

Senate Bill 114

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CHAPTER 334

AN ACT to amend 29.06 (1), 66.054 (4) (a) 4 and 5, 176.62 (2) (a) and (c), (3) (a) and (c) and (4), 193.22, 201.04 (9), 201.37, 272.29 (1), 289.41 (1), 289.50 (3), 313.095, 323.065, 340.01 (42) and 407.404 of the statutes, to correct terminology relating to secured transactions covered by the commercial code.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 29.06 (1) of the statutes is amended to read:

29.06 (1) All confiscated wild animals, or carcasses or parts thereof, and all confiscated apparatus, appliances or devices shall, if not destroyed as authorized by law, be sold at the highest price obtainable, by the ~~state conservation~~ commission or its deputies, or by an agent on commission under the written authority and supervision of the ~~state conservation~~ commission or its deputies. The net proceeds of such sales, after deducting the expense of seizure and sale and any such commissions, shall be promptly remitted by the warden by whom or under whose authority and supervision the sales are made, to the ~~state conservation~~ commission; the remittance to be accompanied by a complete and certified report of

such sales, supported by proper vouchers covering all deductions made for expenses and commissions, to be filed ~~for records~~ in the office of the ~~state conservation~~ commission. Of the remittance from such sales of confiscated apparatus, appliances or devices, 18 per cent shall be paid into the conservation fund to reimburse it for expenses incurred in seizure and sale, and the remaining 82 per cent shall be paid into the common school fund. In the case of the proceeds from the sale of a confiscated motor vehicle if the holder of a ~~duly filed bona fide chattel mortgage or conditional sales contract~~ *security interest perfected by filing* with such motor vehicle as security, ~~shall satisfy~~ *satisfies* (and the burden of proof shall be upon him) the court, or after judgment of confiscation, the ~~state conservation~~ commission, that the violation that led to such confiscation was not with his knowledge, consent or connivance or with that of some person employed or trusted by him, there shall also be deducted the amount due under ~~such mortgage or conditional sales contract~~ *the security agreement* from the proceeds of such sale and the amount due shall be paid to the one entitled; in case a sufficient amount does not remain for such purpose after the other deductions then the amount remaining shall be paid. The commission shall make a reasonable effort within 10 days after seizure to ascertain if ~~such contract or mortgage~~ *a security interest in the seized motor vehicle* exists, and shall within 10 days after obtaining actual or constructive notice of such ~~contract or mortgage~~ *security interest* give the ~~owner of such contract or mortgage~~ *secured party* notice of the time and place when there is to be any proceeding before the court or the judge pertaining to such confiscation and shall also give such ~~owner~~ *secured party* at least 10 days' notice of the time and place of sale. Constructive notice shall be limited to ~~chattel mortgages and conditional sales contracts duly filed in the county of residence of the owner of the confiscated motor vehicle~~ *security interests perfected by filing*. In all such cases the time of sale of the confiscated motor vehicle shall be within 20 days after judgment of confiscation provided in s. 29.05 (7).

SECTION 2. 66.054 (4) (a) 4 and 5 of the statutes are amended to read:

66.054 (4) (a) 4. Sell dispensing equipment such as direct draw boxes, novelty boxes, coil boxes, beer storage boxes or tapping equipment, none of which shall include bar additions, to Class "B" licensees for cash or on credit payable in equal monthly payments within 2 years to be evidenced by a written contract ~~or chattel mortgage~~ setting forth all of the terms, conditions and monthly payments agreed on, and within 10 days after execution of the same the seller shall file with the register of deeds for the county wherein such equipment is installed a true copy of such contract ~~or chattel mortgage~~ and pay a filing fee of ~~50 cents~~ *\$1*; and

