

CHAPTER 241.

CHATTEL MORTGAGES, FRAUDULENT CONTRACTS; TRUST RECEIPTS.

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241.01 Conveyances, when void. All deeds of gift, all conveyances and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

An assignment of a right of action to secure a promissory note did not create a trust for the benefit of the assignor which was void as against creditors, since it did not inure to the benefit of the assignor. *Jones v. Krueger*, 1 W (2d) 27, 82 NW (2d) 910.

241.02 Agreements, what must be written. In the following case every agreement shall be void unless such agreement or some note or memorandum thereof, expressing the consideration, be in writing and subscribed by the party charged therewith:

(1) Every agreement that by its terms is not to be performed within one year from the making thereof.

(2) Every special promise to answer for the debt, default or miscarriage of another person.

(3) Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry.

A contract for hire for an indefinite term is a valid contract although not in writing. *Kirkpatrick v. Jackson*, 256 W 208, 40 NW (2d) 372.

A tourist cabin project was being financed for the owners by a bank under a loan which contemplated that the loan would provide for plumbing and heating; the installation augmented the value of the mortgage security given by the cabin owners to the bank; oral promises made by the bank to a contractor that he would be paid if he completed the installation were not void as promises to answer for the debt of another. *Elder v. Sage*, 257 W 214, 42 NW (2d) 919.

A note signed by persons who had borrowed money, and by a third person who was an accommodation maker 3 weeks after the money was loaned, did not satisfy the statute of frauds as an agreement to pay the debt of another. *Estate of Vogel*, 259 W 73, 47 NW (2d) 333.

An oral agreement whereby one party promised to support the decedent and his

wife for life and the decedent was to leave all his property to such party, and the promise to support was secured by the latter's note, was void under the statute of frauds, 240.06, 241.02 (1) and 235.01 (2), and specific performance could not be required and no damages could be recovered for its breach by the decedent in willing his property to others, but the party who furnished the support in performance of the void contract was entitled to restitution of the value thereof from the estate of the decedent. *Adams v. Congdon*, 259 W 278, 48 NW (2d) 469.

A guaranty signed by a guarantor at the foot of a promissory note, and guaranteeing the payment of the note, was a sufficient memorandum expressing the consideration to comply with the statute of frauds, although the guaranty itself contained no recital of consideration. In determining whether the consideration is sufficiently expressed so as to satisfy the statute of frauds, the entire instrument should be considered. A note and a guaranty, both signed

under seal, import a consideration, 323.27, and under such circumstances the guaranty is good even though no consideration is stated. *Jacobi v. Cielinski*, 262 W 100, 53 NW (2d) 718.

A contract between a manufacturer and a salesman relating to compensation, which provided for increased commissions after 5 years, but which was terminable at will, was a valid contract even though not in writing, and hence was not void under (1). *Kinzfogel v. Greiner*, 265 W 105, 60 NW (2d) 741.

In applying the ordinary and approved meaning of the word "annual" to the evidence presented as to when commissions were payable to the plaintiff, the trial court had the right to conclude that commissions were payable at the end of the defendant employer's fiscal year, which was within one year from the date when the parties entered into their oral agreement, so that

such agreement was not void under (1). *Horne v. Kenosha Lincoln-Mercury, Inc.* 265 W 496, 61 NW (2d) 393.

Where the alleged obligation was that of a corporation, any subsequent promise of its president to pay such obligation, not being in writing, would be void under (2). *Otto v. Black Eagle Oil Co.* 266 W 215, 63 NW (2d) 47.

A guaranty required to be in writing may be terminated by a subsequently executed oral agreement, supported by consideration, even if the original instrument of guaranty was executed under seal. *Home Savings Bank v. Gertenbach*, 270 W 386, 71 NW (2d) 347.

The promise of the buyer of corporate property to pay certain debts of the controlling stockholder, made as part of the purchase deal, was not void under (2) because not in writing. *Gunnison v. Kaufman*, 271 W 113, 72 NW (2d) 706.

241.025 Contracts for employment. Any person who shall represent, as an inducement to the sale of any course of study, that he or the school offering such course will, upon the purchaser's completion of such course, place such purchaser in employment unless there is a written contract between such school and an employer whereby the latter is bound to furnish such employment as represented, is guilty of a misdemeanor. Such purchaser shall be entitled, if such representation is made and no such contract exists, to have the purchase price, tuition, fee or other consideration paid for the course refunded and may recover the same in an action of debt.

History: 1957 c. 433, 672.

241.03 Croppers' contracts to be filed. (1) No landowner-cropper contract shall be valid, except between the parties thereto, unless the contract, subscribed by the parties, describing the premises and containing the entire agreement between the parties, or a copy thereof, be filed with the register of deeds of the county where such premises are located. The register of deeds shall file, indorse, enter and index croppers' contracts filed with him in substantially the same manner as provided for chattel mortgages and he shall permit inspection of such contracts by all persons.

(2) In case such cropper contract is not filed then, except between the parties thereto, the cropper shall be conclusively presumed to have title and possession to an undivided one-half interest in all crops covered by such contract and the relationship between the landowner and cropper to be that of landlord and tenant.

241.05 Presumption if possession not changed. Every sale made by a vendor, of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery and followed by an actual and continued change of possession of the things sold or assigned, shall be presumed to be fraudulent and void as against the creditors of the vendor or the creditors of the person making such assignment or subsequent purchasers in good faith; and shall be conclusive evidence of fraud unless it shall be made to appear on the part of the persons claiming under such sale or assignment that the same was made in good faith and without any intent to defraud such creditors or purchasers.

241.06 "Creditors" defined. The term "creditors," as used in section 241.05, shall be construed to include all persons who shall be creditors of the vendor or assignor at any time whilst such goods and chattels shall remain in his possession or under his control.

241.07 Excepted cases. Nothing contained in sections 241.05 and 241.06 shall be construed to apply to contracts of bottomry or respondentia, nor to assignments or hypothecations of vessels or goods at sea or in foreign ports, or without this state; provided, the assignee or mortgagee shall take possession of such ship, vessels or goods as soon as may be after the arrival thereof within this state.

241.08 Chattel mortgages to be filed or property delivered; when wife must join in executing. No mortgage of personal property shall be valid against any other person than the parties thereto or persons having notice thereof, unless the possession of the mortgaged property be delivered to and retained by the mortgagee or unless the mortgage be filed as provided in section 241.10, except when otherwise directed in these statutes. Nor shall a chattel mortgage of personal property which is by law exempt from seizure and sale upon execution, except a purchase money chattel mortgage, be valid unless the same be signed by the wife of the person making such chattel mortgage, if he be a married man and his wife at the time be a member of his family, and unless such signature of such wife be witnessed by 2 witnesses. In this section "purchase money chattel mortgage" means a mortgage given to the vendor as a part of a transaction of sale

to secure all or part of the purchase money, or a mortgage given to a third person who advances all or part of the money with which to make a purchase.

A bill of sale given to protect the creditor's interest, without any evidence of satisfaction of the debt given by the creditor to the debtor, was a chattel mortgage. Since it was not filed and the property which it described was not delivered to the mortgagee, it was invalid against creditors garnishing the proceeds of the sale of the property in question. *Aamodt v. Bergren*, 256 W 395, 41 NW (2d) 299.

Where a chattel mortgagee had reasonable cause to believe that the mortgagor was insolvent, and repossessed a car under an unfiled mortgage, the repossession constituted a preferential transfer of property under the bankruptcy act. *Tennessen v. First Nat. Bank of Kenosha*, 146 F. Supp. 511.

