

No. 161

AN ACT

Relating to chattel mortgages on livestock, poultry, farm machinery, farm equipment and crops grown, growing or to be grown; designating the operation and effect of the lien of such mortgages; providing for the filing, indexing and docketing of such mortgages and related instruments in prothonotaries' offices, and prescribing prothonotaries' fees; providing for the filing in Pennsylvania of similar lien instruments originally filed or recorded in other states; regulating the assignment, release, satisfaction and extension of the lien of such mortgages; prescribing methods of foreclosure; defining defaults and violations; and fixing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Any person, association, partnership or corporation, may give as security for any funds borrowed or to be borrowed, or any pre-existing indebtedness, a bond or note, with or without a confession of judgment clause, secured by a chattel mortgage upon livestock, poultry, farm machinery, farm equipment and crops, including annual or perennial crops, and other plant products, either grown or growing at the time of the execution of such chattel mortgage, or to be planted or grown within one year thereafter. For the purposes of this act all such chattels and crops shall be deemed to be personal property and mortgageable as such. No such chattel mortgage may secure any indebtedness which shall bear interest in excess of the rate of six per centum (6%) per annum.

Section 2. Any mortgage executed under and pursuant to this act shall be in writing and signed by the mortgagor or his agent duly authorized and constituted, but such mortgage need not be acknowledged, witnessed or sealed. The property covered or to become covered by any such chattel mortgage may be described as all that property of a specified class, so identified by reference to location, brands, marks, numbers or otherwise, as to distinguish it from other property of the same class, or such property may be described in any other manner permitted or authorized by law.

Section 3. Any mortgage executed under and pursuant to this act may validly include livestock, poultry, farm machinery or farm equipment of the same class as that described in the mortgage acquired by the mortgagor subsequent to the execution of the chattel mortgage and prior to its extinguishment, and any such mortgage also may validly include replacements of any of the mortgaged property therein described, and all increase, issue, progeny and produce of animals and livestock of all kinds, and the issue, increase, progeny and produce of

Chattel mortgages.

Chattel mortgages upon livestock, poultry, farm machinery, farm equipment and crops to be effective.

Maximum legal interest.

Chattel mortgage may validly include replacements of mortgaged property.

any and all property mortgageable under the terms and provisions of this act, including the increase, issue, progeny and produce of any original increase, issue or progeny. A mortgage of sheep or goats shall be held to include the wool or mohair which may be clipped therefrom.

Section 4. Any chattel mortgage executed under and pursuant to this act may secure a pre-existing debt, advances currently made or contracted for, and future advances, whether obligatory or optional, to be made by the mortgagee within a period of three years from the date of the execution of such mortgage, but not to exceed in the aggregate an amount stated in the mortgage. Such a chattel mortgage may also secure advances and expenditures of the mortgagee for taxes, levies, insurance and repairs to or maintenance of the property described in the chattel mortgage, together with interest on such advances and expenditures at the rate fixed therefor by the terms of the mortgage, or if no rate therefor is specified, at the rate provided in the mortgage for the principal indebtedness secured thereby. All future advances made within the terms of such chattel mortgage shall be secured to the same extent and shall have the same priority as if made at the time of the execution of the mortgage.

Chattel mortgage
to be a lien.

Section 5. Any mortgage executed pursuant to this act shall be a lien upon the property therein described, which lien shall be good and valid against and superior to all rights of subsequent purchasers, subsequent mortgagees and other subsequent lienors and encumbrancers, and all persons subsequently dealing with the mortgaged property or subsequently acquiring an interest therein from the time of filing of the mortgage, as provided in section eight of this act. The lien of any chattel mortgage on crops executed pursuant to this act shall be superior to any mortgages, deeds of trust or judgments or other liens upon the land upon which any such crop has been or is to be seeded, or may be growing, and any sale made under any mortgage, deed of trust or judgment on such land or otherwise before said crops have been severed shall be made subject to the lien on the crops as provided for in this act.

Section 6. Any of the property covered by a chattel mortgage executed pursuant to this act which may be removed without the written consent of the mortgagee from the county in which it was located at the time of the execution of the mortgage, or from the county in which the mortgage is filed, shall remain subject to the lien of the mortgage.

Any of such property which may be removed with the written consent of the mortgagee from the county in which it was located at the time of the execution of

the mortgage, or from the county in which the mortgage is filed, shall remain subject to the lien of the mortgage: Provided, however, That the lien of any such mortgage shall remain valid as against subsequent purchasers, subsequent mortgagees and other subsequent lienors and subsequent encumbrancers, without actual notice of the chattel mortgage, for a period of only sixty days from the date of removal, unless within such period a true copy of the mortgage is filed in the office of the prothonotary in the county to which the property is removed.

Any property covered by a chattel mortgage which may be sold by the mortgagor shall remain subject to the lien of the mortgage, unless the mortgagee expressly consents in writing to such sale, free and acquit of the mortgage lien, and the consent of the mortgagee to the sale of a part of the property shall not invalidate or impair the lien of the mortgage as to other property covered by the mortgage.