5. Acquire within 5 days after May 24, 1941, any furniture, fixtures, fittings and equipment, or any valid lien thereon or interest therein, which were actually installed in this state on the premises of any Class "B" licensee prior to said date, and may lease or lend the same to Class "B" licensees who are in possession or to any person in possession of the premises where the same are actually installed prior to said date. Any brewer, bottler or wholesaler who ~~shall repossess~~ *repossesses* any furniture, fixtures, fittings or equipment lent, leased or sold to any Class "B" licensee may sell the same to any Class "B" licensee, for cash on delivery only, and deliver a bill of sale of the same. Any application for ~~a~~ Class "B" license after said date made for the sale of fermented malt beverages shall have appended thereto and made a part thereof, an affidavit, sworn and acknowledged under oath, by the applicant for such license, setting forth the ownership of the fixtures in or attached to the premises, or any part

thereof, and if such fixtures are not owned by the applicant for such license, the manner, terms and conditions under which said fixtures are held. No brewer, bottler or wholesaler shall after said date, directly or indirectly, or through a subsidiary or affiliate corporation, or by any officer, director, stockholder or partner enter into any written agreement, and no written or oral agreement shall be valid, whether or not incorporated in any chattel mortgage, conditional sales contract, *security agreement*, bill of sale, lease, land contract, mortgage, deed or other instrument wherein or whereby any Class "B" licensee is required to purchase the fermented malt beverages of any brewer to the exclusion, in whole or in part, of fermented malt beverages manufactured by other brewers. The restrictions contained in this subsection shall not apply to real estate owned in whole or in part on said date by any brewer, bottler or wholesaler, directly or indirectly, or by any subsidiary or affiliate corporation, or by any officer, director, stockholder, partner or trustee for any of the foregoing, or upon which any of the foregoing had or held a valid subsisting lien on said date, or to any real estate now or hereafter owned in whole or in part by any of the foregoing upon which there is or shall be a hotel of 100 or more rooms. Nothing herein contained shall affect the extension of usual and customary commercial credits for products of the industry actually sold and delivered. Any licensee who ~~shall be~~ *is* a party to any violation of this subsection or who ~~shall receive~~ *receives* the benefits thereof shall be equally guilty of a violation ~~of the provisions~~ thereof.

SECTION 3. 176.62 (2) (a) and (c), (3) (a) and (c) and (4) of the statutes are amended to read:

176.62 (2) (a) The court, upon the conviction of any person for owning, possessing, keeping, sorting, manufacturing, selling, distributing or transporting intoxicating liquor or fermented malt beverages in violation of this chapter or ch. 66 or 139, shall order any part or all of such intoxicating liquor, fermented malt beverages or personal property used in connection therewith, which was seized in connection with such violation, to be destroyed if for any reason it is unfit for sale. Such intoxicating liquor and fermented malt beverages and other chattels as are fit for sale shall be turned over to the department of taxation for disposition. The person seizing the same shall exercise reasonable diligence to ascertain the name and address of the owner of said property and of all persons holding a ~~chattel mortgage or conditional sales contract secured by security interest in~~ all or part of said property, and he shall make a written report in respect thereto to the department of ~~taxation~~. Upon receipt of such confiscated property, the department of ~~taxation~~ shall also exercise reasonable diligence to ascertain the names and addresses of any such owners and ~~lienholders~~ *security interest holders*, and if a motor vehicle is confiscated, the department of ~~taxation~~ shall obtain the written advice of the motor vehicle department as to the ownership of *the motor vehicle* and ~~liens outstanding against~~ *shall make reasonable search for perfected security interests in* said motor vehicle.

(c) Any personal property, other than intoxicating liquor or fermented malt beverages, seized pursuant to sub. (1) and fit for sale, shall be turned over to the department of taxation for disposition and shall be disposed of by the department of administration at public auction to the highest bidder at a time and place stated in a notice of sale which shall describe the property to be sold and be subscribed by the department of administration. The place of sale shall be in a conveniently accessible place in the county where the property was taken. A copy of the notice shall be published once each week for 2 successive weeks before the time of sale in the official state newspaper and in a newspaper having general circulation in the area where the property is to be sold and shall be posted in

a conspicuous place in the courthouse or on the courthouse grounds in such county at least 10 days before the sale. The department of taxation shall serve a copy of the notice of sale at least 2 weeks before the date thereof on all persons who are or may be owners or holders of ~~lien contracts or security interests~~ in all or part of the property, according to information received by the department of taxation. Any confiscated chattel worth in excess of \$100 shall be sold separately, and the balance of the confiscated chattels shall be sold in bulk or piecemeal in the discretion of the department of administration. The net proceeds from such sale less all costs of seizure, storage and sale shall be turned over to the state treasurer. No motor vehicle or motorboat confiscated pursuant to this section shall be sold within a period of 30 days after date of seizure.

