

CHAPTER 335

UNIFORM NEGOTIABLE INSTRUMENTS

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335.01 DEFINITIONS. Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subd. 2. **Acceptance.** "Acceptance" means an acceptance completed by delivery or notification.

Subd. 3. **Action.** "Action" includes counter-claim and set-off.

Subd. 4. **Bank.** "Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

Subd. 5. **Bearer.** "Bearer" means the person in possession of a bill or note which is payable to bearer.

Subd. 6. **Bill.** "Bill" means bill of exchange.

Subd. 7. **Note.** "Note" means negotiable promissory note.

Subd. 8. **Delivery.** "Delivery" means transfer of possession, actual or constructive, from one person to another.

Subd. 9. **Holder.** "Holder" means the payee or endorsee of a bill or note, who is in possession of it, or the bearer thereof.

Subd. 10. **Endorsement.** "Endorsement" means an endorsement completed by delivery.

Subd. 11. **Instrument.** "Instrument" means negotiable instrument.

Subd. 12. **Issue.** "Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

Subd. 13. **Person.** "Person" includes a body of persons, whether incorporated or not.

Subd. 14. **Value.** "Value" means valuable consideration.

Subd. 15. **Written.** "Written" includes printed.

Subd. 16. **Writing.** "Writing" includes print.

[1913 c. 272 s. 191] (7235)

FORM, INTERPRETATION

335.02 FORM OF NEGOTIABLE INSTRUMENT. An instrument to be negotiable must conform to the following requirements:

- (1) It must be in writing and signed by the maker or drawer;
- (2) Must contain an unconditional promise or order to pay a sum certain in money;
- (3) Must be payable on demand, or at a fixed or determinable future time;
- (4) Must be payable to order or to bearer; and
- (5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

[1913 c. 272 s. 1] (7044)

335.025 CERTAINTY AS TO SUM; WHAT CONSTITUTES. The sum payable is a sum certain within the meaning of this chapter, although it is to be paid:

- (1) With interest; or
- (2) By stated instalments; or
- (3) By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or
- (4) With exchange, whether at a fixed rate or at the current rate on or at a given place; or
- (5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

[1913 c. 272 s. 2] (7045)

335.03 UNCONDITIONAL PROMISE. An unqualified order or promise to pay is unconditional within the meaning of this chapter, though coupled with:

- (1) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or
 - (2) A statement of the transaction which gives rise to the instrument.
- An order or promise to pay out of a particular fund is not unconditional.

[1913 c. 272 s. 3] (7046)

335.035 DETERMINABLE FUTURE TIME; WHAT CONSTITUTES. An instrument is payable at a determinable future time, within the meaning of this chapter, which is expressed to be payable:

- (1) At a fixed period after date or sight; or
- (2) On or before a fixed or determinable future time specified therein; or
- (3) On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable and the happening of the event does not cure the defect.

[1913 c. 272 s. 4] (7047)

335.04 NEGOTIABLE CHARACTER NOT AFFECTED. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. The negotiable character of an instrument otherwise negotiable is not affected by a provision which:

- (1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
- (2) Authorizes a confession of judgment if the instrument be not paid at maturity; or
- (3) Waives the benefit of any law intended for the advantage or protection of the obligor; or
- (4) Gives the holder an election to require something to be done in lieu of payment of money.

Nothing in this section shall validate any provision or stipulation otherwise illegal.

[1913 c. 272 s. 5] (7048)

335.041 BONDS, NOTES, DEBENTURES, AND PROMISES TO PAY SECURED BY MORTGAGE, DEED OF TRUST, INDENTURE, OR LIEN DEEMED NEGOTIABLE. Any bond, note, debenture, or promise to pay, which shall be secured by a mortgage, deed of trust, indenture, or lien upon any property, real, personal, or mixed, and which shall have been authenticated, certified or approved by the authorized signature of a duly authorized mortgagee, trustee, registrar, or fiscal agent, when otherwise so drawn as to fall under and within the provisions of the uniform negotiable instruments act shall be deemed to be a negotiable instrument,

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as defined by law, and shall be held and construed to be such negotiable instrument notwithstanding the fact that it shall refer to or recite that it is issued under, in connection with, or secured by such mortgage, deed of trust, indenture, or other lien of any kind or nature, and whether or not the terms of the mortgage, deed of trust, indenture, or lien purport to be incorporated therein or made a part thereof, or otherwise.

[1927 c. 416 s. 1] (7048-1)

335.042 TRANSFER OF SECURITY RECEIPTS AND EQUIPMENT TRUST CERTIFICATES; DEFINITIONS. For the purposes of sections 335.042 to 335.044:

The term "security receipt" means any writing in and by which the signer sets forth that the person named therein, or the bearer, is entitled to receive a specified principal amount, par value or number of bonds, notes, debentures, shares of stock, voting trust certificates for shares of stock, scrip, or other security or securities of any kind or character, identified or described therein, absolutely or when, as and if received by the signer or upon any other contingency stated or referred to therein;

The term "equipment trust certificate" means any writing in and by which the signer sets forth that the person named therein, or the bearer, is entitled to an interest or a share of a specified principal amount or par value in money in a trust under an identified trust indenture pursuant to the terms of which the title to rolling stock or equipment for use by or on the lines or routes of common carriers or to vessels or other marine equipment, is held by the trustees for the benefit of all the holders of the interests or shares.

For the purposes of sections 334.042 to 335.044, the character of any such security receipt or equipment trust certificate is not affected by the inclusion therein of other provisions not limiting the right of transfer and the negotiable quality thereof, as provided in sections 335.042 to 335.044.

[1927 c. 433 s. 1] (7247-1)

335.043 MANNER OF TRANSFER. The title to any security receipt or equipment trust certificate which by its terms entitles the bearer to the benefits thereof, may be transferred by the delivery thereof by any person in possession of the same, howsoever such possession may have been acquired.

