

CHAPTER 122.

UNIFORM CONDITIONAL SALES ACT.

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122.01 Definitions. (1) In this chapter "conditional sale" means (a) Any contract for the sale of goods under which possession is delivered to the buyer and the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (b) any contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value of the goods, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming the owner of such goods upon full compliance with the terms of the contract.

(2) "Buyer" means the person who buys or hires the goods covered by the conditional sale, or any legal successor in interest of such person.

(3) "Filing district" means the subdivision of the state in which conditional sale contracts, or copies thereof, are required by this act to be filed.

(4) "Goods" means all chattels personal other than things in action and money, and includes emblements, industrial growing crops, and things attached to or forming a part of land which are agreed to be severed before sale or under the conditional sale.

(5) "Performance of the condition" means the occurrence of the event upon which the property in the goods is to vest in the buyer, whether such event is the performance of an act by the buyer or the happening of a contingency.

(6) "Person" includes an individual, partnership, corporation, and any other association.

(7) "Purchase" includes mortgage and pledge.

(8) "Purchaser" includes mortgagee and pledgee.

(9) "Seller" means the person who sells or leases the goods covered by the conditional sale, or any legal successor in interest of such person.

122.02 Primary rights of buyer. The buyer shall have the right when not in default to retain possession of the goods, and he shall also have the right to acquire the property in the goods on the performance of the conditions of the contract. The seller shall be liable to the buyer for the breach of all promises and warranties, express or implied, made in the conditional sale contract, whether or not the property in the goods has passed to the buyer.

122.03 Primary rights of seller. The buyer shall be liable to the seller for the purchase price, or for instalments thereof, as the same shall become due, and for breach of all promises made by him in the conditional sale contract, whether or not the property in the goods has passed to the buyer.

122.04 Conditional sales valid except as otherwise provided. Every provision in a conditional sale reserving property in the seller after possession of the goods is delivered to the buyer, shall be valid as to all persons, except as otherwise provided in this chapter.

122.05 Conditional sales void as to certain persons. (1) Every provision in a conditional sale reserving property in the seller, shall be void as to any purchaser from or creditor of the buyer, who, without notice of such provision, purchases the goods or acquires by attachment or levy a lien upon them, before the contract or a copy thereof shall

be filed as provided in this chapter, unless such contract or copy is so filed within ten days after the making of the conditional sale.

(2) A conditional sales contract for the sale of household goods, clothing, farm machinery, food and automobiles or automobile trucks shall not be amended to include a later sale of such goods or articles. Any conditional sales contract so amended shall be void as to the purchaser, and the seller shall not be permitted to retake any such goods or articles sold under contract either as originally drawn or later amended. [1935 c. 67]

Note: An oral conditional sale contract is void as to a purchaser from the buyer unless the purchaser had actual knowledge of such facts as would put a prudent man upon inquiry, and which, if prosecuted with ordinary diligence, would lead to actual notice of the right or title in conflict with that which he was about to purchase. *New Dells L. Co. v. Pfiffner*, 216 W 638, 258 NW 375.

Where a contract left in escrow provided the title to personal property was to pass to the buyer on his assignment of a life policy to the seller, and the buyer took possession without assigning the policy, and the seller thereafter orally agreed to permit the buyer to continue in possession on condition of certain payments and giving him the option of becoming the owner by paying the agreed purchase price, the new oral agreement was a "conditional sales contract" (within 122.01 (1)) and was void as to a bank, which, in good faith and without knowledge of the fact that the seller had title or of facts putting it on inquiry, took a mortgage on the property while in the possession of the buyer. *Farmers & Merchants State Bank v. Schulenberg*, 226 W 278, 276 NW 333.

Where the buyer of a truck executed to the seller a conditional sales contract in which the motor and serial numbers of the truck were incorrectly stated, and on the following day executed a second conditional sales contract correctly stating these numbers, and the seller assigned the first contract to a bank and the second contract to a finance company, the bank's claim to the truck under its contract was not superior to the finance company's claim under its contract merely by reason of the fact that the bank's contract was first filed, since the filing statute, 122.05 (1), was inapplicable to the case, the bank being neither a purchaser from nor a creditor of the buyer of the truck but only an assignee of the seller. *Marathon Finance Corp. v. Matheos*, 238 W 351, 298 NW 61.

