

No. 358

## AN ACT

Relating to conditional sales made prior to July one, one thousand nine hundred fifty-four.

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

Conditional sales  
made prior to  
July 1, 1954.

Section 1. Definitions.—As used in this act:

Definitions.

(1) "Uniform Conditional Sales Act" means the act of May twelve, one thousand nine hundred twenty-five (Pamphlet Laws 603), entitled "An act concerning conditional sales; and to make uniform the law relating thereto," as amended from time to time while the act was in effect.

(2) "Conditional sale" means any contract for the sale of goods made prior to July one, one thousand nine hundred fifty-four, and which either was filed prior to that date, pursuant to the Uniform Conditional Sales Act, or was shown before that date on a certificate of title for a motor vehicle, trailer or semi-trailer, pursuant to the vehicle code of May one, one thousand nine hundred twenty-nine (Pamphlet Laws 905), as amended, under which possession was delivered to the buyer and the property in the goods was to vest in the buyer at a subsequent time upon the payment of part or all of the price or upon the performance of any other condition or happening of any contingency.

(3) "Buyer" means the person who bought the goods covered by the conditional sale, or any legal successor in interest of the person.

(4) "Filing district" means the subdivision of the State in which conditional sale contracts, or copies thereof, were required to be filed by the Uniform Conditional Sales Act, or are permitted to be filed by this act.

(5) "Goods" means all chattels personal, other than things in action and money, and includes emblements, industrial growing crops, machinery and equipment attached to real estate, and things attached to or forming a part of land which were agreed to be severed before sale or under the conditional sale.

(6) "Performance of the condition" means the occurrence of the event upon which the property in the goods is to vest in the buyer, whether the event is the performance of an act by the buyer or the happening of a contingency.

(7) "Purchase" includes the creation of a security interest.

(8) "Purchaser" includes a person in whose favor there is a security interest.

(9) "Seller" means the person who sold the goods covered by the conditional sale, or any legal successor in interest of the person.

(10) "Filing Officer" means a person in charge of the office for filing conditional sale contracts in a filing district.

Section 2. Filing Records.—The filing officer shall continue to keep the separate book which he was required to keep by the Uniform Conditional Sales Act in which he was required to enter the names of the seller and buyer, the date of the contract, the day and hour of filing, a brief description of goods, the price named in the contract, and the date of cancellation thereof.

Section 3. Refiling.—The validity of a filing or re-filing, pursuant to the Uniform Conditional Sales Act or this act, may be extended for successive additional periods of five years from the date of re-filing by filing, in the proper filing district, a copy of the original contract within six months next preceding the expiration of each period, with a statement attached, signed by the seller, showing that the contract is in force and the amount remained to be paid thereon. The copy with statement attached shall be filed and entered in the book kept by the filing officer, and shall be indexed in the index of financing statements maintained by the filing officer, pursuant to the Uniform Commercial Code of April six, one thousand nine hundred fifty-three (Pamphlet Laws 3), showing the buyer as the debtor and the seller, or his assignee, as the secured party and noting in the index in place of the file number and addresses of such parties, the book and page number where the conditional sale was originally entered. The filing officer shall be entitled to a fee of two dollars (\$2).

Section 4. Cancellation of Contract.—Any contract filed in the office of the prothonotary may be cancelled by satisfaction noted on the docket in the same manner as judgments at law are satisfied. In lieu of satisfaction after the performance of the condition, upon written demand, delivered personally or by registered mail, by the buyer or any other person having an interest in the goods, the seller shall execute, acknowledge and deliver to the demandant a statement that the condition in the contract has been performed. If, for ten days after demand, the seller fails to mail or deliver a statement of satisfaction, he shall forfeit to the demandant five dollars (\$5) and be liable for all damages suffered. Upon presentation of the statement of satisfaction, the filing officer shall file it and note the cancellation of

the contract and the date thereof on the margin of the page where the contract has been entered. For filing and entering the statement of satisfaction, the filing officer shall be entitled to a fee of seventy-five cents (75¢).

Section 5. Prohibition of Removal or Sale Without Notice.—Unless the contract otherwise provides, the buyer may, without the consent of the seller, remove the goods from any filing district and create a security interest in the goods or sell or otherwise dispose of his interest in them, but, prior to the performance of the condition, no buyer shall remove the goods from a filing district in which the contract, or a copy thereof, is filed, except for temporary uses, for a period of not more than thirty days, unless the buyer, not less than ten days before the removal, shall give the seller, personally or by registered mail, written notice of the place to which the goods are to be removed and the approximate time of the intended removal; nor, prior to the performance of the condition, shall the buyer create a security interest in the goods or sell or otherwise dispose of his interest in them, unless he, or the secured party, or the person to whom he is about to sell or otherwise dispose of the same, shall notify the seller, in writing, personally or by registered mail, of the name and address of the secured party or the person to whom his interest in the goods is about to be sold or otherwise transferred not less than ten days before the creation of a security interest or sale or other disposal. If any buyer does so remove the goods or does so create a security interest in them or sell or otherwise dispose of his interest in them, without notice or in violation of the contract, the seller may retake possession of the goods and deal with them as in case of default in payment of part or all of the purchase price. The provisions of this section regarding the removal of goods shall not apply, however, to railroad or street or inter-urban railway equipment or rolling stock.