241.09 Assignment of wages. No assignment of the salary or wages of any married man shall be valid for any purpose unless such assignment shall be in writing signed by the wife, if she at the time be a member of his family, and unless her signature be witnessed by 2 disinterested witnesses; nor shall any assignment of the salary or wages of any person be valid as to any such salary or wages to accrue more than 2 months after the date of the making of such assignment, except that assignments of salary or wages made directly to licensees under ss. 115.07, 115.09, 214.15 or to state or national banks, savings banks, trust company banks, savings and loan associations or credit unions, may include salary or wages to accrue more than 2 months after the date of making such assignment, and except that any assignment of wages made in connection with a proceeding under s. 128.21 shall run concurrently with the period during which the amortization proceedings are in effect and shall become void upon the dismissal of the proceedings. Nothing in this section shall apply to assignments made under s. 101.10 (14) nor to any authorization from an employe to his employer directing him to make deductions from wages to accrue in the future for union or employe club dues, insurance or annuities, war bond purchases, contributions to the American Red Cross, a community fund or other similar charity, or any indebtedness to his employer.

History: 1947 c. 411 s. 6; 1955 c. 437.

241.10 Filing chattel mortgages. (1) Every mortgage of personal property and any assignment thereof shall be filed with the register of deeds of the county in which such personal property is situated. Provided, in such cities or villages which are located in more than one county and the place where the personal property is to be kept cannot be definitely located as being within one of such counties, then and in that event the chattel mortgages may be filed in the office of register of deeds of each county in which such city or village is situated. To entitle the chattel mortgage to be filed it shall not be necessary that it be acknowledged or attested, except as provided in section 241.08.

(2) Every register of deeds shall keep the same in his office for the inspection of all persons, and file and index the same as provided for in subsection (12) of section 59.51.

(3) Mortgages so filed shall be as valid and binding upon all persons as if the property thereby mortgaged had been, immediately upon the execution of such mortgages, delivered to, and the possession thereof retained by, the mortgagees. A single mortgage of personal property, situated in different counties, may be filed with the register of deeds in all counties in which any of the property described in the mortgage is situated. Filing such a chattel mortgage in any county shall be valid only with respect to the property situated in such county.

(4) Either the original chattel mortgage or a copy thereof certified by the holder of the chattel mortgage to be a true and correct copy thereof or a duplicate original thereof may be filed wherever filing of the mortgage is required or provided for. The signatures on the duplicate original may be carbon copies of the signatures of the parties affixed to the original chattel mortgage.

History: 1955 c. 10.

The removal of the mortgaged goods from the county in which the chattel mortgage thereon was properly filed did not invalidate the lien of the mortgagee as to creditors of the mortgagor. *Peterson Cutting Die Co. v. Bach Sales Co.* 269 W 113, 63 NW (2d) 804.

Where a bank, holder of a chattel mortgage on a tractor owned by a farm-implementation dealer, permitted the tractor to be commingled with the dealer's other stock in trade without any mark indicating that it was mortgaged property, and knew that it was necessary for the dealer to sell its merchandise to remain in business, and accepted a payment on the mortgage note at a time when it knew that the dealer had sold the tractor and other mortgaged items, the bank's conduct constituted an implied agreement that the dealer might deal with the mortgaged property as it did, and the bank thereby waived its mortgage lien so that it was not entitled to replevin the tractor from the purchaser thereof. *Bank of Ashippun v. Ells*, 274 W 530, 80 NW (2d) 357.

241.11 Affidavit of renewal. Every such mortgage shall cease to be valid, as against the creditors of the person making the same or subsequent purchasers or mortgagees in good faith, after the expiration of 3 years from the filing of the same or a copy thereof. The validity of the filing may in each case be extended for successive additional periods of one year from the date of filing the affidavit, by filing with the register of deeds within

30 days next preceding the expiration of each period, an affidavit made by the mortgagee, his agent or attorney, setting forth the interest which the mortgagee has by virtue of such mortgage in the property therein mentioned. Such affidavit shall be filed and entered in the same manner as a chattel mortgage filed and entered for the first time, and the register of deeds shall be entitled to a like fee as upon the original filing.

Where no renewal of a chattel mortgage was filed, and a second mortgage covering the same property was executed after the 3 year period to secure the antecedent debt, the first mortgage was invalid as to creditors armed with executions, and as to them the mortgagee had no security under either mortgage. The creditors need not have actually levied an execution against the property. In re Ripp, 242 F. (2d) 849.

241.13 Sale on default; damages; redemption. (1) No private or public sale of any personal property taken by virtue of any chattel mortgage, lease or other instrument intended as security, except instruments covered by chapter 122, shall be made unless at least 10 days before such sale the mortgagee or his agent shall serve upon the owner of the equity of redemption in such property so taken, if he resides within the county, a written notice of such proposed sale served either as a circuit court summons is served, or served by mailing to him by registered mail; nor shall any property during such time be removed from the county where it was situated when taken; and during such period such property shall be subject to redemption by payment of the mortgage debt, and the actual and necessary costs and expenses of taking and keeping it incurred at the time of making redemption. If the mortgagee intends to sue for a deficiency judgment in the event that the proceeds from the sale of the property covered by the mortgage are insufficient to satisfy the debt secured thereby, he shall so state in the notice given as specified in this subsection. Failure to so state shall bar the mortgagee from recovering such a judgment.

(2) (a) At any time prior to forty-eight hours in advance of a public sale the mortgagor may serve upon the mortgagee or his agent in charge of the property notice that he elects to have such public sale conducted by an auctioneer or other competent person, not interested in such sale or mortgaged property who shall reside within the city or village where such property is located, to be named in such notice, and thereafter no other person shall conduct such sale; provided, however, that if such auctioneer or other person so named shall not attend and conduct the sale, any other person may sell the mortgaged property at the request of the owner of the mortgage, lease or other instrument intended as security.

(b) Such auctioneer or other person shall be compensated wholly by the mortgagor and shall have no claim against the mortgagee or against the proceeds of the property sold, except that portion of the proceeds which belongs to the mortgagor. The auctioneer or other person named in such last-mentioned notice shall conduct such sale, but shall forthwith turn over to the mortgagee or his agent all the proceeds of such sale to be accounted for and disposed of as provided by law.

(c) No costs or expense for taking and keeping property levied upon and seized before the debt for which such property was pledged as security becomes due, shall be taxed or allowed, unless the mortgagee, his legal representatives or assigns, shall have given at least ten days' written notice to the mortgagor, his assigns, or the person in whose possession the said mortgaged property shall be, of his intention to levy upon and take such property under and by virtue of such chattel mortgage, lease or other instrument intended as security, which said notice shall be served in the same manner as a summons in circuit court is served, or by registered mail.

(3) Any person aggrieved by a violation of any provision of this section may recover of the person who violated same, in addition to his actual damages, twenty-five dollars as liquidated damages. If any such property is sold at private or public sale, without proper notice, or is sold within the period herein limited, the mortgage debt shall be deemed paid and the mortgage securing same be deemed canceled.

(4) No sale of any personal property taken by virtue of any chattel mortgage shall be valid as against the mortgagee of any duly filed subsequent mortgage, who has served written notice on the first mortgagee of the existence of such second mortgage prior to the date of sale under the first mortgage, unless ten days' notice previous to such sale shall be given to said mortgagee or mortgagees, either by personal service or by registered mail to the address of the mortgagee or mortgagees as indicated by the respective documents on file.

(5) No act or agreement of the mortgagor, lessor or obligor before or at the time of the making of the contract, nor any agreement or statement by the mortgagor, lessor or obligor in such contract, shall constitute a valid waiver of the provisions of this section.

32 Atty. Gen. 50 overruled. 39 Atty. Gen. 95.

241.134 Deficiency judgments. (1) No deficiency judgment after foreclosure shall be taken upon an obligation secured by a chattel mortgage, either on cognovit or other

wise, 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 chattel mortgage, 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 debtors 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 sub. (2) shall be void, and in any proceeding 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.

Cross Reference: See the last sentence of 241.13 (1) for the prenotice which is essential to the right to recover a deficiency judgment after foreclosure of a chattel mortgage.

History: 1951 c. 271.

