

AN ACT

IN RELATION TO NEGOTIABLE INSTRUMENTS.

CHAPTER FIRST.—NEGOTIABLE INSTRUMENTS IN GENERAL.

Be it enacted by the Governor and Legislative Assembly of the Territory of Utah;

Article First.—General Definitions.

Sec. 1. That a negotiable instrument is a written promise or request for the payment of a certain sum of money to order or bearer, in conformity to the provisions of this act.

Sec. 2. A negotiable instrument must be made payable in money only, and without any condition not certain of fulfillment.

Sec. 3. The person to whose order a negotiable instrument is made payable must be ascertainable at the time the instrument is made.

Sec. 4. A negotiable instrument may give to the payee an option between the payment of the sum specified therein and the performance of another act; but as to the latter, the instrument is not within the provisions of this act.

Sec. 5. A negotiable instrument may be with or without date, and with or without designation of the time or place of payment.

Sec. 6. A negotiable instrument may contain a pledge of collateral security, with authority to dispose thereof.

Sec. 7. A negotiable instrument must not contain any other contract than such as is specified in this article.

Sec. 8. Any date may be inserted by the maker of a negotiable instrument, whether past, present or future, and the instrument is not invalidated by his death or incapacity at the time of the nominal date.

Sec. 9. There are six classes of negotiable instruments, namely: 1st, bills of exchange; 2nd, promissory notes; 3d, bank notes; 4th, checks; 5th, bonds; 6th, certificates of deposit.

Article Second.—Interpretation of Negotiable Instruments.

Sec. 10. A negotiable instrument which does not specify the time of payment is payable immediately.

Sec. 11. A negotiable instrument which does not specify a place of payment is payable at the residence or place of business of the maker, or wherever he may be found.

Sec. 12. An instrument, otherwise negotiable in form, payable to a person named, but with the words added, "or to his order," or "to bearer," or words equivalent thereto, is in the former case payable to the written order of such person and in the latter case payable to the bearer.

Sec. 13. A negotiable instrument, made payable to the order of the maker, or of a fictitious person, if issued by the maker for a valid consideration, without indorsement, has the same effect against him and all other persons having notice of the fact, as if payable to the bearer.

Sec. 14. A negotiable instrument, made payable to the order of a person obviously fictitious, is payable to the bearer.

Sec. 15. The signature of every drawer, acceptor and indorser of a negotiable instrument is presumed to have been made for a valuable consideration, before the maturity of the instrument, and in the ordinary course of business.

Article Third.—Indorsements.

Sec. 16. One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it, with his name thereon, to another person, is called an indorser, and his act is called indorsement.

Sec. 17. One who agrees to indorse a negotiable instrument is bound to write his signature upon the back of the instrument, if there is sufficient space thereon for that purpose.

Sec. 18. When there is not room for a signature upon the back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto.

Sec. 19. An indorsement may be general or special.

Sec. 20. A general indorsement is one by which no indorsee is named.

Sec. 21. A special indorsement specifies the indorsee.

Sec. 22. A negotiable instrument bearing a general indorsement cannot be afterwards specially indorsed; but any lawful holder may turn a general indorsement into a special one, by writing above it a direction for payment to a particular person.

Sec. 23. A special indorsement may be expressed by words for that purpose, but not otherwise, so made as to render the instrument not negotiable.

Sec. 24. Every indorser of a negotiable instrument unless his indorsement is qualified warrants to every subsequent holder thereof, who is not liable thereon to him; 1st, that it is in all respects what it purports to be; 2nd, that he has a good title to it; 3rd, that the signatures of all prior parties are binding upon them; 4th, that if the instrument is dishonored, the indorser will upon notice thereof duly given to him, or without notice where it is excused by law, pay the same with interest, unless exonerated under the provisions of sections 71, 109 and 111.

Sec. 25. One who indorses a negotiable instrument before it is delivered to the payee, is liable to the payee thereon as an indorser.

Sec. 26. An indorser may qualify his indorsement with the words, "without recourse," or equivalent words; and upon such indorsement, he is responsible only to the same extent as in the case of a transfer without indorsement.