The title to any security receipt or equipment trust certificate which by its terms entitles a person named therein to the benefits thereof and which provides, in substance, that title thereto is transferable with the same effect as in the case of a negotiable instrument, may be transferred by delivery thereof by any person in possession of the same, howsoever such possession may have been acquired, if endorsed in blank, or if it is endorsed to a specified person and the delivery is made to such person.

A person to whom title may be transferred, as in this section provided, and who shall have taken any such instrument from any other person for present or antecedent value and without notice of prior defenses or equities or claims of ownership enforceable against such other person, shall have absolute title thereto, free of any defense enforceable against or claims of ownership of the signer or any prior holder. Any holder of any such security receipt or equipment trust certificate, unless the same has been endorsed to a specified person other than the holder and has not been endorsed in blank by such specified person, shall be deemed prima facie to have title thereto, as aforesaid; but when it is shown that the title of any person who has negotiated such instrument is defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder for value and without notice, as aforesaid.

The provisions of this section shall not be applicable to the transfer of any security receipt or equipment trust certificate when it is shown that such transfer was made after the date fixed therein for the performance by the signer of his obligations thereunder, or, if no date is fixed, after the expiration of a reasonable time after the happening of the contingency upon which the signor became obligated to perform.

[1927 c. 433 s. 2] (7247-2)

335.044 NEGOTIABILITY OF INSTRUMENTS NOT AFFECTED. Sections 335.042 to 335.044 shall not be construed to limit or impair the negotiability or quasi

negotiability, by agreement or otherwise, of any instrument, whether or not defined therein. The provisions of those sections shall apply only in respect of instruments issued after the date of the taking effect thereof.

[1927 c 433 s 3] (7247-3)

335.045 VALIDITY AND NEGOTIABILITY NOT AFFECTED, WHEN. The validity and negotiable character of an instrument are not affected by the fact that

- (1) It is not dated; or
- (2) Does not specify the value given, or that any value has been given, therefor; or
- (3) Does not specify the place where it is drawn or the place where it is payable; or
- (4) Bears a seal; or
- (5) Designates a particular kind of current money in which payment is to be made.

Nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

[1913 c. 272 s. 6] (7049)

335.05 PAYABLE ON DEMAND, WHERE. An instrument is payable on demand:

- (1) Where it is expressed to be payable on demand, or at sight, or on presentation; or
- (2) In which no time for payment is expressed.

Where an instrument is issued, accepted, or endorsed when overdue, it is, as regards the person so issuing, accepting, or endorsing it, payable on demand.

[1913 c. 272 s. 7] (7050)

335.051 PAYABLE TO ORDER, WHERE. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

- (1) A payee who is not maker, drawer, or drawee; or
- (2) The drawer or maker; or
- (3) The drawee; or
- (4) Two or more payees jointly; or
- (5) One or more of several payees; or
- (6) The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

An instrument payable to the estate of a deceased person shall be deemed payable to the order of the administrator or executor of his estate.

[1913 c. 272 s. 8; 1929 c. 353] (7051)

335.052 PAYABLE TO BEARER, WHEN. The instrument is payable to bearer:

- (1) When it is expressed to be so payable; or
- (2) When it is payable to a person named therein, or bearer; or
- (3) When it is payable to the order of a fictitious or non-existing person or living person not intended to have any interest in it, and such fact was known to the person making it so payable, or known to his employee or other agent who supplies the name of such payee; or
- (4) When the name of the payee does not purport to be the name of the person;

or

- (5) When the only or last endorsement is an endorsement in blank.

[1913 c 272 s 9; 1953 c 146 s 1] (7052)

335.06 LANGUAGE, WHEN SUFFICIENT. The instrument need not follow the language of this chapter, but any terms are sufficient which clearly indicate an intention to conform to the requirements thereof.

[1913 c. 272 s. 10] (7053)

335.07 DATE, PRIMA FACIE EVIDENCE. Where the instrument or an acceptance or any endorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or endorsement, as the case may be.

[1913 c. 272 s. 11] (7054)

335.071 ANTE-DATED AND POST-DATED. The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

[1913 c. 272 s. 12] (7055)

335.072 UNDATED PAPER. Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but, as to him, the date so inserted is to be regarded as the true date.

[1913 c. 272 s. 13] (7056)

335.08 INCOMPLETED INSTRUMENTS. Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. A signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. If any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

[1913 c. 272 s. 14] (7057)

335.081 INCOMPLETE INSTRUMENT COMPLETED WITHOUT AUTHORITY. Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

[1913 c. 272 s. 15] (7058)

335.09 DELIVERY; WHEN EFFECTUAL; WHEN PRESUMED. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or endorsing, as the case may be; and, in such case, the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. Where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. Where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

[1913 c. 272 s. 16] (7059)

335.10 CONSTRUCTION OF AMBIGUITIES. Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

(1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

(2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

(3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

(4) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

(5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either, at his election;

(6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an endorser;

(7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon. [1913 c. 272 s. 17] (7060)

335.11 LIABILITY OF PERSON SIGNING IN TRADE OR ASSUMED NAME. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. One who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. [1913 c. 272 s. 18] (7061)

335.115 SIGNATURE BY AGENT; AUTHORITY; HOW SHOWN. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose, and the authority of the agent may be established as in other cases of agency. [1913 c. 272 s. 19] (7062)

335.116 AGENT NOT LIABLE, WHERE. Where the instrument contains, or a person adds to his signature, words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. [1913 c. 272 s. 20] (7063)

335.117 SIGNATURE BY PROCURATION; EFFECT OF. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. [1913 c. 272 s. 21] (7064)

335.118 EFFECT OF ENDORSEMENT BY INFANT OR CORPORATION. The endorsement or assignment of the instrument by a corporation, or by an infant, passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon. [1913 c. 272 s. 22] (7065)

335.12 FORGERY. When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority. [1913 c. 272 s. 23] (7066)

CONSIDERATION

335.13 PRESUMPTION OF CONSIDERATION. Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value. [1913 c. 272 s. 24] (7067)

335.131 VALUE. "Value" is any consideration sufficient to support a simple contract. An antecedent or preexisting debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time. [1913 c. 272 s. 25] (7068)

335.132 VALUE PRESUMED. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. [1913 c. 272 s. 26] (7069)

335.133 WHERE HOLDER HAS LIEN. Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. [1913 c. 272 s. 27] (7070)

335.134 ABSENCE OF CONSIDERATION MATTER OF DEFENSE. Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount, or otherwise.

