

NORTH CAROLINA GENERAL ASSEMBLY
1961 SESSION

CHAPTER 574
SENATE BILL 114

1 AN ACT TO MAKE UNIFORM THE LAW WITH REFERENCE TO TRUST RECEIPTS
2 AND PLEDGES OF PERSONAL PROPERTY UNACCOMPANIED BY POSSESSION
3 IN THE PLEDGEE.
4

5 The General Assembly of North Carolina do enact:
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7 **Section 1.** Chapter 45 of the General Statutes is hereby amended by adding a new
8 Article at the end thereof to read as follows:

9 "ARTICLE 6

10 "Uniform Trust Receipts Act

11 "**G.S. 45-46. Definitions.** In this Act unless the context or subject matter otherwise requires:

12 "'Buyer in the ordinary course of trade' means a person to whom goods are sold and
13 delivered for new value and who acts in good faith and without actual knowledge of any
14 limitation on the trustee's liberty of sale, including one who takes by conditional sale or under a
15 pre-existing mercantile contract with the trustee to buy the goods delivered, or like goods, for
16 cash or on credit. 'Buyer in the ordinary course of trade' does not include a pledgee, a
17 mortgagee, a lienor, or a transferee in bulk.

18 "'Document' means any document of title to goods.

19 "'Entruster' means the person who has or directly or by agent takes a security interest in
20 goods, documents or instruments under a trust receipt transaction, and any successor in interest
21 of such person. A person in the business of selling goods or instruments for profit, who at the
22 outset of the transaction has, as against the buyer, general property in such goods or
23 instruments, and who sells the same to the buyer on credit, retaining title or other security
24 interest under a purchase money mortgage or conditional sales contract or otherwise, is
25 excluded.

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

28 "'Instrument' means

29 "(a) any negotiable instrument as defined in the Uniform Negotiable Instruments
30 Law and amendments thereto, or

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

33 "(c) any interim, deposit, or participation certificate or receipt, or other credit or
34 investment instrument of a sort marketed in the ordinary course of business
35 or finance, of which the trustee, after the trust receipt transaction, appears by
36 virtue of possession and the face of the instrument to be the owner.

37 'Instrument' does not include any document of title to goods.

38 "'Lien creditor' means any creditor who has acquired a specific lien on the goods,
39 documents or instruments by attachment, levy, or by any other similar operation of law or
40 judicial process, including a distraining landlord.

41 "'New value' includes new advances or loans made and the renewal and extension of such
42 advances or loans, or new obligations incurred, or the release or surrender of a valid and
43 existing security interest, or the release of a claim to proceeds under G.S. 45-55.

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

4 "Possession', as used in this Act with reference to possession taken or retained by the
5 entruster, means actual possession of goods, documents or instruments, or, in the case of goods,
6 such constructive possession as, by means of tags or signs or other outward marks placed and
7 remaining in conspicuous places, may reasonably be expected in fact to indicate to the third
8 party in question that the entruster has control over or interest in the goods.

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

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

14 "Security interest' means a property interest in goods, documents or instruments, limited in
15 extent to securing performance of some obligation of the trustee or of some third person to the
16 entruster, and includes the interest of a pledgee, and title, whether or not expressed to be
17 absolute, whenever such title is in substance taken or retained for security only.

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

20 "Trustee' means the person having or taking possession of goods, documents or instruments
21 under a trust receipt transaction, and any successor in interest of such person. The use of the
22 word 'Trustee' herein shall not be interpreted or construed to imply the existence of a trust or
23 any right or duty of a trustee in the sense of equity jurisprudence other than as provided by this
24 Act.

25 "Value' means any consideration sufficient to support a simple contract. An antecedent or
26 pre-existing claim, whether for money or not, and whether against the transferrer or against
27 another person, constitutes value where goods, documents or instruments are taken either in
28 satisfaction thereof or as security therefor.