241.14 Stock in trade; inventories. (1) The mortgagor of any stock of goods or stock in trade of which he is in possession and from which he is permitted to make sales and apply the proceeds thereof upon the indebtedness existing between him and the mortgagee shall from time to time at intervals of not exceeding four months file a statement in writing of the aggregate amount of the sales made therefrom, the amount applied on the mortgage debt and the total valuation of the stock added since the date of such mortgage or of the last statement with the register of deeds in whose office such mortgage is filed. Such register of deeds shall make such entries of such statement as are required for the original filing of such mortgage, and for such filing and entering shall receive the same compensation.

(2) Such mortgage shall cover and be a valid lien upon the property added to such stock after its execution for the amount of the indebtedness remaining unpaid thereon, but only if the mortgage shall recite that it is intended to apply to and cover such additions. Such statement shall be verified by the affidavit of the mortgagor, his agent or attorney as being a true and correct statement of all sales made from the stock of mortgaged goods, the value of the additions made to the original stock since the date of the mortgage or the date of the last verified statement so filed and the amount paid on the mortgage debt since the execution of the mortgage or the filing of such statement. If any mortgagor shall fail to file the statements and copies thereof herein required within the time prescribed, the mortgage, as between the parties thereto, shall be immediately due and payable, and at the expiration of fifteen days from the time fixed for the filing of such statements and copies shall cease to be a lien upon such stock of goods or stock in trade except as between the mortgagor and mortgagee.

241.145 Factor's lien. (1) **DEFINITIONS.** (a) "Factor" means any person, firm, bank or corporation, their successors or assigns, engaged in whole or in part in the business of lending or advancing money on the security of merchandise whether or not they are employed to sell such merchandise.

(b) "Merchandise" means any personal property intended for sale, either before or after manufacturing or processing, or in the process thereof, except motor vehicles as defined in section 218.01 (1) but shall not include machinery, equipment or trade fixtures of the borrower which is not intended for sale.

(c) "Borrower" means the owner of the merchandise, or his agent, who creates a lien in favor of a factor.

(2) **CONTINUING LIEN.** If so provided by any written agreement with the borrower, a factor shall have a continuing lien upon all merchandise of the borrower generally described in such agreement, or any separate written statements thereafter signed by the borrower and delivered to the factor, regardless of whether or not such merchandise is in the constructive, actual or exclusive occupancy or possession of the factor, or whether such merchandise shall be in existence at the time of creating the lien or at the time of filing the notice hereinafter referred to, or shall come into existence subsequently thereto or shall be acquired by the borrower thereafter, and upon any accounts receivable or other proceeds resulting from the sale or other disposition of such merchandise, and to the ex-

tent provided for in said written agreement or separate written statement such lien shall secure the factor for all his loans and advances to, or for the account of, the borrower made within the time specified in a notice filed pursuant to the provisions of subsections (3) and (4), or of any amendment of notice filed pursuant thereto, together with interest thereon, and all commissions, obligations, indebtedness, charges and expenses properly chargeable against or due from said borrower, and for the amounts due or owing upon any notes or other obligations given or received by a factor for or upon account of any such loans or advances, interest, commissions, obligations, indebtedness, charges and expenses.

(3) EXECUTION OF LIEN; CONTENTS; AMENDMENT OF NOTICE. (a) Notice of the creation of a factor's lien shall be signed by the factor and the borrower, shall be filed as hereinafter provided, and shall contain the following information: The name and address of the factor, and the name under which the factor does business, if an assumed name; the name and address of the borrower; the general character of merchandise subject to the lien, or which may become subject thereto, together with the place or places where such merchandise is or will be situated; and the date of the written agreement between the factor and the borrower and the period of time, not exceeding one year from the date of filing the notice, during which loans or advances may be made against merchandise under the terms of said agreement.

(b) Amendments of the notice signed by the factor and the borrower may be filed from time to time in the same manner to record any changes in the information contained in the original, subsequent or amended notices, and to record any extension of the time, not exceeding one year from the date of filing such amendment of notice, during which advances may be made under the terms of said written agreement, or any separate written statements signed by the borrower and delivered to the factor subsequent to the original agreement.

(4) NOTICE, FILING OF. Such notice of the creation of a factor's lien shall be filed, as hereafter provided, within 15 days after the execution of the written agreement between the factor and the borrower providing for the creation of said lien; and no factor's lien created pursuant to this section shall be valid or enforceable against creditors of the borrower until the notice provided for in sub. (3) has been so filed. Notice of the creation of a factor's lien shall be filed in the office of the register of deeds of the county in which the merchandise subject to or to become subject to the lien is or will be situated in the manner provided in s. 241.10 for chattel mortgages.

(5) PURCHASES AND LIENS FOR VALUE. (a) Purchasers for value in the ordinary course of the business of the borrower shall take the merchandise free and clear of the factor's lien provided for herein, whether or not they have knowledge of the existence of such lien.

(b) Any conditional sales contract or chattel mortgage for part of the purchase price, executed in connection with such a sale as last above described, may be sold or assigned for value in the ordinary course of business by the borrower, free and clear of the factor's lien provided for herein, whether or not the purchaser or assignee of such conditional sales contract or chattel mortgage had knowledge of the existence of such factor's lien.

(c) Any chattel mortgage on merchandise acquired by the borrower and executed by the borrower for money or credit extended to the borrower in the usual course of business, in payment in whole or in part of the purchase price of said merchandise, shall, if properly filed within 20 days after the receipt of said merchandise by the borrower, have priority over the factor's lien provided for herein whether or not the mortgagee had knowledge of the existence of such factor's lien, and the factor's lien provided for herein shall not attach to merchandise received under consignment pursuant to section 241.26.

(6) EFFECTIVENESS OF FACTOR'S LIEN; EXCEPTIONS. Any factor's lien created pursuant to this section shall from and after the date of filing of the notice of creation of the factor's lien be effectual upon, and attached to, the merchandise from time to time described in the written agreement or separate written statements as against all claims of unsecured creditors of the borrower, and as against subsequent liens of creditors, except that notwithstanding the prior perfection of the lien of the factor under the provisions of this section specific liens for processing, warehousing, or shipping the merchandise in the usual course of the borrower's business preparatory to sale shall be superior to the lien of the factor on said merchandise, but this section shall not obligate the factor personally for any debts secured by such superior lien.

(7) FORECLOSURE. Any factor's lien created pursuant to this section may be foreclosed, the property sold, and redemption made in the same manner as provided for foreclosure, sales or redemption under chattel mortgages, or in such other manner as may have been agreed in writing between the borrower and factor.

(8) PAYMENT; SATISFACTION; CERTIFICATE; TIME LIMITATION. Upon payment or satisfaction of the indebtedness secured by any factor's lien, the factor, upon the request of the

borrower, shall furnish to the borrower a certificate or certificates signed by the factor stating that such indebtedness has been paid or such lien satisfied, or both. When such certificate or certificates are filed with the officer with whom the original notice of lien has been filed, such lien shall be deemed discharged. Failure of the factor to deliver any such certificate or satisfaction within 10 days after any such request shall subject the factor to double damages at the suit of any person injured by such neglect. All liens shall be deemed to have expired 3 years from the date of filing of the notice of creation thereof unless prior to the expiration of such 3-year period the factor files a statement under oath that the indebtedness secured by said factor's lien has not yet been paid in full or otherwise discharged, and upon the filing of such statement the said lien shall be deemed to continue for one year from the date of such filing or until the prior payment of the indebtedness.

(9) **ACCOUNTS RECEIVABLE; ASSIGNMENTS.** The lien of the factor upon any accounts receivable resulting from the sale or other disposition of the merchandise subject to the lien provided for herein, shall be governed as far as applicable by the provisions of section 241.28 provided however, that unless the factor and the borrower shall agree otherwise, the delivery by the borrower to the factor of a written agreement or separate written statement as hereinbefore provided for designating the merchandise which will be subject to the lien, shall operate as an assignment of the accounts receivable which will result from the sale or other disposition of such merchandise with the same effect as if an assignment thereof by the borrower to the factor had been duly perfected under said section 241.28 immediately after such sale or other disposition.

