

Reported Recommending.....
Ind. Postponed.....
Passed Senate.....
Failed to Pass Senate.....
Passed House.....
Failed to Pass House.....

Senate File 266

February 12, 1941.

By COMMITTEE ON MANUFACTURING,
COMMERCE AND TRADE.

On the Calendar.

A BILL FOR

An Act with reference to trust receipts and pledges of personal property unaccompanied by possession in the pledgee; making uniform the law with reference thereto, and repealing all laws in conflict herewith.

Be It Enacted by the General Assembly of the State of Iowa:

- 1 Section 1. Definitions. In this act, unless the context
2 or subject matter otherwise requires:
3 "Buyer in the ordinary course of trade" means a person to
4 whom goods are sold and delivered for new value and who acts
5 in good faith and without actual knowledge of any limitation
6 on the trustee's liberty of sale, including one who takes by
7 conditional sale or under a pre-existing mercantile contract
8 with the trustee to buy the goods delivered, or like goods, for
9 cash or on credit. "Buyer in the ordinary course of trade"
10 does not include a pledgee, or mortgagee, a lienor, or a trans-
11 feree in bulk.
12 "Document" means any document of title to goods.
13 "Entrustor" means the person who has or directly or by
14 agent takes a security interest in goods, documents or instru-
15 ments under a trust receipt transaction, and any successor in

16 interest of such person. A person in the business of selling
17 goods or instruments for profit, who at the outset of the trans-
18 action has, as against the buyer, general property in such goods
19 or instruments, and who sells the same to the buyer on credit,
20 retaining title or other security interest under a purchase
21 money mortgage or conditional sales contract or otherwise, is
22 excluded.

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

26 “Instrument” means

27 (a) any negotiable instrument as defined in the Uniform
28 Negotiable Instrument Law and amendments thereto, or

29 (b) any certificate of stock, or bond or debenture for the
30 payment of money issued by a public or private corporation
31 as part of a series, or

32 (c) any interim, deposit, or participation certificate or
33 receipt, or other credit or investment instrument of a sort
34 marketed in the ordinary course of business or finance, of
35 which the trustee, after the trust receipt transaction, appears
36 by virtue of possession and the face of the instrument to be
37 the owner. “Instrument” does not include any document
38 of title to goods.

39 “Lien creditor” means any creditor who has acquired a spe-
40 cific lien on the goods, documents or instruments by attach-
41 ment, levy, or by any other similar operation of law or judicial

42 process, including a distraining landlord.

43 “New value” includes new advances or loans made, or new
44 obligation incurred, or the release or surrender of a valid and
45 existing security interest, or the release of a claim to proceeds
46 under Section 10; but “new value” shall not be construed to
47 include extensions or renewals of existing obligations of the
48 trustee, nor obligations substituted for such existing obligations.

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

53 “Possession,” as used in this act with reference to posses-
54 sion taken or retained by the entruster, means actual possession
55 of goods, documents or instruments, or, in the case of goods,
56 such constructive possession as, by means of tags or signs or
57 other outward marks placed and remaining in conspicuous
58 places, may reasonably be expected in fact to indicate to the
59 third party in question that the entruster has control over or
60 interest in the goods.

61 “Purchase” means taking by sale, conditional sale, lease,
62 mortgage, or pledge, legal or equitable.

63 “Purchaser” means any person taking by purchase. A
64 pledgee, mortgagee or other claimant of a security interest
65 created by contract is, insofar as concerns his specific security,
66 a purchaser and not a creditor.

67 “Security interest” means a property interest in goods,

68 documents or instruments, limited in extent to securing per-
69 formance of some obligation of the trustee or of some third
70 person to the entruster, and includes the interest of a pledgee,
71 and title, whether or not expressed to be absolute, whenever such
72 title is in substance taken or retained for security only.

73 “Transferee in bulk” means a mortgagee or a pledgee or a
74 buyer of the trustee’s business substantially as a whole.

