

The Commercial Liens Act

being

Chapter C-15.1 of the *Statutes of Saskatchewan, 2001*
(effective March 1, 2002).

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER C-15.1

An Act respecting Commercial Liens and making consequential amendments to other Acts

Short title

1 This Act may be cited as *The Commercial Liens Act*.

Interpretation

2 In this Act:

“**court**” means the Court of Queen’s Bench; (« *tribunal* »)

“**financing statement**” means a financing statement as defined in *The Personal Property Security Act, 1993*; (« *état de financement* »)

“**lien**” means a lien on goods pursuant to section 3; (« *privilège* »)

“**lien claimant**” means a person who has a lien; (« *titulaire de privilège* »)

“**secured party**” means a person who has a security interest; (« *partie garantie* »)

“**security interest**” means an interest in goods that secures payment or performance of an obligation; (« *sûreté* »)

“**services**” means any of the following types of services rendered for consideration in relation to goods:

- (a) the provision of labour or materials for the purposes of restoring, improving or maintaining the condition and properties of goods and of salvaging goods;
- (b) the storage of goods;
- (c) the transportation, carriage and towage of goods. (« *services* »)

2001, c.C-15.1, s.2.

Person who has a lien

3(1) A person has a lien on goods for services that he or she has provided in relation to those goods if, at the time the request was made or the services were provided, the services were requested by a person:

- (a) with an interest in the goods;
- (b) in possession of the goods; or
- (c) legally entitled to possession of the goods.

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(2) A person who, pursuant to the legislation of another jurisdiction in Canada, has a lien on goods for services that he or she has provided in relation to those goods is deemed to have a lien on goods within the meaning of this Act if:

- (a) the services were requested by a person:
 - (i) with an interest in the goods;
 - (ii) in possession of the goods; or
 - (iii) legally entitled to possession of the goods; and
- (b) the lien is registered in a public registry for liens in that other jurisdiction.

(3) Where the lien claimant repudiates an agreement respecting services before completion of those services, he or she does not have a lien on the goods.

2001, c.C-15.1, s.3.

Amount secured by lien

4(1) Subject to section 5, a lien secures the amount that the person who requested the services agreed to pay for the services.

(2) If no amount is agreed on, the lien secures the fair value of the services provided.

2001, c.C-15.1, s.4.

When lien attaches

5 A lien attaches to goods on the commencement of the services giving rise to the lien but, until completion of the services, secures only the fair value of the services provided.

2001, c.C-15.1, s.5.

When lien enforceable

6(1) Subject to subsection (4), a lien is enforceable only where:

- (a) the goods are in the possession of the lien claimant; or
- (b) the person requesting the services has, at any time:
 - (i) authorized the services giving rise to the lien in a signed writing that includes a description of the goods that are subject to the lien; or
 - (ii) acknowledged an obligation to pay for the services giving rise to the lien in a signed writing that includes a description of the goods that are subject to the lien.

(2) For the purposes of clause (1)(a), a lien claimant is deemed not to have possession of goods that are in the apparent possession or control of the person requesting the services or that person's agent.

(3) An acknowledgment of an obligation to pay pursuant to subclause (1)(b)(ii) is without prejudice to the right of the person requesting the services or any other person to dispute the amount the lien claimant is owed.

(4) If the conditions mentioned in subsection (1) have not been met when a third party acquires an interest in the goods, a subsequent acquisition of possession or of a signed acknowledgment of indebtedness by the lien claimant does not render the lien enforceable against the third party.

(5) For the purposes of subsection (4), a person described in clause 12(2)(a) is a third party who acquires an interest in the goods.

2001, c.C-15.1, s.6.

Lien may be assigned

7 Where the debt secured by a lien is assigned, the lien claimant may, in writing, assign the lien to the person to whom the debt is assigned.

2001, c.C-15.1, s.7.

Effect of credit and taking of security

8(1) The granting of credit by a lien claimant for the payment of 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.

(2) A lien claimant who takes a security interest in goods that are subject to a lien in order to secure the amount secured by the lien is deemed to have taken the security interest in substitution for the lien.

2001, c.C-15.1, s.8.

Perfection

9(1) In this section:

“**owner**” includes a buyer, a lessee or a consignee under a transaction to which *The Personal Property Security Act, 1993* applies; (« *propriétaire* »)

“**serial numbered goods**” means serial numbered goods as defined in *The Personal Property Security Regulations*. (« *biens numérotés en série* »)

(2) Possession of goods by a lien claimant or by a person acting on behalf of a lien claimant perfects a lien on the goods.

