

A BILL

FOR AN ACT DEFINING THE RIGHTS OF MORTGAGEES AND MORTGAGORS OF CHATTEL PROPERTY, AND THE RIGHTS OF JUDGMENT CREDITORS. ALSO, DEFINING THE OFFICIAL DUTIES OF TOWNSHIP CLERKS AND COUNTY RECORDERS IN RELATION THERETO.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa,* That hereafter
2 whenever a chattel mortgage shall be acknowledged, the officer before whom the acknowl-
3 edgment shall be taken shall, at the same time, and before the delivery of the mortgage,
4 make two corresponding statements, and certify to the correctness thereof, and which state-
5 ments shall each contain the name of the party who gave the mortgage, the name of the
6 party to whom it is drawn, the full description of the property held thereby, the principal,
7 rate of interest, date of mortgage, and date and time of maturity of each note or other obliga-
8 tion therein described, and deliver the same to the mortgagee, who shall, within three days
9 from the date of acknowledgment, either deliver in person or deposit said statements, with
10 twenty-five cents each, in the United States mail, one of which shall be directed to the
11 recorder of the county and the other to the clerk of the township in which the mortgaged
12 property is situated, and which statements shall be noted in an index-book and kept on file,
13 with all other papers pertaining thereto, in alphabetical order, in their respective offices,
14 subject to inspection whenever required.

SEC. 2. That hereafter no chattel mortgage shall be made a matter of record otherwise
2 than by filing the statements as indicated by section 1 of this act.

SEC. 3. That whenever any mortgagor of personal property shall remove to another
2 county within this state, and shall also remove any part of the property which is held by any
3 chattel mortgage or statement on file in the county from whence he removed, with the con-
4 sent or knowledge of the mortgagee, the mortgagee shall, within thirty days of the date of
5 said removal, file, or cause to be filed, in the offices of the township clerk and county recorder
6 of the county to which he has removed, three copies of the original statements on file in the
7 offices of the township clerk and county recorder from whence the mortgagor removed, and

8 failing so to do, his mortgage shall become junior and inferior to any other lien which may
9 have been filed against said mortgaged property, or any part thereof, in the township and
10 county in which the mortgagor resides.

SEC. 4. Where two or more persons hold chattel mortgages on the same property, in
2 whole or in part, to ascertain the amount due and unpaid upon all notes or other obligations
3 secured thereby, any junior mortgagee, at any time after the last note or other obligation
4 described in any senior mortgage has become due, may serve or cause to be served a written
5 or printed notice on any senior mortgagee, commanding him, within five days thereafter and
6 at his own expense, to file an affidavit in the office of his township clerk, which shall fully
7 state for what purpose, and property in kind and amount, his mortgage was taken, and the
8 amount and date of all payments which have been made thereon, and if the said mortgagee
9 fail or refuse to file said affidavit within the time required by the notice, his mortgage shall
10 become junior and inferior to any mortgage held against so much of the property as is mort-
11 gaged to the party serving said notice.

SEC. 5. The service of any notice contemplated by this act may be made by or upon the
2 agent or either party having an interest therein, and by which service the principals of such
3 agents shall all be bound.

SEC. 6. If any mortgagee shall willfully or knowingly make any false statement as to the
2 amount paid on any of the obligations described in his mortgage, or in relation to the prop-
3 erty in amount or kind for which the indebtedness was incurred, he shall be liable to the
4 party aggrieved for all expense, damages and losses the aggrieved party may have sustained
5 in consequence thereof, the same to be recovered in an action for damages in any court of
6 competent jurisdiction, and he shall also be liable for the crime of perjury as defined by
7 the laws of this state.

SEC. 7. At any time after the filing of the affidavit provided for by section four of this
2 act, any junior mortgagee may tender to the senior mortgagee the amount due on all unpaid
3 obligations secured by the senior mortgage, with costs of assignment and cancellation, where-
4 upon the senior mortgagee shall forthwith assign and deliver to said junior mortgagee the
5 said senior mortgage, together with all the unpaid obligations therein described; and if he
6 fail or refuse so to do, the senior mortgage, so far as it relates to property covered by the
7 junior mortgage, shall become junior and inferior thereto, and the junior mortgagee may pro-
8 ceed without interference to foreclose his mortgage as complete in all respects as though no
9 senior mortgage had ever been given.

