

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1935



ENROLLED

SENATE BILL No. 78

(By Mr. Fleming)



PASSED March 9 1935

In Effect from **Passage**

78

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Senate Bill No. 78

(BY MR. FLEMING)

[Passed March 9, 1935; in effect from passage.]

AN ACT permitting persons, associations, partnerships or corporations of the state of West Virginia to borrow funds from production credit associations, regional agricultural credit corporations, the reconstruction finance corporation, banks for cooperatives, or the government of the United States or any department, agency or officer thereof, federal intermediate credit banks or any institution which has made arrangements to discount therewith or to procure funds therefrom on the security of the obligation of the borrower and providing a means of securing said loans on chattels and crops.

Be it enacted by the Legislature of West Virginia:

Section 1. Any person may enter into an agreement with
2 and borrow funds from a production credit association organ-
3 ized under the farm credit act of one thousand nine hundred
4 thirty-three, a regional agricultural credit corporation, the
5 reconstruction finance corporation, or the government of the
6 United States or any department, agency or officer thereof, a
7 federal intermediate credit bank, or any institution which has
8 made arrangements to discount therewith, or to procure funds
9 therefrom on the security of, the obligations of the borrower,
10 and any cooperative association or corporation composed of
11 agricultural producers and/or purchasers may enter into an
12 agreement with, and borrow from, any bank for cooperatives
13 organized under said farm credit act of one thousand nine
14 hundred thirty-three and/or from any federal intermediate
15 credit bank, and the repayment of any funds so borrowed,
16 and/or of any then existing indebtedness to any such institu-
17 tion may be secured by chattel deed of trust upon personal
18 property of any kind, character or description owned at the
19 time of the execution of the chattel deed of trust, or property
20 of the same class as is covered by the chattel deed of trust or

21 mortgage if acquired by the grantor subsequent to the execu-
22 tion of the chattel deed of trust, and prior to its extinguish-
23 ment, or upon any crop or crops, annual or perennial, including
24 fruit crops, grown or growing, either already planted or to be
25 planted and/or maturing within one year from the execution
26 of such chattel deed of trust. Such chattel deed of trust shall
27 be a lien upon the property therein described from the time of
28 the docketing of such chattel deed of trust as provided for
29 herein, which lien shall be good and valid against, and superior
30 to all rights of subsequent creditors, purchasers, mortgagees,
31 and other lienors and encumbrancers, and any of them. For
32 the purposes of this act, all such property shall be deemed to
33 be personal property and encumberable and mortgageable as
34 such.

Sec. 2. The lien of any chattel deed of trust on crops exe-
2 cuted in pursuance of the provisions of this act shall be supe-
3 rior to any mortgages, deeds of trust, or judgments upon the
4 land upon which any such crop has been so seeded and/or may
5 be growing, and any sale made under any mortgage, deed of
6 trust, or judgment upon such land before said crop has been
7 severed shall be made subject to any lien on said crops acquired

8 as provided for in this act: *Provided, however,* That the pro-
9 visions of this act shall not in any manner whatever affect any
10 deed of trust, mortgage, or judgment upon the land, recorded or
11 docketed prior to the approval of this act: *Provided further,*
12 That nothing in the act shall be construed to affect in any
13 manner the rights of a landlord to his proper share of rents or
14 his rights of distress or attachment for the same, unless such
15 landlord shall expressly waive such rights in writing.

Sec. 3. Any such deed of trust or mortgage may secure
2 future advances to be made by the beneficiary, at its option,
3 within a period of three years from the execution of such deed
4 of trust, but not to exceed in the aggregate an amount stated
5 in such deed of trust; and all advances so made shall be se-
6 cured by such deed of trust equally and to the same extent
7 as the amount originally advanced on the security of such deed
8 of trust; and all such future advances shall be a lien upon
9 the property therein described from the time of the docketing
10 of such deed of trust, good and valid against and superior to
11 all rights of subsequent creditors, purchasers, mortgagees and
12 other subsequent lienors and encumbrancers and any of them.

Sec. 4. Such chattel deed of trust may include replacements

2 of any of the encumbered property therein described and all
3 increase of animals and livestock of all kinds. No chattel deed
4 of trust of livestock and hay, grain or other food stuffs shall
5 be invalid in any particular because provision is contained
6 therein, or the beneficiary consents, that the grantor may use
7 and consume food, forage and/or fodder crops in preserving
8 and preparing for market the livestock covered thereby.

Sec. 5. Any chattel deed of trust given under and pursuant
2 to this act shall be executed by the grantor and need not be
3 sealed or witnessed, but shall be acknowledged in the same
4 manner as deeds of trust on real property.

Sec. 6. (a) Any chattel deed of trust given under and
2 pursuant to this act, or instrument intended to operate as such,
3 shall be filed in the office of the clerk of the county court for
4 the county in which the chattels or crops are located at the
5 time of the execution of such deed of trust. The county court
6 clerk shall docket such instrument when presented to him for
7 that purpose, in a well bound book to be known as the "Fed-
8 eral Farm Credit Lien Book", and shall alphabetically index
9 same therein, setting forth the date of the lien, the name of
10 the grantor, the trustee and beneficiary, the amount advanced

11 and the limit thereof, and a brief description of the chattels
12 described therein and/or the crops affected, and the property
13 on which said chattels and/or crops are located.