(10) **ACTS THAT DO NOT INVALIDATE.** No one or more of the following acts shall impair, invalidate or render void the factor's lien on any such merchandise or any other merchandise remaining subject to such factor's lien nor the factor's right to or lien upon any balance remaining owing on any such account receivable or on any other account receivable resulting from the sale of any other merchandise which is subject to such factor's lien irrespective of whether the factor shall have consented to or acquiesced in any of the following acts:

(a) The return to or recovery by the borrower of merchandise sold and the subsequent dealing with said merchandise by the borrower as his own property; or

(b) The granting of credit allowances or adjustments by the borrower to the person purchasing such merchandise; or

(c) Failure of the factor to require the borrower to account to the factor for the proceeds of merchandise sold, or to account to the factor for moneys received on any account receivable resulting from the sale of merchandise covered by any factor's lien.

(11) **EFFECT OF POSSESSION.** When any factor, or any third party for the account of any such factor, shall have possession of any merchandise, such factor shall have a continuing general lien, as set forth in subsection (2), without filing the notice provided for in this section. Nothing herein shall be construed as affecting or limiting any other existing or future lien or right of the factor, at common law or by statute, or any transaction falling within the provisions of law requiring or permitting filing, recording, consent, publication, notices or formalities of execution of instruments creating chattel mortgages or other liens of any nature.

(12) **CONSTRUCTION.** This section is to be construed liberally to secure the beneficial interests and purposes thereof. A substantial compliance with its several provisions shall be sufficient for the validity of a lien and to give jurisdiction to the courts to enforce the same.

History: 1951 c. 486; 1953 c. 61.

241.15 Affidavit of sale to be filed. (1) Whenever any property covered by a chattel mortgage, or instrument intended to have the effect of a chattel mortgage, shall be taken and sold under and by virtue of such mortgage pursuant to the power of sale contained therein, the owner of such mortgage, or the person acting as the agent of such owner and conducting such sale, shall, within ten days after the sale of any property covered by such mortgage, make and file in the office of the register of deeds an affidavit setting forth the date of such sale, a description of the property sold, the sum then claimed to be due on the indebtedness secured by such mortgage, the amount realized on such sale, a statement in detail of the expenses of such sale including the cost of taking and keeping the property pending the sale. A copy of the notice of sale if any shall be attached to said affidavit and be deemed a part thereof.

(2) Such affidavit shall be filed in the office of the register of deeds of the county where the mortgage under which such sale is had was filed, or, if such mortgage be not so filed, then in the office of the register of deeds of the county where such sale was held.

(3) Any person violating the provisions of this section shall be liable to the person personally liable for the indebtedness, in which case such person shall be entitled to recover in addition to his actual damages the sum of twenty-five dollars liquidated damages.

241.17 Chattel mortgage, how satisfied. Whenever a chattel mortgage, or a mortgage of a stock of goods, wares and merchandise or of the fixtures pertaining thereto, shall have been paid and the other conditions thereof fully performed the mortgagee, his representative or if assigned, then his assignee or such assignee's representative shall execute and deliver a release thereof. The mortgagee, his representative or if assigned, then his assignee or such assignee's representative may from time to time release with or without consideration and without having the indebtedness secured by the mortgage reduced, any part or portion of the mortgaged property from a chattel mortgage or a mortgage of a stock of goods, wares and merchandise or of the fixtures pertaining thereto, by executing and delivering a partial release, specifying the part or portion of the property released from the mortgage. The mortgagor shall within ten days after receiving such release or partial release, cause the same to be filed in the office of the register of deeds, where the mortgage to which the same applies is filed.

241.18 Fraudulent conveyances. The sale, transfer, or assignment, in bulk, otherwise than in the ordinary course of trade, and in the regular prosecution of the business of the seller, transferor or assignor, of any part, or the whole, of any stock of goods, wares and merchandise, or of the fixtures pertaining to the same, or of such goods, wares and merchandise and fixtures, including such sales, transfers and assignments made in consideration of an existing indebtedness, shall be conclusively presumed to be fraudulent and void as against the then existing creditors of the seller, transferor, or assignor, unless the seller, transferor, or assignor and the purchaser, transferee or assignee, shall, at least five days before the sale, transfer, or assignment, make a full and detailed inventory, showing the quantity, and, so far as possible, with the exercise of reasonable diligence, the cost price to the seller, transferor or assignor, of each article to be included in the sale, transfer or assignment; and unless the purchaser, transferee or assignee, demand and receive from the seller, transferor or assignor, and the seller, transferor or assignor make and deliver to the purchaser, transferee or assignee, a written list of the names and addresses of all the creditors of the seller, transferor or assignor, with the amount of the indebtedness, either due or owing to each, and certified by the seller, transferor or assignor, under oath, to be a full, accurate and complete list of his creditors and their respective addresses, and of his indebtedness, or, if there be no creditors, a like sworn statement to that effect; and unless the purchaser, transferee or assignee, shall at least five days before taking possession of such goods, wares and merchandise, or of such fixtures, or of such merchandise and fixtures, hereinbefore described, or paying therefor, or delivering to such seller, transferor or assignor, or to his use, the consideration therefor, notify personally every creditor whose name and address are stated in said list, or of whom he has knowledge, of the proposed sale, transfer or assignment, and of the price, terms, and conditions thereof; or shall, in lieu of such personal service, deposit such notices in the post office, properly addressed to each creditor, to be sent by registered mail, at least ten days before such property described above is paid for, taken possession of or delivered.

The bulk sales law is penal in character and in derogation of the common law, and should be strictly construed. It does not restrict the sale in bulk of articles used by the seller in carrying on his trade or business and which are necessary to enable him to enjoy the fruits of his own labor. It applies only to merchants selling at retail and to the property held for sale at retail, and it does not apply to items to be processed or to which labor is to be added prior to sale. In respect to a sale of his assets in bulk by one engaged in the garage business and the business of selling and repairing farm machinery, the bulk sales law would apply to machinery parts to be merely sold at retail but would not apply to parts to be installed by the seller in carrying on his repair business, and such law would apply to fixtures pertaining to items to be sold at retail but would not apply to fixtures used in connection with the repair business. *State Bank of Viroqua v. Jackson*, 261 W 538, 53 NW (2d) 433.

In case of noncompliance with the bulk sales law, the buyer holds the goods or the proceeds thereof as a trust fund for the benefit of creditors of the seller. The buyer

is accountable for the proceeds of items sold that come under the provisions of the law at the time of sale, but as to goods coming under the act that are on hand, he is only accountable for the goods themselves. As a general rule, unless a creditor of the seller gives actual assent to a sale not complying with the bulk sales law, his conduct, in order to prevent recovery from the buyer within statutory limits, should be such as to afford ground for estoppel, namely, justifiable reliance by the buyer on the apparent intention of the creditor. *State Bank of Viroqua v. Jackson*, 261 W 538, 53 NW (2d) 433.

The bulk sales law applies to merchants selling at retail, and it does not apply to items that are to be processed or to which labor is to be added prior to sale. Where there has been no compliance with the requirements of the law, the burden is on the buyer, made a defendant in an action by creditors of the seller, to show that the stock of merchandise or fixtures purchased by him do not come under such law. The Wisconsin law does apply to a sale of tavern fixtures alone. *Berger v. Berger*, 271 W 292, 73 NW (2d) 503.

241.19 Definition of parties. Sellers, transferors and assignors, purchasers, transferees, and assignees under sections 241.18 to 241.21, shall include corporations, associations, copartnerships and individuals. But nothing contained in sections 241.18 to 241.21 shall apply to sales, transfers or assignments by executors, administrators, guardians, receivers, trustees in bankruptcy, public officers under judicial process, assignees under a voluntary assignment for the benefit of creditors; or to sales, transfers, or assignments

made by order of a court of competent jurisdiction, or upon a bona fide foreclosure of a chattel mortgage; or to, or by, any person to whom any such property may in good faith be transferred or assigned, in trust for the creditors of such transferor or assignor, for the purpose of liquidating the debts of the latter.

