

CHAPTER 600

DOCUMENTS AS EVIDENCE

600.01 BUSINESS.

NOTE: The uniform business records as evidence act was adopted and promulgated by the national conference of commissioners on uniform state laws in 1936. It is the law in Minnesota by virtue of L. 1939, c. 78. It has been adopted by the following states: California, Delaware, Hawaii, Idaho, Minnesota, Montana, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, and Wyoming.

Where a party refuses to produce a document which is privileged as a communication between attorney and client the opposing party, if he has given due notice to produce, may show the contents thereof by parol testimony, but such testimony must itself not be privileged. Where parties are engaged in maintaining a common cause, furnishing copy of a document privileged as a communication between attorney and client by attorney for one party to attorney for another does not affect the privilege, and the recipient of the copy stands under the same restraints arising from the privileged character of the document as is the giver. *Schmitt v Emery*, 211 M 547, 2 NW(2d) 413.

Admissibility of records kept in the regular course of business. 24 MLR 958.

600.02 BUSINESS RECORDS AS EVIDENCE.

Admissibility of hospital and medical records. *Lund v Olson*, 182 M 204, 234 NW 310; *Ghelin v Johnson*, 186 M 405, 243 NW 443; *Ost v Ulring*, 207 M 500, 292 NW 207.

Admissibility of documents, records, and memoranda lies largely within the discretion of the trial court. *Lundgren v Union Indemnity*, 171 M 122, 213 NW 553; *Garbisch v American Ry. Express*, 177 M 494, 225 NW 432; *Schoonover v Prudential Ins. Co.* 187 M 343, 245 NW 476; *Topinka v Minnesota Mutual*, 189 M 75, 248 NW 660.

The issue being as to the cubic contents of dikes, engineers' field notes recording the center heights of the dikes were properly admitted as evidence where there was testimony showing the uniform slope or angle of repose of the embankments so that the measurement of height showed also the base. *Barnard-Curtiss Co. v Mpls. Dredging Co.* 200 M 327, 274 NW 229.

The court was not bound to accept the testimony of an adjuster, employed by plaintiffs to prepare an inventory and proof of loss of the stock of merchandise damaged by fire, as to the market value thereof before and after the fire, since it appeared that such inventory could not be made without the assistance of the plaintiff who had handled the same but who did not attend the trial. *Foot v Yorkshire Fire Ins. Co.* 205 M 478, 286 NW 400.

Loose-leaf ledger sheets identified by party under whose supervision they were compiled, wherein entries were made in regular course of business at substantially time of transactions recorded therein, are admissible in evidence, in discretion of the court under sections 600.01 to 600.04 known as the uniform business records as evidence act, as well as under the common-law rules relative thereto, even in absence of original journal sheets from which entries in ledger sheets were transferred, particularly where it is established that original journal sheets have been lost or destroyed. *Shepherdson v Central Fire Ins.* 220 M 401, 19 NW(2d) 772.

Admissibility of records kept in the regular course of business. 24 MLR 958.

Evidence of oral authorization in dealings subsequent to entry into contract was not inadmissible under the parol evidence rule. 30 MLR 548.

600.05 ACCOUNT BOOKS; LOOSE-LEAF SYSTEM.

The question whether a sufficient foundation for admission of documentary evidence is laid is addressed to the discretion of the trial court. *Bull Remedy Co. v Boyer*, 109 M 396, 124 NW 20; *De Vita v Payne*, 149 M 405, 184 NW 184; *Young v Yeates*, 161 M 278, 201 NW 421; *Tiedt v Larson*, 174 M 558, 219 NW 905; *Garbisch v American Railway Express*, 177 M 494, 225 NW 432; *Topinka v Minnesota Mutual*, 189 M 75, 248 NW 660.

See, *Shepherdson v Central Fire Ins. Co.* 220 M 401, 19 NW(2d) 772, under section 600.02.

Where plaintiff testified that he was to receive commission of ten per cent on business procured for defendant; and where certain of his checks were marked "Sales Comm."; and where he was paid in excess of the amount due on a claimed salary agreement, such evidence was sufficient to sustain the trial court's finding that plaintiff was employed by defendant on a commission basis. *Fleetham v Lindgren*, 221 M 544, 22 NW(2d) 637.

The uniform business records as evidence act enacted by L. 1939, c. 78, coded as sections 600.01 to 600.04, is broader in scope than the earlier Minnesota statute, now section 600.05, originating in 1851, in that the 1939 act on admission of books of account is not limited to accounts but applies to "a record of an act, condition, or event." 24 MLR 958.

Evidence of oral authorization in dealings subsequent to entry into the contract was not inadmissible under the parol evidence rule. 30 MLR 548.

600.13 OFFICIAL RECORDS PRIMA FACIE EVIDENCE; CERTIFIED COPIES; CERTIFIED COPIES OF DECREES OF PROBATE COURTS; WHEN SEAL NOT NECESSARY.

Admissibility as evidence of the findings of an administrative board or agency. 25 MLR 950.

600.14 INSTRUMENTS ACKNOWLEDGED; EVIDENCE.

The "prima facie evidence of the existence of the facts" as stated in the state fire marshal's order provided by section 73.15 does not change the burden of proof. It only stands until its weight is met by competent evidence to the contrary. The burden of maintaining the affirmative is upon the party alleging the fact which constitutes the issue, and this burden remains throughout the trial. The prima facie case which the statute creates simply means that the burden of going forward with the evidence shifts. As such, the mentioned statute is not unconstitutional as violative of the due process provision of the constitution. *State Fire Marshal v Sherman*, 201 M 594, 277 NW 249.

600.15 BILLS AND NOTES; ENDORSEMENT; SIGNATURE TO INSTRUMENTS PRESUMED.

Failure to deny execution of notes when sued upon. 12 MLR 85.

600.18 FEDERAL CENSUS; POPULATION.

When the population of a county is one of the governing factors of the salary of an official, the date on which a certified copy of the last federal census was filed with the secretary of state governs. OAG May 20, 1943 (46-A).

600.22 INSTRUMENTS, RECORDS THEREOF, AND COPIES.

Copies of the record of deeds and other similar private writings made in a sister state are admissible in evidence in the courts of this state under the provisions of the federal statutes if properly certified and authenticated. They will be given such force and effect only as is given thereto by the law of the state from which they are taken, and it must appear that the record was one which was authorized and provided for by the statutes of that state; and no presumption exists that the

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statutory law of a sister state is the same as that of this state. *Wilcox v Bergman*, 96 M 219, 104 NW 955.

600.23 REGISTERS AND CLERKS.

The notice required by L. 1945, c. 363, s. 1, when filed, need not be recorded. It is not a conveyance. OAG Jan. 3, 1946 (373-B-16).

600.24 FINDING OF PRESUMED DEATH UNDER FEDERAL MISSING PERSONS ACT.

HISTORY. 1947 c. 229 s. 1.

600.25 PRIMA FACIE EVIDENCE.

HISTORY. 1947 c. 229 s. 2.

600.26 AUTHORITY PRESUMED.

HISTORY. 1947 c. 229 s. 3.