WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1961

ENROLLED

HOUSE BILL No. 282

(By Mr. Sisley and Mr. Seibert)

PASSED March 5, 1961

In Effect Ninety days from Passage

Filed in Office of the Secretary of State
of West Virginia MAR 17, 1961

JOE F. BURDETT
SECRETARY OF STATE
ENROLLED

House Bill No. 282
(By Mr. Speaker, Mr. Singleton, and Mr. Seibert)

[Passed March 8, 1961; in effect ninety days from passage.]

AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen, relating to trust receipts and trust receipts financing, by adopting the Uniform Trust Receipts Act.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article fifteen, to read as follows:

Article 15. Uniform Trust Receipts Act.

Section 1. Definitions.—In this act, 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 the goods delivered, or like goods, for cash or on credit.

"Buyer in the ordinary course of trade" does not include a pledgee, or mortgagee, a lienor, or a transferee in bulk.

"Document" means any document of title to goods.

"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.

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

"Instrument" means
(a) Any negotiable instrument as defined in the uniform negotiable instrument law and amendment 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) any interim, deposit, or participation certificate or receipt, or other credit or investment instrument of a sort marketed in the ordinary course of business or finance, of 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.

"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.

"New value" includes new advances or loans made, or new obligation incurred, or the release or surrender of a valid and existing security interest, or the release of a claim to proceeds under section ten; but "new value"
shall not be construed to include extensions or renewals of existing obligations of the trustee, nor obligations substituted for such existing obligations.

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

"Possession", as used in this act 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.

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

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

"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.

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

"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 inter-
preted or construed to imply the existence of a trust or
any right or duty of a trustee in the sense of equity juris-
prudence other than as provided by this act.

"Value" means any consideration sufficient to support
a simple contract. An antecedent or preexisting 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.

Sec. 2. What Constitutes Trust Receipt Transaction and Trust Receipt.—1. A trust receipt transaction within the meaning of this act is any transaction to which an entruster and a trustee are parties, for one of the purposes set forth in subsection three, whereby:

(a) The entruster or any third person delivers to the trustee goods, documents or instruments in which the entruster (i) prior to the transaction has, or for new value (ii) by the transaction acquires or (iii) as the 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: Provided,

That the delivery under paragraph (a) or the giving of
new value under paragraph (b) either (i) be against the
signing and delivery by the trustee of a writing design-
nating the goods, documents or instruments concerned,
and reciting that a security interest therein remains in
or will remain in, or has passed to or will pass to, the
entruster, or (ii) be pursuant to a prior or concurrent
written and signed agreement of the trustee to give such
a writing.

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.

If the trustee's rights in the goods, documents or in-
struments are subject to a prior trust receipt transaction,
or to a prior equitable pledge, section nine and section
three, respectively, of this act, determine the priorities.

2. A writing such as is described in subsection one,
paragraph (i), signed by the trustee, and given in or pur-
suant to such a transaction, is designated in this act as a
"trust receipt". No further formality of execution or au-
thentication shall be necessary to the validity of a trust
receipt.
39 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:
40  (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
41  (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, trans-shipping or otherwise dealing with them in a manner preliminary to or necessary to their sale; or
42  (c) in the case of instruments, for the purpose of delivering them to a principal, under whom the trustee is holding them, or for consummation of some transaction involving delivery to a depositary or registrar, or for their presentation, collection or renewal.

Sec. 3. 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 re-
quirements 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 ten 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 ten days from the giving thereof, the pledge shall
have validity as against lien creditors without notice, who
become such as prescribed in section eight, only as of the
time the pledgee takes possession, and without relation
back.
2. Purchasers (including entrusters) for value and with-
out 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, delivery 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.

Sec. 4. Contract to Give Trust Receipt.—1. A contract
to give a trust receipt, if in writing and signed by the
trustee, shall, with reference to goods, documents or in-
struments thereafter delivered by the entruster to the
trustee in reliance on such contract, 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 trus-
tee; but this subsection shall not enlarge the scope of the
entruster's rights against creditors of the trustee as lim-
ited by this act.

Sec. 5. Validity Between the Parties.—Between the en-
truster and the trustee the terms of the trust receipt shall,
save as otherwise provided by this act, be valid and en-
forceable. But no provision for forfeiture of the trustee's
interest shall be valid except as provided in subsection
five of section six.
Sec. 6. Repossession, and 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. An entruster entitled to possession under the terms of the trust receipt or of subsection one may take such possession without legal process, whenever that is possible without breach of the peace.

3. (a) After possession taken, the entruster shall, subject to subdivision (b) and subsection five, 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 five 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 (i) to the payment of the expense thereof, (ii) to the
payment of the expenses of re-taking, keeping and storing
the goods, documents, or instruments, (iii) to the satis-
faction of the trustee's indebtedness. The trustee shall
receive any surplus and shall be liable to the entruster
for any deficiency. Notice of sale shall be deemed suffi-
ciently given if in writing, and either (i) personally
served on the trustee, or (ii) sent by post-paid ordinary
mail to the trustee's last known business address.
(c) 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.

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

5. 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, 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 indebted-
ness there must be cancelled not less than eighty per cent
cent of the purchase price to the trustee or of the orig-
inal indebtedness, whichever is greater; or, in the case of
a first renewal, not less than seventy per cent, or, in the
case of a second or further renewal, not less than sixty
per cent.