29 **"G.S. 45-47. What Constitutes Trust Receipt Transaction and Trust Receipt.**

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

32 "(a) the entruster or any third person delivers to the trustee goods, documents or
33 instruments in which the entruster (i) prior to the transaction has, or for new
34 value (ii) by the transaction acquires or (iii) as the result thereof is to acquire
35 promptly, a security interest, or

36 "(b) the entruster gives new value in reliance upon the transfer by the trustee to
37 such entruster of a security interest in instruments or documents which are
38 actually exhibited to such entruster, or to his agent in that behalf, at a place
39 of business of either entruster or agent, but possession of which is retained
40 by the trustee; provided, that the delivery under paragraph (a) or the giving
41 of new value under paragraph (b) either

42 "(i) be against the signing and delivery by the trustee of a writing
43 designating the goods, documents or instruments concerned, and
44 reciting that a security interest therein remains in or will remain in, or
45 has passed to or will pass to, the entruster, or

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

48 "The security interest of the entruster may be derived from the trustee or from any other
49 person, and by pledge or by transfer of title or otherwise.

1 "If the trustee's rights in the goods, documents or instruments are subject to a prior trust
2 receipt transaction, or to a prior equitable pledge, G.S. 45-54 and G.S. 45-48, respectively, of
3 this Act, determine the priorities.

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

8 "3. A transaction shall not be deemed a trust receipt transaction unless the possession of
9 the trustee thereunder is for a purpose substantially equivalent to any one of the following:

10 "(a) in the case of goods, documents or instruments, for the purpose of selling or
11 exchanging them, or of procuring their sale or exchange; or

12 "(b) in the case of goods or documents, for the purpose of manufacturing or
13 processing the goods delivered or covered by the documents, with the
14 purpose of ultimate sale, or for the purpose of loading, unloading, storing,
15 shipping, transshipping or otherwise dealing with them in a manner
16 preliminary to or necessary to their sale; or

17 "(c) in the case of instruments, for the purpose of delivering them to a principal,
18 under whom the trustee is holding them, or for consummation of some
19 transaction involving delivery to a depository or registrar, or for their
20 presentation, collection, or renewal.

21 **"G.S. 45-48. Attempted Creation or Continuance of Pledge Without Delivery or**
22 **Retention of Possession.**

23 "1. An attempted pledge or agreement to pledge not accompanied by delivery of
24 possession, which does not fulfill the requirements of a trust receipt transaction, shall be valid
25 as against creditors of the pledgor only as follows:

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

29 "(b) to the extent that the value given by the pledgee is not new value, and in the
30 case of new value after the lapse of ten days from the giving thereof, the
31 pledge shall have validity as against lien creditors without notice, who
32 become such as prescribed in G.S. 45-53, only as of the time the pledgee
33 takes possession, and without relation back.

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

37 "3. Where, under circumstances not constituting a trust receipt transaction, a person, for
38 a temporary and limited purpose, delivers goods, documents, or instruments, in which he holds
39 a pledgee's or other security interest, to the person holding the beneficial interest therein, the
40 transaction has like effect with a purported pledge for new value under this Section.

41 **"G.S. 45-49. Contract to Give Trust Receipt.**

42 "1. A contract to give a trust receipt, if in writing and signed by the trustee, shall, with
43 reference to goods, documents or instruments thereafter delivered by the entruster to the trustee
44 in reliance on such contract be equivalent in all respects to a trust receipt.

45 "2. Such a contract shall as to such goods, documents, or instruments be specifically
46 enforceable against the trustee; but this subsection shall not enlarge the scope of the entruster's
47 rights against creditors of the trustee as limited by this Act.

48 **"G.S. 45-50. Validity Between the Parties.** Between the entruster and the trustee the terms of
49 the trust receipt shall, save as otherwise provided by this Act, be valid and enforceable. But no
50 provision for forfeiture of the trustee's interest shall be valid except as provided in Subsection 5
51 of G.S. 45-51.

1 **"45-51. Repossession, and Entruster's Rights on Default.**

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

4 "2. An entruster entitled to possession under the terms of the trust receipt or of
5 Subsection 1 may take such possession without legal process, whenever that is possible without
6 breach of the peace.

