

No. 98, S.]

[Published July 30, 1919.

CHAPTER 672.

AN ACT to create sections 1684u—1 to 1684u—31 of the statutes in a new chapter to be numbered 78u, and to repeal sections 1684t—53a, 1839a, 2317 and 2319b of the statutes, relating to conditional sales and to make uniform the law relating thereto and providing a penalty.

The people of the state of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Thirty-one new sections are added to the statutes in a new chapter to be numbered 78u and to read: (Definition of Terms.) Section 1684u—1. 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 sub-division 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 served before sale or under the conditional sale.

5. “Performance of 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.

(Primary Rights of Buyer.) Section 1684—2. 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.

(Primary Rights of Seller.) Section 1684u—3. The buyer shall be liable to the seller for the purchase price, or for installments 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.

(Conditional Sales Valid Except as Otherwise Provided.) Section 1684u—4. Every provision in a conditional sale reserving property by 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.

(Conditional Sales Void as to Certain Persons.) Section 1684u—5. 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.

(Place of Filing.) Section 1684u—6. The conditional sale contract or copy shall be filed in the office of the clerk of the town, village or city in which the goods are first kept for use by the buyer after the sale. 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 1684u—8.

(Fixtures.) Section 1684u—7. 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 where a deed of the realty would be recorded or registered to affect such realty. 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 a 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 where a deed would be recorded or registered to affect such realty.

(Railroad Equipment or Rolling Stock.) Section 1684u—8. 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 1684u—5, 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 be plainly and conspicuously marked upon each side thereof the name of the seller, followed by the word "owner."

(Conditional Sale of Goods for Resale.) Section 1684u—9. 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.

(Filing.) Section 1684u—10. The filing officer shall mark upon the contract or copy filed with him the day and hour of filing and shall file the contract or copy in his office for public inspection. He shall keep a separate book in which he shall enter the names of the seller and buyer, the date of the

contract, the day and hour of filing, a brief description of the goods, the price named in the contract and the date of cancellation thereof; except that in entering the contracts mentioned in section 1684u—8 the secretary of state shall record either the sum remaining to be paid upon the contract or the price of the goods. Such books shall be indexed under the names of both seller and buyer. For filing and entering such contract or copy the filing officer shall be entitled to a fee of ten cents, except that for filing and entering a contract described in section 1684u—8 the secretary of state shall be entitled to a fee of one dollar.

(Refiling.) Section 1684u—11. The filing of conditional sale contracts provided for in sections 1684u—5, 1684u—6 and 1684u—7 shall be valid for a period of three years only. The filing of the contract provided for by section 1684u—8 shall be valid for a period of fifteen years only. The validity of the filing may in each case be extended for successive additional periods of one year from the date of refiling by filing in the proper filing district a copy of the original contract within thirty days next preceding the expiration of each period, with a statement attached signed by the seller, showing that the contract is in force and the amount remaining to be paid thereon. Such copy, with statement attached, shall be filed and entered in the same manner as a contract or copy filed and entered for the first time, and the filing officer shall be entitled to a like fee as upon the original filing.

(Cancellation of Contract.) Section 1684u—12. 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 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 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 filing officer shall file the same and note the cancellation of the contract and the date thereof on the margin of the page where the contract has been entered. For filing and entering the statement of satisfaction the filing officer shall be entitled to a fee of ten cents except that the secretary of state shall be entitled to a fee of fifty cents for filing and entering a statement of satisfaction of a contract described in section 1684u—8.

(Prohibition of Removal or Sale Without Notice.) Section

1684u—13. Unless the contract otherwise provides, the buyer may, without the consent of the seller, remove the goods from any filing district 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 filing district 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 have given the seller 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; not 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 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 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 1684u—8.