Sec. 27. Except as otherwise prescribed by the last section, an indorsement without recourse has the same effect as any other indorsement.

Sec. 28. An indorsee of a negotiable instrument has the same rights against every prior party thereto that he would have had if the contract had been made directly between them in the first instance.

Sec. 29. The want of a consideration for the undertaking of a maker, acceptor or indorser of a negotiable instrument does not exonerate him from liability thereon to an indorsee in good faith for a consideration.

Sec. 30. An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer.

Sec. 31. An indorsee of a negotiable instrument, in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it.

Sec. 32. One who makes himself a party to an instrument intended to be negotiable, but which is left partly in blank for the purpose of filling afterwards, is liable upon the instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filled, so long as it remains negotiable in form.

Article Fourth.—Presentment for Payment.

Sec. 33. It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument in order to charge to him, but if the instrument is by its terms payable at a specified place and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment upon his part.

Sec. 34. Presentment of a negotiable instrument for payment, when necessary, must be made as follows: as nearly as by reasonable diligence is practicable: 1st, The instrument must be presented by the holder; 2nd, The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made, and if not, then it must be presented to some other person having charge thereof or employed therein, if one can be found there; 3rd, An instrument which specifies a place for its payment must be presented there, and if the place specified includes more than one house, then at the place of residence or business of the principal debtor if it can be found there; 4th, An instrument which does not specify a place for its payment must be presented at the place of residence or business of the principal debtor, or wherever he may be found, at the option of the presenter; 5th, The instrument must be presented upon the day of its maturity, or, if it be payable on demand, it may be presented upon any day; it must be presented within reasonable hours, and if it be payable at a banking house, within the usual banking hours of the vicinity, but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day; and 6th, If the principal debtor have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for payment is excused.

Sec. 35. The apparent maturity of a negotiable instrument payable at a particular time, is the day on which its terms it becomes due, or when that is a holiday, the next preceding business day, except when such preceding day is also a holiday, in the latter event such instrument shall become due on the next succeeding business day.

Sec. 36. A bill of exchange, payable at a certain time after sight, which is not accepted within ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance, is presumed to have been dishonored.

Sec. 37. The apparent maturity of a bill of exchange payable at sight or on demand is 1st, if it bears interest, one year after its date; or, 2nd, if it does not bear interest, ten days after its date in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

Sec. 38. The apparent maturity of a promissory note payable at sight or on demand is, 1st, if it bears interest, one year after its date; or, 2nd, if it does not bear interest, six months after its date.

Sec. 39. When a promissory note is payable at a certain time after sight or demand, such time is to be added to the periods mentioned in the preceding section.

Sec. 40. A party to a negotiable instrument may require, as a condition concurrent to its payment by him, 1st, That the instrument be surrendered to him, unless it is lost or destroyed, or the holder has other claims upon it; or, 2nd, If the holder has a right to retain the instrument and does retain it, then that a receipt for the amount paid or an exoneration of the party paying be written thereon; or, 3d, If the instrument is lost or destroyed, then that the holder give to him a bond, executed by himself and two sufficient sureties, to indemnify him against any lawful claim thereon.

Article Fifth.—Dishonor of Negotiable Instruments.

Sec. 41. A negotiable instrument is dishonored when it is either not paid or not accepted, according to its tenor, or presentment for that purpose, or without presentment where that is excused.

Sec. 42. Notice of the dishonor of a negotiable instrument may be given, 1st, by a holder thereof; or, 2nd, by any party to the instrument who might be compelled to pay it to the holder, and who would upon taking it up have a right to reimbursement from the party to whom the notice is given.

Sec. 43. A notice of dishonor may be given in any form which describes the instrument with reasonable certainty, and substantially informs the party receiving

it that the instrument has been dishonored.

Sec. 44. A notice of dishonor may be given, 1st, by delivering it to the party to be charged, personally, at any place; or, 2nd, by delivering it to some person of discretion at the place of residence or business of such party apparently acting for him; or, 3rd, by properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the post office most conveniently accessible from the place where the presentment was made and paying the postage thereon.