75 “Trustee” means the person having or taking possession of
76 goods, documents or instruments under a trust receipt trans-
77 action, and any successor in interest of such person. The use of
78 the word “Trustee” herein shall not be interpreted or con-
79 strued to imply the existence of a trust or any right or duty of
80 a trustee in the sense of equity jurisprudence other than as
81 provided by this act.

82 “Value” means any consideration sufficient to support a
83 simple contract. An antecedent or preexisting claim, whether
84 for money or not, and whether against the transferor or against
85 another person, constitutes value where goods, documents or
86 instruments are taken either in satisfaction thereof or as secu-
87 rity therefor.

1 Sec. 2. What constitutes trust receipt transaction
2 and trust receipt.

3 1. A trust receipt transaction within the meaning of this
4 act is any transaction to which an entruster and a trustee are
5 parties, for one of the purposes set forth in Subsection 3,
6 whereby

7 (a) the entruster or any third person delivers to the
8 trustee goods, documents or instruments in which the en-
9 trustor (i) prior to the transaction has, or for new value
10 (ii) by the transaction acquires or (iii) as the result thereof
11 is to acquire promptly, a security interest; or

12 (b) the entruster gives new value in reliance upon the
13 transfer by the trustee to such entruster of a security interest
14 in instruments or documents which are actually exhibited to such
15 entruster, or to his agent in that behalf, at a place of busi-
16 ness of either entruster or agent, but possession of which is
17 retained by the trustee;

18 provided that the delivery under paragraph (a) or the giving
19 of new value under paragraph (b) either

20 (i) be against the signing and delivery by the trustee of
21 a writing designating the goods, documents or instruments
22 concerned, and reciting that a security interest therein re-
23 mains in or will remain in, or has passed to or will pass to
24 the entruster, or

25 (ii) be pursuant to a prior or concurrent written and
26 signed agreement of the trustee to give such a writing.

27 The security interest of the entruster may be derived from
28 the trustee or from any other person, and by pledge or by trans-
29 fer of title or otherwise.

30 If the trustee's rights in the goods, documents or instru-
31 ments are subject to a prior trust receipt transaction, or to a
32 prior equitable pledge, Section 9 and Section 3, respectively,

33 of this act, determine the priorities.

34 2. A writing such as is described in Subsection 1, para-
35 graph (i), signed by the trustee, and given in or pursuant to
36 such a transaction, is designated in this act as a “trust receipt.”
37 No further formality of execution or authentication shall be
38 necessary to the validity of a trust receipt.

39 3. A transaction shall not be deemed a trust receipt trans-
40 action unless the possession of the trustee thereunder is for a
41 purpose substantially equivalent to any one of the following:

42 (a) in the case of goods, documents or instruments, for
43 the purpose of selling or exchanging them, or of procuring
44 their sale or exchange; or

45 (b) in the case of goods or documents, for the purpose of
46 manufacturing or processing the goods delivered or covered
47 by the documents, with the purpose of ultimate sale, or for
48 the purpose of loading, unloading, storing, shipping, trans-
49 shipping or otherwise dealing with them in a manner pre-
50 liminary to or necessary to their sale; or

51 (c) in the case of instruments, for the purpose of deliver-
52 ing them to a principal, under whom the trustee is holding
52 them, or for consummation of some transaction involving
54 delivery to a depository or registrar, or for their presenta-
55 tion, collection, or renewal.

1 Sec. 3. Attempted creation or continuance of pledge
2 without delivery or retention of possession.

3 1. An attempted pledge or agreement to pledge not accom-

4 panied by delivery of possession, which does not fulfill the re-
5 quirements of a trust receipt transaction, shall be valid as
6 against creditors of the pledgor only as follows :

7 (a) to the extent that new value is given by the pledgee
8 in reliance thereon, such pledge or agreement to pledge shall
9 be valid as against all creditors with or without notice, for
10 ten days from the time the new value is given ;

11 (b) to the extent that the value given by the pledgee is
12 not new value, and in the case of new value after the lapse
13 of ten days from the giving thereof, the pledge shall have
14 validity as against lien creditors without notice, who become
15 such as prescribed in Section 8, only as of the time the peldgee
16 takes possession, and without relation back.

