

BILL NO. 22

(as passed)



*2nd Session, 58th General Assembly
Nova Scotia
50 Elizabeth II, 2001*

Government Bill

Liens Act

CHAPTER 33 OF THE ACTS OF 2001

The Honourable Michael G. Baker, Q.C.
Minister of Justice

[First Reading](#): April 9, 2001 (LINK TO BILL AS INTRODUCED)

Second Reading: November 1, 2001

[Third Reading](#): November 13, 2001

Royal Assent: November 22, 2001



**An Act to Codify and Reform the
Law Respecting Liens on Personal Property**

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *Liens Act*.

2 In this Act,

(a) "court" means the Supreme Court of Nova Scotia or, where the value of the goods does not exceed ten thousand dollars, includes the Small Claims Court of Nova Scotia;

(b) "financing statement" means a financing statement as defined in the *Personal Property Security Act*;

(c) "lien" means, except where the context requires otherwise, a lien on goods pursuant to Section 3;

(d) "lien claimant" means a person who has a lien on goods pursuant to Section 3;

(e) "secured party" means a person who has a security interest;

(f) "security interest" means an interest in goods that secures payment of performance of an obligation;

(g) "services" means any of the following types of services rendered for consideration in relation to goods:

(i) the provision of labour and materials for the purposes of restoring, improving and maintaining the condition and properties of goods and of salvaging goods,

(ii) the storage of goods,

(iii) the transportation, carriage and towage of goods.

3 (1) A person has a lien on goods for services provided by that person in relation to the goods at the request of a person

(a) with an interest in the goods;

(b) in possession of the goods; or

(c) legally entitled to possession of the goods.

(2) A person who, pursuant to legislation of another jurisdiction in Canada, has a lien on goods for services provided by that person in relation to the goods at the request of a person in possession of the goods is deemed to have a lien on goods created by this Section 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 accordance with the personal property security legislation of that jurisdiction.

4 (1) Subject to subsection 5(1), a lien secures the amount that the person requesting the services agrees to pay for the services.

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

5 (1) Subject to subsection (2), 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.

(2) Where the lien claimant repudiates the agreement before completion of the services provided for in the agreement, the attachment of the lien ends.

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 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.

(6) For the purposes of subsection (1), the authorization or acknowledgment is deemed to be in writing and signed by the person requesting the services when it is in the form of a tangible authenticated record.

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.

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, enforceability, perfection 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 of the lien is deemed to have taken the security interest in substitution for the lien.

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

(2) For the purposes of subsection (1), 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.

(3) Registration of a financing statement in the Personal Property Registry perfects a lien when

(a) either

(i) in the case of serial numbered goods, the goods are described in the financing statement by their 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 regulations made pursuant to the *Personal Property Security Act* have been met.

(4) For the purposes of subsection (3),

(a) "owner" includes a buyer, a lessee or a consignee under a transaction to which the *Personal Property Security Act* applies;

(b) "serial numbered goods" means serial numbered goods as defined in the regulations made pursuant to the *Personal Property Security Act*.

(5) Part IV of the *Personal Property Security Act* applies, with any necessary modification, to financing statements registered pursuant to subsection (3).

(6) Where the perfection of a lien is not continuous, the date of perfection to be considered in determining the priority of the lien is its most recent date of perfection.

(7) With respect to a lien mentioned in subsection 3(2), registration of the lien pursuant to the personal property security legislation of 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.

10 (1) Where a lien is perfected by possession, returning the goods to the control of the person requesting the services does not affect the perfection of the lien if the lien claimant registers a financing statement with respect to the goods within the first fifteen 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 with respect to the goods within the first fifteen days after completion of the services, the lien is deemed to be perfected during that fifteen-day period.

11 (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) Notwithstanding subsections 36(2) and (5) of the *Personal Property Security Act*, a lien, whether perfected or unperfected, has priority over

(a) a security interest that attaches before the lien attaches; and

(b) a writ of execution that is issued or a charging order that is granted before the lien attaches.

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 causes 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 after the lien attaches and 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.

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.