[1913 c. 272 s. 28] (7071)

335.14 ACCOMMODATION PARTY. An "accommodation party" is one who has signed the instrument as maker, drawer, acceptor, or endorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

[1913 c. 272 s. 29] (7072)

NEGOTIATION

335.15 WHAT CONSTITUTES NEGOTIATION. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the endorsement of the holder completed by delivery.

[1913 c. 272 s. 30] (7073)

335.151 ENDORSEMENT, HOW MADE; SUFFICIENCY. The endorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the endorser, without additional words, is a sufficient endorsement.

[1913 c. 272 s. 31] (7074)

335.152 ENDORSEMENT MUST BE ENTIRE. The endorsement must be an endorsement of the entire instrument. An endorsement which purports to transfer to the endorsee a part only of the amount payable, or which purports to transfer the instrument to two or more endorsees severally, does not operate as a negotiation of the instrument. Where the instrument has been paid in part, it may be endorsed as to the residue.

[1913 c. 272 s. 32] (7075)

335.153 KINDS OF ENDORSEMENT. An endorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

[1913 c. 272 s. 33] (7076)

335.154 SPECIAL ENDORSEMENT; ENDORSEMENT IN BLANK. A special endorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the endorsement of such endorsee is necessary to the further negotiation of the instrument. An endorsement in blank specifies no endorsee, and an instrument so endorsed is payable to bearer and may be negotiated by delivery.

[1913 c. 272 s. 34] (7077)

335.155 CONVERSION OF BLANK ENDORSEMENT INTO SPECIAL ENDORSEMENT. The holder may convert a blank endorsement into a special endorsement by writing over the signature of the endorser, in blank, any contract consistent with the character of the endorsement.

[1913 c. 272 s. 35] (7078)

335.16 ENDORSEMENT, WHEN RESTRICTIVE. An endorsement is restrictive which:

- (1) Prohibits the further negotiation of the instrument; or
- (2) Constitutes the endorsee the agent of the endorser; or
- (3) Vests the title in the endorsee in trust for or to the use of some other person.

The mere absence of words implying power to negotiate does not make an endorsement restrictive.

[1913 c. 272 s. 36] (7079)

335.161 RIGHTS CONFERRED BY RESTRICTIVE ENDORSEMENT. A restrictive endorsement confers upon the endorsee the right:

- (1) To receive payment of the instrument;
- (2) To bring any action thereon that the endorser could bring;
- (3) To transfer his rights as such endorsee, where the form of the endorsement authorizes him to do so.

All subsequent endorsees acquire only the title of the first endorsee under the restrictive endorsement.

[1913 c. 272 s. 37] (7080)

335.162 QUALIFIED ENDORSEMENT. A qualified endorsement constitutes the endorser a mere assignor of the title to the instrument. It may be made by adding to the endorser's signature the words "without recourse" or any words of similar import. Such an endorsement does not impair the negotiable character of the instrument.

[1913 c. 272 s. 38] (7081)

335.163 CONDITIONAL ENDORSEMENT. Where an endorsement is conditional, a party required to pay the instrument may disregard the condition and make payment to the endorsee or his transferee, whether the condition has been fulfilled or not. Any person to whom an instrument so endorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person endorsing conditionally.

[1913 c. 272 s. 39] (7082)

335.164 ENDORSEMENT OF INSTRUMENT PAYABLE TO BEARER. Where an instrument, payable to bearer, is endorsed specially it may nevertheless be further negotiated by delivery; but the person endorsing specially is liable as endorser to only such holders as make title through his endorsement.

[1913 c. 272 s. 40] (7083)

335.17 ENDORSEMENT PAYABLE TO TWO OR MORE PERSONS. Where an instrument is payable to the order of two or more payees or endorsees who are not partners, all must endorse, unless the one endorsing has the authority to endorse for the others.

[1913 c. 272 s. 41] (7084)

335.171 ENDORSEMENT TO FISCAL OFFICER. Where an instrument is drawn or endorsed to a person as cashier or other fiscal officer of a bank or corporation it is deemed prima facie to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the endorsement of the bank or corporation, or the endorsement of the officer.

[1913 c. 272 s. 42] (7085)

335.172 NAMES MISSPELLED. Where the name of a payee or endorsee is wrongly designated or misspelled he may endorse the instrument as therein described, adding, if he thinks fit, his proper signature.

[1913 c. 272 s. 43] (7086)

335.173 NEGATIVE PERSONAL LIABILITY. Where any person is under obligation to endorse in a representative capacity he may endorse in such terms as to negative personal liability.

[1913 c. 272 s. 44] (7087)

335.18 PRESUMPTION AS TO TIME OF ENDORSEMENT. Except where an endorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

[1913 c. 272 s. 45] (7088)

335.181 PRESUMPTION AS TO PLACE OF ENDORSEMENT. Except where the contrary appears, every endorsement is presumed prima facie to have been made at the place where the instrument is dated.

