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c 102 The Personal Property Security Amendment Act, 1973

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CHAPTER 102

An Act to amend
The Personal Property Security Act

Assented to October 30th, 1973
Session Prorogued March 5th, 1974

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

1. Subsection 2 of section 6 of The Personal Property Security Act, as amended by chapter 344 of the Revised Statutes of Ontario, 1970, is amended by striking out "caution" in the third line and inserting in lieu thereof "financing statement".

2. Subsection 2 of section 7 of the said Act is amended by striking out "the security agreement covering the collateral", in the fifth line and inserting in lieu thereof "a financing statement in the prescribed form".

3. Clause b of section 10 of the said Act is amended by striking out "a description" in the fourth line and inserting in lieu thereof "identification".

4.—(1) Subsection 1 of section 20 of the said Act is repealed and the following substituted therefor:

(1) A debtor or a person having an interest in the collateral or an execution creditor may, by a notice in writing, require the secured party to furnish to him any one or more of:

(a) a statement in writing of the amount of the indebtedness and of the terms of payment thereof as of the date specified in the notice;

(b) a statement in writing approving or correcting as of the date specified in the notice a statement of the collateral attached to the notice;

(c) a statement in writing approving or correcting as of the date specified in the notice a statement of the amount of the indebtedness and of the terms of payment thereof; or
(d) a true copy of the security agreement.

(2) Subsection 3 of the said section 20 is amended by inserting at the commencement thereof "Subject to payment of any fee required pursuant to subsection 6".

(3) The said section 20 is amended by adding thereto the following subsection:

(6) The secured party may require payment to him of a fee of $2 for each statement or copy of the security agreement required pursuant to subsection 1, but the debtor is entitled to a statement without charge once in every six months.

5. Subsection 1 of section 26 of the said Act is amended by striking out "registered security agreement" in the fourth line and inserting in lieu thereof "security agreement signed by the debtor and the secured party".

6. Subsection 2 of section 27 of the said Act is repealed and the following substituted therefor:

(2) The security interest in proceeds is a perfected security interest if the security interest in the collateral is perfected but it ceases to be a perfected security interest and becomes unperfected after ten days after receipt of the proceeds by the debtor unless,

(a) a financing statement in the prescribed form in respect of the collateral is registered; or

(b) the security interest in the proceeds is perfected before the expiration of the ten day period,

but there is no perfected security interest in proceeds that are not identifiable or traceable.

7. Clause b of subsection 2 of section 34 of the said Act is amended by striking out "security agreement, a notice of intention or a caution" in the fifth line and inserting in lieu thereof "financing statement in the prescribed form".

8. Subsection 1 of section 44 of the said Act is repealed and the following substituted therefor:

(1) Upon the request of any person and upon payment of the prescribed fee the registrar shall,

(a) issue a certificate stating whether there is registered at the time mentioned in the certificate a financing
statement or financing change statement the registration of which is still effective in which the person named in the certificate is shown as a debtor and, if there is, the registration number of it, and any other information recorded in the central office of the registration system; or

(b) furnish a certified copy of a registered financing statement or a registered financing change statement.

9. Sections 46 to 54 of the said Act are repealed and the following substituted therefor:

46. A financing statement or financing change statement to be registered under this Act may be tendered for registration:

(a) by personal delivery to any branch office; or

(b) by mail addressed to an address fixed by the regulations,

and the registration is effective from the time assigned to the registration by the registrar or branch registrar.

47.—(1) In order to register under this Act for the purpose of perfecting a security interest that is created in or provided for in a security agreement, a financing statement in the prescribed form shall be registered.

(2) Where the collateral is goods to be held for sale or lease, a financing statement in the prescribed form may be registered before a security agreement is signed for the purpose of perfecting a security interest in such goods.

(3) The financing statement referred to in subsection 1 shall not be registered before the execution of the security agreement or after thirty days from the date of the execution of the security agreement.

(4) Subject to section 63, a financing statement that is not registered in accordance with the provisions of subsection 3 does not constitute notice or perfection under subsection 1 of section 53.

(5) An error of a clerical nature or in an immaterial or non-essential part of a financing statement or financing change statement that has not misled does not invalidate the registration or destroy the effect of the registration.
48.—(1) Where a security interest is perfected by registration and the secured party has assigned his interest, a financing change statement in the prescribed form may be registered.

(2) Where a security interest has not been perfected by registration and the secured party has assigned his interest, a financing statement in the prescribed form may be registered in which the assignee is shown as the secured party.

(3) Upon the registration of the financing change statement under subsection 1 or the financing statement under subsection 2, the assignee becomes the secured party of record.