17 2. Purchasers (including entrusters) for value and without
18 notice of the pledgee's interest shall take free of any such pledge
19 or agreement to pledge unless, prior to the purchase, it has
20 been perfected by possession taken.

21 3. Where, under circumstances not constituting a trust
22 receipt transaction, a person, for a temporary and limited pur-
23 pose, delivers goods, documents, or instruments, in which he
24 holds a pledgee's or other security interest, to the person hold-
25 ing the beneficial interest therein, the transaction has like
26 effect with a purported pledge for new value under this section.

1 Sec. 4. Contract to give trust receipt.

2 1. A contract to give a trust receipt, if in writing and signed
3 by the trustee, shall, with reference to goods, documents or

4 instruments thereafter delivered by the entruster to the trustee
5 in reliance on such contract, be equivalent in all respects to a
6 trust receipt.

7 2. Such a contract shall as to such goods, documents, or
8 instruments be specifically enforceable against the trustee; but
9 this subsection shall not enlarge the scope of the entruster's
10 rights against creditors of the trustee as limited by this act.

1 Sec. 5. Validity between the parties.

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

1 Sec. 6. Repossession, and entruster's rights on
2 default.

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

6 2. An entruster entitled to possession under the terms of the
7 trust receipt or of Subsection 1 may take such possession with-
8 out legal process, whenever that is possible without breach of
9 the peace.

10 3. (a) After possession taken, the entruster shall, subject
11 to subdivision (b) and Subsection 5, hold such goods, docu-
12 ments or instruments with the rights and duties of a pledgee.

13 (b) An entruster in possession may, on or after default,

14 give notice to the trustee of intention to sell, and may, not
15 less than five days after the serving or sending of such notice,
16 sell the goods, documents or instruments for the trustee's
17 account, at public or private sale, and may at a public sale
18 himself become a purchaser. The proceeds of any such sale,
19 whether public or private, shall be applied (i) to the pay-
20 ment of the expenses thereof, (ii) to the payment of the
21 expenses of re-taking, keeping and storing the goods, docu-
22 ments, or instruments, (iii) to the satisfaction of the trust-
23 tee's indebtedness. The trustee shall receive any surplus and
24 shall be liable to the entruster for any deficiency. Notice of
25 sale shall be deemed sufficiently given if in writing, and either
26 (i) personally served on the trustee, or (ii) sent by post-paid
27 ordinary mail to the trustee's last known business address.

28 (c) A purchaser in good faith and for value from an
29 entruster in possession takes free of the trustee's interest,
30 even in a case in which the entruster is liable to the trustee
31 for conversion.

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

35 5. As to articles manufactured by style or model, the terms
36 of the trust receipt may provide for forfeiture of the trustee's
37 interest, at the election of the entruster, in the event of the
38 trustee's default, against cancellation of the trustee's then
39 remaining indebtedness; provided that in the case of the origi-

40 nal maturity of such an indebtedness there must be cancelled
41 not less than 80% of the purchase price to the trustee, or of
42 the original indebtedness, whichever is greater; or, in the case
43 of a first renewal, not less than 70%, or, in the case of a second
44 or further renewal, not less than 60%.

1 Sec. 7. General effect of entruster's filing or taking
2 possession.

3 1. (a) If the entruster within the period of thirty days
4 specified in subsection 1 of Section 8 files as in this act pro-
5 vided, such filing shall be effective to preserve his security in-
6 terest in documents or goods against all persons, save as other-
7 wise provided by Sections 8, 9, 10, 11, 14 and 15 of this act.

8 (b) Filing after the lapse of the said period shall be valid;
9 but in such event, save as provided in subdivision 2(b) of
10 Section 9, the entruster's security interest shall be deemed to
11 be created by the trustee as of the time of such filing, without
12 relation back, as against all persons not having notice of such
13 interest.

14 2. The taking of possession by the entruster shall, so long
15 as such possession is retained, have the effect of filing, in the
16 case of goods or documents; and of notice of the entruster's
17 security interest to all persons, in the case of instruments.

1 Sec. 8. Validity against creditors.

2 1. The entruster's security interest in goods, documents or
3 instruments under the written terms of a trust receipt trans-
4 action, shall without any filing be valid as against all creditors

5 of the trustee, with or without notice, for thirty days after de-
6 livery of the goods, documents or instruments to the trustee,
7 and thereafter except as in this act otherwise provided.

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

13 2. Save as provided in Subsection 1, the entruster's security
14 interest shall be void as against lien creditors who become such
15 after such thirty day period and without notice of such interest
16 and before filing.

17 (a) Where a creditor secures the issuance of process which
18 within a reasonable time after such issuance results in attach-
19 ment of or levy on the goods, he is deemed to have become a
20 lien creditor as of the date of the issuance of the process.

21 (b) Unless prior to the acquisition of notice by all creditors
22 filing has occurred or possession has been taken by the en-
23 trustee, (i) an assignee for the benefit of creditors, from the
24 time of assignments, or (ii) a receiver in equity from the time
25 of his appointment, or (iii) a trustee in bankruptcy or judicial
26 insolvency proceedings from the time of filing of the petition
27 in bankruptcy or judicial insolvency by or against the trustee,
28 shall, on behalf of all creditors, stand in the position of a lien
29 creditor without notice, without reference to whether he per-
30 sonally has or has not, in fact, notice of the entruster's interest.

1 Sec. 9. Limitations on entruster's protection against
2 purchasers.

3 1. Purchasers of negotiable documents or instruments.

4 (a) Nothing in this act shall limit the rights of pur-
5 chasers in good faith and for value from the trustee of ne-
6 gotiable instruments or negotiable documents, and pur-
7 chasers taking from the trustee for value, in good faith, and
8 by transfer in the customary manner instruments in such
9 form as are by common practice purchased and sold as if
10 negotiable, shall hold such instruments free of the entruster's
11 interest; and filing under this act shall not be deemed to
12 constitute notice of the entruster's interest to purchasers in
13 good faith and for value of such documents or instruments,
14 other than transferees in bulk.

15 (b) The entrusting (directly, by agent, or through the
16 intervention of a third person) of goods, documents or instru-
17 ments by an entruster to a trustee, under a trust receipt
18 transaction or a transaction falling within Section 3 of this
19 act, shall be equivalent to the like entrusting of any docu-
20 ments or instruments which the trustee may procure in sub-
21 stitution, or which represent the same goods or instruments
22 or the proceeds thereof, and which the trustee negotiates to
23 a purchaser in good faith and for value.

24 2. Where a purchaser from the trustee is not protected under
25 Subsection 1 hereof, the following rules shall govern:

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

27 (i) Where the trustee, under the trust receipt transac-
28 tion, has liberty of sale and sells to a buyer in the ordinary
29 course of trade, whether before or after the expiration of
30 the thirty day period specified in Subsection 1 of Section 8
31 of this act, and whether or not filing has taken place, such
32 buyer takes free of the entruster's security interest in the
33 goods so sold, and no filing shall constitute notice of the
34 entruster's security interest to such a buyer.

35 (ii) No limitation placed by the entruster on the lib-
36 erty of sale granted to the trustee shall affect a buyer in
37 the ordinary course of trade, unless the limitation is actu-
38 ally known to the latter.

39 (b) Purchasers other than buyers in the ordinary course
40 of trade.

41 In the absence of filing, the entruster's security interest
42 in goods shall be valid, as against purchasers, save as pro-
43 vided in this Section; but any purchaser, not a buyer in the
44 ordinary course of trade, who, in good faith and without
45 notice of the entruster's security interest and before filing,
46 either (i) gives new value before the expiration of the thirty
47 day period specified in Subsection 1 of Section 8, or (ii)
48 gives value after said period, and who in either event before
49 filing also obtains delivery of goods from a trustee shall hold
50 the subject matter of his purchase free of the entruster's
51 security interest; but a transferee in bulk can take only
52 under (ii) of this subdivision (b).

53 (c) Liberty of sale.

54 If the entruster consents to the placing of goods subject
55 to a trust receipt transaction in the trustee's stock in trade
56 or in his sales or exhibition rooms, or allows such goods to
57 be so placed or kept, such consent or allowance shall have
58 like effect as granting the trustee liberty of sale.

59 3. As to all cases covered by this section the purchase of
60 goods, documents or instruments on credit shall constitute a
61 purchase for new value, but the entruster shall be entitled to
62 any debt owing to the trustee and any security therefor, by
63 reason of such purchase; except that the entruster's right shall
64 be subject to any set-off or defense valid against the trustee
65 and accruing before the purchaser has actual notice of the
66 entruster's interest.

1 Sec. 10. Entruster's right to proceeds.

2 Where, under the terms of the trust receipt transaction, the
3 trustee has no liberty of sale or other disposition, or, having
4 liberty of sale or other disposition, is to account to the en-
5 truster for the proceeds of any disposition of the goods, docu-
6 ments or instruments, the entruster shall be entitled, to the
7 extent to which and as against all classes of persons as to
8 whom his security interest was valid at the time of disposition
9 by the trustees, as follows:

10 (a) to the debts described in Section 9 (3); and also

11 (b) to any proceeds or the value of any proceeds (whether
12 such proceeds are identifiable or not) of the goods, docu-

13 ments or instruments, if said proceeds were received by the
14 trustee within ten days prior to either application for ap-
15 pointment of a receiver of the trustee, or the filing of a
16 petition in bankruptcy or judicial insolvency proceedings by
17 or against the trustee, or demand made by the entruster for
18 prompt accounting; and to a priority to the amount of such
19 proceeds or value; and also

20 (c) to any other proceeds of the goods, documents or
21 instruments which are identifiable, unless the provision for
22 accounting has been waived by the entruster by words or
23 conduct; and knowledge by the entruster of the existence
24 of proceeds, without demand for accounting made within ten
25 days from such knowledge, shall be deemed such a waiver.

1 Sec. 11. Liens in course of business good against
2 entruster.

3 Specific liens arising out of contractual acts of the trustee
4 with reference to the processing, warehousing, shipping or
5 otherwise dealing with specific goods in the usual course of
6 the trustee's business preparatory to their sale shall attach
7 against the interest of the entruster in said goods as well as
8 against the interest of the trustee, whether or not filing has
9 occurred under his act; but this section shall not obligate the
10 entruster personally for any debt secured by such lien; nor
11 shall it be construed to include the lien of a landlord.

1 Sec. 12. Entruster not responsible on sale by
2 trustee.

3 An entruster holding a security interest shall not, merely
4 by virtue of such interest or of his having given the trustee
5 liberty of sale or other disposition, be responsible as principal
6 or as vendor under any sale or contract to sell made by the
7 trustee.

1 Sec. 13. Filing and refiling concerning trust receipt
2 transactions covering documents or goods.

3 1. Any entruster undertaking or contemplating trust receipt
4 transactions with references to documents or goods is entitled
5 to file with the Secretary of State a statement, signed by the
6 entruster and the trustee, containing:

7 (a) a designation of the entruster and the trustee, and
8 of the chief place of business of each within this state, if
9 any; and if the entruster has no place of business within the
10 state, a designation of his chief place of business outside the
11 state; and

12 (b) a statement that the entruster is engaged, or expects
13 to be engaged, in financing under trust receipt transactions
14 the acquisition of goods by the trustee; and

15 (c) a description of the kind or kinds of goods covered
16 or to be covered by such financing.

17 2. The following form of statement (or any other form of
18 statement containing substantially the same information) shall
19 suffice for the purposes of this act:

20 "Statement of Trust Receipt Financing

21 "The entruster, whose chief place of busi-

22 ness within this state is at (or who has
 23 no place of business within this state and whose chief place of
 24 business outside this state is at,) is
 25 or expects to be engaged in financing under trust receipt trans-
 26 actions the acquisition by the trustee, whose
 27 chief place of business within this state is at
 28 of goods of the following description:
 29 (coffee, silk, automobiles, or the like.)

30 (Signed).....Entruster.

31 (Signed).....Trustee.”

32 3. It shall be the duty of the filing officer to mark each state-
 33 ment filed with a consecutive file number, and with the date
 34 and hour of filing, and to keep such statement in a separate
 35 file; and to note and index the filing in a suitable index, in-
 36 dexed according to the name of the trustee and containing a
 37 notation of the trustee’s chief place of business as given in the
 38 statement. The fee for such filing shall be one dollar.

39 4. Presentation for filing of the statement described in sub-
 40 section 1, and payment of the filing fee, shall constitute filing
 41 under this act, in favor of the entruster, as to any documents
 42 or goods falling within the description in the statement which
 43 are within one year from the date of such filing, or have been,
 44 within thirty days previous to such filing, the subject-matter
 45 of a trust receipt transaction between the entruster and the
 46 trustee.

47 5. At any time before expiration of the validity of the filing,

48 as specified in subsection 4, a like statement, or an affidavit by
49 the entruster alone, setting out the information required by
50 subsection 1, may be filed in like manner as the original filing.
51 Any filing of such further statement or affidavit shall be valid
52 in like manner and for like period as an original filing, and
53 shall also continue the rank of the entruster's existing security
54 interest as against all junior interests. It shall be the duty
55 of the filing officer to mark, file and index the further state-
56 ment or affidavit in like manner as the original.

1 Sec. 14. Limitations on extent of obligation
2 secured.

3 As against purchasers and creditors, the entruster's security
4 interest may extend to any obligation, for which the goods,
5 documents or instruments were security before the trust receipt
6 transaction, and to any new value given or agreed to be given
7 as a part of such transaction; but not, otherwise, to secure
8 past indebtedness of the trustee; nor shall the obligation se-
9 cured under any trust receipt transaction extend to obligations
10 of the trustee to be subsequently created.

1 Sec. 15. Act not applicable to certain transactions.

2 This act shall not apply to single transactions of legal or
3 equitable pledge, not constituting a course of business, whether
4 such transactions be unaccompanied by delivery of possession,
5 or involve constructive delivery, or delivery and redelivery,
6 actual or constructive, so far as such transactions involve only
7 an entruster who is an individual natural person, and a trus-

8 tee entrusted as a fiduciary with handling investments or
9 finances of the entruster; nor shall it apply to transactions of
10 bailment or consignment in which the title of the bailor or
11 consignor is not retained to secure an indebtedness to him of
12 the bailee or consignee.

1 Sec. 16. Election among filing statutes.

2 As to any transaction falling within the provisions both of
3 this act and of any other act requiring filing or recording, the
4 entruster shall not be required to comply with both, but by
5 complying with the provisions of either at his election may
6 have the protection given by the act complied with; except
7 that buyers in the ordinary course of trade as described in
8 subsection 2 of Section 9, and lienors as described in Section 11,
9 shall be protected as therein provided, although the compliance
10 of the entruster be with the filing or recording requirements of
11 another act.

1 Sec. 17. Cases not provided for.

2 In any case not provided for in this act the rules of law and
3 equity, including the law merchant, shall continue to apply to
4 trust receipt transactions and purported pledge transactions
5 not accompanied by delivery of possession.

1 Sec. 18. Uniformity of interpretation.

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

1 Sec. 19. Constitutionality.

2 If any provision of this act or the application thereof to any
3 person or circumstance is held invalid, such invalidity shall
4 not affect other provisions or applications of the act which can
5 be given effect without the invalid provision or application,
6 and to this end the provisions of this act are declared to be
7 severable.

1 Sec. 20. Short title.

2 This act may be cited as the Uniform Trust Receipts Act.

1 Sec. 21. Inconsistent laws repealed.

2 All acts or parts of acts inconsistent with this act are hereby
3 repealed.