Contract providing for delivery of furniture to bankrupt to be paid for at invoice price after sale thereof by bankrupt, with privilege of purchasing furniture upon terms to be agreed on, held "conditional sale", where bankrupt was at liberty to sell upon its own terms. *In re Wayside F. Co.*, 67 F (2d) 201.

122.06 Place of filing. The conditional sale contract or copy, and any assignment thereof and affidavits pertaining thereto, shall be filed in the office of the register of deeds of the county in which the goods are first kept for use by the buyer after the sale; provided, that in such cities or villages which are located in more than one county and the place where the goods are to be kept cannot be definitely located as being within one of such counties, then and in that event duplicate originals or copies may be filed in the recorder's office of each county in which such city or village is situated. Provided, further, that no such conditional sale contract or copy shall be filed unless the debt secured by said contract is ten dollars or more. It shall not be necessary to the validity of such conditional sale contract, or in order to entitle it to be filed, that it be acknowledged or attested. This section shall not apply to the contracts described in section 122.08. [1931 c. 291 s. 2]

122.07 Fixtures. If the goods are so affixed to realty, at the time of a conditional sale or subsequently as to become a part thereof and not to be severable wholly or in any portion without material injury to the freehold, the reservation of property as to any portion not so severable shall be void after the goods are so affixed, as against any person who has not expressly assented to the reservation. If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become part thereof but to be severable without material injury to the freehold, the reservation of property shall be void after the goods are so affixed as against subsequent purchasers of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are or are to be affixed thereto, shall be filed before such purchase in the office of the register of deeds of the county where such realty is located, and also entered in the tract index, when kept. As against the owner of realty the reservation of the property in goods by a conditional seller shall be void when such goods are to be so affixed to the realty as to become part thereof but to be severable without material injury to the freehold, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are to be affixed thereto, shall be filed before they are affixed, in the office of the register of deeds of the county where such realty is located, and also entered in the tract index, when kept. [1931 c. 291 s. 2]

Note: Where machinery and equipment is sold to be affixed to a building under a conditional sales contract the rights of the seller and of mortgagors and lienors of the premises are determined by the conditional sales act and not by the law applicable to fixtures. *People's S. & T. Co. v. Munsert & Sheboygan M. Co.*, 212 W 449, 249 NW 527, 250 NW 385.

This section is inapplicable where owner of realty is vendee under sale contract, mortgagee without knowledge of unrecorded

conditional sale contract until execution of second mortgage on realty, to which chattels sold were so affixed as to be severable without materially injuring freehold, was subsequent purchaser of chattels for value without notice of seller's reserved title, but could not assert invalidity of subsequent conditional sale contract, executed after execution of mortgage, as purchaser on foreclosure sale, where she had notice of seller's title before bidding. *American L. M. Co. v. Larson*, 217 W 208, 257 NW 608.

The removal from a farm of a silo constructed of concrete staves placed on but not fastened to a concrete foundation and used in connection with a wooden runway fastened to a barn but not to the silo was not a "material injury to the freehold" and hence a prior mortgagee of the farm was not entitled to recover against the conditional seller, who had removed the silo. *Myhre v. Michigan Silo Co.*, 220 W 593, 265 NW 703.

122.08 Railroad equipment or rolling stock. No conditional sale of railroad, or street or interurban railway equipment or rolling stock shall be valid as against the purchasers and creditors described in section 122.05, unless the contract shall be acknowledged by the buyer or attested in like manner as a deed of real property, and the contract, or a copy thereof, shall be filed or recorded in the office of the secretary of state; and unless when any engine or car so sold is delivered there shall then be plainly and conspicuously marked upon each side thereof the name of the seller, followed by the word "owner."