(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 at a lien on goods where the purchase price exceeds one thousand dollars or, in the case of a lease, where the market value of the goods exceeds one thousand dollars.

(5) A buyer or lessee takes free of a lien described in Section 10 if, during the fifteen-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.

14 Priority among two or more liens is to be determined by the reverse order in which the services are provided.

15 A sheriff may appoint one or more persons to exercise any of the powers of the sheriff that are conferred by this Act, and the exercise of any of those powers by a person so appointed is deemed to be an exercise of the power by the sheriff.

16 (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 has expired.

(2) Only a sheriff may seize goods to which a lien has attached.

(3) The sheriff shall not seize goods unless the lien claimant or an agent of 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 59 of the *Personal Property Security Act*.

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

17 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.

18 (1) Where a lien is perfected by registration, 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 the prescribed form

(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.

19 (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 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; or

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

20 If the person requesting the services fails to pay the debt within thirty 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*, and the lien claimant has all the rights and obligations of a secured party under Part V of that Act.

21 (1) The person requesting the services or any other person claiming a proprietary interest in, or a contractual right to possession of, the goods that are subject to a lien may 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 a court under the *Personal Property Security Act*, on hearing an application pursuant to subsection (1), the court may make any order that it considers appropriate in the circumstances.

22 (1) Where, in an application under Section 20, the amount claimed by the lien claimant is paid into court or security for this amount is posted with the court, the prothonotary shall issue to the applicant a certificate setting out the details of the payment or security.

(2) On the receipt of the certificate, the lien claimant shall

(a) release the goods; or

(b) not later than three days after receiving the certificate, file a notice of objection with the court stating that additional or alternative security should be posted with the court prior to release of the goods.

(3) Where an objection mentioned in subsection (2) has been filed and the applicant has posted the additional or alternative security demanded by the lien claimant, the lien claimant shall release the goods.

(4) 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.

23 (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 ninety days after the goods are returned by the applicant unless the lien claimant accepts the applicant's offer of settlement or commences an action to recover the amount claimed.

(3) After the expiry of ninety days, the prothonotary shall return to the applicant the money paid into court or the security posted if the applicant files with the prothonotary 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.

24 Except as otherwise provided in this Act, the following provisions of the *Personal Property Security Act* apply, with any necessary modification, to a lien created by this Act as though the lien were a security interest:

(a) Section 6 (perfection of interest in goods or possessory interest);

(b) Section 7 (removal from Province);

(c) Section 8 (perfection of other interests);

(d) Section 9 (applicable law);

(e) Section 18 (duties and rights of secured party);

(f) Section 19 (right to certain information);

(g) Part IV (registration);

(h) Part V (default - rights and remedies);

(i) Section 66 (application of law and manner of exercising rights);

(j) Section 67 (damages);

(k) clause 68(c) (extending or abridging time periods);

(l) Section 70 (manner of giving notice or demand).

25 (1) For the purpose of carrying out this Act according to its intent, the 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 a regulation adopted pursuant to clause (b), whether or not the word or expression is defined in the regulation;

(b) adopting, as amended from time to time or otherwise, any regulations made pursuant to the *Personal Property Security Act* and amending them or otherwise providing for any necessary modifications to them for the purposes of this Act;

(c) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;

(d) respecting any other matter or thing that the Governor in Council considers necessary to carry out the intent of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*.

26 (1) Any lien arising under the common law of the kind that arises under this Act is abolished.

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

27 (1) This Act applies to every lien created under the *Warehousemen's Lien Act* that has not been terminated in accordance with that Act before the coming into force of this Act.

(2) A lien created under prior law that is validly registered pursuant to the *Warehousemen's Lien Act* is deemed to be registered pursuant to this Act for the unexpired portion of the registration, and may be continued by registration pursuant to this Act.

28 Section 45 of Chapter 277 of the Revised Statutes, 1989, the *Mechanics' Lien Act*, is repealed.

29 Section 10 of Chapter 9 of the Acts of 1994-95, the *Tourist Accommodations Act*, is repealed.

30 Chapter 499 of the Revised Statutes, 1989, the *Warehousemen's Lien Act*, is repealed.

31 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