Section 6. Refiling on Removal.—When, prior to the performance of the condition, the goods are removed by the buyer from a filing district in this State to another filing district in this State in which the contract or a copy thereof is not filed, the reservation of the property in the seller shall be void as to any purchaser from or creditor of the buyer, who, without notice of the contract, purchases the goods or acquires by attachment or levy a lien upon them, unless the conditional sale contract, or a copy thereof, shall be filed in the filing district to which the goods are removed within ten days after the seller has received notice of the filing district to which the goods have been removed. The provisions of this

section shall not apply, however, to railroad or street or interurban railway equipment or rolling stock. The filing shall be valid for a period of three years. The provisions of section three regarding the necessity for refiling, and the duration of the validity thereof, shall apply to contracts or copies which are filed in a filing district other than where the goods are originally kept for use by the buyer after the sale.

Section 7. Fraudulent Injury, Concealment, Removal, or Sale.—When prior to the performance of the condition, the buyer maliciously or with intent to defraud shall injure, destroy, or conceal the goods, or remove them to a filing district where the contract or a copy thereof is not filed, without having given the notice required by section five, or shall sell, mortgage, or otherwise dispose of the goods under claim of full ownership, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to imprisonment for not more than one year, or to pay a fine not exceeding five hundred dollars (\$500), or both.

Section 8. Retaking Possession.—When the buyer shall be in default in the payment of any sum due under the contract, or in the performance of any other condition which the contract requires him to perform in order to obtain the property in the goods, or in the performance of any promise the breach of which is by the contract expressly made a ground for the retaking of the goods, the seller may retake possession thereof. Unless the goods can be retaken without breach of the peace, they shall be retaken by legal process, but nothing herein shall be construed to authorize a violation of the criminal law.

Section 9. Notice of Intention to Retake.—Not more than forty nor less than twenty days prior to the retaking, the seller may serve upon the buyer, personally or by registered mail, a notice of intention to retake the goods on account of the buyer's default. The notice shall state the default and the period at the end of which the goods will be retaken and shall briefly and clearly state what the buyer's rights under this act will be in case they are retaken. If the notice is so served and the buyer does not perform the obligations in which he has made default before the day set for retaking, the seller may retake the goods and hold them subject to the provisions of sections eleven, twelve, thirteen, fourteen and fifteen regarding the sale, but without any right of redemption.

Section 10. Redemption.—If the seller does not give the notice of intention to retake as provided in section nine, he shall retain the goods for ten days after the

retaking within the state in which they were located when retaken, during which period the buyer, upon payment or tender of the amount due under the contract at the time of retaking and interest, or upon performance or tender of performance of any other condition as may be named in the contract as precedent to the passage of the property in the goods, or upon performance or tender of performance of any other promise for the breach of which the goods were retaken, and upon payment of the expenses of retaking, keeping, and storage, may redeem the goods and become entitled to take possession of them and to continue in the performance of the contract as if no default had occurred. Upon written demand, delivered personally or by registered mail, by the buyer, the seller shall furnish to the buyer a written statement of the sum due under the contract and the expense of retaking, keeping, and storage. For failure to furnish the statement within a reasonable time after demand, the seller shall forfeit to the buyer ten dollars (\$10) and also be liable to him for all damages suffered because of such failure. If the goods are perishable so that retention for ten days, as herein prescribed, would result in their destruction or substantial injury, the provisions of this section shall not apply and the seller may resell the goods immediately upon their retaking. The provision of this section requiring the retention of the goods within the State during the period allowed for redemption shall not apply to railroad or street or interurban railway equipment or rolling stock.

Section 11. Compulsory Resale by Seller.—If the buyer does not redeem the goods within ten days after the seller has retaken possession, and the buyer has paid at least fifty per centum of the purchase price at the time of the retaking, the seller shall sell them at public auction in the State where they were at the time of the retaking, the sale to be held not more than thirty days after the retaking. The seller shall give to the buyer not less than ten days' written notice of the sale, either personally or by registered mail, directed to the buyer at his last known place of business or residence. The seller shall also give notice of the sale by at least three notices posted in different public places within the filing district where the goods are to be sold, at least five days before the sale. If, at the time of the retaking, five hundred dollars (\$500) or more has been paid on the purchase price, the seller shall also give notice of the sale at least five days before the sale by publication in a newspaper published or having a general circulation within the filing district where the goods are to be sold. The seller may bid for the goods at the resale. If the

goods are railroad or street or interurban railway equipment or rolling stock, the parties may fix in the conditional sale contract the place where the goods shall be resold.

