

**A GENERAL ACT
RELATIVE TO NEGOTIABLE
INSTRUMENTS**

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A general act relative to negotiable instruments by Various

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VARIOUS

**A GENERAL ACT
RELATIVE TO NEGOTIABLE
INSTRUMENTS**

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AN ACT

RELATIVE TO

NEGOTIABLE INSTRUMENTS.

APPROVED JUNE 15, 1898.

TO TAKE EFFECT JANUARY 1, 1899.

BOSTON CLEARING HOUSE.

1898.

Massachusetts. Laws, Statutes, &c. Commercial Law

A GENERAL ACT^{c†}

RELATIVE TO

NEGOTIABLE INSTRUMENTS

(BEING AN ACT TO ESTABLISH A LAW UNIFORM WITH THE
LAWS OF OTHER STATES ON THAT SUBJECT),

EMBODYING THE GENERAL AND MOST RECENTLY ACCEPTED
PRINCIPLES OF THE LAW OF

BILLS OF EXCHANGE, PROMISSORY NOTES
AND CHECKS.

BOSTON CLEARING HOUSE.

1898.

INTRODUCTORY.

IMPORTANT CHANGES.

The Negotiable Instruments Act, herein printed, was passed for the sake of uniformity of law in matters of business throughout the United States, and hence necessarily changed the law of every State adopting it in some particulars. The changes are, however, rather slighter in Massachusetts than in other States (notably New York), and the temporary inconvenience caused to merchants and bankers by the adoption of the new law will be far more than compensated by the certainty that the law is the same throughout the United States, as it is confidently hoped will be the case in a few years; the statute having already been adopted in the important commercial States of New York, Massachusetts, Connecticut, Maryland, Virginia, also in Colorado and Florida, and having passed the House of Representatives at Washington by a unanimous vote.

The following States hold session of the Legislature during the ensuing winter, and in all of them it is hoped the bill will be introduced and brought to a successful passage:—

Alabama,	Kansas,	New Hampshire,	Tennessee,
Arkansas,	Maine,	North Carolina,	Texas,
California,	Michigan,	North Dakota,	Vermont,
Delaware,	Minnesota,	Oregon,	Washington,
Florida,	Missouri,	Pennsylvania,	West Virginia,
Idaho,	Montana,	Rhode Island,	Wisconsin,
Illinois,	Nebraska,	South Carolina,	Wyoming.
Indiana,	Nevada,	South Dakota,	

The more important changes of the law are as follows (the statute in full being printed hereafter):—

Section 7 abolishes the discussion between instruments payable on demand and payable at sight.

Section 9 affirms clearly the law that an instrument payable to the order of fictitious or non-existing persons is held payable to bearer if so made with knowledge of the maker.

SECTION 17, paragraph 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 indorser."

In some States, under prior existing law, a person so signing was held a joint maker, and in other States a guarantor.

SECTION 20. "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."

SECTION 24. "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."

This has always been the law of the mercantile world in general, but there have been some anomalous decisions on the point in Massachusetts.

SECTION 25. "Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time."

This section wholly changes the law of the State of New York, but is believed to be in accordance with our own decisions.

SECTION 28. "Absence or failure of consideration is matter of defence as against any person not a holder in due course; and partial failure of consideration is a defence pro tanto whether the failure is an ascertained and liquidated amount or otherwise."

SECTION 29. "An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, 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."

See note to Section 24 on page 4.

SECTION 36. "An indorsement is restrictive, which either:

"1. Prohibits the further negotiation of the instrument; or

"2. Constitutes the indorsee the agent of the indorser; or

"3. Vests the title in the indorsee in trust for or to the use of some other person.

"But the mere absence of words implying power to negotiate does not make an indorsement restrictive."

Especial attention is called to paragraph 3 of this section as embodying indorsements "for collection," and the law as to such is stated in Section 37.

SECTION 37. "A restrictive indorsement confers upon the indorsee the right:

"1. To receive payment of the instrument;

"2. To bring any action thereon that the indorser could bring;

"3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

"But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement."

SECTION 42. "Where an instrument is drawn or indorsed 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 either by the indorsement of the bank or corporation, or by the indorsement of the officer."

Somewhat amplifies the present rule.

SECTION 46. "Except where the contrary appears every indorsement is presumed prima facie to have been made at the place where the instrument is dated."

As the effect of an indorsement is determined by the law of the State where the indorsement is made, this section is important.

SECTION 53. "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."

This changes the present demand-note rule of sixty days.

SECTION 63. "A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity."

In some States such a person is now held to be a joint maker, in other States a guarantor. The prior existing law merely provided for notice to such a party as indorser, if he signed in blank on the back. The following section declares the law as to such party:—

SECTION 64. "Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser 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."

SECTION 65. "Every person negotiating an instrument by delivery or by qualified indorsement 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.

"But when the negotiation is by delivery only the warranty extends in favor of no holder other than the immediate transferee.

"The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes."

The importance of this section requires no comment, and the following sections complete the subject:—

SECTION 66. "Every indorser who indorses without qualification warrants to all subsequent holders in due course:

"1. The matters and things mentioned in subdivisions one, two and three of the next preceding section; and

"2. That the instrument is at the time of his indorsement valid and subsisting.

"And, 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 is dishonored, and the necessary proceedings on dishonor are duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it."

SECTION 67. "Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liability of an indorser."

Section 71 allows a demand note to be presented within a reasonable time after its issue, and a bill of exchange within a reasonable time after its last negotiation, changing the present sixty-day rule.

Section 85 abolishes grace in all instruments, including sight and demand, and makes them payable and presentable the following day, if maturing on Sundays or holidays, and requires instruments falling due on Saturday to be presented on the next succeeding business day, except those payable on demand.

SECTION 87. "Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon."

This section possibly changes the law in Massachusetts, though it is generally part of the law merchant in other States and countries.

Section 124 discusses the effect of a material alteration, making the alteration void, instead of the instrument, in the hands of a holder in due course, and validating the instrument against an indorser subsequent to the alteration.

Section 132 destroys the peculiar Massachusetts doctrine of verbal or parol acceptance of bills of exchange, and requires all acceptances to be in writing; and Section 136 slightly alters the time for acceptance, making it twenty-four hours after presentation instead of until two o'clock on the following day.

SECTION 185. "A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise