

## CHAPTER 39

## AN ACT

[S. B. 33]

Providing for punishment, upon conviction, for selling mortgaged personal property to a third party for a valuable consideration without informing him of the existence and effect of such mortgage, and providing for a penalty therefor.

*Be it enacted by the Legislature of the Territory of Alaska:*

Section 1. If any person shall convey any goods, chattels, or personal property to another by mortgage, and shall, during the existence of the lien or title created by such a mortgage, sell the property or any part thereof to a third party for a valuable consideration, without informing him of the existence and effect of such mortgage, such person, upon conviction thereof, shall be punished by imprisonment in the Federal Jail for not more than one year or by a fine of not more than \$500.00, or by both such fine and imprisonment, in the discretion of the court.

Penalty for  
concealing  
mortgage.

Approved March 19, 1951.

## CHAPTER 40

## AN ACT

[H. B. 106]

To establish a Uniform Trust Receipts Law.

*Be it enacted by the Legislature of the Territory of Alaska:*

**Definitions.**

Section 1. In this Act, unless the context or subject matter otherwise requires:

**Buyer.**

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

**Document.**

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

**Entrustee.**

(3) "Entruster" means the person who has, directly or by agent, taken 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 money mortgage or conditional sales contract or otherwise, is excluded.

**Goods.**

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

(5) "Instrument" means:

**Instrument.**

(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 <sup>Stock or bond.</sup>

(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.

(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. <sup>Lien creditor</sup>

(7) "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 10; but "new value" shall not be construed to include extension or renewals of existing obligations of the trustee, nor obligations substituted for such existing obligations. <sup>New value.</sup>

(8) "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. <sup>Person</sup>

(9) "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 sign or other outward marks placed and remaining in conspicuous places, may reasonably be expected in fact to indicate to the third <sup>Possession.</sup>

party in question that the entruster has control over or interest in the goods.

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

**Purchaser.** (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.

**Security interest.** (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.

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

**Trustee.** (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 this act.

**Value.** (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.

## Section 2.

(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 subdivision three of this section, whereby

Trust receipt transaction defined.

(a) The entruster or any third person delivers to the trustee goods, documents or instruments in which the entruster (i) prior to 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

Acquiring security interest.

(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 actually are 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

Entruster giving new value.

(i) 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 in or will remain in, or has passed to or will pass to, the entruster; or

Additional conditions.

(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 instruments are subject to a prior trust receipt transaction, or to a prior equitable pledge, section 9 and section 3, respectively, determine the priorities.

Trust  
receipt.

(2) A writing such as is described in subdivision 1, paragraph (i), of this section signed by the trustee, and given in or pursuant to such a transaction, is designated in this act as a "trust receipt". No further formality of execution or authentication shall be necessary to the validity of a trust receipt.

When  
transaction  
not 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 consummation of some transaction involving delivery to a depositary or registrar, or for their presentation, collection or renewal.

### Section 3.

(1) An attempted pledge or agreement to pledge not accompanied by delivery of possession, which does not fulfil 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 section 8, 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 a new value under this section.

#### Section 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 of goods, documents or instruments 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 trustee; but this subdivision shall not enlarge the scope of the entruster's rights against creditors of the trustee as limited by this act.

#### Section 5.

Terms between  
entruster  
and trustee.

Between the entruster and the trustee the terms of the trust receipt shall, save as otherwise provided by this act, be valid and enforceable. But no provision for forfeiture of the trustee's interest shall be valid except as provided in subdivision 5, section 6.

#### Section 6.

Right of  
entruster

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

(2) An entruster entitled to possession under the terms of the trust receipt or of subdivision 1 of this section 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 paragraph (b) of this subdivision and to subdivision 5, 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 expenses thereof, (ii) to the payment of the expenses of retaking, keeping and storing the goods, documents or instruments, (iii) to the satisfaction 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 sufficiently given if in writing, and either (i) personally served on the trustee, or (ii) sent by postpaid 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 the 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 indebtedness there must be canceled not less than 80 per centum of the purchase price to the trustee, or of the original indebtedness, whichever is greater; or, in the case of a first renewal, not less than 70 per centum, or, in the case of a second or further renewal, not less than 60 per centum.