Section 12. Resale at Option of Parties.—If the buyer has not paid at least fifty per centum of the purchase price at the time of the retaking, the seller shall not be under a duty to resell the goods, as prescribed in section eleven, unless the buyer serves upon the seller, within ten days after the retaking, a written notice demanding a resale, delivered personally or by registered mail. If the notice is served, the resale shall take place within thirty days after the service in the manner, at the place, and upon the notice prescribed in section eleven. The seller may voluntarily resell the goods for account of the buyer on compliance with the same requirements.

Section 13. Proceeds of Resale.—The proceeds of the resale shall be applied (1) to the payment of the expenses thereof, (2) to the payment of the expenses of retaking, keeping, and storing the goods and (3) to the satisfaction of the balance due under the contract. Any sum remaining after the satisfaction of the claims shall be paid to the buyer.

Section 14. Deficiency on Resale.—If the proceeds of the resale are not sufficient to defray the expenses thereof and also the expenses of the retaking, keeping, and storing the goods and the balance due upon the purchase price, the seller may recover the deficiency from the buyer or from any one who has succeeded to the obligations of the buyer.

Section 15. Rights of Parties Where There is No Resale.—Where there is no resale, the seller may retain the goods as his own property without obligation to account to the buyer, except as provided in section seventeen, and the buyer shall be discharged of all obligation.

Section 16. Election of Remedies.—After the retaking of possession, as provided in section eight, the buyer shall be liable for the price only after a resale and only to the extent provided in section fourteen. Neither the bringing of an action by the seller for the recovery of the whole or any part of the price, nor the recovery of judgment in such action, nor the collection of a portion of the price, shall be deemed inconsistent with a later retaking of the goods, as provided in section eight, but the right of retaking shall not be exercised by the seller after he has collected the entire price or after he has claimed a lien upon the goods or attached them or levied upon them as the goods of the buyer.

Section 17. Recovery of Part Payments.—If the seller fails to comply with the provisions of sections ten, eleven, twelve, thirteen and fifteen, after retaking the goods, the buyer may recover from the seller his actual damages, if any, and in no event less than one-fourth of the sum of all payments which have been made under the contract with interest.

Section 18. Waiver of Statutory Protection.—No act or agreement of the buyer before or at any time of the making of the contract nor any agreement or statement by the buyer in the contract shall constitute a valid waiver of the provisions of section ten, eleven, twelve, thirteen and fifteen, except that the contract may stipulate that, on such default of the buyer, as is provided for in section eight, the seller may rescind the conditional sale either as to all the goods or as to any part thereof for which a specific price was fixed in the contract. If the contract provides for rescission, the seller at his option may retake such goods without complying with or being bound by the provisions of sections nine to seventeen, inclusive, as to the goods retaken, upon crediting the buyer with the full purchase price of those goods. So much of this credit as is necessary to cancel any indebtedness of the buyer to the seller shall be so applied and the seller shall repay to the buyer on demand any surplus not so required.

Section 19. Validity of Conditional Sales Refiled on or after July one, one thousand nine hundred fifty-four.—Every provision in a conditional sale reserving property in the seller shall be valid as to any purchaser from or creditor of the buyer who, after the effective date of this act, purchases the goods or acquires by attachment or levy a lien upon them, if the filing of the contract was valid under the Uniform Conditional Sales Act at 12:01 A. M. on July one, one thousand nine hundred fifty-four, by reason of (1) having been filed (i) during the period beginning July one, one thousand nine hundred fifty-one, and ending three years prior to the effective date of this act, or (ii) in the case of railroad or street or interurban railway equipment or rolling stock during the period beginning July one, one thousand nine hundred thirty-nine, and ending fifteen years prior to the effective date of this act, or (2) having been last refiled during the period beginning July one, one thousand nine hundred fifty-three, and ending July one, one thousand nine hundred fifty-four, and, if the contract or a copy thereof was refiled on or after July one, one thousand nine hundred fifty-four, and prior to the effective date of this act, pursuant to the method prescribed by the Uniform Conditional Sales Act, or is refiled within sixty days after the effec-

tive date of this act, pursuant to the method prescribed by section three hereof, any such refiling, prior to the effective date of this act, shall be valid for a period of one year from the date of refiling or sixty days from the effective date of this act, whichever is longer. Any such refiling after the effective date of this act shall be valid for a period of five years from the date of refiling.

Act effective  
immediately.

Section 20. Effective Date.—This act shall take effect immediately.

APPROVED—The 28th day of February, A. D. 1956.

GEORGE M. LEADER

No. 359

AN ACT

Relating to the administration and distribution of incompetents' estates, (except in Philadelphia County) both as to real and personal property, and the procedure relating thereto; including the disposition of such estates or portions thereof and the determination of title thereto without the appointment of a guardian in certain cases; the appointment, bond, removal and discharge of guardians of such estates, their powers, duties and liabilities, the rights of persons dealing with such guardians, and the rights of persons claiming an interest in such estates or in property distributed therefrom whether as claimants or distributees, and containing provisions concerning the determination of incompetency and the powers, duties and liabilities of foreign guardians; and also generally dealing with the jurisdiction, powers and procedure of the orphans' court and the common pleas court relating to incompetents' estates.

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