Sec. 45. In case of the death of a party to whom the notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives; or if there are none, then to any member of his family who resided with him at his death; or, if there is none, then it must be mailed to his last place of residence, as prescribed by subdivision 3 of the last section.

Sec. 46. A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid.

Sec. 47. Notice of dishonor, when given by the holder of an instrument or his agent, otherwise than by mail, must be given on the day of dishonor, or on the next business day thereafter.

Sec. 48. When notice of dishonor is given by mail, it must be deposited in the post office in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored for the place to which the notice should be sent.

Sec. 49. When the holder of a negotiable instrument, at the time of its dishonor, is a mere agent for the owner, it is sufficient for him to give notice to his principal in the same manner as to an indorser, and his principal may give notice to any other party to be charged, as if he were himself an indorser. And if an agent of the owner employs a sub-agent, it is sufficient for each successive agent or sub-agent to give notice in like manner to his own principal.

Sec. 50. Every party to a negotiable instrument receiving notice of its dishonor has the like time thereafter to give similar notice to prior parties as the original holder had after its dishonor, but this additional time is available only to the particular party entitled thereto.

Sec. 51. A notice of the dishonor of a negotiable instrument, if valid, in favor of the party giving it, inures to the benefit of all other parties thereto whose right to give the like notice has not then been lost.

Article Sixth.—Excuse of Presentment and Notice.

Sec. 52. Notice of dishonor is excused; 1st, when the party by whom it should be given cannot with reasonable diligence, ascertain either the place of residence or business of the party to be charged; or, 2nd, when there is no post office communication between the town of the party by whom the notice should be given, and the town in which the place of residence or business of the party to be charged is situated; or, 3rd, when the party to be charged is the same person who dishonors the instrument; or, 4th, when the notice is waived by the party entitled thereto.

Sec. 53. Presentment and notice are excused as to any party to a negotiable instrument, who informs the holder, within ten days before its maturity, that it will be dishonored.

Sec. 54. If before or after the maturity of an instrument an indorser has received full security for the amount thereof, or the maker has assigned all his estate to him as such security presentment and notice to him are excused.

Sec. 55. Delay in presentment, or in giving notice of dishonor, is excused when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence.

Sec. 56. A waiver of presentment waives notice of dishonor also; unless the contrary is expressly stipulated; but a waiver of notice does not waive presentment.

Sec. 57. A waiver of protest on any negotiable instrument other than a foreign bill of exchange waives presentment and notice.

Article Eighth.—Extinction of Negotiable Instruments.

Sec. 58. The obligation of a party to a negotiable instrument is extinguished: 1st, in like manner with that of parties to contracts in general; or, 2nd, by payment of the amount due upon the instrument at or after its maturity, in good faith and in the ordinary course of business to any person having actual possession thereof and entitled by its terms to payment.

CHAPTER SECOND.—BILLS OF EXCHANGE.

Article First.—Form and Interpretation of a Bill.

Sec. 59. A bill of exchange is an instrument negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money.

Sec. 60. A bill of exchange may give the name of any person in addition to the drawee, to be resorted to in case of need.

Sec. 61. A bill of exchange may be drawn in any number of parts, each part stating the existence of the others, and all forming one set.

Sec. 62. An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it.

Sec. 63. Presentment, acceptance or payment of a single part in a set of a bill of exchange is sufficient for the whole.

Sec. 64. A bill of exchange is payable; 1st, at the place where by its terms it is made payable; or, 2nd, if it specifies no place of payment, then at the place to which it is addressed; or, 3rd, if it is not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business, or residence cannot with reasonable diligence be ascertained, pre-

sentment for payment is excused, and the bill may be protested for non-payment.

Sec. 65. The rights and obligations of the drawer of a bill of exchange are the same as those of the first indorser of any negotiable instrument.

Article Second.—Days of Grace.

Sec. 66. Days of grace are not allowed.

Article Third.—Presentment for Acceptance.

Sec. 67. At any time before a bill of exchange is payable, the holder may present it to the drawee for acceptance, and if acceptance is refused the bill is dishonored.