If the mortgagor, with or without the written consent of the mortgagee, shall make sale of the mortgaged property or any part thereof, the proceeds realized through such sale shall be subject to the lien of said mortgage, and the mortgagee at his option may enforce said lien against said chattels or against said proceeds: Provided, however, That said mortgagee shall receive only one full satisfaction of the debt secured by said mortgage: And provided further, That the mortgagee in consenting in writing to sale of the mortgaged property or a part thereof may authorize and permit the mortgagor to sell such mortgaged chattels free and acquit of the mortgage lien, upon condition that the proceeds of sale be paid to the mortgagee, and if consent to sale is given on such terms and conditions, any purchaser or grantee of said mortgaged chattels shall acquire title to said chattels free and acquit of said lien, but the lien shall remain attached to the proceeds realized through sale until payment thereof to the mortgagee.

A chattel mortgage conveying livestock or poultry and hay, grain or other foodstuffs or crops, shall not be invalid in any particular because provision is contained therein or the mortgagee agrees that the mortgagor may use and consume any such hay, grain, food, forage, fodder or crops, in preserving or preparing for market the livestock or poultry covered by the mortgage.

Section 7. If the mortgagor, without the consent of the mortgagee, shall substantially injure the chattel or chattels subject to the mortgage, or conceal or purport to sell or otherwise dispose of them or any substantial part of them, under claim of full ownership, or otherwise by his wilful act or neglect substantially impair the value of the agreed security, save in so far as is consistent with a reasonable use of the chattel or chattels,

such action shall constitute a default under the chattel mortgage: Provided, however, That unless otherwise stipulated in the instrument the injury or destruction of the chattel or chattels without fault of the mortgagor shall not constitute a default, and such injury or destruction incurred before final sale or foreclosure shall not discharge the mortgagor for any obligation secured for which he is personally liable.

Recording of
chattel mort-
gages.

Section 8. Any chattel mortgage executed pursuant to this act may be filed in the office of the prothonotary for each county in which the chattels or any portion of the chattels are located at the time of filing such chattel mortgage, and when so filed such chattel mortgage shall constitute a lien on the property described therein and conveyed thereby from the time of such filing, which lien shall be good and valid as hereinbefore provided: Provided, however, That in the case of more than one chattel mortgage, the first filed shall have priority and be first paid out of the proceeds of the sale of the mortgaged chattels. The prothonotary shall maintain a book, to be known as the "Chattel Mortgage Book", in which he shall docket each instrument presented to him for filing pursuant to this act, and in said docket he shall set forth the date and the hour of filing, the name of the mortgagor, the name of the mortgagee, the amount advanced, and the limit thereof, and a brief description of the chattels described in the instrument, and the premises upon which such chattels and crops are located, and he shall retain the instrument in his office for future public inspection. The prothonotary shall likewise maintain a book, to be known as a "Chattel Mortgage Index", in which he shall index alphabetically under the names of the mortgagor or mortgagors or a mortgagee or mortgagees, all chattel mortgages filed pursuant to this act and on which the date of filing such instrument shall be noted.

Any instrument affecting the lien of a chattel mortgage or its ownership may be filed in each office in which the chattel mortgage is filed, and from the date of filing thereof each such instrument shall be good and valid as against subsequent purchasers, subsequent mortgagees or other subsequent lienors, and subsequent encumbrances, with or without notice thereof, and the fact and date of filing of each such instrument shall be noted by the prothonotary on the margin of the page on which the chattel mortgage is docketed.

Fees.

Section 9. The prothonotary shall be entitled to charge and receive for services rendered hereunder the following fees:

(1) For filing, indexing and docketing each chattel mortgage, seventy-five cents (75c).

(2) For filing, indexing and noting each assignment, seventy-five cents (75c).

(3) For filing and noting each partial release, satisfaction, extension or subordination by written instrument, twenty-five cents (25c).

(4) For attesting the entry of a marginal satisfaction and noting the satisfaction on the index, twenty-five cents (25c).

(5) For indexing and attesting the entry of a marginal assignment, fifty cents (50c).

(6) For a certified copy of a chattel mortgage filed hereunder, the sum of twenty-five cents (25c),* if a copy of the instrument is furnished at the time the same is filed. If no copy is furnished the charge shall be the same as provided by law for similar service.

Section 10. When chattels are brought into this State subject to a chattel mortgage or other chattel lien, filed or recorded in another state, such chattel mortgage or other chattel lien, instrument or a copy thereof, certified by the officer in whose office it was filed or recorded, may be filed as chattel mortgages provided for herein are filed, and when so filed any such instrument shall be indexed and docketed upon an affidavit of the mortgagee, setting forth a brief description of the lands and premises upon which said chattels are located in this State, and upon such filing such chattel lien instrument shall have the same force and effect and be subject to all the terms and conditions of this act, to the same extent and in the same manner as though executed and filed in this State pursuant to this act.