7 "3. (a) After possession taken, the entruster shall, subject to subdivision (b) and
8 Subsection 5, hold such goods, documents or instruments with the rights and
9 duties of a pledgee.

10 "(b) An entruster in possession may, on or after default, give notice to the trustee
11 of intention to sell, and may, not less than five days after the serving or
12 sending of such notice, sell the goods, documents or instruments for the
13 trustee's account, at public or private sale, and may at a public sale himself
14 become a purchaser. The proceeds of any such sale, whether public or
15 private, shall be applied (i) to the payment of the expenses thereof, (ii) to the
16 payment of the expenses of retaking, keeping and storing the goods,
17 documents, or instruments, (iii) to the satisfaction of the trustee's
18 indebtedness. The trustee shall receive any surplus and shall be liable to the
19 entruster for any deficiency. Notice of sale shall be deemed sufficiently
20 given if in writing, and either (i) personally served on the trustee, or (ii) sent
21 by postpaid ordinary mail to the trustee's last known business address.

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

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

27 "5. As to articles manufactured by style or model, the terms of the trust receipt may
28 provide for forfeiture of the trustee's interest, at the election of the entruster, in the event of the
29 trustee's default, against cancellation of the trustee's then remaining indebtedness; provided that
30 in the case of the original maturity of such an indebtedness there must be cancelled not less
31 than eighty per cent (80%) of the purchase price to the trustee, or of the original indebtedness,
32 whichever is greater; or, in the case of a first renewal, not less than seventy per cent (70%), or,
33 in the case of a second or further renewal, not less than sixty per cent (60%).

34 **"G.S. 45-52. General Effect of Entruster's Filing or Taking Possession.**

35 "1. (a) If the entruster within the period of thirty days specified in Subsection 1 of
36 G.S. 45-53 files as in this Act provided, such filing shall be effective to
37 preserve his security interest in documents or goods against all persons save
38 as otherwise provided by G.S. 45-53, 45-54, 45-55, 45-56, 45-59 and 45-60
39 of this Act.

40 "(b) Filing after the lapse of the said period shall be valid; but in such event, save
41 as provided in subdivision 2(b) of G.S. 45-54, the entruster's security interest
42 shall be deemed to be created by the trustee as of the time of such filing,
43 without relation back, as against all persons not having notice of such
44 interest.

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

48 **"G.S. 45-53. Validity Against Creditors.**

49 "1. The entruster's security interest in goods, documents or instruments under the
50 written terms of a trust receipt transaction, shall without any filing be valid as against all

1 creditors of the trustee, with or without notice, for thirty days after delivery of the goods,
2 documents or instruments to the trustee, and thereafter except as in this Act otherwise provided.

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

7 "2. Save as provided in Subsection 1, the entruster's security interest shall be void as
8 against lien creditors who become such after such thirtyday period and without notice of such
9 interest and before filing.

10 "Unless prior to the acquisition of notice by all creditors filing has occurred or possession
11 has been taken by the entruster, (i) an assignee for the benefit of creditors, from the time of
12 assignment, or (ii) a receiver in equity from the time of his appointment, or (iii) a trustee in
13 bankruptcy or judicial insolvency proceedings from the time of filing of the petition in
14 bankruptcy or judicial insolvency by or against the trustee, shall, on behalf of all creditors,
15 stand in the position of a lien creditor without notice, without reference to whether he
16 personally has or has not, in fact, notice of the entruster's interest.

17 **"G.S. 45-54. Limitations on Entruster's Protection Against Purchasers.**

18 "1. Purchasers of Negotiable Documents or Instruments.

19 "(a) Nothing in this Act shall limit the rights of purchasers in good faith and for
20 value from the trustee of negotiable instruments or negotiable documents,
21 and purchasers taking from the trustee for value, in good faith, and by
22 transfer in the customary manner instruments in such form as are by
23 common practice purchased and sold as if negotiable, shall hold such
24 instruments free of the entruster's interest; and filing under this Act shall not
25 be deemed to constitute notice of the entruster's interest to purchasers in
26 good faith and for value of such documents or instruments, other than
27 transferees in bulk.