49.—(1) Where a security interest has been perfected by registration and the debtor with the consent of the secured party transfers his interest in the collateral, the transferee becomes a debtor and the security interest becomes unperfected and the registration ceases to constitute notice unless the secured party registers a financing change statement in the prescribed form within fifteen days of the time he consents to the transfer.

(2) Where a security interest has been perfected by registration and the secured party learns that,

(a) the debtor has transferred his interest in the collateral;

or

(b) the debtor has changed his name,

the security interest becomes unperfected and the registration ceases to constitute notice fifteen days after the secured party learns of,

(c) the transfer and the name of the transferee; or

(d) the change of name and the new name of the transferee,

as the case may be, unless he registers a financing change statement in the prescribed form within such fifteen days.

(3) A security interest that becomes unperfected under subsection 1 or 2 may thereafter be perfected by registering a financing change statement in the prescribed form at any time during the remainder of the unexpired registration period.

50. Where a security interest is perfected by registration, and,
(a) the security agreement to which it relates is amended;

(b) the name or address of the secured party or debtor is changed; or

(c) an error or omission of a clerical nature was made in the preparation of the financing statement or financing change statement that is registered in respect of the security interest,

a financing change statement in the prescribed form may be registered at any time during the period that the registration is effective.

51. Where a secured party of record has subordinated his interest to the interest of another person, a financing change statement in the prescribed form may be registered at any time during the period that the registration of the subordinated interest is effective.

52. Where a security interest has been perfected by renewal registration, the registration may be renewed,

(a) before the expiration of the registration period, by the registration of a financing change statement in the prescribed form; or

(b) notwithstanding subsection 3 of section 47, after the expiration of the registration period, by the registration of a financing statement in the prescribed form.

53.—(1) Where the collateral is other than instruments, securities, letters of credit, advices of credit or negotiable documents of title, registration under this Act of,

(a) a financing statement constitutes,

(i) notice of the security interest to which it relates to all persons claiming any interest in such collateral, and

(ii) subject to section 21, perfection of the security interest;

during the period of three years following such registration;

(b) a financing change statement under clause (a) of section 52 extends the effect of the registration of
the financing statement to which it relates during the period of three years following the registration of the financing change statement;

(c) a financing statement under clause b of section 52 extends the effect of the registration of the original financing statement during the period of three years following the registration of the financing statement under clause b of section 52, but when such registration has prejudiced the rights that any person acquired by an act or thing done by him during the period that the security interest was unperfected, the registration shall be presumed not to have occurred for the purpose of obtaining such rights;

(d) a financing change statement under subsection 3 of section 49 extends the effect of the registration of the financing statement to which it relates for the remainder of the unexpired registration period, but when such registration has prejudiced the rights that any person acquired by an act or thing done by him during the period that the security interest was unperfected, the registration shall be presumed not to have occurred for the purpose of obtaining such rights;

(e) any other financing change statement constitutes notice thereof to all persons claiming any interest in such collateral during the remainder of the period for which the registration of the financing statement is effective.

(2) For the purposes of this section, the period of three years in respect of the registration of a financing statement or a financing change statement is a period of time commencing with the time assigned to the registration of the statement by the registrar or branch registrar and ending with the expiry of the third anniversary of the date of the registration.

54.—(1) Where the collateral is or includes fixtures or goods that may become fixtures, or crops, or oil, gas or other minerals to be extracted, or timber to be cut, a notice in the prescribed form may be registered in the proper land registry office.

(2) A notice registered under subsection 1 may be discharged by a certificate in the prescribed form and the certificate may be registered in the proper land registry office.
(3) The registration of the notice under subsection 1 shall, for the purposes of subsection 3 of section 36, constitute actual notice of the security interest.

54a.—(1) Where a security interest is perfected by registration and the collateral or proceeds, as the case requires, is released or partially released, the registration may be discharged or partially discharged by the registration of a financing change statement in the prescribed form.

(2) The financing change statement referred to in subsection idem 1 shall not be registered unless financing change statements in respect of all assignments by the secured party or transfers by the debtor are registered.

(3) Where a financing statement is registered under this Act, and,

(a) all the obligations under the security agreement to which it relates have been performed; or

(b) it is agreed to release part of the collateral covered by the security agreement to which it relates upon payment or performance of certain of the obligations under the security agreement, then upon payment or performance of such obligations, any person having an interest in the collateral covered by the security agreement may deliver a written demand to the secured party, either personally or by registered mail, demanding a financing change statement referred to in subsection 1 and the secured party shall sign and deliver personally or by registered mail to the person demanding it at the place set out in the demand the financing change statement together with financing change statements in respect of all assignments by the secured party of the security interest or transfers by the debtor of his interest in the collateral in respect of which financing change statements have not been registered.