Section 11. Any chattel mortgage executed under and pursuant to this act may be assigned by an instrument in writing signed by the mortgagee or assignee, and setting forth the amount of the debt as of the date of the assignment, and upon presentation of such assignment to the prothonotary, the prothonotary shall file the same and note on the margin of the page in which the chattel mortgage is docketed the fact of the assignment, the date of the notation, the name of the assignor, the name of the assignee, the address of each, the date of the assignment, and the amount of the debt as of the date of the assignment, and such assignment shall, except as to the parties thereto, take effect and be valid only from the time of the marginal notation as herein provided: Provided, however, Any such chattel mortgage may be assigned by an assignment stating the amount of the debt as of the date of the assignment, and executed by the mortgagee or assignee on the margin of the page where such chattel mortgage is docketed, which assignment shall be attested by the prothonotary.

Assignment.

Section 12. Any such chattel mortgage may be satisfied by an instrument in writing signed by the mortgagee or assignee or the duly authorized attorney for such mortgagee or assignee, and upon presentation of

* "c" omitted in original.

such instrument to the prothonotary, the prothonotary shall file the same and note the fact of such satisfaction and the date thereof on the margin of the page of the book where the chattel mortgage is docketed, and when so noted such satisfaction shall fully and effectually release the lien of such mortgage: Provided, however, That any such chattel mortgage may be satisfied by the mortgagee or assignee on the margin of the page where such chattel mortgage is docketed, which satisfaction shall be attested by the prothonotary. Each satisfaction of a chattel mortgage lien shall be noted by the prothonotary on the line of the page on which the chattel mortgage is indexed.

Section 13. Such chattel mortgages shall, except between the parties thereto, take effect and be valid only from the time of filing as herein provided. Such mortgage shall remain a lien on the property mortgaged as between the parties thereto until paid, but as to third parties shall not remain a lien for a longer period than five (5) years, unless the lien thereof is extended by filing prior to the expiration of the said lien with the prothonotary an affidavit of the mortgagee or his assignee, stating the amount then secured by the lien, in which case the said mortgage shall remain a lien for an additional period of five (5) years from the date of the filing of such affidavit. The lien of any mortgage may be further extended with like effect by the filing of successive like affidavits. The prothonotary shall note each extension of a chattel mortgage lien and date of filing the same on the margin of the page of the book where the chattel mortgage is docketed. The prothonotary shall likewise index each such extension in the "Chattel Mortgage Index" in the same manner as is herein provided for the indexing of chattel mortgages originally filed.

Section 14. Upon default in any of the terms and covenants of any chattel mortgage or bond executed in accordance with the provisions of this act, the mortgagee, assignee or duly authorized attorney or agent of such mortgagee or assignee, shall have the right, without process of law, immediately to take possession of the mortgaged property and to do all things necessary to preserve the same, and any expense incurred in conjunction therewith shall be included in and secured by the lien of said chattel mortgage. And this right shall be in addition to any and all other rights inuring to the benefit of the mortgagee or assignee.

Default.

Section 15. Upon default by the mortgagor in the payment of the mortgaged debt, either as to principal or interest, or upon default in the performance of any covenant contained in the chattel mortgage or bond or note, the chattel mortgage may be foreclosed by any of

the methods authorized by law for the foreclosure of a mortgage, including the entry of judgment on the bond or note secured by the chattel mortgage. The lien of any levy which may be made upon the mortgaged property by virtue of any execution based upon a judgment entered upon such bond or note, shall relate back to the date of the filing of the chattel mortgage. In such foreclosure proceedings the mortgaged chattels may be sold in the same manner as authorized by the laws of this Commonwealth in the case of personal property sold under execution.

Section 16. This act shall not be construed to adversely affect or impair the lien of or rights under any existing chattel mortgage, nor shall this act be construed to repeal or affect any act relating to chattel mortgages not herein expressly repealed.

Section 17. The act, approved the second day of March, one thousand nine hundred and thirty-three (Pamphlet Laws, six), entitled "An act to enable persons, associations, partnerships and corporations engaged in farming, and raising, breeding, fattening and marketing livestock, to borrow money and secure the repayment thereof by the execution and recordation of chattel mortgages on livestock, farm machinery, farm equipment, and crops; and designating the operation and effect of the lien of such mortgages," as amended by an act, approved the eighteenth day of April, one thousand nine hundred and thirty-five (Pamphlet Laws, thirty-eight), and as amended by an act, approved the twenty-fourth day of July, one thousand nine hundred and forty-one (Pamphlet Laws, four hundred thirty-nine), are hereby repealed.

Act of March
2, 1933, P. L. 6,
as amended, is
hereby repealed.

APPROVED—The 21st day of May, A. D. 1943.

EDWARD MARTIN

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No. 162

AN ACT

Requiring political subdivisions to refund taxes and license fees erroneously and inadvertently paid thereto, and giving a right of action against such political subdivision for the recovery of such taxes and fees upon their failure to make such refunds; making the provisions of the act retroactive; and repealing existing laws.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Whenever any person or corporation of this Commonwealth has erroneously or inadvertently paid or caused to be paid into the treasury of any political subdivision, directly or indirectly, any tax or

Taxes and
license fees.

Refund when
erroneously paid
into treasury of
any political
subdivision.