(3) (a) Prior to sale, the owner of any confiscated property may apply to any court of record in the county where the property was seized, for an order restoring said property to such owner; and such owner may apply to such court, after sale, for a refund of the amount realized on the sale of the property of such owner; and any holder of a ~~chattel mortgage or a conditional sales contract secured by security interest~~ in any part or all of said property may apply to such court for a refund of the sum realized on the sale of property subject to any such ~~lien security interest~~, but not in excess of the amount due ~~on such lien contract under the security agreement~~.

(c) Relief shall be granted only after a showing by the applicant that he is the true owner or holder of a bona fide ~~lien contract or security interest~~ in all or part of the property seized, and that the violation which led to the confiscation was not with his knowledge, consent or connivance, and that he had no reasonable grounds to believe or suspect that such property would be used in such a violation; and as to these matters the burden of proof shall be on the applicant.

(4) ~~The term~~ "Lienor" or "lien claimant" as herein used ~~shall include~~ *includes* the vendor under a conditional sales agreement ~~and~~, the mortgagee under a chattel mortgage ~~and the holder of equivalent security interests under the commercial code~~.

SECTION 4. 193.22 of the statutes is amended to read:

193.22 Any street railway corporation organized under any law may, by a vote of the stockholders owning three-fourths of the capital stock, borrow money and execute any mortgage or deed of trust, under ~~the provisions of ss. 190.02 (9) and 190.11~~, embracing therein any and all of its property, ~~real and personal~~; and may therein provide for the disposal and replacing or substitution of its ~~horses, harness, cars, motor vehicles or other property which shall become~~ *becomes* old, worn, or unfit for use; and such substituted or after-acquired property shall ~~then be then~~ subject to the terms of such instrument. Any such corporation having heretofore executed any such mortgage or deed of trust embracing any or all of its property, and having since the execution of such mortgage or deed of trust engaged in the operation of motor vehicles for the transportation of passengers or property for hire as a part of its business, may, at its option, execute a supplemental mortgage or deed of trust providing for the inclusion of any or all of the motor vehicles owned and operated by such corporation within the terms of the original mortgage or deed of trust, with the same effect as though such motor vehicle had been specifically therein described in the first instance. Any such instrument or supplemental instrument may be recorded in the office of the register of deeds of the county wherein such corporation has its principal office in this state, and such record shall be as valid and effectual as if filed in the proper office as a chattel mortgage ~~or equivalent security interest under the commercial~~

code, and so remain until satisfied or discharged without any further affidavit or proceeding whatever on the part of the mortgagee or any holder of the bonds or evidences of debt thereby secured. No such corporation shall be allowed to make the defense of usury against the holder of any indebtedness so secured.

SECTION 5. 201.04 (9) of the statutes is amended to read:

201.04 (9) Credit Insurance.—Against loss from the failure of persons indebted to the assured to meet their liabilities, including the insurance or guarantee of depositors or deposits in banks or trust companies and including also, without limitation by reason of enumeration, the insurance against financial loss by reason of nonpayment of principal, interest or other sums agreed to be paid under the terms of any note or bond secured by a ~~chattel mortgage~~ *security interest in personal property or fixtures*.

SECTION 6. 201.37 of the statutes is amended to read:

201.37 No person, ~~firm or corporation~~ shall include as a part of the consideration in any agreement of sale of personal property in this state on the instalment *plan or under a conditional sales contract plan or equivalent security agreement under the commercial code* any charge for insurance on such property not effected through an insurance company authorized to do business in this state, and any policies issued on such property so sold shall be issued and countersigned by a resident agent.