(3) For the purposes of subsection (2), a lien claimant or a person acting on behalf of a lien claimant does not have possession of goods if:

(a) the goods are in the actual or apparent possession or control of the person requesting the services or that person’s agent; or

(b) the goods are being held as a result of a seizure or repossession.

(4) Registration of a financing statement in the Personal Property Registry perfects a lien if:

(a) either:

(i) in the case of serial numbered goods, the goods are described in the financing statement by serial number; or

(ii) in the case of goods that are not serial numbered goods, both the owner of the goods and the person requesting the services, if that person is not the owner, are identified as debtors in the financing statement; and

(b) all other requirements of *The Personal Property Security Regulations* have been met.

(5) Part IV of *The Personal Property Security Act, 1993* applies, with any necessary modification, to a financing statement registered pursuant to subsection (4).

(6) A lien claimant may register a financing statement pursuant to subsection (4) for a lien that is enforceable pursuant to clause 6(1)(b) at any time after receiving the written authorization or written acknowledgment.

(7) Where 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.

(8) With respect to a lien mentioned in subsection 3(2), registration of the lien in a public registry for liens in another jurisdiction does not constitute perfection of the lien for the purposes of this Act, but the lien may be perfected by any of the methods set out in this section.

2001, c.C-15.1, s.9.

Grace period for registration

10(1) Where a lien is perfected by possession, returning the goods to the control of the person who requested the services does not affect the perfection of the lien if the lien claimant registers a financing statement pursuant to subsection 9(4) respecting the goods within the first 15 days after returning control of the goods to that person.

(2) Where a lien claimant does not have possession of goods when a lien attaches to the goods and the lien claimant registers a financing statement pursuant to subsection 9(4) respecting the goods within the first 15 days after completion of the services, the lien is deemed to be perfected during that 15-day period.

2001, c.C-15.1, s.10.

Priority of liens over other interests

11(1) Except as provided in this Act or any other Act, a perfected lien has priority over an interest that was created after the lien attached.

- (2) Notwithstanding subsections 35(2) and (5) of *The Personal Property Security Act, 1993*, a lien, whether perfected or unperfected, has priority over:
- (a) a security interest that attached before the lien attached; and
 - (b) a writ of execution issued or a charging order granted before the lien attached.

2001, c.C-15.1, s.11.

Where lien subordinate or unenforceable

12(1) In this section, “**seized under legal process**” includes seizure under a writ of execution and the issue of an equitable execution or charging order affecting the goods subject to the lien.

(2) If a lien is unperfected when the goods are seized under legal process to enforce a judgment, the lien is subordinate to the interest of:

- (a) a person who caused the goods to be seized;
- (b) a creditor entitled by law to participate in the distribution of the seized goods or their proceeds; and
- (c) a representative of creditors, but only for the purposes of enforcing the rights of a person mentioned in clause (a).

(3) A lien is subordinate to:

- (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; and
- (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:

- (a) a trustee in bankruptcy if the lien is unperfected at the date of bankruptcy; or
- (b) a liquidator appointed pursuant to the *Winding-Up and Restructuring Act* (Canada) if the lien is unperfected at the date the winding-up order is made.

2001, c.C-15.1, s.12.

Exceptions to priority of liens

13(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 free of any perfected lien whether or not the buyer or lessee has knowledge of the lien.

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(3) A buyer or lessee of goods that are acquired as consumer goods takes free of any lien on the goods 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 goods where the purchase price exceeds \$1,000 or, in the case of a lease, where the market value of the goods exceeds \$1,000.

(5) A buyer or lessee takes free of a lien described in section 10 if, during the 15-day period mentioned 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.

2001, c.C-15.1, s.13.

Priority among liens

14 Subject to section 6, priority among two or more perfected liens is to be determined by the reverse order in which the services were provided.

2001, c.C-15.1, s.14.

Seizure by sheriff

15(1) A lien claimant may cause goods that are subject to a lien to be seized where:

- (a) the amount secured by the lien remains unpaid; and
- (b) any period granted for repayment set out in writing has expired.

(2) Goods to which a lien has attached may only be seized by a lien claimant through a sheriff.

(3) A sheriff shall not seize goods unless the lien claimant has executed and delivered a warrant in the form prescribed in the regulations to the sheriff who is to carry out the seizure.

