

# BILL

## No. 102

### An Act to amend *The Personal Property Security Act, 1993*

(Assented to )

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

#### Short title

**1** This Act may be cited as *The Personal Property Security Amendment Act, 2009*.

#### S.S. 1993, c.P-6.2 amended

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

#### Section 2 amended

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

**(a) in subclause (q)(ii) by striking out “where the context permits,”; and**

**(b) in clause (r):**

**(i) by striking out “or” after subclause (ii); and**

**(ii) by repealing subclause (ii) and substituting the following:**

“(ii) data that is authorized by the regulations to be transmitted to the registry to effect a registration;

“(ii.1) where the context permits:

(A) a financing change statement; or

(B) a security agreement registered prior to the day on which *The Personal Property Security Act* came into force; or”.

#### Section 5 amended

**4(1) Subsection 5(1) is amended in the portion preceding clause (a) by striking out “sections 6 and 7” and substituting “sections 6 to 8”.**

**(2) Subsections 5(1.1) and (2) are repealed.**

#### New section 7

**5 Section 7 is repealed and the following substituted:**

“Intangibles, mobile goods, etc.

**7(1) In this section:**

(a) ‘**minehead**’ includes wellhead;

(b) ‘**minerals**’ includes petroleum and gas;

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(c) **‘previously applicable law’** means the law of the jurisdiction where the debtor was located, as that law existed immediately before the coming into force of this section;

(d) **‘registered organization’** means an organization organized pursuant to a law of a U.S. State or of the United States of America that requires the organization of the organization to be disclosed in a public record;

(e) **‘U.S. State’** means a State of the United States of America, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States of America.

(2) The validity, the perfection, the effect of perfection or non-perfection and the priority of the following security interests are governed by the law of the jurisdiction where the debtor is located when the security interest attaches:

(a) a security interest in:

(i) an intangible; or

(ii) goods, other than a foreign registered ship, that are of a type that are normally used in more than one jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others;

(b) a non-possessory security interest in an instrument, a negotiable document of title, money and chattel paper.

(3) If a debtor relocates to another jurisdiction, a security interest perfected in accordance with the law applicable as provided in subsection (2) continues perfected until the earliest of:

(a) 60 days after the day on which the debtor relocates to another jurisdiction;

(b) 15 days after the day on which the secured party has knowledge that the debtor has relocated to another jurisdiction; and

(c) the day that perfection ceases pursuant to the previously applicable law.

(4) If the law governing the perfection of a security interest mentioned in subsection (2) or (3) does not provide for public registration or recording of the security interest or a notice relating to it, and the collateral is not in the possession of the secured party, the security interest is subordinate to the following interests, unless it is perfected pursuant to this Act before the following interests arise:

(a) an interest in an account payable in Saskatchewan;

(b) an interest in goods, a security, an instrument, a negotiable document of title, money or chattel paper acquired when the collateral was situated in Saskatchewan.

(5) A security interest mentioned in subsection (4) may be perfected pursuant to this Act.

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(6) The validity, the perfection, the effect of perfection or non-perfection and the priority of a security interest in a foreign registered ship are governed by the law of the jurisdiction where the ship is registered when the security interest attaches.

(7) Notwithstanding subsections (2) and (3) and section 6, the validity, the perfection, the effect of perfection or non-perfection, and the priority of a security interest in minerals, or in an account resulting from the sale of the minerals at the minehead, that are provided for in a security agreement executed before the minerals are extracted and attach to the minerals on extraction, or attach to an account on the sale of the minerals, are governed by the law of the jurisdiction in which the minehead is located.

(8) Notwithstanding subsections (3) and (4), the validity, the perfection, the effect of perfection or non-perfection, and the priority of a security interest in a licence are governed pursuant to this Act.

(9) For the purposes of this section, a debtor is located:

(a) if the debtor is an individual, in the jurisdiction where the debtor's principal residence is located;

(b) if the debtor is a partnership, other than a limited partnership, and the partnership agreement governing the partnership states that the agreement is governed by the laws of a province or territory of Canada, in that province or territory;

(c) if the debtor is a corporation, a limited partnership or an organization and is incorporated, continued, amalgamated or otherwise organized pursuant to a law of a province or territory of Canada that requires the incorporation, continuance, amalgamation or organization to be disclosed in a public record, in that province or territory;

(d) if the debtor is a corporation and is incorporated, continued or amalgamated pursuant to a law of Canada that requires the incorporation, continuance or amalgamation to be disclosed in a public record, in the jurisdiction where the registered office or head office of the debtor is located:

(i) as set out in the governing legislation, letters patent, articles or other constating instrument pursuant to which the debtor was incorporated, continued or amalgamated; or

(ii) if subclause (i) is not applicable, as set out in the debtor's bylaws;

(e) if the debtor is a registered organization that is organized pursuant to a law of a U.S. State, in that U.S. State;

(f) if the debtor is a registered organization that is organized pursuant to a law of the United States of America:

(i) if the law designates a U.S. State of location, in that U.S. State;

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- (ii) if the law authorizes the registered organization to designate a U.S. State of location, in the U.S. State that the registered organization designates; or
  - (iii) if subclauses (i) and (ii) are not applicable, in the District of Columbia in the United States of America;
  - (g) if the debtor is one or more trustees acting for a trust:
    - (i) if the trust instrument governing the trust states that the instrument is governed by the laws of a province or territory of Canada, in that province or territory; or
    - (ii) if subclause (i) is not applicable, in the jurisdiction in which the administration of the trust by the trustees is principally carried out; or
  - (h) if clauses (a) to (g) are not applicable, in the jurisdiction where the chief executive office of the debtor is located.
- (10) For the purposes of this section, a debtor continues to be located in the jurisdiction determined pursuant to subsection (9) notwithstanding the following events:
- (a) in the case of a debtor who is an individual, the death or incapacity of the individual;
  - (b) in the case of any other debtor, the suspension, revocation, forfeiture or lapse of the debtor's status in its jurisdiction of incorporation, continuation, amalgamation or organization, or the dissolution, winding-up or cancellation of the debtor".

**Section 7.1 amended****6(1) The following subsection is added before subsection 7.1(1):**

“(0.1) In this section, ‘**previously applicable law**’ means the law of the jurisdiction where the debtor was located, as that law existed immediately before the coming into force of this subsection”.

**(2) Subsection 7.1(2) is amended in the portion preceding clause (a) by striking out “is governed” and substituting “are governed”.****(3) Clause 7.1(3)(a) is amended by striking out “subsection 7(1)” and substituting “subsection 7(9)”.****New sections 7.2 and 7.3****7 The following sections are added after section 7.1:****“Applicable law – location of debtor re security interest****7.2(1) In this section:**

- (a) ‘**prior law**’ means *The Personal Property Security Act, 1993*, as that Act existed immediately before the coming into force of this section, including the applicable law as determined pursuant to that Act;

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(b) **‘prior security agreement’** means a security agreement entered into before the coming into force of this section and, subject to subsection (2), includes any security agreement that is amended, renewed or extended by an agreement that is entered into on or after the coming into force of this section;

(c) **‘prior security interest’** means a security interest described in subsection 7(2) of the prior law that arises pursuant to a prior security agreement.

(2) If a prior security agreement is amended, renewed or extended by an agreement that is entered into on or after the coming into force of this section and that includes additional collateral that was not previously described in the agreement, it is not a prior security agreement with respect to the additional collateral.

(3) For the purpose of ascertaining the location of the debtor in order to determine the law governing the validity of a prior security interest, subsection 7(1) of the prior law continues to apply and subsections 7(9) and (10) do not apply.

(4) Subject to subsections (5) and (6), subsections 7(9) and (10) apply for the purpose of ascertaining the location of the debtor in order to determine the law governing the perfection of a security interest described in subsection 7(2), whether attachment occurs before, on or after the day on which this section comes into force.

(5) A prior security interest that is a perfected security interest pursuant to the prior law immediately before the day on which this section comes into force continues perfected until the earlier of:

(a) the day that perfection ceases pursuant to prior law; and

(b) five years after the day on which this section comes into force.

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

(7) Subject to subsections (8) to (10), subsections 7(9) and (10) apply for the purpose of ascertaining the location of the debtor in order to determine the law governing the effect of perfection or non-perfection and the priority of a security interest mentioned in subsection 7(2), whether attachment occurs before, on or after the day on which this section comes into force.

(8) For the purpose of ascertaining the location of the debtor in order to determine the law governing the effect of perfection or non-perfection and the priority of a prior security interest with respect to an interest, other than a security interest in the same collateral arising before this section comes into force, the prior law continues to apply and subsections 7(9) and (10) do not apply, regardless of whether the prior security interest is perfected, on or after the day on which this section comes into force, in accordance with the applicable law as determined pursuant to this Act.

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

(10) If a prior security interest is not a perfected security interest pursuant to the prior law immediately before the day on which this section comes into force but is subsequently perfected in accordance with the applicable law as determined pursuant to this Act as it exists after the coming into force of sections 4 to 8 of *The Personal Property Security Amendment Act, 2009*, subsections 7(9) and (10) apply for the purpose of ascertaining the location of the debtor in order to determine the law governing the priority of the prior security interest with respect to any other security interest in the same collateral.