Sec. 68. Presentment for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable: 1st. The bill must be presented by the holder or his agent. 2nd. It must be presented on a business day and within reasonable hours. 3rd. It must be presented to the drawee; or if he be absent from his place of residence or business, to some person having charge thereof or employed therein; and, 4th, the drawee on such presentment may postpone his acceptance or refusal until the next business day, but if the drawee have no place of business, or if his place of business or residence cannot with reasonable diligence be ascertained, presentment for acceptance is excused and the bill may be protested for non-acceptance.

Sec. 69. Presentment for acceptance to one of the several joint drawees and refusal by him, dispenses with presentment to the others.

Sec. 70. A bill of exchange which specifies a drawee in case of need must be presented to him for acceptance or payment, as the case may be, before it can be treated as dishonored.

Sec. 71. When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated if it is not presented for acceptance within ten days after the time which would suffice with ordinary diligence, to forward it for acceptance, unless presentment is excused.

Article Fourth.—Acceptance.

Sec. 72. An acceptance of a bill must be made in writing by the drawee, or by an acceptor for honor, and may be made by the acceptor writing his name across the face of the bill, with or without other words.

Sec. 73. The holder of a bill of exchange if entitled to an acceptance thereof, may treat the bill as dishonored if the drawee refuses to write across its face an unqualified acceptance.

Sec. 74. The holder of a bill of exchange may without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance; 1st, an acceptance written upon any part of the bill, or upon a separate paper; 2nd, an acceptance qualified so far only as to make the bill payable at a particular place within the city or town in which, if the acceptance was unqualified, it would be payable; or, 3rd, a refusal by the drawee to return the bill to the holder after presentment, in which case the bill is payable immediately without regard to its terms.

Sec. 75. The acceptance of a bill of exchange, by a separate instrument binds the acceptor to one, who, upon the faith thereof, has the bill for value or other good consideration.

Sec. 76. An unconditional promise, in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person who upon the faith thereof has taken the bill for value or other good consideration.

Sec. 77. The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder, and before the holder has, with the consent of the acceptor, transferred its title to another person, who has given value for it upon the faith of such acceptance.

Sec. 78. The acceptance of a bill of exchange admits the signature of the drawer, but does not admit the signature of any indorser to be genuine.

Article Fifth.—Acceptance and Payment for Honor.

Sec. 79. On the dishonor of a bill of exchange by the drawee, and in case of a foreign bill, after it has been duly protested, it may be accepted or paid by any person, for the honor of any party thereto.

Sec. 80. The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor.

Sec. 81. An acceptor or payor for honor must write a memorandum upon the bill, stating therein for whose honor he accepts or pays, and must give notice to such parties with reasonable diligence, of the fact of such acceptance or payment. Having done so, he is entitled to reimbursement from such parties and from all parties prior to them.

Sec. 82. A bill of exchange which has been accepted for honor, must be presented at its maturity to the drawee for payment, and notice of its dishonor by him must be given to the acceptor for honor, in like manner as to an endorser; after which the acceptor for honor must pay the bill.

Sec. 83. The acceptance of a bill of exchange for honor does not exonerate the holder from giving notice of its dishonor by the drawee.

Article Sixth.—Presentment for Payment.

Sec. 84. If a bill of exchange is, by its terms, payable at a particular place, and is not accepted on presentment, it must be presented at the same place for payment, when presentment for payment is necessary.

Sec. 85. A bill of exchange accepted payable at a particular place, must be presented at that place for payment when presentment for payment is necessary, and need not be presented elsewhere.

Sec. 86. If a bill of exchange, payable at sight or on demand, without interest, is not duly presented for payment within ten days after the time in which it could with reasonable diligence, be transmitted to the proper place for such presentment, the drawer and indorsers are exonerated, unless such presentment is excused.

Sec. 87. Mere delay in presenting a bill of exchange, payable with interest, at sight or on demand, does not exonerate any party thereto.

Article Seventh.—Excuse of Presentment and Notice.

Sec. 88.—The presentment of a bill of exchange for a certain sum, is excused if the drawee has no capacity to accept it.

Sec. 89.—Delay in the presentment of a bill of exchange for acceptance is excused, when caused by circumstances over which the holder has no control.