(Refiling on Removal.) Section 1684u—14. When, prior to the performance of the condition, the goods are removed by the buyer from a filing district in this state to another filing district in this state in which such contract or a copy thereof is not filed, or are removed from another state into a filing district 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 1684u—5, unless the conditional sale contract or copy thereof shall be filed in the filing district to which the goods are removed, within ten days after the seller has received notice of the filing district to which the goods have been removed. The provisions of this section shall not apply, however, to the goods described in section 1684u—8. The provisions of section 1684u—11 regarding the duration of the validity of the filing and the necessity for refiling shall apply to contracts or copies which are filed in a filing district other than that where the goods are originally kept for use by the buyer after the sale.

(Fraudulent Injury, Concealment, removal or Sale.) Section 1684u—15. 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 filing district where the contract or a copy thereof is not filed, without having given the notice required by section 1684u—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.

(Retaking Possession.) Section 1684u—16. 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.

(Notice of Intention to Retake.) Section 1684u—17. 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 1684u—19, 1684u—20, 1684u—21, 1684u—22 and 1684u—23 regarding resale, but without any right of redemption.

(Redemption.) Section 1684u—18. If the seller does not give the notice of intention to retake described in section 1684u—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 1684u—8.

(Compulsory Resale by Seller.) Section 1684u—19. 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 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 filing district 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 filing district 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 1684u—8, the parties may fix in the conditional sale contract the place where the goods shall be resold.

(Resale at Option of Parties.) Section 1684u—20. 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 1684u—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 1684u—19. The seller may voluntarily resell the goods for account of the buyer on compliance with the same requirements.

(Proceeds of Resale.) Section 1684u—21. 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.

(Deficiency on Resale.) Section 1684u—22. 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.

(Rights of Parties Where There is no Resale.) Section 1684u—23. Where there is no resale, the seller may retain the goods as his own property without obligation to account the buyer except as provided in section 1684u—25, and the buyer shall be discharged of all obligation.

(Election of Remedies.) Section 1684u—24. After the retaking of possession as provided in section 1684u—16 the buyer shall be liable for the price only after a resale and only to the extent provided in section 1684u—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 1684u—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.

(Recovery of Part Payments.) Section 1684u—25. If the seller fails to comply with the provisions of sections 1684u—18, 1684u—19, 1684u—20, 1684u—21 and 1684u—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.

(Waiver of Statutory Protection.) Section 1684u—26. 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 1684u—18, 1684u—19, 1684u—20, 1684u—21 and 1684u—25.

(Loss and Increase.) Section 1684u—27. 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.

(Act Prospective Only.) Section 1684u—28. This chapter shall not apply to conditional sales made prior to the time when it takes effect.

(Rules for Cases not Provided For.) Section 1684u—29. 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.

(Uniformity of Interpretation.) Section 1684u—30. 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.

(Short Title.) Section 1684u—31. This chapter may be cited as the uniform conditional sales act.

SECTION 2. Except so far as they are applicable to conditional sales made prior to the time when this act takes effect, sections 1684t—53a, 1839a, 2317 and 2319b of the statutes are repealed. Said sections need not be published in future editions of the statutes.

SECTION 3. Subsection 1 of section 2316a, and subsection 1 of section 2316m of the statutes are amended to read: (Section 2316a) 1. No sale of any personal property taken by virtue of any chattel mortgage, lease or other instrument intended as security, *except instruments covered by Chapter 78u*, except by consent of the mortgagor, his legal representatives or assigns, shall be made before the expiration of five days from the time when the same was actually taken, 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.

(Section 2316m) 1. No 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 78u*, except by consent of the mortgagor, his legal representatives or assigns, shall be made unless at least five 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. At any time prior to forty-eight hours in advance of such 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.

SECTION 4. This act shall take effect upon passage and publication.

Approved July 25, 1919.

No. 703, A.]

[Published August 1, 1919.

CHAPTER 673.

AN ACT relating to sundry departments, and making certain transfers and appropriations.

The people of the state of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Authority is hereby granted to the Wisconsin state cranberry growers' association to charge bills amounting to ninety-seven dollars and forty-eight cents, incurred prior to July 1, 1917, to the unexpended balance remaining on July 1, 1919, in the appropriation made by subsection (3) of section 20.61.

SECTION 2. Authority is hereby granted the department of agriculture to charge bills incurred prior to July 1, 1919,