### Section 7.

Filing by entruster.

(1) (a) If the entruster within the period of 30 days specified in subdivision 1 of section 8 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 8, 9, 10, 11, 14 and 15.

Filing after time specified.

(b) Filing after the lapse of the said period shall be valid; but in such event, save as provided in paragraph (b) of subdivision 2 of section 9, 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.

When possession has effect of filing.

(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.

### Section 8.

Validity of security interest.

(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

in this act otherwise provided. But where the trustee at the time of the trust receipt transaction has and retains instruments or documents, the 30 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 subdivision 1 of this section, 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. When void.

(3) (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. When creditor secures lien.

(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. Lien creditors without notice.

## Section 9.

(1) Purchasers of Negotiable Documents or Instruments: Purchasers.

Purchase  
in good  
faith.

(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 3, 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 subdivision 1 hereof, the following rules shall govern:

Sale by  
trustee.

(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 30-day period specified in subdivision 1 of section 8, 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. <sup>Out of trade purchasers.</sup>

(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 before filing, either (i) gives new value before the expiration of the 30-day period specified in subdivision 1, section 8, 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 paragraph (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. <sup>Liberty of sale.</sup>

(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 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. <sup>Credit Purchase.</sup>

## Section 10.

Limitation  
on liberty  
of sale.

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:

(a) To the debts described in subdivision 3 of section 9 hereof; 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 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

(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 existence of proceeds, without demand for accounting made within 10 days from such knowledge, shall be deemed such a waiver.

## Section 11.

Specific  
liens.

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 this act; 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.

### Section 12.

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.

Responsibility  
of entruster.

### Section 13.

(1) Any entruster undertaking or contemplating trust receipt transactions with reference to documents or goods is entitled to file with the Auditor of the Territory of Alaska a statement, signed by the entruster and the trustee, containing:

Notice to  
Auditor  
of Alaska.

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

Contents of  
notice.

(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.

Form of  
statement.

(2) The following form of statement (or any other form of statement containing substantially the same information) shall suffice for the purpose of this act:

“STATEMENT OF TRUST RECEIPT FINANCING.

“The entruster ....., whose chief place of business within this Territory is at ..... (or who has no place of business within this Territory and whose chief place of business outside this Territory is at .....), is or expects to be engaged in financing under trust receipt transactions the acquisition by the trustee, ..... whose chief place of business within this Territory is at ..... of goods of the following description: (coffee, silk, automobiles, or the like).

“(signed) ..... Entruster

“(signed) ..... Trustee.”

Duty of  
filing  
officer.

(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 \$1.

What  
constitutes  
filing.

(4) Presentation for filing of the statement described in subdivision 1, and payment of the filing fee, shall constitute filing under this chapter, 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 subdivision 4, a like statement, or an affidavit by the entruster alone, setting out the information required by subdivision 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 also shall 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.

Additional filings.

#### Section 14.

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.

Extent of entrusters security interest.

#### Section 15.

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.

Exemption from Act.

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.

### Section 16.

Limit on  
compliance.

As to any transaction falling within the provisions both of this act 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 the law complied with; except that buyers in the ordinary course of trade as described in subdivision 2 of section 9, and lienors as described in section 11, shall be protected as therein provided, although the compliance of the entruster be with the filing or recording requirements of another law.

### Section 17.

Law and  
equity  
application.

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.

### Section 18.

Interpretation.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states and territories which enact it.

## Section 19.

Notwithstanding the provisions of any general or special law, the provisions of this act shall control, excepting as to trust receipts and pledge transactions entered into before this act, as hereby added, takes effect.

## Section 20.

If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and its application to other persons or circumstances shall not be affected thereby.

## Section 21.

This act may be cited as the "Uniform Trust Receipts Law".

Approved March 19, 1951.

## CHAPTER 41

## AN ACT.

[H. B. 38]

Amending Sec. 39-5-3 ACLA 1949, relating to the Fisheries Experimental Commission.

*Be it enacted by the Legislature of the Territory of Alaska:*

Section 1. That Sec. 39-5-3 ACLA 1949 is hereby amended to read as follows:

Sec. 39-5-3. FISHERIES EXPERIMENTAL