(4) In effecting a seizure, a sheriff may exercise any powers given to a secured party pursuant to section 58 of *The Personal Property Security Act, 1993*.

(5) A seizure by a sheriff does not affect the interest of a person who, pursuant to this Act or any other law, has priority over the rights of the lien claimant.

2001, c.C-15.1, s.15.

Sheriff may require security

16 A sheriff may refuse to make or continue a seizure of goods unless the sheriff is furnished with security sufficient to:

- (a) cover the sheriff's fees and expenses; and

(b) indemnify the sheriff for anything done in relation to a seizure, including indemnification for claims by the person requesting the services or any third party.

2001, c.C-15.1, s.16.

Sheriff may appoint bailee

17(1) Where a lien is perfected by registration of a financing statement pursuant to subsection 9(4), the sheriff may, at any time after making a seizure, appoint any person in possession of the goods seized as bailee of the sheriff if the person executes an undertaking in a form prescribed in the regulations:

- (a) to hold the goods as bailee for the sheriff; and
- (b) to deliver up possession of the goods to the sheriff on demand.

(2) Seized goods held by a bailee appointed by the sheriff are deemed to be held under seizure by the sheriff.

2001, c.C-15.1, s.17.

Surrender of possession to lien claimant

18(1) A sheriff may surrender possession or the right of possession of the goods seized to the lien claimant or a person designated in writing by the lien claimant.

(2) Before or after a seizure of goods, a sheriff may give a written notice to the lien claimant named in the warrant under which the seizure is made, indicating that the seizure is to be released at a date specified in the notice unless the lien claimant takes possession of the seized goods before that date and pays all sheriff's costs associated with the seizure.

(3) If the person to whom the notice is given does not take possession of the goods mentioned in the notice on or before the date specified, the sheriff may release the seizure.

(4) If the sheriff releases a seizure pursuant to subsection (3), the lien ceases to exist when the seizure is released.

(5) After a surrender of possession or the right of possession pursuant to subsection (1), or a release of a seizure pursuant to subsection (3), the sheriff is not liable for any of the following that occur after the surrender or release:

- (a) loss of or damage to the goods;
- (b) unlawful interference with the rights of the person requesting the services or any other person who has rights in or to the goods.

2001, c.C-15.1, s.18.

Lien claimant may dispose of goods

19 If the amount secured by a lien is not paid within 30 days after the day on which it becomes payable, the lien claimant may realize on the goods in accordance with Part V of *The Personal Property Security Act, 1993*, and the lien claimant has all the rights and obligations of a secured party pursuant to Part V of that Act.

2001, c.C-15.1, s.19.

Court may resolve dispute

20(1) The person who requested the services, or any other person claiming a proprietary interest or a contractual right to possession of the goods that are subject to a lien, may, after providing notice to all parties that the court considers appropriate, apply to the court to have a dispute resolved where the dispute concerns:

- (a) the existence of a lien or the amount secured by a lien; or
- (b) the right of the lien claimant to take or retain possession of the goods.

(2) In addition to the powers conferred on the court pursuant to *The Personal Property Security Act, 1993*, on hearing an application pursuant to subsection (1), the court may make any order that it considers appropriate in the circumstances.

2001, c.C-15.1, s.20.

Payment into court

21(1) In an application pursuant to section 20, the applicant may:

- (a) pay the amount claimed by the lien claimant into court or post security for that amount with the court; or
- (b) make an offer of settlement and pay into court the amount offered in settlement and post security with the court for the balance claimed by the lien claimant.

(2) Where money is paid into court or security is posted with the court, the registrar shall issue to the applicant a certificate setting out the details of the payment, security and offer to settle, if any.

(3) On the receipt of a certificate, the lien claimant shall:

- (a) release the goods; or
- (b) not later than seven days after receiving the certificate, file a notice of objection with the court stating that additional money or additional alternative security should be posted with the court before the release of the goods.

(4) Where an objection has been filed and the applicant has paid into court the additional money or has posted the additional or alternative security demanded by the lien claimant, the lien claimant shall release the goods to the sheriff or directly to the applicant.

(5) If the court concludes that the lien is not valid or that the additional or alternative security mentioned in subsection (2) is not justified, the court shall order the lien claimant to pay to the applicant as damages any loss suffered or cost incurred by the applicant as a result of having to pay money into court or post security or additional or alternative security.

2001, c.C-15.1, s.21.

Where goods released

22(1) Where goods are released after a certificate is issued by the court, the lien is discharged and is replaced by a charge on the amount paid into court or on the security posted.