241.20 False representations. Any such seller, transferor or assignor, or anyone acting in his behalf, who shall wilfully or knowingly refuse to make, or shall make, or cause to be made materially false or incomplete answers to the inquiries of the purchaser, assignee or transferee, as provided in section 241.18, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed two hundred and fifty dollars or imprisonment in the county jail not to exceed one year.

241.21 Vendee liable to creditors. Any purchaser, transferee or assignee who shall not conform to the provisions of sections 241.18 to 241.21 shall become, and be held, liable and accountable to the creditors of the seller, transferor or assignor, for all goods, wares and merchandise, and fixtures, coming into his possession or control by virtue of such sale, transfer or assignment; provided, however, that any purchaser, transferee or assignee who shall conform to the provisions of sections 241.18 to 241.21 shall not be held in any way accountable under sections 241.18 to 241.21 to any creditor of the seller, transferor or assignor, or to the seller, transferor or assignor, for any of the goods, wares, merchandise or fixtures that have come in the possession or control of such purchaser, transferee or assignee, by virtue of such sale, transfer or assignment.

241.22 Copy of mortgage as evidence. A copy of such mortgage or other instrument or copy thereof, so filed, including any affidavits annexed thereto in pursuance of this chapter, certified by the register of deeds in whose office the same shall be filed, shall be received in evidence.

241.23 Burden of showing bona fides of mortgage. Whenever it shall appear upon the trial of any action against a sheriff, coroner, constable or other officer for the recovery of the possession of personal property or the value thereof that the defendant obtained the possession of such property by virtue of an execution or writ of attachment against the property of a person not a party to such action, from whom the plaintiff claims to have derived his right by a mortgage, and that such property was taken by the officer from the possession of the defendant in such execution or attachment or from premises occupied or controlled by him and it shall be alleged in the answer of the defendant that such mortgage was fraudulent as to the creditors of the mortgagor, then the burden of proof shall be upon the plaintiff to show that such mortgage was given in good faith and to secure an actual indebtedness and the amount thereof.

241.24 Board of trade contracts. No contract for the future purchase, sale, transfer or delivery of personal property shall be void when either party thereto intends, in good faith, to perform the same; and an intention on the part of either not to perform any such contract shall not invalidate it if the other party shall in good faith intend to perform the same. No such contract shall be void because the vendor was not, at the time it was made, the owner of the property contracted to be sold; and in any action by either party for the enforcement of its terms or to recover damages for a breach thereof it shall be incompetent to show in defense, by any extrinsic evidence, that such contract had any other intent or meaning than it expresses; and it and all collateral contracts, agreements or securities growing out thereof or of which they may have formed the consideration in whole or in part shall be legal and valid; provided, that nothing herein shall be construed to exclude evidence of fraud in the procuring of any such contract as is first mentioned herein, or of any collateral contract, agreement or security growing out thereof, or that any such contract was not entered into upon sufficient consideration, or is not supported thereby, or that both parties intended to make a wagering contract.

241.25 Transfer of bank book to be in writing. No gift, sale, assignment or transfer of any saving fund bank book bearing evidence of bank deposits or of any interest in the deposits represented thereby, shall be valid unless the same shall be in writing and the same or a copy thereof delivered to the bank issuing such bank deposit book.

241.26 Goods delivered on consignment; filing of agreement. (1) Whenever goods, wares or merchandise are consigned and delivered to any person for the purpose of sale or merchandising, and the title thereto remains conditionally or unconditionally in the consignor the consignment agreement shall be in writing and filed in accordance with the provisions of sections 122.06, 122.11 and 122.14.

(2) If a consignment agreement is not so made and filed, the title to any such goods, wares or merchandise shall be deemed to be in the consignee as to purchasers thereof and creditors of such consignee.

(3) Whenever additional goods, wares or merchandise are subsequently consigned and delivered to a consignee under a consignment agreement then legally on file as above provided it shall be sufficient to bring such additional goods, wares or merchandise within the protection of such original filing that an invoice of such additional goods, wares or merchandise, referring to such original filing by date and number, be filed in the same office. The register of deeds shall be entitled to a fee of twenty-five cents for each such invoice filed.

241.27 Contracts requiring warning. Every proposed contract for the benefit of any person, firm or corporation furnishing or supplying in any wise whatever, goods, wares or merchandise to hawkers or peddlers and which by its terms upon execution thereof would bind any person to answer for the debt, default or miscarriage of any such hawker or peddler, in lawfully or unlawfully disposing of such goods, wares or merchandise or the proceeds thereof, or which would bind any person to guarantee or answer for any debt or liability incurred by such hawker or peddler in acquiring any title to or interest in the goods, wares or merchandise to be disposed of by such hawker or peddler or in acquiring any title to or interest in any equipment intended to be used in conducting the business of such hawker or peddler, shall have plainly printed upon it, in red ink, in type not smaller than ten point bold face type, at the time of its execution and directly above the place for the signature of the person who would, by signing such contract, become obligated to so answer for the debt, default or miscarriage of any such peddler or hawker, the following statement: "Warning—this may obligate you to pay money". Every such contract not containing such statement shall be unlawful and in any action brought upon any such contract in any court of this state, such contract shall be construed in accordance with the laws of this state. The provisions of this section, however, shall not apply to any such contract where the same contains a provision expressly limiting the amount of the liability of each person obligated to answer for the debt, default or miscarriage of any such peddler or hawker.

241.28 Assignment of accounts receivable. (1) **DEFINITIONS.** As used in this section, unless the context requires otherwise, the term:

(a) "Account receivable" or "account" means and includes any open, running or book account which arises out of or is acquired in connection with a business or occupation of the assignor and which is not represented by a judgment, or by a negotiable instrument or other writing the surrender of which is required by the obligor's contract with the assignor for the enforcement thereof. It includes sums due or to become due and accounts to arise under an existing contract, whether performed or unperformed. It also includes the proceeds and avails of any such account and all rights, powers, remedies, liens, collateral, security and incidents appertaining to such account, and all of the assignor's rights, title and interest in or to, or liens on, the merchandise or other property, if any, the sale or other transfer of which to the obligor gave rise to such account, in case such merchandise or property be not delivered to or accepted by, or be rejected or returned by or repossessed from the obligor.

(b) "Obligor" means a person who owes or will owe the account.

(c) "Assignment" means and includes any sale, pledge, conveyance or transfer of an account, or of any right, title or interest therein.

(d) "Assignor" means the person who, being the owner of an account, makes an assignment thereof, and the term "assignee" means the person to whom such assignment is made.

(2) **EFFECT OF ASSIGNMENT; ORDER OF PRIORITY.** Every assignment of an account receivable heretofore or hereafter made in writing for valuable consideration shall be valid and shall be deemed and held to have been fully perfected at the time such assignment was or is made, notwithstanding that the obligor be not notified of or does not assent to such assignment; and thereafter no subsequent assignee, pledgee, purchaser or transferee of such account or other person claiming or to claim under, through or against the assignor, and no existing or future attaching, garnishing, judgment, execution, levying or other creditor of the assignor, except a creditor who through judicial proceedings shall have perfected a superior lien on such account prior to the time of such assignment, shall or can have or be entitled to any right, title, lien or interest in or to such account superior to or in diminution of that of such assignee therein or thereto; and in case more than one assignment of the same account or any interest therein is made by the assignor, the one prior in time shall prevail over each subsequent one, notwithstanding that such subsequent assignee shall have notified the obligor of his claim thereto.