[1913 c. 272 s. 46] (7089)

335.182 DURATION OF NEGOTIABLE CHARACTER. An instrument negotiable in its origin continues to be negotiable until it has been restrictively endorsed or discharged by payment or otherwise.

[1913 c. 272 s. 47] (7090)

335.19 STRIKING OUT ENDORSEMENT; EFFECT THEREOF. The holder may at any time strike out any endorsement which is not necessary to his title. The endorser whose endorsement is struck out, and all endorsers subsequent to him, are thereby relieved from liability on the instrument.

[1913 c. 272 s. 48] (7091)

335.195 TRANSFER WITHOUT ENDORSEMENT; EFFECT OF. Where the holder of an instrument payable to his order transfers it for value without endorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the endorsement of the transferor. For the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the endorsement is actually made.

[1913 c. 272 s. 49] (7092)

335.196 WHEN PRIOR PARTY MAY NEGOTIATE INSTRUMENT. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this chapter, re-issue and further negotiate the same. He is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

[1913 c. 272 s. 50] (7093)

RIGHTS OF HOLDER

335.20 HOLDER MAY SUE. The holder of a negotiable instrument may sue thereon in his own name, and payment to him in due course discharges the instrument.

[1913 c. 272 s. 51] (7094)

335.201 HOLDER IN DUE COURSE. A holder in due course is a holder who has taken the instrument under the following conditions:

- (1) That it is complete and regular upon its face;
- (2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
- (3) That he took it in good faith and for value;
- (4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

[1913 c. 272 s. 52] (7095)

335.202 WHEN NOT HOLDER IN DUE COURSE. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

[1913 c. 272 s. 53] (7096)

335.203 NOTICE OF INFIRMITY IN ENDORSEMENT. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

[1913 c. 272 s. 54] (7097)

335.21 DEFECTIVE TITLE. The title of a person who negotiates an instrument is defective within the meaning of this chapter when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

[1913 c. 272 s. 55] (7098)

335.211 ACTUAL KNOWLEDGE OF INFIRMITY NECESSARY TO CHARGE NOTICE. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

[1913 c. 272 s. 56] (7099)

335.22 RIGHTS OF HOLDER IN DUE COURSE. A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

[1913 c. 272 s. 57] (7100)

335.221 HOLDER OTHER THAN IN DUE COURSE. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. A holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

[1913 c. 272 s. 58] (7101)

335.222 BURDEN OF PROOF AS TO TITLE. Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he, or some person under whom he claims, acquired the title as holder in due course. The last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

[1913 c. 272 s. 59] (7102)

LIABILITY OF PARTIES

335.23 LIABILITY OF MAKER. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to endorse.

[1913 c. 272 s. 60] (7103)

335.231 LIABILITY OF DRAWER. The drawer by drawing the instrument admits the existence of the payee and his then capacity to endorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent endorser who may be compelled to pay it. The drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

[1913 c. 272 s. 61] (7104)

335.232 LIABILITY OF ACCEPTOR. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance, and admits:

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

(2) The existence of the payee and his then capacity to endorse.

[1913 c. 272 s. 62] (7105)

335.24 WHEN PERSON DEEMED ENDORSER. A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor, is deemed to be an endorser, unless he clearly indicates, by appropriate words, his intention to be bound in some other capacity.

[1913 c. 272 s. 63] (7106)

335.245 LIABILITY OF IRREGULAR ENDORSER. Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as endorser, in accordance with the following rules:

(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

(2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

(3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

[1913 c. 272 s. 64] (7107)

335.25 WARRANTY WHERE NEGOTIATION BY DELIVERY OR QUALIFIED ENDORSEMENT. Every person negotiating an instrument by delivery, or by a qualified endorsement, warrants:

(1) That the instrument is genuine and in all respects what it purports to be;

(2) That he has a good title to it;

(3) That all prior parties had capacity to contract;

(4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

When the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of clause (3) of this section do not apply to persons negotiating public or corporation securities, other than bills and notes.

[1913 c. 272 s. 65] (7108)

335.255 WARRANTY OF ENDORSER WITHOUT QUALIFICATION. Every endorser who endorses without qualification warrants to all subsequent holders in due course:

(1) The matters and things mentioned in section 335.25, clauses (1), (2), and (3); and

(2) That the instrument is at the time of his endorsement valid and subsisting.

In addition, he engages that, on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent endorser who may be compelled to pay it.

[1913 c. 272 s. 66] (7109)

335.26 LIABILITY OF ENDORSER WHERE PAPER NEGOTIABLE BY DELIVERY. Where a person places his endorsement on an instrument negotiable by delivery he incurs all the liability of an endorser.

[1913 c. 272 s. 67] (7110)

335.261 ENDORSERS PRIMA FACIE LIABLE IN ORDER OF ENDORSEMENT. As respects one another, endorsers are liable *prima facie* in the order in which they endorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint endorsees who endorse are deemed to endorse jointly and severally.

[1913 c. 272 s. 68] (7111)

335.262 LIABILITY OF AN AGENT OR BROKER. Where a broker or other agent negotiates an instrument without endorsement he incurs all the liabilities prescribed by section 335.25, unless he discloses the name of his principal, and the fact that he is acting only as agent.

[1913 c. 272 s. 69] (7112)

PRESENTMENT FOR PAYMENT

335.27 PRESENTMENT, WHEN NECESSARY. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. Except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and endorsers.

[1913 c. 272 s. 70] (7113)

335.271 PRESENTMENT WHERE INSTRUMENT IS NOT PAYABLE ON DEMAND AND WHERE PAYABLE ON DEMAND. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

[1913 c. 272 s. 71] (7114)

335.275 SUFFICIENT PRESENTMENT. Presentment for payment, to be sufficient, must be made:

(1) By the holder, or by some person authorized to receive payment on his behalf;

(2) At a reasonable hour on a business day;

(3) At a proper place as herein defined;

(4) To the person primarily liable on the instrument, or, if he is absent or inaccessible, to any person found at the place where the presentment is made.