Note: Conditional sale contract of rolling stock to railroad must be accepted by secretary of state for filing if executed in either of alternative methods provided by 122.08. That section is controlling and independent of 190.10 and 190.11. Even if this is not true secretary of state as ministerial officer should not refuse to file conditional sale contract so executed as such refusal would have to be based upon exercise of judicial judgment involving interpretation of several statutes, which function is beyond duty of ministerial filing officer. 27 Atty. Gen. 698.

122.09 Conditional sale of goods for resale. When goods are delivered under a conditional sale contract and the seller expressly or impliedly consents that the buyer may resell them prior to performance of the condition, the reservation of property shall be void against purchasers from the buyer for value in the ordinary course of business, and as to them the buyer shall be deemed the owner of the goods, even though the contract or a copy thereof shall be filed according to the provisions of this chapter.

122.10 Filing. The register of deeds shall mark upon the contracts or copies filed with him the document number, and day and hour of filing and shall file the contracts or copies in his office for public inspection. He shall enter alphabetically the names of the grantor or buyer in indices of which each page shall be divided into nine columns with heads to the respective columns as follows: Number of instrument, the date and time of filing, name of grantor or buyer, name of grantee or seller, name of instrument, date of instrument, amount or price named in the contract, a brief description of the property, and date of cancellation thereof; except that in entering the contracts mentioned in section 122.08 the secretary of state shall record either the sum remaining to be paid upon the contract or the price of the goods. For filing and entering such contract or copy the register of deeds shall be entitled to a fee of fifty cents, except that for filing and entering a contract described in section 122.08 the secretary of state shall be entitled to a fee of one dollar. [1931 c. 79 s. 19; 1931 c. 291 s. 2]

Note: Condition sale contract filed in office of register of deeds should be retained in his office even though it has been properly satisfied. 26 Atty. Gen. 624.

122.11 Renewal. The filing of conditional sales contracts provided for in sections 122.05 to 122.07 shall be valid for a period of 3 years only. The filing of the contract provided for by section 122.08 shall be valid for a period of 15 years only. The validity of the filing may in each case be extended for successive additional periods of one year from the date of renewal by filing with the register of deeds, within 30 days next preceding the expiration of each period, a statement signed by the seller, his agent or attorney, showing that the contract is in force and the amount remaining to be paid thereon. Such statement shall be entered in the same manner as the contract or copy originally filed and shall be attached thereto by the register of deeds, who shall be entitled to a like fee as upon the original filing. [1931 c. 291 s. 2; 1943 c. 210; 1945 c. 33]

Cross Reference: As to effect of change in law of filing place, see 241.10 (5).

122.12 Cancellation of contract. After the performance of the condition, upon written demand delivered personally or by registered mail by the buyer or any other person having an interest in the goods, the seller, or his assignee if the contract be assigned, shall execute, acknowledge and deliver to the demandant a statement that the condition in the contract has been performed. If for ten days after such demand the seller, or his assignee as the case may be, fails to mail or deliver such a statement of satisfaction, he shall forfeit to the demandant five dollars and be liable for all damages suffered. Upon presentation of such statement of satisfaction the register of deeds shall file the same and enter on the same line in the last column where such mortgage or contract appears in the index, the document number and date of filing, of all assignments, foreclosure affidavits, extensions or releases thereof. For filing and entering the satisfaction the register of deeds shall be entitled to a fee of twenty-five cents and except that the secretary of state shall be entitled to a fee of fifty cents for filing and entering a statement of the satisfaction of a contract described in section 122.08. [1931 c. 291 s. 2]

122.13 Prohibition of removal or sale without notice. Unless the contract otherwise provides, the buyer may, without the consent of the seller, or his assignee if any, remove

the goods from any county and sell, mortgage or otherwise dispose of his interest in them; but prior to the performance of the condition, no such buyer shall remove the goods from a county in which the contract or a copy thereof is filed, except for temporary uses for a period of not more than thirty days, unless the buyer not less than ten days before such removal shall give the seller, or his assignee if any, personally or by registered mail written notice of the place to which the goods are to be removed and the approximate time of such intended removal; nor prior to the performance of the condition shall the buyer sell, mortgage or otherwise dispose of his interest in the goods, unless he, or the person to whom he is about to sell, mortgage or otherwise dispose of the same, shall notify the seller, or his assignee if any, in writing personally or by registered mail of the name and address of the person to whom his interest in the goods is about to be sold, mortgaged or otherwise transferred, not less than ten days before such sale, mortgage or other disposal. If any buyer does so remove the goods, or does so sell, mortgage or otherwise dispose of his interest in them without such notice or in violation of the contract, the seller, or his assignee if any, may retake possession of the goods and deal with them as in case of default in payment of part or all of the purchase price. The provisions of this section regarding the removal of goods shall not apply, however, to the goods described in section 122.08. [1931 c. 291 s. 2]