14 (b) Every assignment made of any instrument executed un-
15 der and pursuant to this act shall be filed in the office of the
16 clerk of the county court where the original instrument is
17 docketed; and when any such assignment is presented for filing,
18 the said clerk of the county court shall enter upon the margin
19 of the page on which is docketed the original instrument, the
20 names of the assignor and assignee and the addresses of each,
21 the amount of the debt or the date of the assignment, the date
22 of the execution of the assignment and the date of filing thereof.

Sec. 7. The county court clerks are entitled to receive a fee
2 of fifty cents for the docketing and entering of chattel deed of
3 trust filed and docketed under and pursuant to this act, and a
4 fee of twenty-five cents for each assignment and each release
5 filed and indexed pursuant to this act.

Sec. 8. A chattel deed of trust executed under and pursuant
2 to this act shall be invalid as against creditors, purchasers,
3 mortgagees, and other lienors and encumbrancers after the ex-
4 piration of a period of five years, reckoning from the time of

5 the docketing of said chattel deed of trust, unless before the
6 expiration of such term the beneficiary or someone on behalf
7 of the beneficiary shall file a statement containing the names
8 of the parties to the deed of trust, the time and place where
9 docketed, and the amount then due thereon for principal and
10 interest, in which case the lien of the deed of trust shall be
11 extended for five years from and after the date of the filing of
12 said statement. The officer filing the statement shall enter the
13 same in the "Federal Farm Credit Lien Book" and shall be
14 entitled to the same fee as in the case of the docketing and
15 entry of a chattel deed of trust under this act.

Sec. 9. Any deed of trust executed under and pursuant to
2 this act may be assigned by an instrument in writing, signed
3 and acknowledged by the beneficiary, its agent or assignee,
4 and upon presentation of such assignment to the county court
5 clerk in the office in which the original deed of trust is docketed,
6 such assignment shall be by such county court clerk indexed
7 and filed and the fact thereof shall be noted on the margin of
8 the page in which the original deed of trust is docketed, and
9 such assignment shall, except as to the parties thereto, take

10 effect and be valid only from the time of filing and noting as
11 herein provided.

Sec. 10. Any chattel deed of trust executed under and
2 pursuant to this act may be released by an instrument in writ-
3 ing signed and acknowledged by the beneficiary, or its as-
4 signee, or the duly authorized agent of such beneficiary, or
5 assignee, and upon presentation of such release in the office
6 of the clerk of the county court, where the original chattel
7 deed of trust is docketed, the clerk of the county court shall
8 index and file the same and shall note such release and the date
9 thereof on the margin of the page of the book where the original
10 chattel deed of trust is docketed, and when so noted such re-
11 lease shall fully and effectually release the lien of said chattel
12 deed of trust.

Sec. 11. The lien of the deed of trust shall not be ex-
2 tinguished or impaired by the removal of the encumbered
3 property from the county in which the deed of trust is dock-
4 eted.

Sec. 12. Upon default in any of the terms and provisions of
2 any deed of trust executed in accordance with the provisions of

3 this act, the trustee shall have the right, without process of law,
4 immediately to take possession of the encumbered property
5 and do all things necessary to preserve same, and any expense
6 incurred in connection therewith shall be included in and se-
7 cured by the lien of said deed of trust.

Sec. 13. In addition to any other methods of foreclosing
2 chattel deeds of trust under the laws of this state, chattel deeds
3 of trust executed under and pursuant to this act may be fore-
4 closed in the manner provided for in said chattel deed of trust.
5 Where such chattel deed of trust contains a power of sale, the
6 same may be foreclosed upon compliance with the provisions
7 of sale as set out in said chattel deed of trust: *Provided*, All
8 sales are made at public auction.

Sec. 14. This act shall be liberally construed to effectuate
2 the purposes hereof and substantial compliance herewith shall
3 be sufficient hereunder. The provisions of this act, so far as the
4 same are applicable, shall govern and control chattel deeds of
5 trust given under and pursuant hereto. If any provision of
6 this act, or the application thereof to any person or circum-
7 stances, is held invalid, the remainder of the act, and the appli-

8 cation of such provisions to other persons or circumstances,
9 shall not be affected thereby. All laws or clauses of laws in
10 conflict herewith are hereby repealed.

I certify that the foregoing act,
having been presented to the Governor for
his approval, and not having been returned
by him to the House of the Legislature in
which it originated within the time pre-
scribed by the constitution of the state, has
become a law without his approval.

This the 15th day of March,
1925.....



SECRETARY OF STATE

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Clinton L. Howard

Chairman Senate Committee

Arnold M. Vickers

Chairman House Committee

Originated in the

Senate

Takes effect

from

passage.

Charles M. ...

Clerk of the Senate

Geo S Hall

Clerk of the House of Delegates

Chas. E. Hoops

President of the Senate

Stuart S. Helter

Speaker House of Delegates

The within.....this the.....

day of....., 1935.

.....
Governor

Filed in the office of the Secretary of State
of West Virginia. **MAR 15 1935**

Wm. S. O'BRIEN,
Secretary of State