[1913 c. 272 s. 72] (7115)

335.276 PRESENTMENT AT PROPER PLACE. Presentment for payment is made at the proper place:

(1) Where a place of payment is specified in the instrument and it is there presented;

(2) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

(3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

(4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

[1913 c. 272 s. 73] (7116)

335.28 INSTRUMENT MUST BE EXHIBITED. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

[1913 c. 272 s. 74] (7117)

335.281 DURING BANKING HOURS. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

[1913 c. 272 s. 75] (7118)

335.282 IN CASE OF DEATH. Where a person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if, with the exercise of reasonable diligence, he can be found.

[1913 c. 272 s. 76] (71119)

335.29 PRESENTMENT TO PERSONS LIABLE AS PARTNERS. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

[1913 c. 272 s. 77] (7120)

335.291 PRESENTMENT TO JOINT DEBTORS. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to all of them.

[1913 c. 272 s. 78] (7121)

335.30 IN ORDER TO CHARGE DRAWER. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

[1913 c. 272 s. 79] (7122)

335.301 IN ORDER TO CHARGE ENDORSER. Presentment for payment is not required in order to charge an endorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

[1913 c. 272 s. 80] (7123)

335.31 DELAY, WHEN EXCUSED. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

[1913 c. 272 s. 81] (7124)

335.311 WHEN DISPENSED WITH. Presentment for payment is dispensed with:

(1) Where, after the exercise of reasonable diligence, presentment as required by this chapter cannot be made;

(2) Where the drawee is a fictitious person;

(3) By waiver of presentment, expressed or implied.

[1913 c. 272 s. 82] (7125)

335.32 DISHONORED BY NON-PAYMENT, WHEN. The instrument is dishonored by non-payment when:

(1) It is duly presented for payment and payment is refused or cannot be obtained; or

(2) Presentment is excused and the instrument is overdue and unpaid.

[1913 c. 272 s. 83] (7126)

335.33 RIGHT OF RECOURSE OF HOLDER. Subject to the provisions of this chapter, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

[1913 c. 272 s. 84] (7127)

335.331 WITHOUT GRACE; MATURITY. Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before 12 o'clock noon on Saturday when that entire day is not a holiday; and, if presented after 12 o'clock noon on Saturday when that entire day is not a holiday, may, at the option of the payor, be then paid.

[1913 c. 272 s. 85; 1917 c. 204 s. 1] (7128)

335.332 TIME; HOW COMPUTED. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

[1913 c. 272 s. 86] (7129)

335.333 RULE WHERE PAYABLE AT BANK. Where the instrument is made payable at a bank it shall not be equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

[1913 c. 272 s. 87] (7130)

335.334 PAYMENT IN DUE COURSE. Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

[1913 c. 272 s. 88] (7131)

NOTICE OF DISHONOR

335.335 NOTICE OF DISHONOR; HOW GIVEN. Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each endorser, and any drawer or endorser to whom such notice is not given is discharged.

[1913 c. 272 s. 89] (7132)

335.351 BY WHOM GIVEN. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given.

[1913 c. 272 s. 90] (7133)

335.352 NOTICE GIVEN BY AGENT. Notice of dishonor may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

[1913 c. 272 s. 91] (7134)

335.353 SUBSEQUENT HOLDERS. Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

[1913 c. 272 s. 92] (7135)

335.354 NOTICE ON BEHALF OF ENTITLED PARTY. Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

[1913 c. 272 s. 93] (7136)

335.355 WHEN AGENT MAY GIVE NOTICE. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal he must do so within the same time as if he were the holder, and the principal, upon receipt of such notice himself, the same time for giving notice as if the agent had been an independent holder.

[1913 c. 272 s. 94] (7137)

335.36 CHARACTER OF NOTICE. A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

[1913 c. 272 s. 95] (7138)

335.365 FORM OF NOTICE. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

[1913 c. 272 s. 96] (7139)

335.37 TO WHOM NOTICE MAY BE GIVEN. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

[1913 c. 272 s. 97] (7140)

335.371 NOTICE WHEN PARTY IS DEAD. When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

[1913 c. 272 s. 98] (7141)

335.372 NOTICE TO PARTNERS. Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

[1913 c. 272 s. 99] (7142)

335.373 NOTICE TO PERSONS JOINTLY LIABLE. Notice to joint parties who are not partners must be given to each of them unless one of them has authority to receive such notice for the others.

[1913 c. 272 s. 100] (7143)

335.374 NOTICE TO BANKRUPT. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

[1913 c. 272 s. 101] (7144)

335.38 WHEN GIVEN. Notice may be given as soon as the instrument is dishonored; and, unless delay is excused as hereinafter provided, must be given within the times fixed by this chapter.

[1913 c. 272 s. 102] (7145)

335.381 WHERE PARTIES RESIDE IN SAME PLACE. Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;

(2) If given at his residence, it must be given before the usual hours of rest on the day following;

(3) If sent by mail, it must be deposited in the post-office in time to reach him in usual course on the day following.

[1913 c. 272 s. 103] (7146)

335.382 WHERE PARTIES RESIDE IN DIFFERENT PLACES. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

(1) If sent by mail, it must be deposited in the post-office in time to go by mail the day following the day of dishonor, or, if there be no mail at a convenient hour on that day, by the next mail thereafter;

(2) If given otherwise than through the post-office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post-office within the time specified in clause (1).

[1913 c. 272 s. 104] (7147)

335.39 BY MAIL. Where notice of dishonor is duly addressed and deposited in the post-office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

[1913 c. 272 s. 105] (7148)

335.391 DEPOSIT IN POST-OFFICE; WHAT CONSTITUTES. Notice is deemed to have been deposited in the post-office when deposited in any branch post-office or in any letter-box under the control of the post-office department.