122.14 Refiling on removal. When, prior to the performance of the condition, the goods are removed by the buyer from a county in this state to another county in this state in which such contract or a copy thereof is not filed, or are removed from another state into a county in this state where such contract or copy is not filed, the reservation of the property in the seller shall be void as to the purchasers and creditors described in section 122.05, unless the conditional sale contract or a copy thereof shall be filed in the county to which the goods are removed, within ten days after the seller has received notice of the county to which the goods have been removed. The provisions of this section shall not apply, however, to the goods described in section 122.08. The provisions of section 122.11 regarding the duration of the validity of the filing and the necessity for refile shall apply to contracts or copies which are filed in a county other than that where the goods are originally kept for use by the buyer after the sale.

Note: Bringing an automobile into the state during vacation and having it repaired here did not show an intention to create a new situs within this state requiring the conditional vendor to file his contract as against attaching creditors. *Forgan v. Smedal*, 203 W 564, 234 NW 896.
If a conditional seller in another state, upon receiving notice of the removal of the

goods into this state, fails to file his contract in the proper filing district in this state within ten days thereafter, the reservation of title in his contract is void as to any creditor who, without notice of such reservation, has acquired a lien by attachment upon the goods before the contract, or a copy thereof has been filed. *Universal C. Co. v. Finn*, 212 W 601, 250 NW 391.

122.15 Fraudulent injury, concealment, removal or sale. When, prior to the performance of the condition, the buyer maliciously or with intent to defraud, shall injure, destroy or conceal the goods, or remove them to a county where the contract or a copy thereof is not filed, without having given the notice required by section 122.13, or shall sell, mortgage, or otherwise dispose of such goods under claim of full ownership, he shall be guilty of a misdemeanor and upon conviction thereof shall be imprisoned in the county jail for not more than one year or be fined not more than five hundred dollars or both.

Note: Under 122.16 the seller or his assigns may retake possession of goods when the conditional buyer is in default and the breach has been expressly made a ground for retaking; but to convict the buyer of larceny there must be a legal taking including an adequate assertion of possession by seller, precluding the buyer from interposing objection and placing upon one seeking to repossess the duty of resorting to legal proceedings. *La Porte M. Co. v. Firemen's Ins. Co.*, 209 W 397, 245 NW 105.

122.16 Retaking possession. When the buyer shall be in default in the payment of any sum due under the contract, or in the performance of any other condition which the contract requires him to perform in order to obtain the property in the goods, or in the performance of any promise, the breach of which is by the contract expressly made a ground for the retaking of the goods, the seller may retake possession thereof. Unless the goods can be retaken without breach of the peace, they shall be retaken by legal process; but nothing herein shall be construed to authorize a violation of the criminal law. In no case shall household furniture sold on conditional sales contract be retaken by the seller without legal process. [1933 c. 422]

Note: A seller who retakes property sold under conditional sales contract, to prevent deterioration, may recover balance due. Whether retaking is for his own benefit or as trustee for buyer, is ordinarily a question of fact. *Waukesha F. Corp. v. Southard*, 202 W 570, 232 NW 534.

122.17 Notice of intention to retake. Not more than forty nor less than twenty days prior to the retaking, the seller, if he so desires, may serve upon the buyer personally or by registered mail a notice of intention to retake the goods on account of the

buyer's default. The notice shall state the default and the period at the end of which the goods will be retaken, and shall briefly and clearly state what the buyer's rights under this act will be in case they are retaken. If the notice is so served and the buyer does not perform the obligations in which he has made default before the day set for retaking, the seller may retake the goods and hold them subject to the provisions of sections 122.19 to 122.23, inclusive, regarding resale, but without any right of redemption.