(3) **PAYMENTS BY OBLIGOR; LIABILITY OF PAYEE.** In any case where the obligor, acting in good faith, makes payment of such account in whole or in part to the assignor, or to a subsequent purchaser or transferee of such account who shall have notified the obligor of such purchase or transfer to such subsequent purchaser or transferee, then the obligor

shall to the extent of such payment be exonerated of liability to make payment to the first assignee of the account, but the person to whom such payment is made shall be accountable and liable to the assignee for such sums received by him.

(4) APPLICATION. This section shall not be construed to alter or affect any existing law with respect to the negotiation of or the rights of the holders of negotiable instruments, or with respect to the assignment of wages.

241.31 Definitions. In ss. 241.31 to 241.50, unless the context or subject matter otherwise requires:

(1) "Buyer in the ordinary course of trade" means a person to whom goods are sold and delivered for new value and who acts in good faith and without actual knowledge of any limitation on the trustee's liberty of sale, including one who takes by conditional sale or under a pre-existing mercantile contract with the trustee to buy goods delivered, or like goods, for cash or on credit. "Buyer in the ordinary course of trade" does not include a pledgee, a mortgagee, a lienor, or a transferee in bulk.

(2) "Document" means any document of title to goods.

(3) "Entruster" means the person who has, or directly or by agent takes, a security interest in goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. A person in the business of selling goods or instruments for profit, who at the outset of the transaction has, as against the buyer, general property in such goods or instruments, and who sells the same to the buyer on credit, retaining title or other security interest under a purchase money mortgage or conditional sales contract or otherwise, is excluded.

(4) "Goods" means any chattels personal other than money, choses in action, or things so affixed to land as to become a part thereof.

(5) "Instrument" means:

(a) Any negotiable instrument as defined in the uniform negotiable instruments law and amendments thereto, or

(b) Any certificate of stock, or bond or debenture for the payment of money issued by a public or private corporation as part of a series, or

(c) An interim, deposit or participation certificate or receipt, or other credit or investment instrument of a sort marketed in the ordinary course of business of finance, or which the trustee, after the trust receipt transaction, appears by virtue of possession and the face of the instrument to be the owner. "Instrument" does not include any document of title to goods.

(6) "Lien creditor" means any creditor who has acquired a specific lien on the goods, documents or instruments by attachment, levy, or by any other similar operation of law or judicial process, including a distraining landlord.

(7) "New value" includes new advances or loans made, and the renewal and extension of such advances or loans, or new obligations incurred, or the release or surrender of a valid and existing security interest, or the release of a claim to proceeds under s. 241.40.

(8) "Person" means, as the case may be, an individual, trustee, receiver or other fiduciary, partnership, corporation, business trust or other association, and 2 or more persons having a joint or common interest.

(9) "Possession" as used in ss. 241.31 to 241.50 with reference to possession taken or retained by the entruster, means actual possession of goods, documents or instruments, or, in the case of goods, such constructive possession as, by means of tags or signs or other outward marks placed and remaining in conspicuous places, may reasonably be expected in fact to indicate to the third party in question that the entruster has control over or interest in the goods.

(10) "Purchase" means taking by sale, conditional sale, lease, mortgage or pledge, legal or equitable.

(11) "Purchaser" means any person taking by purchase. A pledgee, mortgagee or other claimant of a security interest created by contract is, in so far as concerns his specific security, a purchaser and not a creditor.

(12) "Security interest" means a property interest in goods, documents or instruments, limited in extent to securing performance of some obligation of the trustee or of some third person to the entruster, and includes the interest of a pledgee, and title, whether or not expressed to be absolute, whenever such title is in substance taken or retained for security only.

(13) "Transferee in bulk" means a mortgagee or a pledgee or a buyer of the trustee's business substantially as a whole.

(14) "Trustee" means the person having or taking possession of goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person. The use of the word "trustee" herein shall not be interpreted or construed to imply the

existence of a trust or any right or duty of a trustee in the sense of equity jurisprudence other than as provided by ss. 241.31 to 241.50.

(15) "Value" means any consideration sufficient to support a simple contract. An antecedent or pre-existing claim, whether for money or not, and whether against the transferor or against another person, constitutes value where goods, documents or instruments are taken either in satisfaction thereof or as security therefor.

History: 1953 c. 490; 1953 c. 631 s. 62.

A trustee (automobile dealer) under a trust receipt, made pursuant to the Uniform Trust Receipts Act, which provides that the trustee upon sale of the automobiles shall hold the proceeds in trust, separate from his own funds, and immediately pay them over to the entruster (finance company), is guilty of embezzlement under 343.20, Stats. 1953, if he fraudulently converts the proceeds to his own use. But if the entruster by words or conduct permits the trustee to use the proceeds as his own money, the trust relationship is waived and there is no embezzlement of such proceeds. 44 Atty. Gen. 319.

241.32 What constitutes trust receipt transaction and trust receipt. (1) A trust receipt transaction within the meaning of ss. 241.31 to 241.50 is any transaction to which an entruster and a trustee are parties for one of the purposes set forth in sub. (3) whereby:

(a) The entruster or any third person delivers to the trustee goods, documents or instruments in which the entruster prior to the transaction has, or for new value by the transaction acquires or as a result thereof is to acquire promptly, a security interest; or

(b) The entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in instruments or documents which are actually exhibited to such entruster, or to his agent in that behalf, at a place of business of either entruster or agent, but possession of which is retained by the trustee; or

(c) The entruster gives new value in reliance upon the transfer by the trustee to such entruster of a security interest in goods or documents in possession of the trustee and the possession of which is retained by the trustee; provided, that the delivery under par.

(a) or the giving of new value under pars. (b) or (c) either:

1. Be against the signing and delivery by the trustee of a writing designating the goods, documents or instruments concerned, and reciting that a security interest therein remains or will remain, or has passed to or will pass to, the entruster; or

2. Be pursuant to a prior or concurrent written and signed agreement of the trustee to give such a writing.

3. The security interest of the entruster may be derived from the trustee or from any other person, and by pledge or by transfer of title or otherwise.

4. If the trustee's rights in the goods, documents or instruments are subject to a prior trust receipt transaction, or to a prior equitable pledge, ss. 241.39 and 241.33, respectively, determine the priorities.

(2) A writing such as is described in sub. (1) (c) 1 signed by the trustee, and given in or pursuant to such a transaction, is designated in ss. 241.31 to 241.50 as a "trust receipt". No further formality of execution or authentication shall be necessary to the validity of a trust receipt.

(3) A transaction shall not be deemed a trust receipt transaction unless the possession of the trustee thereunder is for a purpose substantially equivalent to any one of the following:

(a) In the case of goods, documents or instruments, for the purpose of selling or exchanging them, or of procuring their sale or exchange; or

(b) In the case of goods or documents, for the purpose of manufacturing or processing the goods delivered or covered by the documents, with the purpose of ultimate sale, or for the purpose of loading, unloading, storing, shipping, transshipping, or otherwise dealing with them in a manner preliminary to or necessary to their sale; or

(c) In the case of instruments, for the purpose of delivering them to a principal, under whom the trustee is holding them, or for the consummation of some transaction involving delivery to a depository or registrar, or for their presentation, collection or renewal.

History: 1953 c. 490; 1953 c. 631 s. 62.

241.33 Attempted creation or continuance of pledge without delivery or retention of possession. (1) An attempted pledge or agreement to pledge not accompanied by delivery of possession, which does not fulfill the requirements of a trust receipt transaction, shall be valid as against creditors of the pledgor only as follows:

(a) To the extent that new value is given by the pledgee in reliance thereon, such pledge or agreement to pledge shall be valid as against all creditors with or without notice, for 10 days from the time the new value is given;

(b) To the extent that the value given by the pledgee is not new value, and in the case of new value after the lapse of 10 days from the giving thereof, the pledge shall have validity as against lien creditors without notice, who become such as prescribed in s. 241.38, only as of the time the pledgee takes possession, and without relation back.

(2) Purchasers (including entrusters) for value and without notice of the pledgee's interest shall take free of any such pledge or agreement to pledge unless, prior to the purchase, it has been perfected by possession taken.