[1913 c. 272 s. 106] (7149)

335.40 NOTICE TO ANTECEDENT PARTY; TIME OF. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

[1913 c. 272 s. 107] (7150)

335.41 WHERE TO BE SENT. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

(1) Either to the post-office nearest to his place of residence, or to the post-office where he is accustomed to receive his letters; or

(2) If he live in one place, and have his place of business in another, notice may be sent to either place; or

(3) If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

Where the notice is actually received by the party within the time specified in this chapter, it will be sufficient, though not sent in accordance with the requirements of this section.

[1913 c. 272 s. 108] (7151)

335.42 WAIVER OF NOTICE. Notice of dishonor may be waived either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be expressed or implied.

[1913 c. 272 s. 109] (7152)

335.421 WAIVER IN INSTRUMENT. Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an endorser, it binds him only.

[1913 c. 272 s. 110] (7153)

335.422 WAIVER OF PROTEST. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

[1913 c. 272 s. 111] (7154)

335.423 NOTICE, WHEN DISPENSED WITH. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

[1913 c. 272 s. 112] (7155)

335.424 DELAY, WHEN EXCUSED. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

[1913 c. 272 s. 113] (7156)

335.43 NOTICE TO DRAWER, WHERE NOT REQUIRED. Notice of dishonor is not required to be given to the drawer in any of the following cases:

- (1) Where the drawer and drawee are the same person;
- (2) Where the drawee is a fictitious person or a person not having capacity to contract;
- (3) Where the drawer is the person to whom the instrument is presented for payment;
- (4) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
- (5) Where the drawer has countermanded payment.

[1913 c. 272 s. 114] (7157)

335.431 NOTICE TO ENDORSER, WHERE NOT REQUIRED. Notice of dishonor is not required to be given to an endorser in any of the following cases:

- (1) Where the drawee is a fictitious person or a person not having capacity to contract, and the endorser was aware of the fact at the time he endorsed the instrument;
- (2) Where the endorser is the person to whom the instrument is presented for payment;
- (3) Where the instrument was made or accepted for his accommodation.

[1913 c. 272 s. 115] (7158)

335.432 NOTICE OF SUBSEQUENT DISHONOR. Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

[1913 c. 272 s. 116] (7159)

335.433 OMISSION TO GIVE NOTICE. An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

[1913 c. 272 s. 117] (7160)

335.44 PROTEST, WHEN MUST BE MADE. Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

[1913 c. 272 s. 118] (7161)

DISCHARGE OF NEGOTIABLE INSTRUMENTS

335.45 WHEN AND HOW DISCHARGED. A negotiable instrument is discharged:

- (1) By payment in due course by or on behalf of the principal debtor;
- (2) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;
- (3) By the intentional cancellation thereof by the holder;
- (4) By any other act which will discharge a simple contract for the payment of money;

(5) When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

[1913 c. 272 s. 119] (7162)

335.451 DISCHARGE FROM SECONDARY LIABILITY. A person secondarily liable on the instrument is discharged:

- (1) By any act which discharges the instrument;
- (2) By the intentional cancellation of his signature by the holder;
- (3) By the discharge of a prior party;
- (4) By a valid tender of payment made by a prior party;
- (5) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;
- (6) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

[1913 c. 272 s. 120] (7163)

335.452 RIGHT OF PARTY WHO DISCHARGES INSTRUMENT. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent endorsements, and again negotiate the instrument, except:

- (1) Where it is payable to the order of a third person, and has been paid by the drawer; and
- (2) Where it was made or accepted for accommodation, and has been paid by the party accommodated.

[1913 c. 272 s. 121] (7164)

335.46 RENUNCIATION OF RIGHTS BY HOLDER. The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. A renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

[1913 c. 272 s. 122] (7165)

335.47 CANCELANON BY MISTAKE; BURDEN OF PROOF. A cancelation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled, the burden of proof lies on the party who alleges that the cancelation was made unintentionally, or under a mistake or without authority.

[1913 c. 272 s. 123] (7166)

335.48 ALTERATION OF INSTRUMENT; EFFECT OF. Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized, or assented to the alteration, and subsequent endorers.

When an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

[1913 c. 272 s. 124] (7167)

335.481 WHAT CONSTITUTES A MATERIAL ALTERATION. Any alteration which changes:

- (1) The date;
- (2) The sum payable either for principal or interest;
- (3) The time or place of payment;
- (4) The number or the relations of the parties;
- (5) The medium or currency in which payment is to be made; or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

[1913 c. 272 s. 125] (7168)

BILLS OF EXCHANGE; FORM; INTERPRETATION

335.49 BILL OF EXCHANGE. A bill of exchange is an unconditional order, in writing, addressed by one person to another, signed by the person giving it,

requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer.

[1913 c. 272 s. 126] (7169)

335.491 NOT AN ASSIGNMENT OF FUNDS. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

[1913 c. 272 s. 127] (7170)

335.492 ADDRESS OF BILL. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

[1913 c. 272 s. 128] (7171)

335.50 INLAND AND FOREIGN BILL. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

[1913 c. 272 s. 129] (7172)

335.501 WHEN BILL MAY BE TREATED AS PROMISSORY NOTE. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

[1913 c. 272 s. 130] (7173)

335.502 REFEREE IN CASE OF NEED. The drawer of a bill and any endorser may insert thereon the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit.

