) Each of the following documents, as applicable, must be given in accordance with subsection (4):
- (a) a notice to the lien holder referred to in the following sections:
 - (i) section 38 (1) (d) [*notice of disposition*];
 - (ii) section 41 (1) (b) [*distribution of amounts realized from disposition of goods*];
 - (iii) section 42 (1) (d) [*lien holder proposal to take goods in satisfaction of lien*];
 - (b) a demand under section 41 (3);
 - (c) a notice of objection to the lien holder referred to in section 42 (2);
 - (d) a copy of a financing statement referred to in section 43 (15) [*copies of financing statement to be provided to debtors*] of the *Personal Property Security Act* as adopted by section 16 [*application of Personal Property Security Act*] of this Act;
 - (e) a copy of a verification statement referred to in section 43 (15) of the *Personal Property Security Act* as adopted by section 16 of this Act.
- (2) A demand referred to in section 17 (2) [*amendment or discharge of registrations*] must be given
- (a) in accordance with subsection (4) of this section, or
 - (b) by registered mail addressed to the address of the lien holder as the address appears on the registered financing statement.
- (3) A notice required under section 38 (1) [*notice of disposition*] or section 42 (1) [*lien holder proposal to take goods in satisfaction of lien*] must be given
- (a) in accordance with subsection (4) of this section, or
 - (b) if the notice is to be given to a person who registered a financing statement, by registered mail addressed to the address of the person to whom it is to be given as the address appears on the financing statement.
- (4) A document referred to in subsections (1) to (3) that is to be given in accordance with this subsection must be given as follows:
- (a) to an individual by leaving it with the individual or by sending it by registered mail addressed to
 - (i) the individual by name at the individual's residence, or
 - (ii) if the individual is the sole proprietor of a business, the name of the individual at the address of the business;

- (b) to a partnership
 - (i) by leaving it with
 - (A) one or more of the general partners, or
 - (B) a person having, at the time the notice is given, control or management of the partnership business, or
 - (ii) by registered mail addressed to
 - (A) the partnership,
 - (B) any one or more of the general partners, or
 - (C) a person having, at the time the notice is given, control or management of the partnership business, at the address of a partnership business;
- (c) to a corporation
 - (i) by leaving it with an officer or director of the corporation or a person in charge of any office or place of business of the corporation,
 - (ii) by leaving it with or by sending it by registered mail addressed to the registered office or head office of the corporation, or
 - (iii) if the corporation has its registered office or head office outside of British Columbia, by leaving it with, or by sending it by registered mail addressed to, the attorney for service for the corporation;
- (d) to a municipal corporation by leaving it with, or sending it by registered mail addressed to, the municipal corporate officer;
- (e) to an association
 - (i) by leaving it with an officer of the association, or
 - (ii) by sending it by registered mail addressed to an officer of the association at the address of the officer;
- (f) to the government in the manner provided by the *Crown Proceeding Act*.
- (5) A document sent by registered mail under this Act is deemed to be given on the earlier of
 - (a) the date the addressee actually receives the notice, and
 - (b) except when postal services are not functioning, the expiry of 10 days after the date of registration.

Regulations

- 61 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations respecting any matter for which regulations are contemplated by this Act.

- (3) In making a regulation under this Act, the Lieutenant Governor in Council may do one or more of the following:
- (a) exempt a good or class of goods from the application of this Act;
 - (b) exempt a service or class of services from the application of this Act;
 - (c) in respect of the definition of “payment” in section 45 (1) [*forms of payment*], prescribe criteria in respect of
 - (i) a type of security or the content of a type of security, or
 - (ii) a bank or a credit union that issues a type of security that meets the prescribed criteria;
 - (d) make different regulations for different types or classes of types of prescribed security under section 45 (1);
 - (e) make different regulations under sections 45 (4) and 46 (4) [*content of notices of payment*] in respect of different forms of payment.

Section 5 of *Offence Act* does not apply

- 62 Section 5 [*general offence*] of the *Offence Act* does not apply to this Act or the regulations.

**PART 8 – TRANSITIONAL PROVISIONS, REPEALS
AND CONSEQUENTIAL AMENDMENTS**

Division 1 – Transitional Provisions

Transition – common law lien

- 63 (1) In this section, “**repairer’s lien**” includes an artisan’s lien and an artificer’s lien.
- (2) Despite section 48 [*common law liens abolished*], a repairer’s lien that existed at common law on the day before the date this section comes into force continues as and is deemed to be a lien under this Act if the repairer’s lien meets the conditions set out in section 4 [*commercial lien*] of this Act.
- (3) Despite section 48, a common carrier’s lien that existed at common law on the day immediately before the date this section comes into force continues as and is deemed to be a lien under this Act if the common carrier’s lien meets the conditions set out in section 4 of this Act.

Transition – statutory lien – lien on chattels

- 64** (1) Despite section 69 [*acts repealed*], a lien held by a mechanic or other person under section 2 [*lien on chattels*] of the *Repairers Lien Act* that existed on the day immediately before the date this section comes into force
- (a) continues as a lien under this Act, and
 - (b) for certainty, is not required to meet the conditions set out in section 4 of this Act.
- (2) For certainty, a lien holder who holds a lien that is continued under subsection (1) may not exercise any remedies under the *Repairers Lien Act*.