Sec. 7. General Effect of Entruster's Filing or Taking
Possession.—1. (a) If the entruster within the period of
thirty days specified in subsection one of section eight
files as in this act provided, such filing shall be effective
to preserve his security interest in documents or goods
against all persons, save as otherwise provided by sections
eight, nine, ten, eleven, fourteen and fifteen of this act.
(b) Filing after the lapse of the said period shall be
valid; but in such event, save as provided in subdivision
two- (b) of section nine, 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 retained, 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.

Sec. 8. 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 thirty days after delivery of the goods, documents or instruments to the trustee, and thereafter except as in this act otherwise provided.

But where the trustee at the time of the trust receipt transaction has and retains instruments, or documents, the thirty days shall be reckoned from the time such instruments, or documents, are actually shown to the entruster, or from the time that the entruster gives new value under the transaction, whichever is prior.

2. Save as provided in subsection one, the entruster's security interest shall be void as against lien creditors who become such after such thirty-day period and without notice of such interest and before filing.
(a) Where a creditor secures the issuance of process which within a reasonable time after such issuance results in attachment of or levy on the goods, he is deemed to have become a lien creditor as of the date of the issuance of the process.

(b) Unless prior to the acquisition of notice by all creditors filing has occurred or possession has been taken by the entruster, (i) an assignee for the benefit of creditors, from the time of assignment, or (ii) a receiver in equity from the time of his appointment, or (iii) a trustee in bankruptcy or 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.

Sec. 9. Limitations on Entruster’s Protection Against Purchasers.—1. Purchasers of Negotiable Documents or Instruments.

(a) Nothing in this act 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, shall hold such instruments free of the entruster's interest; and filing under this act 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 section three of this act, 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 subsection one hereof, the following rules shall govern:

(a) Sales by trustee in the ordinary course of trade.

(i) 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 thirty-day period specified in subsection one of section eight of this act, 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.

(ii) 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) Purchasers other than buyers in the ordinary course of trade.

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 be-
fore filing, either (i) gives new value before the expira-
tion of the thirty-day period specified in subsection one
of section eight, or (ii) 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 (ii) of this sub-
division (b).

(c) Liberty of Sale.

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 sales 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 con-
stitute 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 purchase; 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.

Sec. 10. Entruster's Right to Proceeds.—Where, under
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, docu-
ments 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:

(a) To the debts described in section nine (three); and
also

(b) 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 ten days prior to either
application for appointment of a receiver of the trustee,
or the filing of a petition in bankruptcy or judicial in-
solvency proceedings by or against the trustee, or demand
made by the entruster for prompt accounting; and to a pri-
ority to the amount of such proceeds or value; and also
(c) to any other proceeds of the goods, documents or
instruments which are identifiable, unless the provision
for accounting has been waived by the entruster by words
or conduct; and knowledge by the entruster of the ex-
istence of proceeds, without demand for accounting made
within ten days from such knowledge, shall be deemed
such a waiver.

Sec. 11. **Liens in Course of Business Good Against En-
truster.**—Specific liens arising out of contractual acts
of the trustee with reference to the processing, ware-
housing, 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 this
act; but this section shall not obligate the entruster per-
sonally for any debt secured by such lien; nor shall it
be construed to include the lien of a landlord.
Sec. 12. 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.

Sec. 13. 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, containing:

(a) A designation of the entruster and the trustee, and of the chief place of business of each within this state, if any; and if the entruster has no place of business within the state, a designation of his chief place of business outside the state; 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 this act:

"Statement of Trust Receipt Financing

"The entruster, whose chief place of business within this state is at , (or who has no place of business within this state and whose chief place of business outside this state is at )

is or expects to be engaged in financing under trust receipt transactions the acquisition by the trustee, 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 five dollars.

4. Presentation for filing of the statement described in
subsection one, and payment of the filing fee, shall consti-
tute filing under this act, 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 thirty days previous
to such filing, the subject-matter of a trust receipt trans-
action between the entruster and the trustee.

5. At any time before expiration of the validity of the
filing, as specified in subsection four, a like statement, or
an affidavit by the entruster alone, setting out the infor-
mation required by subsection one, 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 con-
tinue 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.

Sec. 14. 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 transactions; 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.

Sec. 15. Act Not Applicable to Certain Transactions.—

This act 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 redelivery, 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.

Sec. 16. Election Among Filing Statutes.—As to any transaction falling within the provisions both of this act and of any other act 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 the act complied with; except that buyers in the ordinary course of trade as described in subsection two of section nine, and lienors as described in section eleven, shall be protected as therein provided, although the compliance of the entruster be with the filing or recording requirements of another act.

Sec. 17. Cases Not Provided For.—In any case not provided for in this act 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.
Sec. 18. *Uniformity of Interpretation.*—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

Sec. 19. *Constitutionality.*—If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 20. *Short Title.*—This act may be cited as the “Uniform Trust Receipts Act.”
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 17th day of March, 1961.

Governor

Filed in Office of the Secretary of State of West Virginia MAR 17 1961 JOE F. BURDETT SECRETARY OF STATE