SECTION 7. 272.29 (1) of the statutes is amended to read:

272.29 (1) No execution sale of personal property shall be made unless 20 days previous notice of such sale ~~shall have~~ *has* been given by posting notices thereof in 3 public places of the town or municipality where such sale is to be had, specifying the time and place of sale ~~provided that~~ *but* when any property seized ~~shall be~~ *is* likely to perish or depreciate in value before the expiration of the 20 days the court or a judge may order the same to be sold in such manner and upon such terms as the best interests of the parties demand. Every such sale shall be made at auction between the hour of 9 o'clock in the forenoon *a.m.* and 5 o'clock in the afternoon *p.m.* and no property shall be sold unless ~~the same be~~ *it is* in view of those attending the sale, except in the case of the sale of the interest of the judgment debtor in property in the possession of a ~~pledgee or mortgagee~~ *secured party*. It shall be offered for sale in such lots and parcels as ~~shall be~~ *is* calculated to bring the highest price.

SECTION 8. 289.41 (1) of the statutes is amended to read:

289.41 (1) Every mechanic and every keeper of a garage or shop, and every employer of a mechanic who transports, makes, alters, repairs or does any work on personal property at the request of the owner or legal possessor thereof, shall have a lien thereon for his just and reasonable charges therefor, including any parts, accessories, materials or supplies furnished in connection therewith and may retain possession of such property until such charges are paid. The lien given by this section for all such charges in excess of \$200, except that for trucks, \$600, road tractors, trailers and semitrailers, \$1,000, and road machinery including mobile cranes and trench hoes, \$2,500, shall be subject to the lien of any ~~chattel mortgage upon~~ *security interest in said property*; ~~or the right of any person in whom title to said property is reserved under a conditional sales contract, if the chattel mortgage or conditional sales contract was filed which was perfected by filing as required by law prior to the commencement of the work for which a lien is claimed unless such~~

work was done with the express consent of the holder of such mortgage or of such title under such conditional sales contract security interest.

SECTION 9. 289.50 (3) of the statutes is amended to read:

289.50 (3) The lien created by this section shall be preferred to all other liens and encumbrances, but does not apply to an innocent purchaser for value unless such lien ~~be is~~ filed as a chattel mortgage in the office of the register of deeds of the county where the services were performed within 15 days from the date of the completion of such service.

SECTION 10. 313.095 of the statutes is amended to read:

313.095 The county court, on the application of the executor or administrator, may at any time order the personal estate of any deceased person to be mortgaged used as collateral for a secured loan when it ~~shall appear~~ appears to be necessary for the purpose of paying debts, legacies, expenses of administration or for the preservation of the property or when it ~~shall be~~ is requested by all the heirs residing in this state; or the court may order such personal property to be mortgaged so used upon a showing by the executor or administrator that such mortgaging borrowing is beneficial to the estate.

SECTION 11. 323.065 of the statutes is amended to read:

323.065 The county court, on the application of any such trustee, may at any time order the personal property so held in trust to be mortgaged used as collateral for a secured loan when it ~~shall appear~~ appears to be necessary for the purpose of paying debts, expenses of administration, for the preservation of trust property, for the purposes of the trust, or when it ~~shall be~~ is requested by all the beneficiaries residing in this state; or the court may order such personal property to be mortgaged so used upon a showing by the trustee that such mortgaging borrowing is beneficial to the trust estate; but no order for such mortgaging use shall be made in violation of the terms of the trust.

SECTION 12. 340.01 (42) of the statutes is amended to read:

340.01 (42) "Owner" means a person who holds the legal title of a vehicle, except that in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor if legal title is held by a secured party with the immediate right of possession of the vehicle vested in the debtor, the debtor is the owner for the purposes of chs. 340 to 349.

SECTION 13. 407.404 of the statutes is amended to read:

407.404 A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this chapter is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

SECTION 14. This act shall take effect July 1, 1965.

Approved November 3, 1965.