Transition – statutory lien – garage keeper’s lien

- 65** (1) Despite section 69, a lien held by a garage keeper under section 3 [*garage keeper’s lien on motor vehicle, aircraft, boat or outboard motor*] of the *Repairers Lien Act* that existed on the day immediately before the date this section comes into force
- (a) continues as a lien under this Act, and
 - (b) for certainty, is not required to meet the conditions set out in section 4 of this Act.
- (2) A financing statement registered in the registry in respect of a lien held by a garage keeper under section 3 of the *Repairers Lien Act* is deemed to have been registered under this Act for its unexpired period under section 4 [*duration and renewal of lien*] of the *Repairers Lien Act* and, for certainty, the period of registration may be extended by registration in accordance with section 12 [*perfection by registration*] of this Act.
- (3) For certainty, a lien holder who holds a lien that is continued as a lien under subsection (1) may not exercise any remedies under the *Repairers Lien Act*.

Transition – statutory lien – Warehouse Lien Act

- 66** (1) Despite section 69, a lien held by a warehouse under section 2 [*warehouse lien*] of the *Warehouse Lien Act* that existed on the day immediately before the date this section comes into force
- (a) continues as a lien under this Act, and
 - (b) for certainty, is not required to meet the conditions set out in section 4 of this Act.
- (2) For certainty, a lien holder who holds a lien that is continued under subsection (1) may not exercise any remedies under the *Warehouse Lien Act*.

Transition – statutory lien – *Livestock Lien Act*

- 67 (1) Despite section 69, a lien held by a person under section 2 [*lien on cattle*] of the *Livestock Lien Act* that existed on the day immediately before the date this section comes into force
- (a) continues as a lien under this Act, and
 - (b) for certainty, is not required to meet the conditions set out in section 4 of this Act.
- (2) For certainty, a lien holder who holds a lien that is continued under subsection (1) may not exercise any remedies under the *Livestock Lien Act*.

Transition – order of priorities for liens arising before this Act comes into force

- 68 (1) In this section, “**prior law**” means the law in force immediately before the date this section comes into force.
- (2) The order of priorities between a lien that arose under prior law and another interest that arose under prior law is determined by prior law.

Division 2 – Repeals

Acts repealed

- 69 The following Acts are repealed:
- (a) *Livestock Lien Act*, R.S.B.C. 1996, c. 272;
 - (b) *Repairers Lien Act*, R.S.B.C. 1996, c. 404;
 - (c) *Tugboat Worker Lien Act*, R.S.B.C. 1996, c. 466;
 - (d) *Warehouse Lien Act*, R.S.B.C. 1996, c. 480;
 - (e) *Woodworker Lien Act*, R.S.B.C. 1996, c. 491.

Division 3 – Consequential Amendments

Firearm Violence Prevention Act

- 70 ***Section 36 (2) (a) of the Firearm Violence Prevention Act, S.B.C. 2021, c. 7, is repealed and the following substituted:***

- (a) that, unless the owner or a person authorized by the owner discharges the impoundment lien, the impounded motor vehicle may be disposed of in accordance with this Part or subject to any of the rights and remedies available under Divisions 1 to 3 of Part 6 [*Rights and Remedies on Default*] and section 47 (1) (g) [*order determining entitlement to surplus*] of the *Commercial Liens Act*; .

71 Section 42 (2) and (3) is repealed and the following substituted:

- (2) An impoundment lien may be enforced under section 46 [*power of person who has custody to dispose of motor vehicle*] or, if the lien is not discharged under this Part, any of the rights and remedies under Divisions 1 to 3 of Part 6 [*Rights and Remedies on Default*] and section 47 (1) (g) [*order determining entitlement to surplus*] of the *Commercial Liens Act* may be exercised in respect of the lien.
- (3) The person who has custody of an impounded motor vehicle must promptly notify the minister if, under the *Commercial Liens Act*, the person disposes of the motor vehicle or is deemed to have irrevocably elected to retain the motor vehicle.

72 Section 43 (c) is repealed and the following substituted:

- (c) if the motor vehicle is disposed of under section 46 [*power of person who has custody to dispose of motor vehicle*] of this Act, when the motor vehicle is disposed of;
- (d) if the motor vehicle is disposed of under Division 3 of Part 6 of the *Commercial Liens Act*, when the motor vehicle is disposed of;
- (e) if no notices of objection are given and the lien holder is deemed to have irrevocably elected to retain the motor vehicle under section 42 (3) of the *Commercial Liens Act*, at the expiry of the 15-day period in section 42 (2) of that Act.

73 Section 45 (1) is amended by striking out “to dispose of the motor vehicle” and substituting “to dispose of the motor vehicle under this Act or to dispose of or irrevocably elect to retain the motor vehicle under the *Commercial Liens Act*”.

Motor Vehicle Act

74 Section 188 (5) of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, is repealed and the following substituted:

- (5) The rights and remedies under Part 6 of the *Commercial Liens Act* may be exercised in respect of a lien under subsection (4).