SEC. 8. Any property seized by virtue of the foreclosure of any chattel mortgage, and in

2 which any other mortgagee or judgment creditor shall claim an interest, or an interest in
3 the proceeds of the sale thereof, shall be appraised and sold in the same manner as though
4 the same were seized to be appraised and sold under execution, as provided for by section
5 3100 of the Code of 1873.

SEC. 9. Whenever the obligations described by any chattel mortgage are fully paid, or
2 the property described therein fully sold, the party receiving the proceeds thereof shall,
3 within ten days thereafter, indorse, or cause to be indorsed, upon the said statements in
4 hands of the township clerk and county recorder, the full amount of all payments received,
5 whether arising from the foreclosure or otherwise, and if he shall fail so to do within thirty
6 days from the last receipt thereof, he shall be liable to a penalty of fifty dollars, to be col-
7 lected by any party aggrieved, in an action for damages, before any court having jurisdic-
8 tion thereof.

SEC. 10. After all the notes or other obligations specified in any chattel mortgage shall
2 have been due and unpaid for one year or more, any judgment creditor may garnishee the
3 mortgagee and cite him to appear at a certain day and hour, not more than ten days nor less
4 than three days from the day of service, if before and within the jurisdiction of a justice of
5 the peace, or at the first term if before a circuit or district court, at a day and hour in said
6 notice specified, there to answer under oath such questions as may be asked him by said
7 judgment debtor or his attorney, concerning the origin and extent of his mortgage, or claims
8 against the mortgagor, and any other questions which shall relate to and disclose the finan-
9 cial relations existing between the mortgagor and mortgagee in relation to the mortgage in
10 question; and if the mortgagee appear at the time and place specified, at his own expense,
11 and answer such questions fully as may be propounded to him, the judgment creditor may,
12 at any time within three days, pay over to the mortgagee the amount ascertained to be due
13 on his mortgage or the obligations secured thereby; whereupon the mortgagee shall assign
14 and deliver over to the judgment creditor his said mortgage and all the unpaid obligations
15 therein described; and if he fail or refuse so to do, or fail or refuse to appear or answer as
16 hereinbefore specified, the judgment creditor may direct a levy to be made on so much of the
17 property held by the mortgage, and not exempt from execution, as will satisfy his claim, with
18 costs, and sell so much thereof, as near as may be done, without interference from any prior
19 mortgage lien, as will pay the judgment debtor, and the costs incurred in the proceedings,
20 and pay the balance remaining in his hands, if any, over to the mortgagor.

SEC. 11. After the service of any notice contemplated by this act there shall be no
2 renewal of the mortgage, nor extension of any payment made by the mortgagors, on any of

3 the obligations secured thereby, and any attempt to alter, renew, conceal, sell, assign or
4 transfer said mortgage, or the obligations therein defined, or any stipulation thereafter made
5 between the mortgagee and mortgagor contrary to any of the provisions of this act, shall be
6 void in law.

SEC. 12. For any of the official services contemplated by this act, and not otherwise pro-
2 vided for, the following fees shall be allowed: To the party making the mortgage and taking
3 the acknowledgment, fifty cents; for making each statement, fifteen cents; to the township
4 clerk and county recorder, for indexing and filing each statement, twenty-five cents each; for
5 certified copy of statement, fifteen cents; for filing any other paper relating thereto, ten
6 cents; for all copies thereof, fifteen cents; for final cancellation of statement, fifteen cents;
7 and all of which fees, when not otherwise specified, shall be paid by the party applying for
8 the service.

SEC. 12. *And be it further enacted,* That all of the provisions of chapter 4, title XIII, of the
2 Code of 1873, so far as the same may relate to the recording of chattel mortgages, and all
3 other acts and parts of the acts of said Code inconsistent with the provisions of this act, be
4 and the same are hereby repealed.