[1913 c. 272 s. 131] (7174)

ACCEPTANCES

335.51 ACCEPTANCE, HOW MADE. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

[1913 c. 272 s. 132] (7175)

335.511 HOLDER MAY REQUIRE ACCEPTANCE IN WRITING. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored

[1913 c. 272 s. 133] (7176)

335.512 ACCEPTANCE BY SEPARATE INSTRUMENT. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

[1913 c. 272 s. 134] (7177)

335.513 PROMISE IN WRITING. An unconditional promise, in writing, to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

[1913 c. 272 s. 135] (7178)

335.52 TIME ALLOWED FOR ACCEPTANCE. The drawee is allowed 24 hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation.

[1913 c. 272 s. 136] (7179)

335.53 REFUSAL OR FAILURE TO RETURN. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses, within 24 hours after such delivery or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

[1913 c. 272 s. 137] (7180)

335.531 ACCEPTANCE BEFORE SIGNING. A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-

payment. When a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

[1913 c. 272 s. 138] (7181)

335.532 KINDS OF ACCEPTANCES. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

[1913 c. 272 s. 139] (7182)

335.533 WHAT CONSTITUTES A GENERAL ACCEPTANCE. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

[1913 c. 272 s. 140] (7183)

335.54 QUALIFIED ACCEPTANCE. An acceptance is qualified which is:

(1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

(2) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(3) Local, that is to say, an acceptance to pay only at a particular place;

(4) Qualified as to time;

(5) The acceptance of some one or more of the drawees, but not of all.

[1913 c. 272 s. 141] (7184)

335.541 RIGHTS OF PARTIES AS TO QUALIFIED ACCEPTANCE. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken the drawer and endorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an endorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto.

[1913 c. 272 s. 142] (7185)

PRESENTMENT FOR ACCEPTANCE

335.55 PRESENTMENT FOR ACCEPTANCE; WHERE MADE. Presentment for acceptance must be made:

(1) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

(2) Where the bill expressly stipulates that it shall be presented for acceptance; or

(3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

[1913 c. 272 s. 143] (7186)

335.551 EFFECT OF FAILURE TO PRESENT OR NEGOTIATE. Except as herein otherwise provided, the holder of a bill which is required by section 335.55 to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all endorsers are discharged.

[1913 c. 272 s. 144] (7187)

335.56 PRESENTMENT, WHEN AND WHERE MADE. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and

(1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to all of them, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

(2) Where the drawee is dead, presentment may be made to his personal representative;

(3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

[1913 c. 272 s. 145] (7188)

335.561 ON WHAT DAYS PRESENTMENT MAY BE MADE. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 335.275 and 335.331. When Saturday is not otherwise a holiday, presentment for acceptance may be made before 12 o'clock, noon, on that day.

[1913 c. 272 s. 146] (7189)

335.57 DELAY, WHEN EXCUSABLE. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and endorsers.

[1913 c. 272 s. 147] (7190)

335.571 WHERE PRESENTMENT IS EXCUSED. Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance in any of the following cases:

(1) Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill;

(2) Where, after the exercise of reasonable diligence, presentment cannot be made;

(3) Where, although presentment has been irregular, acceptance has been refused on some other ground.

[1913 c. 272 s. 148] (7191)

335.58 WHEN DISHONORED. A bill is dishonored by non-acceptance:

(1) When it is duly presented for acceptance and such an acceptance as is prescribed by this chapter is refused or cannot be obtained; or

(2) When presentment for acceptance is excused and the bill is not accepted.

[1913 c. 272 s. 149] (7192)

335.581 RECOURSE, WHERE LOST. Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and endorsers.

[1913 c. 272 s. 150] (7193)

335.582 WHEN RECOURSE ACCRUES. When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and endorsers accrues to the holder and no presentment for payment is necessary.

[1913 c. 272 s. 151] (7194)

PROTEST

335.59 PROTEST, WHEN NECESSARY. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment it must be duly protested for non-payment. If it is not so protested, the drawer and endorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

[1913 c. 272 s. 152] (7195)

335.591 SPECIFICATION OF PROTEST. The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

(1) The time and place of presentment;

(2) The fact that presentment was made, and the manner thereof;

(3) The cause or reason for protesting the bill;

(4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

[1913 c. 272 s. 153] (7196)

335.592 PROTEST; BY WHOM MADE. Protest may be made by:

(1) A notary public; or

(2) Any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

[1913 c. 272 s. 154] (7197)

335.593 PROTEST; WHEN TO BE MADE. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

[1913 c. 272 s. 155] (7198)

335.594 PROTEST; WHERE MADE. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

[1913 c. 272 s. 156] (7199)

335.60 PROTEST FOR NON-ACCEPTANCE AND NON-PAYMENT. A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

[1913 c. 272 s. 157] (7200)

335.61 PROTEST BEFORE MATURITY WHERE ACCEPTOR A BANKRUPT. Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and endorsers.

[1913 c. 272 s. 158] (7201)

335.62 WHEN PROTEST DISPENSED WITH. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

[1913 c. 272 s. 159] (7202)

335.621 LOST BILL. When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

[1913 c. 272 s. 160] (7203)

ACCEPTANCE FOR HONOR

335.63 ACCEPTANCE SUPRA PROTEST FOR HONOR. Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for the part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

[1913 c. 272 s. 161] (7204)

335.631 ACCEPTANCE FOR HONOR TO BE IN WRITING. An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

[1913 c. 272 s. 162] (7205)

335.632 FOR DRAWER, WHEN. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

[1913 c. 272 s. 163] (7206)

335.633 LIABILITY OF ACCEPTOR FOR HONOR. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

[1913 c. 272 s. 164] (7207)

335.634 ENGAGEMENT OF ACCEPTOR FOR HONOR. The acceptor for honor by such acceptance engages that he will, on due presentment, pay the bill

according to the terms of his acceptance, provided it shall not have been paid by the drawee; and, provided, also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given him.