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

**7.3(1)** In this section:

(a) **‘prior law’** means *The Personal Property Security Act, 1993*, as that Act existed immediately before the coming into force of this section, including the applicable law as determined pursuant to that Act;

(b) **‘prior security agreement’** means a security agreement entered into before the coming into force of this section and includes any security agreement that is amended, renewed or extended by an agreement that is entered into on or after the coming into force of this section;

(c) **‘prior security interest’** means a security interest in investment property that arises pursuant to a prior security agreement.

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

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

(4) A prior security interest that is perfected by registration and that is a perfected security interest pursuant to the prior law immediately before the day on which this section comes into force continues perfected until the earlier of:

(a) the day that perfection ceases pursuant to the prior law; and

(b) five years after the day on which this section comes into force.

(5) If a prior security interest mentioned in subsection (4) is perfected in accordance with the applicable law as determined pursuant to this Act on or after the day on which this section comes into force but before the earlier of the dates mentioned in clauses (4)(a) and (b), the security interest is deemed to be continuously perfected from the day of its perfection pursuant to the prior law”.

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**Section 8 amended**

**8(1) Subsection 8(1) is amended in the portion preceding clause (a) by striking out “sections 5, 6, 7 and 7.1” and substituting “sections 5 to 7.3”.**

**(2) Subsection 8(2) is amended by striking out “sections 5, 6, 7 and 7.1” and substituting “sections 5 to 7.3”.**

**Section 10 amended**

**9(1) Subsection 10(3) is amended by striking out “clause (1)(b)” and substituting “clause (1)(d)”.**

**(2) Subsection 10(4) is amended by striking out “clause (1)(b)” and substituting “clause (1)(d)”.**

**Section 20 amended**

**10 Subsection 20(3) is amended:**

**(a) in the portion preceding clause (a) by striking out “chattel paper,”; and**

**(b) in clause (a) by adding “or that is a security agreement under which the transferor acquires a purchase money security interest to secure all or part of the purchase price of goods” after “security agreement”.**

**Section 42 amended**

**11(1) Clause 42(2)(b) is amended by adding “, who shall act under the direction of the registrar” after “deputy registrars”.**

**(2) The following subsection is added after subsection 42(3):**

**“(3.1) If the registrar is absent or unable to act or the office of the registrar is vacant, a deputy registrar may exercise all the powers and shall perform all the responsibilities of the registrar, including any statutory duties imposed on the registrar by this Act”.**

**Section 43 amended**

**12 Subsection 43(12) is amended:**

**(a) by repealing clause (a) and substituting the following:**

**“(a) a copy of a verification statement issued by the registry that relates to the financing statement”; and**

**(b) by repealing clause (b) and substituting the following:**

**“(b) a reproduced copy of the verification statement mentioned in clause (a) issued by the registry”.**

**New section 43.1**

**13 The following section is added after section 43:**

**“General power to permit registrations**

**43.1 Notwithstanding the requirements of this Act or the regulations, if it is consistent with the purposes and intent of this Act, the registrar may permit any registration”.**

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## Section 48 amended

**14(1) Subsection 48(1) is amended:**

- (a) in clause (d) by striking out “printed”;
- (b) by striking out “or” after clause (d); and
- (c) by repealing clause (e) and substituting the following:
  - “(e) any other prescribed search”.

**(2) Subsection 48(3) is repealed and the following substituted:**

“(3) A copy of a printed document from the registry that is certified by the registrar in the prescribed manner is admissible in evidence as a true copy of the document without proof of the signature or official position of the registrar”.

## Section 68 amended

**15 Subsection 68(1) is amended in the portion preceding clause (a) by striking out “a copy of a financing statement or verification statement” and substituting “a copy or reproduced copy of a verification statement”.**

## Section 71 amended

**16 Subsection 71(1) is amended:**

- (a) in the portion of clause (k) preceding subclause (i) by adding “requirements as to” after “prescribing”; and
- (b) by repealing clause (l) and substituting the following:
  - “(l) prescribing all matters relating to searches of the registry and the method of disclosure of registered information, including:
    - (i) the types of searches that may be performed;
    - (ii) the form of a search result;
    - (iii) the manner of requesting a copy or certified copy of a document; and
    - (iv) the manner in which the registrar may certify a printed document”.

## Coming into force

- 17(1) Subject to subsection (2), this Act comes into force on assent.
- (2) Sections 4 to 8 of this Act come into force on proclamation.