28 "(b) The entrusting (directly, by agent, or through the intervention of a third
29 person) of goods, documents or instruments by an entruster to a trustee,
30 under a trust receipt transaction or a transaction falling within G.S. 45-48 of
31 this Act, shall be equivalent to the like entrusting of any documents or
32 instruments which the trustee may procure in substitution, or which
33 represent the same goods or instruments or the proceeds thereof, and which
34 the trustee negotiates to a purchaser in good faith and for value.

35 "2. Where a buyer from the trustee is not protected under subsection 1 hereof, the
36 following rules shall govern:

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

38 "(i) Where the trustee, under the trust receipt transaction, has liberty of
39 sale and sells to a buyer in the ordinary course of trade, whether
40 before or after the expiration of the thirty-day period specified in
41 subsection 1 of G.S. 45-53 of this Act, and whether or not filing has
42 taken place, such buyer takes free of the entruster's security interest
43 in the goods so sold and no filing shall constitute notice of the
44 entruster's security interest to such a buyer.

45 "(ii) No limitation placed by the entruster on the liberty of sale granted to
46 the trustee shall affect a buyer in the ordinary course of trade, unless
47 the limitation is actually known to the latter.

48 "(b) Purchasers other than buyers in the ordinary course of trade. In the absence
49 of filing, the entruster's security interest in goods shall be valid, as against
50 purchasers, save as provided in this Section; but any purchaser, not a buyer
51 in the ordinary course of trade, who, in good faith and without notice of the

1 entruster's security interest and before filing, either (i) gives new value
2 before the expiration of the thirty-day period specified in subsection 1 of
3 G.S. 45-53, or (ii) gives value after said period, and who in either event
4 before filing also obtains delivery of goods from a trustee shall hold the
5 subject matter of his purchase free of the entruster's security interest; but a
6 transferee in bulk can take only under (ii) of this subdivision (b).

7 "(c) Liberty of Sale. If the entruster consents to the placing of goods subject to a
8 trust receipt transaction in the trustee's stock in trade or in his sales or
9 exhibition rooms, or allows such goods to be so placed or kept, such consent
10 or allowance shall have like effect as granting the trustee liberty of sale.

11 "3. As to all cases covered by this Section the purchase of goods, documents or
12 instruments on credit shall constitute a purchase for new value, but the entruster shall be
13 entitled to any debt owing to the trustee and any security therefor, by reason of such purchase;
14 except that the entruster's right shall be subject to any set-off or defense valid against the
15 trustee and accruing before the purchaser has actual notice of the entruster's interest.

16 "**G.S. 45-55. Entruster's Right to Proceeds.** Where, under the terms of the trust receipt
17 transaction, the trustee has no liberty of sale or other disposition, or, having liberty of sale or
18 other disposition, is to account to the entruster for the proceeds of any disposition of the goods,
19 documents or instruments, the entruster shall be entitled, to the extent to which and as against
20 all classes of persons as to whom his security interest was valid at the time of disposition by the
21 trustee, as follows:

22 "(a) to the debts described in G.S. 45-54(3); and also

23 "(b) to any proceeds or the value of any proceeds (whether such proceeds are
24 identifiable or not) of the goods, documents or instruments, if said proceeds
25 were received by the trustee within thirty days prior to either application for
26 appointment of a receiver of the trustee, or the filing of a petition in
27 bankruptcy or judicial insolvency proceedings by or against the trustee, or
28 demand made by the entruster for prompt accounting; and to a priority to the
29 amount of such proceeds or value; and also

30 "(c) to any other proceeds of the goods, documents or instruments which are
31 identifiable.

32 "**G.S. 45-56. Liens in Course of Business Good Against Entruster.** Specific liens arising out
33 of contractual acts of the trustee with reference to the processing, warehousing, shipping or
34 otherwise dealing with specific goods in the usual course of the trustee's business preparatory to
35 their sale shall attach against the interest of the entruster in said goods as well as against the
36 interest of the trustee, whether or not filing has occurred under this Act; but this Section shall
37 not obligate the entruster personally for any debt secured by such lien; nor shall it be construed
38 to include the lien of a landlord.

39 "**G.S. 45-57. Entruster not Responsible on Sale by Trustee.** An entruster holding a security
40 interest shall not, merely by virtue of such interest or of his having given the trustee liberty of
41 sale or other disposition, be responsible as principal or as vendor under any sale or contract to
42 sell made by trustee.

43 "**G.S. 45-58. Filing and Refiling Concerning Trust Receipt Transaction Covering
44 Documents or Goods.**

45 "1. Any entruster undertaking or contemplating trust receipt transactions with reference
46 to documents or goods is entitled to file a statement, signed by the entruster and the trustee and
47 acknowledged by the trustee before an officer authorized to take acknowledgments, and
48 probated as other instruments are now probated, which shall contain:

49 "(a) the name and mailing address within this State of both entruster and trustee,
50 or if either the entruster or trustee has no mailing address within the State,
51 the mailing address outside the State; and

1 **"G.S. 45-59. Limitations on Extent of Obligation Secured.** As against purchasers and
2 creditors, the entruster's security interest may extend to any obligation for which the goods,
3 documents or instruments were security before the trust receipt transaction, and to any new
4 value given or agreed to be given as a part of such transaction; but not, otherwise, to secure past
5 indebtedness of the trustee; nor shall the obligation secured under any trust receipt transaction
6 extend to obligations of the trustee to be subsequently created.

7 **"G.S. 45-60. Act Not Applicable to Certain Transactions.** This Act shall not apply to single
8 transactions of legal or equitable pledge, not constituting a course of business, whether such
9 transactions be unaccompanied by delivery of possession, or involve constructive delivery, or
10 delivery and redelivery, actual or constructive, so far as such transactions involve only an
11 entruster who is an individual natural person, and a trustee entrusted as a fiduciary with
12 handling investments or finances of the entruster; nor shall it apply to transactions of bailment
13 or consignment in which the title of the bailor or consignor is not retained to secure an
14 indebtedness to him of the bailee or consignee.

15 **"G.S. 45-61. Election Among Filing Statutes.** As to any transaction falling within the
16 provisions both of this Act and of any other Act or law requiring or permitting filing or
17 recording, the entruster shall not be required to comply with both, but by complying with the
18 provisions of either at his election may have the protection given by the Act complied with;
19 except that buyers in the ordinary course of trade as described in subsection 2 of G.S. 45-54,
20 and lienors as described in G.S. 45-56, shall be protected as therein provided, although the
21 compliance of the entruster be with the filing or recording provisions of another Act or law.

22 **"G.S. 45-62. Cases Not Provided For.** In any case not provided for in this Act the rules of law
23 and equity, including the law merchant, shall continue to apply to trust receipt transactions and
24 purported pledge transactions not accompanied by delivery of possession.

25 **"G.S. 45-63. Uniformity of Interpretation.** This Act shall be so interpreted and construed as
26 to effectuate its general purpose to make uniform the law of the states which enact it.

27 **"G.S. 45-64. Constitutionality.** If any provision of this Act or the application thereof to any
28 person or circumstances is held invalid, such invalidity shall not affect other provisions or
29 applications of the Act which can be given effect without the invalid provision or application,
30 and to this end the provisions of this Act are declared to be severable.

31 **"G.S. 45-65. Short Title.** This Act may be cited as the Uniform Trust Receipts Act.

32 **"G.S. 45-66. Inconsistent Laws.** Notwithstanding the provisions of any general or special law,
33 the provisions of this Act shall control, provided, however, that this Act shall not affect
34 transactions entered into before the effective date of this Act."

35 **Sec. 2.** All laws and clauses of laws in conflict with this Act are hereby repealed.

36 **Sec. 3.** This Act shall be in full force and effect from and after its ratification.

37 In the General Assembly read three times and ratified, this the 1st day of June, 1961.