(3) Where, under circumstances not constituting a trust receipt transaction, a person for a temporary and limited purpose, delivers goods, documents or instruments, in which he holds a pledgee's or other security interest, to the person holding the beneficial interest therein, the transaction has like effect with a purported pledge for new value under this section.

History: 1953 c. 490; 1953 c. 631 s. 62.

241.34 Contract to give trust receipts. (1) A contract to give a trust receipt, if in writing and signed by the trustee, shall, with reference to the goods, documents or instruments thereafter delivered by the entruster to the trustee in reliance on such contract and with reference to goods, documents and instruments in trustee's possession for a security interest in which entruster thereafter gives new value to trustee, be equivalent in all respects to a trust receipt.

(2) Such a contract shall as to such goods, documents or instruments be specifically enforceable against the trustee; but this subsection shall not enlarge the scope of the entruster's rights against creditors of the trustee as limited by ss. 241.31 to 241.50.

History: 1953 c. 490; 1953 c. 631 s. 62.

241.35 Validity between the parties. Between the entruster and the trustee the terms of the trust receipt shall, save as otherwise provided by ss. 241.31 to 241.50, be valid and enforceable. But no provision for forfeiture of the trustee's interest shall be valid except as provided in s. 241.36 (4).

History: 1953 c. 490; 1953 c. 631 s. 62.

241.36 Repossession, and the entruster's rights on default. (1) The entruster shall be entitled as against the trustee to possession of the goods, documents or instruments on default and as may be otherwise specified in the trust receipt.

(2) (a) After possession taken, the entruster shall, subject to par. (b) and sub. (4), hold such goods, documents or instruments with the rights and duties of a pledgee.

(b) An entruster in possession may, on or after default, give notice to the trustee of intention to sell, and may, not less than 5 days after the serving or sending of such notice, sell the goods, documents or instruments for the trustee's account at public or private sale, and may at a public sale himself become a purchaser. The proceeds of any such sale, whether public or private shall be applied in the following order: 1. To the payment of the expenses thereof; 2. To the payment of the expenses of retaking, keeping and storing the goods, documents or instruments; 3. To the satisfaction of the trustee's indebtedness.

(c) The trustee shall receive any surplus and shall be liable to the entruster for any deficiency. Notice of sale shall be deemed sufficiently given if in writing, and either personally served on the trustee, or sent by postpaid ordinary mail to the trustee's last known business address.

(d) A purchaser in good faith and for value from an entruster in possession takes free of the trustee's interest, even in a case in which the entruster is liable to the trustee for conversion.

(3) Surrender of the trustee's interest to the entruster shall be valid, on any terms upon which the trustee and the entruster may, after default, agree.

(4) As to articles manufactured by style or model, the terms of the trust receipt may provide for forfeiture of the trustee's interest, at the election of the entruster, and as an alternative to the remedies hereinbefore provided, in the event of the trustee's default, against cancellation of the trustee's then remaining indebtedness; provided that in the case of the original maturity of such an indebtedness and renewals up to a period of 90 days there must be outstanding and must be cancelled not less than 80 per cent of the purchase price to the trustee or of the original indebtedness, whichever is greater; or in case of a first renewal from 91 to 180 days, both inclusive, beyond the date of the original indebtedness, not less than 70 per cent, or in case of a further renewal not less than 60 per cent.

History: 1953 c. 490; 1953 c. 631 s. 62.

241.37 General effect of entruster's filing or taking possession. (1) (a) If the entruster within the period of 30 days specified in s. 241.38 (1) files as provided in ss. 241.31 to 241.50, such filing shall be effective to preserve his security interest in documents or goods against all persons, save as otherwise provided.

(b) Filing after the lapse of the said period shall be valid; but in such event, save as provided in s. 241.39 (2) (b), the entruster's security interest shall be deemed to be created by the trustee as of the time of such filing, without relation back, as against all persons not having notice of such interest.

(2) The taking of possession by the entruster shall, so long as such possession is re-

tained, have the effect of filing, in the case of goods or documents; and of notice of the entruster's security interest to all persons in the case of instruments.

History: 1953 c. 490; 1953 c. 631 c. 62.

241.38 Validity against creditors. (1) The entruster's security interest in goods, documents or instruments under the written terms of a trust receipt transaction, shall without any filing be valid as against all creditors of the trustee, with or without notice, for 30 days after delivery of the goods, documents or instruments to the trustee, and thereafter except as otherwise provided in ss. 241.31 to 241.50. But where the trustee at the time of the trust receipt transaction has and retains goods, documents or instruments, the 30 days shall be reckoned, in the case of goods or documents from the time the entruster gives new value under the transaction and in the case of instruments from the time such instruments are actually shown to the entruster or from the time that the entruster gives new value, whichever is prior.

(2) Save as provided in sub. (1), the entruster's security interest shall be void as against lien creditors who become such after such 30-day period and without notice of such interest and before filing.

(3) Unless prior to the acquisition of notice by all creditors filing has occurred or possession has been taken by the entruster, (a) an assignee for the benefit of creditors, from the time of assignment, or (b) a receiver in equity from the time of his appointment, or (c) a trustee in bankruptcy or in judicial insolvency proceedings from the time of filing of the petition in bankruptcy or judicial insolvency by or against the trustee shall, on behalf of all creditors, stand in the position of a lien creditor without notice, without reference to whether he personally has or has not, in fact, notice of the entruster's interest.

History: 1953 c. 490; 1953 c. 631 s. 62.

241.39 Limitations on entruster's protection against purchasers. (1) (a) Nothing in ss. 241.31 to 241.50 shall limit the rights of purchasers in good faith and for value from the trustee of negotiable instruments or negotiable documents, and purchasers taking from the trustee for value, in good faith, and by transfer in the customary manner, instruments, in such form as are by common practice purchased and sold as if negotiable; and they shall hold such instruments free of the entruster's interest; and filing under ss. 241.31 to 241.50 shall not be deemed to constitute notice of the entruster's interest to purchasers in good faith and for value of such documents or instruments, other than transferees in bulk.

(b) The entrusting (directly, by agent, or through the intervention of a third person) of goods, documents or instruments by an entruster to a trustee, under a trust receipt transaction or a transaction falling within s. 241.33, shall be equivalent to the like entrusting of any documents or instruments which the trustee may procure in substitution, or which represent the same goods or instruments or the proceeds thereof, and which the trustee negotiates to a purchaser in good faith and for value.

(2) Where a purchaser from the trustee is not protected under sub. (1), the following rules shall govern:

(a) 1. Where the trustee, under the trust receipt transaction, has liberty of sale and sells to a buyer in the ordinary course of trade, whether before or after the expiration of the 30-day period specified in s. 241.38 (1), and whether or not filing has taken place, such buyer takes free of the entruster's security interest in the goods so sold, and no filing shall constitute notice of the entruster's security interest to such a buyer.

2. No limitation placed by the entruster on the liberty of sale granted to the trustee shall affect a buyer in the ordinary course of trade, unless the limitation is actually known to the latter.

(b) In the absence of filing, the entruster's security interest in goods shall be valid, as against purchasers, save as provided in this section; but any purchaser, not a buyer in the ordinary course of trade, who, in good faith and without notice of the entruster's security interest and before filing, either:

1. Gives new value before the expiration of the 30-day period specified in s. 241.38 (1), or

2. Gives value after said period, and who in either event before filing also obtains delivery of goods from a trustee shall hold the subject matter of his purchase free of the entruster's security interest; but a transferee in bulk can take only under this subdivision.

(c) If the entruster consents to the placing of goods subject to a trust receipt transaction in the trustee's stock in trade or in his sale or exhibition rooms, or allows such goods to be so placed or kept, such consent or allowance shall have like effect as granting the trustee liberty of sale.