122.18 Redemption. If the seller does not give the notice of intention to retake described in section 122.17, he shall retain the goods for ten days after the retaking within the state in which they were located when retaken, during which period the buyer, upon payment or tender of the amount due under the contract at the time of retaking and interest, or upon performance or tender of performance of such other condition as may be named in the contract as precedent to the passage of the property in the goods, or upon performance or tender of performance of any other promise for the breach of which the goods were retaken, and upon payment of the expenses of retaking, keeping and storage, may redeem the goods and become entitled to take possession of them and to continue in the performance of the contract as if no default had occurred. Upon written demand delivered personally or by registered mail by the buyer, the seller shall furnish to the buyer a written statement of the sum due under the contract and the expense of retaking, keeping and storage. For failure to furnish such statement within a reasonable time after demand, the seller shall forfeit to the buyer ten dollars and also be liable to him for all damages suffered because of such failure. If the goods are perishable so that retention for ten days as herein prescribed would result in their destruction or substantial injury, the provisions of this section shall not apply, and the seller may resell the goods immediately upon their retaking. The provision of this section requiring the retention of the goods within the state during the period allowed for redemption shall not apply to the goods described in section 122.08.

Note: Where an automobile was sold under a contract made in Minnesota and was delivered in Minnesota, the law of Minnesota governed, so that the seller's assignee of the contract, retaking the car in Wisconsin and removing it to Minnesota and retaining it there, was not liable to the buyer for failure to comply with the requirement of 122.18 that the goods be retained within the state for 10 days after such retaking. *Magoon v. Motors Acceptance Corp.*, 238 W 1, 298 NW 191.

122.19 Compulsory resale by seller. If the buyer does not redeem the goods within ten days after the seller has retaken possession, and the buyer has paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall sell them at public auction in the state where they were at the time of the retaking, such sale to be held not more than thirty days after the retaking. The seller shall give to the buyer not less than ten days' written notice of the sale, either personally or by registered mail, directed to the buyer at his last known place of business or residence. The seller shall also give notice of the sale by at least three notices posted in different public places within the town, village or city where the goods are to be sold, at least five days before the sale. If at the time of the retaking five hundred dollars or more has been paid on the purchase price, the seller shall also give notice of the sale at least five days before the sale by publication in a newspaper published or having a general circulation within the town, village or city where the goods are to be sold. The seller may bid for the goods at the resale. If the goods are of the kind described in section 122.08, the parties may fix in the conditional sale contract the place where the goods shall be resold.

Note: Where a conditional vendor recovered the balance of the purchase price, possessed himself of the property and sold although the purchaser consented to the the same without giving the notice required sale. *Mack I. M. T. Corp. v. Thelen T. Co.* the sale was void and the vendor could not recover. 205 W 434, 237 NW 75.

122.20 Resale at option of parties. If the buyer has not paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall not be under a duty to resell the goods as prescribed in section 122.19, unless the buyer serves upon the seller, within ten days after the retaking, a written notice demanding a resale, delivered personally or by registered mail. If such notice is served, the resale shall take place within thirty days after the service, in the manner, at the place and upon the notice prescribed in section 122.19. The seller may voluntarily resell the goods for account of the buyer on compliance with the same requirements.

122.21 Proceeds of resale. The proceeds of the resale shall be applied (a) To the payment of the expenses thereof, (b) to the payment of the expenses of retaking, keeping and storing the goods, (c) to the satisfaction of the balance due under the contract. Any sum remaining after the satisfaction of such claim shall be paid to the buyer.

122.22 Deficiency on resale. If the proceeds of the resale are not sufficient to defray the expenses thereof, and also the expenses of retaking, keeping and storing the goods and the balance due upon the purchase price, the seller may recover the deficiency from the buyer, or from anyone who has succeeded to the obligations of the buyer.