(2) The charge is discharged 90 days after the goods are returned to the applicant unless the lien claimant accepts the applicant's offer of settlement or has commenced or commences an action to recover the amount claimed.

(3) After the expiry of 90 days, the registrar shall return to the applicant the money paid into court or the security posted if the applicant files with the registrar an affidavit confirming that the lien claimant has not accepted the applicant's offer of settlement or commenced an action to recover the amount claimed.

2001, c.C-15.1, s.22.

Proceedings to be summary

23(1) Any proceedings related to the enforcement of a lien shall, to the extent possible, be of a summary character having regard to the amount and nature of the lien at issue.

(2) Except where otherwise provided by this Act, no interlocutory proceedings shall be permitted without an order of the court or the consent of all parties on the application.

2001, c.C-15.1, s.23.

Application of *The Personal Property Security Act, 1993*

24 Except as otherwise provided in this Act, subsection 2(2), sections 5 to 8, 17 and 18, Parts IV and V and sections 65, 67 and 68 of *The Personal Property Security Act, 1993* apply, with any necessary modification, to a lien created by this Act as though the lien were a security interest.

2001, c.C-15.1, s.24.

Regulations

25 For the purpose of carrying out this Act according to its intent, the Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act, including words and expressions defined in this Act, and any word or expression used in regulations adopted pursuant to clause (b), whether or not the word or expression is defined in those regulations;
- (b) adopting, as amended from time to time or otherwise, any regulations made pursuant to *The Personal Property Security Act, 1993* and amending them or otherwise providing for any necessary modification to them for the purposes of this Act;
- (c) excepting any types of goods or services from the application of this Act;
- (d) prescribing forms for the purposes of subsections 15(3) and 17(1);
- (e) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (f) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

2001, c.C-15.1, s.25.

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Common law liens abolished

26(1) Any lien arising under the common law of the kind that secures an obligation secured by a lien pursuant to this Act is abolished.

(2) The lien arising under the common law in favour of an innkeeper respecting the goods of a guest of the innkeeper is abolished.

2001, c.C-15.1, s.26.

Transition

27(1) This Act applies to every lien created pursuant to one of the following Acts that has not been terminated in accordance with that Act before the coming into force of this Act:

- (a) *The Garage Keepers Act*;
- (b) An Act respecting the Liens of Contractors, Wage Earners and Others, formerly known as *The Mechanics' Lien Act*;
- (c) *The Warehousemen's Lien Act*.

(2) A financing statement filed respecting a lien created pursuant to *The Garage Keepers Act*:

- (a) is deemed to have been registered pursuant to this Act for its unexpired term;
- (b) may be continued by registration pursuant to this Act.

2001, c.C-15.1, s.27.

S.S. 1997, c.H-3.01, section 21 amended

28 Subsection 21(9) of *The Highways and Transportation Act, 1997* is amended by striking out "Sections 13 to 15 of *The Garage Keepers Act* apply" and substituting "Section 19 of *The Commercial Liens Act* applies".

2001, c.C-15.1, s.28.

S.S. 1986, c.H-3.1 amended

29(1) *The Highway Traffic Act* is amended in the manner set forth in this section.

(2) Clause 89.1(b) is repealed and the following substituted:

“(b) ‘**garage keeper**’ means a person who provides services on a motor vehicle, including the storage and towing of motor vehicles, for consideration and includes any persons or class of persons designated by the administrator as garage keepers pursuant to section 89.6”.

(3) Subsection 89.2(2) is repealed and the following substituted:

“(2) Subject to subsections (4) and (5) and sections 89.31 and 89.5, a garage keeper who immobilizes or impounds a motor vehicle pursuant to this section is deemed to have a lien on the motor vehicle pursuant to section 3 of *The Commercial Liens Act* with respect to the motor vehicle for all unpaid amounts of prescribed fees and charges relating to the seizure, immobilization and impoundment of a motor vehicle, and that Act applies, with any necessary modification, to the enforcement and realization of that lien”.

(4) Subsection 89.2(4) is repealed and the following substituted:

“(4) Subject to subsection (4.1), if 15 or more days have passed since the period of immobilization or impoundment ended, a garage keeper may sell the motor vehicle or any part of it at a public auction and apply the proceeds of the sale in the manner prescribed in the regulations.