(4) Where the secured party, without reasonable excuse, fails to deliver the financing change statements required under subsection 3 within ten days after receipt of a demand therefor, he shall pay $100 to the person making the demand and any damages resulting from the failure, which sum and damages are recoverable in any court of competent jurisdiction.

(5) Upon application to the county or district court by originating notice to all persons concerned or to such persons as the judge may determine, the judge may,
(a) allow security for or payment into court of the amount claimed by the secured party and such costs as he may fix, and thereupon order the secured party to discharge or partially discharge, as the case may be, the registration of the financing statement; or

(b) order upon any ground he considers proper that the registrar amend the recorded information to indicate that the registration of the financing statement has been discharged or partially discharged, as the case may be.

10. Subsection 5 of section 58 of the said Act is repealed and the following substituted therefor:

(5) Unless the collateral is perishable or unless the secured party believes on reasonable grounds that the collateral will decline speedily in value, the secured party shall give to the debtor and to any other person who has a security interest in the collateral that is perfected by registration against the name of the debtor and to any other person known by the secured party to have a security interest in the collateral not less than fifteen days notice in writing containing,

(a) a brief description of the collateral;

(b) the amount required to satisfy the obligation secured by his security interest;

(c) the amount of the applicable expenses referred to in clause (a) of subsection 1 or, in a case where the amount of such expenses has not been determined, his reasonable estimate thereof;

(d) a statement that upon payment of the amounts due the debtor may redeem the collateral;

(e) a statement that unless the amounts due are paid the collateral will be disposed of and the debtor may be liable for any deficiency; and

(f) the date, time and place of any public sale or of the date after which any private disposition of the collateral is to be made.

11. Subsection 2 of section 60 of the said Act is amended by striking out "security agreement" in the eighth line and inserting in lieu thereof "financing statement in the prescribed form".
12. Subsection 2 of section 63 of the said Act is repealed.  

13. Section 65 of the said Act is repealed and the following substituted therefor:

103.

s. 65(2), repealed

re-enacted

103.

65.—(1) Where a security interest was covered by an unexpired filing or registration under The Assignment of Book Debts Act, The Bills of Sale and Chattel Mortgages Act or The Conditional Sales Act, and in respect of which a financing statement was filed before section 13 of the Statutes of Ontario, 1973, chapter 102 comes into force,

(a) the financing statement and any filed financing change statement relating thereto shall be deemed to be registered; and

(b) the security interest to which the financing statement relates shall be deemed to be perfected, under this Act and, subject to this Act, the effect of the prior filing or registration is continued for the unexpired portion of the filing or registration period.

(2) Upon the request of any person and upon payment of the prescribed fee, any chattel mortgage registered under The Bills of Sale and Chattel Mortgages Act, any contract registered under The Conditional Sales Act or any assignment of book debts registered under The Assignment of Book Debts Act shall, subject to section 67, be provided for inspection.

14. Section 67 of the said Act is repealed and the following substituted therefor:

67.—(1) Where,

(a) books, documents, records or papers have been preserved for the purposes of this Act; or

(b) chattel mortgages, conditional sale contracts or assignments of book debts registered under The Bills of Sale and Chattel Mortgages Act, The Conditional Sales Act or The Assignment of Book Debts Act have been preserved,

for so long that it appears they need not be preserved any longer, the Director of Land Registration appointed under The Registry Act may authorize their destruction.

(2) The registrar may remove from the registration system information related to a financing statement or financing change statement that is no longer effective.
15. Clause i of section 70 of the said Act is repealed and the following substituted therefor:

(i) prescribing forms, the information to be contained in forms, the manner of recording the information and the persons who shall sign forms;

(i) requiring that the forms to be used shall be those provided or approved by the registrar;

(ib) governing the time assigned to the registration of financing statements and financing change statements;

(ic) prescribing abbreviations, expansions or symbols that may be used in a financing statement or financing change statement or in the recording or production of information by the registrar;

(id) fixing the address to which financing statements and financing change statements shall be addressed when tendered by mail for registration;

(ie) providing for the approval by the registrar of the forms to be used for the purposes of this Act, and for the withdrawal by the registrar of any such approval.

16.—(1) This Act, except sections 1 to 14, comes into force on the day it receives Royal Assent.

(2) Sections 1 to 14 come into force on a day to be named by the Lieutenant Governor by his proclamation.

17. This Act may be cited as The Personal Property Security Amendment Act, 1973.