122.221 Deficiency judgments. (1) No deficiency judgment after foreclosure shall be taken upon an obligation secured by a conditional sales contract, either on cognovit or otherwise, except in an action brought for that purpose with process served in the manner by law provided upon all the persons to be charged with such deficiency judgment. In such action the court shall find the reasonable value of the chattels sold at the time of sale and the sum then due on such obligation, including all proper costs and charges, and upon such findings shall grant the deficiency or deny a deficiency if none appears due.

(2) On a judgment taken upon such an obligation prior to foreclosure, no execution, garnishment or other process shall issue after foreclosure of the conditional sales contract, unless prior to the issue of such process the holder of the judgment shall apply in that action for and have entered an order of the court determining the reasonable value of the chattels sold at the time of the sale. A 5-day written notice of such application shall be served on all the judgment creditors in the manner provided for serving notice in section 278.105. On such application the court shall order the judgment reduced by the amount it shall determine to have been the reasonable value of the chattels at the time of the foreclosure sale, less the costs and expenses of the sale.

(3) Any execution, garnishment or other process issued in violation of the preceding paragraph hereof shall be void, and in any proceedings to quash such process, the judgment debtor may be awarded an attorney fee not to exceed \$50 in addition to his costs and disbursements.

(4) No waiver of the provisions of this section shall be valid, except by written agreement, for consideration, after default. [1943 c. 378]

122.23 Rights of parties where there is no resale. Where there is no resale, the seller may retain the goods as his own property without obligation to account to the buyer except as provided in section 122.25, and the buyer shall be discharged of all obligation.

Note: As to the effect of retaking possession of property sold, see note to 122.16, citing *Waukesha F. Corp. v. Southard*, 202 W 570, 232 NW 234.

122.24 Election of remedies. After the retaking of possession as provided in section 122.16 the buyer shall be liable for the price only after a resale and only to the extent provided in section 122.22. Neither the bringing of an action by the seller for the recovery of the whole or any part of the price, nor the recovery of judgment in such action, nor the collection of a portion of the price, shall be deemed inconsistent with a later retaking of the goods as provided in section 122.16. But such right of retaking shall not be exercised by the seller after he has collected the entire price, or after he has claimed a lien upon the goods, or attached them, or levied upon them as the goods of the buyer.

Note: See note to 239.09, citing *Viking A. S. Co. v. Thwaites*, 215 W 225, 253 NW 398.

122.25 Recovery of part payments. If the seller fails to comply with the provisions of sections 122.18 to 122.21, inclusive, and 122.23 after retaking the goods, the buyer may recover from the seller his actual damages, if any, and in no event less than one-fourth of the sum of all payments which have been made under the contract, with interest.

122.26 Waiver of statutory protection. No act or agreement of the buyer before or at the time of the making of the contract, nor any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of sections 122.18 to 122.21, inclusive, and 122.25; except that the contract may stipulate that on such default of the buyer as is provided for in section 122.16, the seller may rescind the conditional sale, either as to all the goods or as to any part thereof for which a specific price was fixed in the contract. If the contract thus provides for rescission, the seller at his option, may retake such goods without complying with or being bound by the provisions of sections 122.17 to 122.25, inclusive, as to the goods retaken, upon crediting the buyer with the full purchase price of those goods. So much of this credit as is necessary to cancel any indebtedness of the buyer to the seller shall be so applied, and the seller shall repay to the buyer on demand any surplus not so required.

122.27 Loss and increase. After the delivery of the goods to the buyer and prior to the retaking of them by the seller, the risk of injury and loss shall rest upon the buyer. The increase of the goods shall be subject to the same conditions as the original goods.

122.28 Act prospective only. This chapter shall not apply to conditional sales made prior to July 31, 1919. [43.03 (3)]

122.29 Rules for cases not provided for. In any case not provided for in this chapter the rules of law and equity, including the law merchant, and in particular those relating to principal and agent and to the effect of fraud, misrepresentation, duress or

coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to conditional sales.

122.30 **Uniformity of interpretation.** This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Note: In construing the uniform acts the to attain uniformity. *Forgan v. Smedal*, 203 decisions of other courts should be followed W 554, 234 NW 896.

122.31 **Short title.** This chapter may be cited as the "Uniform Conditional Sales Act."