“(4.1) Before the sale, the garage keeper shall:

- (a) deliver to the administrator:
 - (i) notice of the intended sale;
 - (ii) a statutory declaration in a form provided by the administrator declaring the amount secured by the lien mentioned in subsection (2); and
 - (iii) a search result respecting the motor vehicle from the registry, within the meaning of *The Personal Property Security Act, 1993*, with a currency date of not more than 15 days before the date of the delivery to the administrator of the notice, statutory declaration and search result; and
- (b) insert in the Gazette and in a newspaper circulating in the locality in which the vehicle was impounded two weeks before the sale a notice of the intended sale stating:
 - (i) the name, if known, of the owner of the motor vehicle to be sold;
 - (ii) a general description of the vehicle, including the serial number;
 - (iii) the time and place of the sale; and
 - (iv) the name of the auctioneer”.

(5) Section 89.6 is repealed and the following substituted:**“Designation**

89.6 The administrator may designate any persons or class of persons as garage keepers and a person so designated is deemed to be a garage keeper for the purposes of this Act and the regulations and is subject to the same obligations, rights and entitlements of a garage keeper set out in section 89.2”.

2001, c.C-15.1, s.29.

S.S. 1996, c.H-3.2 amended

30(1) *The Highway Traffic Act, 1996* is amended in the manner set forth in this section.

(2) The definition of “garage keeper” in section 98 is repealed and the following substituted:

“**garage keeper**’ means a person who provides services on a motor vehicle, including the storage and towing of motor vehicles, for consideration and includes any persons or class of persons designated by the administrator as garage keepers pursuant to section 106; (« *garagiste* »)”.

(3) Subsection 100(2) is repealed and the following substituted:

“(2) Subject to subsections (4) and (5) and sections 103 and 105, a garage keeper who immobilizes or impounds a motor vehicle pursuant to this section is deemed to have a lien on the motor vehicle pursuant to section 3 of *The Commercial Liens Act* with respect to the motor vehicle for all unpaid amounts of prescribed fees and charges relating to the seizure, immobilization and impoundment of a motor vehicle, and that Act applies, with any necessary modification, to the enforcement and realization of that lien”.

(4) Subsection 100(4) is repealed and the following substituted:

“(4) Subject to subsection (4.1), if 15 or more days have passed since the period of immobilization or impoundment ended, a garage keeper may sell the motor vehicle or any part of it at a public auction and apply the proceeds of the sale in the manner prescribed in the regulations.

“(4.1) Before the sale, the garage keeper shall:

- (a) deliver to the administrator:
 - (i) notice of the intended sale;
 - (ii) a statutory declaration in a form provided by the administrator declaring the amount secured by the lien mentioned in subsection (2); and
 - (iii) a search result respecting the motor vehicle from the registry, within the meaning of *The Personal Property Security Act, 1993*, with a currency date of not more than 15 days before the date of the delivery to the administrator of the notice, statutory declaration and search result; and
- (b) insert in the Gazette and in a newspaper circulating in the locality in which the vehicle was impounded two weeks before the sale a notice of the intended sale stating:
 - (i) the name, if known, of the owner of the motor vehicle to be sold;
 - (ii) a general description of the vehicle, including the serial number;
 - (iii) the time and place of the sale; and
 - (iv) the name of the auctioneer”.

(5) Section 106 is repealed and the following substituted:**“Designation**

106 The administrator may designate any persons or class of persons as garage keepers and a person so designated is deemed to be a garage keeper for the purposes of this Act and the regulations and is subject to the same obligations, rights and entitlements of a garage keeper set out in section 100”.

S.S. 1986, c.V-2.1, section 68 amended

31 Subsection 68(6) of *The Vehicle Administration Act* is amended by striking out “*The Garage Keepers Act*” and substituting “*The Commercial Liens Act*”.

2001, c.C-15.1, s.31.

R.S.S. 1978, c.G-2 repealed

32 *The Garage Keepers Act* is repealed.

2001, c.C-15.1, s.32.

R.S.S. 1978, c.M-7 repealed

33 An Act respecting the Liens of Contractors, Wage Earners and Others, formerly known as *The Mechanics’ Lien Act*, is repealed.

2001, c.C-15.1, s.33.

R.S.S. 1978, c.W-3 repealed

34 *The Warehousemen’s Lien Act* is repealed.

2001, c.C-15.1, s.34.

R.S.S. 1978, c.H-11 amended

35 Sections 2 to 7 of *The Hotel Keepers Act* are repealed.

2001, c.C-15.1, s.35.

Coming into force

36 This Act comes into force on proclamation.

2001, c.C-15.1, s.36.