(3) As to all cases covered by this section the purchase of goods, documents or instruments on credit shall constitute a purchase for new value, but the entruster shall be entitled to any debt owing to the trustee and any security therefor, by reason of such pur-

chase; except that the entruster's right shall be subject to any set-off or defense valid against the trustee and accruing before the purchaser has actual notice of the entruster's interest.

History: 1953 c. 490; 1953 c. 631 s. 62; 1955 c. 366.

241.40 Entruster's rights to proceeds. Where, under the terms of the trust receipt transaction, the trustee has no liberty of sale or other disposition, or, having liberty of sale or other disposition, is to account to the entruster for the proceeds of any disposition of the goods, documents or instruments, the entruster shall be entitled, to the extent to which and as against all classes of persons as to whom his security interest was valid at the time of disposition by the trustee, as follows:

- (1) To the debts described in s. 241.39 (3); and also
- (2) To any proceeds or the value of any proceeds (whether such proceeds are identifiable or not) of the goods, documents or instruments, if said proceeds were received by the trustee within 10 days prior to either application for appointment of a receiver of the trustee, or the filing of a petition in bankruptcy or judicial insolvency proceedings by or against the trustee, or demand made by the entruster for prompt accounting; and to a priority to the amount of such proceeds or value; and also
- (3) To any other proceeds of the goods, documents or instruments which are identifiable.

History: 1953 c. 490; 1953 c. 631 s. 62.

241.41 Liens in course of business good against entruster. Specific liens arising out of contractual acts of the trustee with reference to the processing, warehousing, shipping or otherwise dealing with specific goods in the usual course of the trustee's business preparatory to their sale shall attach against the interest of the entruster in said goods as well as against the interest of the trustee, whether or not filing has occurred under ss. 241.31 to 241.50; but this section shall not obligate the entruster personally for any debt secured by such lien; nor shall it be construed to include the lien of a landlord.

History: 1953 c. 490; 1953 c. 631 s. 62.

241.42 Entruster not responsible on sale by trustee. An entruster holding a security interest shall not, merely by virtue of such interest or of his having given the trustee liberty of sale or other disposition, be responsible as principal or as vendor under any sale or contract to sell made by the trustee.

History: 1953 c. 490; 1953 c. 631 s. 62.

241.43 Filing and refiling concerning trust receipt transactions covering documents or goods. (1) Any entruster undertaking or contemplating trust receipt transactions with reference to documents or goods is entitled to file with the secretary of state a statement, signed by the entruster and the trustee, bearing the correct name of the sole trader, copartnership or corporation of the entruster and trustee, as well as the correct trade name, if one is used; and have plainly printed or typewritten thereon the names of the parties executing the same; the statement shall further contain:

- (a) A designation of the entruster and the trustee, and of the chief place of business of each within this state, if any, including street and post-office address; and if the entruster has no place of business within the state, a designation of his chief place of business outside the state, including street and post-office address; and
- (b) A statement that the entruster is engaged, or expects to be engaged, in financing under trust receipt transactions the acquisition of goods by the trustee; and
- (c) A description of the kind or kinds of goods covered or to be covered by such financing.

(2) The following form of statement (or any other form of statement containing substantially the same information) shall suffice for the purposes of ss. 241.31 to 241.50:

Statement of trust receipt financing

The entruster,, whose chief place of business within this state is at Street, in the city of and state of (or who has no place of business within this state and whose chief place of business outside this state is at Street, in the city of and state of), is or expects to be engaged in financing under trust receipt transactions the acquisition by the trustee,, a sole trader (), copartnership (), or corporation (), whose chief place of business within this state is at (Street or Rural Route No.), and whose P.O. address is, of goods of the following description: coffee, silk, automobiles or the like.

(Signed) Entruster

(Signed) Trustee

(3) It shall be the duty of the filing officer to mark each statement filed with a consecutive file number, and with the date and hour of filing, and to keep such statement in a separate file; and to note and index the filing in a suitable index, indexed according to the name of the trustee and containing a notation of the trustee's chief place of business as given in the statement. The fee for such filing shall be \$2.

(4) Presentation for filing of the statement described in sub. (1), and payment of the filing fee, shall constitute filing under ss. 241.31 to 241.50 in favor of the entruster, as to any documents or goods falling within the description in the statement which are within one year from the date of such filing, or have been, within 30 days previous to such filing, the subject matter of a trust receipt transaction between the entruster and the trustee.

(5) At any time before expiration of the validity of the filing, as specified in sub. (4), a like statement, or an affidavit by the entruster alone, setting out the information required by sub. (1), may be filed in like manner as the original filing. Any filing of such further statement or affidavit shall be valid in like manner and for like period as an original filing, and shall also continue the rank of the entruster's existing security interest as against all junior interests. It shall be the duty of the filing officer to mark, file and index the further statement or affidavit in like manner as the original.

History: 1953 c. 490; 1953 c. 631 s. 62; 1955 c. 501.

241.44 Limitations on extent of obligation secured. As against purchasers and creditors, the entruster's security interest may extend to any obligation for which the goods, documents or instruments were security before the trust receipt transaction, and to any new value given or agreed to be given as a part of such transaction; but not, otherwise, to secure past indebtedness of the trustee; nor shall the obligation secured under any trust receipt transaction extend to obligations of the trustee to be subsequently created.

History: 1953 c. 490; 1953 c. 631 s. 62.

241.45 Sections 241.31 to 241.50 not applicable to certain transactions. Sections 241.31 to 241.50 shall not apply to single transactions of legal or equitable pledge, not constituting a course of business, whether such transactions be unaccompanied by delivery of possession, or involve constructive delivery, or delivery and re-delivery, actual or constructive, so far as such transactions involve only an entruster who is an individual natural person, and a trustee entrusted as a fiduciary with handling investments or finances of the entruster; nor shall it apply to transactions of bailment or consignment in which the title of the bailor or consignor is not retained to secure an indebtedness to him of the bailee or consignee.

History: 1953 c. 490; 1953 c. 631 s. 62.

241.46 Election among filing statutes. As to any transaction falling within the provisions both of ss. 241.31 to 241.50 and of any other law requiring filing or recording, the entruster shall not be required to comply with both, but by complying with the provisions of either at his election may have the protection given by law complied with; except that buyers in the ordinary course of trade as described in s. 241.39 (2), and lienors as described in s. 241.41, shall be protected as therein provided, although the compliance of the entruster be with the filing or recording requirements of another law.

History: 1953 c. 490; 1953 c. 631 s. 62.

241.47 Cases not provided for. In any case not provided for in ss. 241.31 to 241.50 the rules of law and equity, including the law merchant, shall continue to apply to trust receipt transactions and purported pledge transactions not accompanied by delivery of possession.

History: 1953 c. 490; 1953 c. 631 s. 62.

241.48 Uniformity of interpretation. Sections 241.31 to 241.50 shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

History: 1953 c. 490; 1953 c. 631 s. 62.

241.49 Provisions of ss. 241.31 to 241.50 controlling. Notwithstanding the provisions of any general or special law, the provisions of ss. 241.31 to 241.50 shall control, provided that ss. 241.31 to 241.50 shall not affect transactions entered into before July 10, 1953.

History: 1953 c. 490; 1953 c. 631 s. 62.

241.495 Penalty. (1) Where under the terms of a trust receipt transaction the trustee has no liberty of sale or other disposition or having liberty of sale or other disposition is to account to the entruster for the proceeds of any disposition of the goods, documents or instruments, and wilfully and wrongfully fails to pay to the entruster the amounts due under the trust receipt, he shall be imprisoned not less than 6 months nor more than 10 years.

(2) No intermingling of the proceeds of the sale by the trustee with his own property shall destroy the trust relationship in respect to such proceeds created by a trust receipt unless such intermingling was with the express written consent of the entruster.

History: 1957 c. 835.

241.50 Citation. Sections 241.31 to 241.50 may be cited as the "Uniform Trust Receipts Act."

History: 1953 c. 490; 1953 c. 631 s. 62.