75 Section 192 (3) is repealed and the following substituted:

- (3) The rights and remedies under Part 6 of the *Commercial Liens Act* may be exercised in respect of a lien under subsection (2).

76 Section 215.4 (6) is repealed and the following substituted:

- (6) All of the costs and charges for towing, care and storage of a motor vehicle impounded under subsection (1) are a lien on the motor vehicle, and the rights and remedies under Divisions 1 to 3 of Part 6 and section 47 (1) (g) of the *Commercial Liens Act* may be exercised in respect of a lien under this subsection.

77 Section 254 (3) (e) is amended by striking out “the motor vehicle may be disposed of under the *Warehouse Lien Act* or under section 255 (7) of this Act” and substituting “the motor vehicle may be disposed of under section 255 (7) of this Act or may be subject to the rights and remedies under Divisions 1 to 3 of Part 6 and section 47 (1) (g) of the *Commercial Liens Act*”.

78 Section 255 is amended

(a) by repealing subsections (3) and (4) and substituting the following:

- (3) The lien described in subsection (2) may be enforced under subsection (7) of this section, or the rights and remedies under Divisions 1 to 3 of Part 6 and section 47 (1) (g) of the *Commercial Liens Act* may be exercised in respect of the lien.
- (4) The person who has custody of a motor vehicle impounded under section 215.46 or 251 (1) of this Act must notify the superintendent if, under the *Commercial Liens Act*, the person disposes of the motor vehicle or is deemed to have irrevocably elected to retain the motor vehicle. ,

(b) in subsection (5) by striking out “or” at the end of paragraph (b) and by repealing paragraph (c) and substituting the following:

- (c) the motor vehicle is disposed of under subsection (7) of this section,
- (d) the motor vehicle is disposed of under Division 3 of Part 6 of the *Commercial Liens Act*, or
- (e) the 15-day period under section 42 (2) of the *Commercial Liens Act* expires, if no notices of objection are given and the lien holder is deemed to have irrevocably elected to retain the motor vehicle under section 42 (3) of that Act. , **and**

(c) in subsection (6) by striking out “under the *Warehouse Lien Act*” and substituting “to exercise a right or remedy under the *Commercial Liens Act*”.

Personal Property Security Act

79 *Section 18 of the Personal Property Security Act, R.S.B.C. 1996, c. 359, is amended*

- (a) in subsection (2) (e) by striking out “sufficient information” and substituting “information” and by adding “sufficient” before “to enable a person”,*
- (b) in subsection (9) (b) by striking out “in the case of a demand under subsection (1)” and substituting “in the case of a demand under subsection (1),”,*
- (c) in subsection (9) by striking out “making the demand, may” and substituting “making the demand may,”,*
- (d) in subsection (13) by striking out “of a secured party” and substituting “of the secured party or the person receiving the demand”,*
- (e) in subsection (13) (a) by adding “or the requirement for disclosure” after “any order the court considers necessary to ensure compliance with the demand”,*
- (f) in subsection (13) (b) by striking out “or the person receiving the demand”, and*
- (g) in subsection (17) (a) by striking out “that person’s identity and address” and substituting “the successor’s identity and address”.*

80 *Section 43 (9) is amended by striking out “contained” and substituting “described”.*

81 *Section 50 is amended*

- (a) in subsection (2) by striking out “one month period” and substituting “one-month period”, and*
- (b) in subsection (11) by striking out “unless the charge has been agreed to by the parties before the making of the demand” and substituting “unless the charge was agreed to by the parties before the demand was given”.*

82 *Section 51 (4) is amended by striking out “or the secured party” and substituting “and the secured party”.*

83 *Section 61 is amended*

- (a) in subsection (3) by striking out “, and from any person” and substituting “and from all rights and interests of any person”,*
- (b) in subsection (3) by striking out “sections 49 and 50” and substituting “sections 49 (10) (a) and 50 (3) (a)”, and*

(c) *in subsection (8) by striking out* “deemed performed for the purposes of sections 49 and 50” *and substituting* “deemed performed for the purposes of sections 49 (10) (a) and 50 (3) (a)”.

84 *Section 68 (3) is amended by striking out* “some other person” *and substituting* “another person”.

85 *The Schedule is amended*

(a) *by striking out* “the *Sale of Goods Act* or the *Forestry Service Providers Protection Act*” *wherever it appears and substituting* “the *Commercial Liens Act*, the *Forestry Service Providers Protection Act* or the *Sale of Goods Act*”,

(b) *by repealing item 4, and*

(c) *in item 9 by striking out* “an amendment/other change by means of a financing change statement” *and substituting* “an amendment by means of a financing change statement”.

Transport of Dangerous Goods Act

86 *Section 9 (4) of the Transport of Dangerous Goods Act, R.S.B.C. 1996, c. 458, is amended by striking out* “and the lien may be enforced in the manner provided under the *Warehouse Lien Act*” *and substituting* “and any of the rights and remedies under Part 6 of the *Commercial Liens Act* may be exercised in respect of the lien”.

Commencement

87 This Act comes into force by regulation of the Lieutenant Governor in Council.