[1913 c. 272 s. 165] (7208)

335.64 BILL PAYABLE AFTER SIGHT; ACCEPTED FOR HONOR. Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

[1913 c. 272 s. 166] (7209)

335.641 ACCEPTANCE OF DISHONORED BILL. Where a dishonored bill has been accepted for honor supra protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

[1913 c. 272 s. 167] (7210)

335.65 PRESENTMENT TO ACCEPTOR; HOW MADE. Presentment for payment to the acceptor for honor must be made as follows:

(1) If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity;

(2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 335.382.

[1913 c. 272 s. 168] (7211)

335.651 DELAY; SECTION 335.31 APPLIES. The provisions of section 335.31 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

[1913 c. 272 s. 169] (7212)

335.66 DISHONOR OF BILL BY ACCEPTOR FOR HONOR. When the bill is dishonored by the acceptor for honor, it must be protested for non-payment by him.

[1913 c. 272 s. 170] (7213)

PAYMENT FOR HONOR

335.67 SUPRA PROTEST. Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

[1913 c. 272 s. 171] (7214)

335.671 NOTARIAL ACT OF HONOR WHERE NECESSARY. The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

[1913 c. 272 s. 172] (7215)

335.672 FOUNDATION OF NOTARIAL ACT. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

[1913 c. 272 s. 173] (7216)

335.673 PREFERENCE OF PARTIES OFFERING TO PAY FOR HONOR. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

[1913 c. 272 s. 174] (7217)

335.674 PAYER FOR HONOR ENTITLED TO SUBROGATION. Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

[1913 c. 272 s. 175] (7218)

335.68 HOLDER'S REFUSAL, SUPRA PROTEST. Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

[1913 c. 272 s. 176] (7219)

335.69 RIGHTS OF PAYER FOR HONOR. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

[1913 c. 272 s. 177] (7220)

BILLS IN SET

335.70 BILLS IN SETS CONSTITUTE ONE BILL. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

[1913 c. 272 s. 178] (7221)

335.701 RIGHT OF HOLDERS WHERE PARTS ARE NEGOTIATED. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. Nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

[1913 c. 272 s. 179] (7222)

335.702 LIABILITY OF HOLDER WHO ENDORSES TWO OR MORE PARTS OF A SET TO DIFFERENT PERSONS. Where the holder of a set endorses two or more parts to different persons he is liable on every such part, and every endorser subsequent to him is liable on the part he has himself endorsed, as if such parts were separate bills.

[1913 c. 272 s. 180] (7223)

335.703 ACCEPTANCE ON ANY PART. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

[1913 c. 272 s. 181] (7224)

335.704 LIABILITY OF ACCEPTOR IN PAYING PART. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

[1913 c. 272 s. 182] (7225)

335.71 EFFECT OF DISCHARGING ONE OF A SET. Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

[1913 c. 272 s. 183] (7226)

PROMISSORY NOTES, CHECKS

335.72 PROMISSORY NOTE. A negotiable promissory note within the meaning of this chapter is an unconditional promise, in writing, made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until endorsed by him.

[1913 c. 272 s. 184] (7227)

335.73 CHECK IS BILL OF EXCHANGE. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this chapter applicable to a bill of exchange payable on demand apply to a check.

[1913 c. 272 s. 185] (7228)

335.74 WITHIN WHAT TIME A CHECK MUST BE PRESENTED. A check must be presented for payment within a reasonable time after its issue, or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

[1913 c. 272 s. 186] (7229)

335.741 CERTIFIED CHECK. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

[1913 c. 272 s. 187] (7230)

335.742 EFFECT WHERE HOLDER OF CHECK PROCURES IT TO BE CERTIFIED. Where the holder of a check procures it to be accepted or certified, the drawer and all endorsers are discharged from liability thereon.

[1913 c. 272 s. 188] (7231)

335.743 CHECK NOT ASSIGNMENT OF FUNDS. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

[1913 c. 272 s. 189] (7232)

335.75 BANKS RECEIVING ITEMS FOR DEPOSIT OR COLLECTION; ACTING ONLY AS COLLECTING AGENT FOR DEPOSITOR; LIABILITY. Any bank, savings bank, or trust company (hereinafter called "bank") doing business in this state, in receiving items for deposit or collection, in the absence of a written agreement to the contrary, shall act only as the depositor's collecting agent and shall have no responsibility beyond the exercise of due care. All such items shall be credited subject to final payment in cash or solvent credits. Such bank shall not be liable for default or negligence of its duly selected correspondents nor for losses in transit, and each correspondent so selected shall not be liable except for its own negligence. Such bank or correspondent may send items, directly or indirectly, to any bank including the payer, and accept its draft, check, or credit as conditional payment in lieu of cash. It may charge back any item at any time before final payment, whether returned or not.

[1927 c. 138 s. 1] (7233-1)

GENERAL PROVISIONS

335.76 [Unnecessary]

335.77 PERSON PRIMARILY LIABLE ON INSTRUMENT. The person primarily liable on an instrument is the person who, by the terms of the instrument, is absolutely required to pay the same. All other parties are secondarily liable.

[1913 c. 272 s. 192] (7236)

335.78 REASONABLE TIME, WHAT CONSTITUTES. In determining what is a reasonable time or an unreasonable time, regard is to be had to the nature of the instrument, the usage of trade or business, if any, with respect to such instruments, and the facts of the particular case.

[1913 c. 272 s. 193] (7237)

335.781 TIME, HOW COMPUTED; WHEN LAST DAY FALLS ON HOLIDAY. Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

[1913 c. 272 s. 194] (7238)

335.79 APPLICATION. The provisions of this chapter do not apply to negotiable instruments made and delivered prior to the taking effect thereof, nor shall they be construed as modifying, repealing, or superseding any of the terms and provisions of section 334.12.

[1913 c. 272 s. 195] (7239)

335.80 CASES NOT PROVIDED FOR. In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall govern.

[1913 c. 272 s. 196] (7240)