Sec. 90.—Presentment of a bill of exchange for acceptance or payment, and notice of its dishonor, are excused as to the drawer, if he forbids the drawee to accept, or the acceptor to pay the bill, or if, at the time of drawing, he had no reason to believe that the drawee would accept or pay the same.

Article Eighth.—Foreign Bills.

Sec. 91.—An inland bill of exchange is one drawn and payable within this Territory, all others are foreign.

Sec. 92.—Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest.

Sec. 93.—Protest must be made by a notary public, if with reasonable diligence one can be obtained; and if not, then by any reputable person in the presence of two witnesses.

Sec. 94. Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment and manner in which it was made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept or to pay, or the inability of the drawee to give a binding acceptance, and cause of refusal, the reason assigned, if any, and, finally, protesting against all the parties to be charged.

Sec. 95. A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance, and a protest for non-payment in the city or town in which it is presented for payment.

Sec. 96. A protest must be noted on the day of presentment, or on the next business day, but it may be written out at any time thereafter.

Sec. 97. The want of a protest of a foreign bill of exchange, or delay in making the same, is excused in like cases with the want or delay of presentment.

Sec. 98. Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest.

Sec. 99. If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto, in like manner as of an inland bill; except that if any indorser of such a bill expressly requires protest to be made by a direct or written on the bill, or before his indorsement, protest must be made and notice thereof given to him and to all subsequent indorsers.

Sec. 100. One who pays a foreign bill of exchange for honor must declare, before payment, in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement.

Sec. 101. Damages are allowed as hereafter prescribed. As a full compensation for interest accrued, before notice of dishonor, re-exchange, expenses and all other damages in favor of holders for value only, upon a bill of exchange drawn or negotiated within the Territory and protested for non-acceptance or non-payment.

Sec. 102. Damages are allowed under the last section upon bills drawn upon any person; 1st, if drawn upon any person in the Territory, one dollar upon each one hundred dollars of the principal sum specified in the bill; 2d, if drawn upon any person in any of the other States or Territories of the United States two and a half dollars upon each one hundred dollars of the principal sum specified in the bill; 3d, if drawn upon any person in any place in a foreign country five dollars upon each hundred dollars of the principal sum specified in the bill.

Sec. 103. From the time of notice of dishonor and demand of payment, lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned in the preceding section.

Sec. 104. If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange.

Sec. 105. If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated, and where such bills are currently sold.

CHAPTER THIRD.—PROMISSORY NOTES.

Sec. 106. A promissory note is an instrument negotiable in form whereby the signatory promises to pay a specified sum of money.

Sec. 107.—An instrument in the form of bill of exchange, but drawn upon and accepted by the drawer himself is to be deemed promissory note.

Sec. 108.—A bill of exchange, if accepted with the consent of the owner by a person other than the drawee, or an acceptor for honor, becomes in effect the promissory note of such person, and all prior parties thereto are exonerated.

Sec. 109.—If a promissory note payable on demand, or at sight, without interest, is not duly presented for payment within six months from its date, the indorsers thereof are exonerated, unless such presentment is excused, and chapter one and sections 96 and 97 of this act shall apply to promissory notes.

CHAPTER FOURTH.—CHECKS.

Sec. 110.—A check is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, payable on demand, without interest.

Sec. 111.—A check is subject to all the provisions of this act, concerning bills of exchange, except that; 1st, the drawer and indorsers are exonerated by delay in presentment, only to the extent of the injury which they suffer thereby; 2nd, an indorsee at its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period.

CHAPTER FIFTH.—BANK NOTES.

Sec. 112.—A bank note remains negotiable even after it has been paid by the maker.

Sec. 113.—This act shall be published six consecutive issues in the DESERET NEWS Daily edition, and in two consecutive issues of the Semi-Weekly edition, and shall take effect at twelve at night of the last of its publication in the daily.

Approved March 9, 1882.

UTAH, TERRITORY } Secretary's Office. } ss.

I Arthur L. Thomas, Secretary of Territory of Utah, do hereby certify that foregoing is a full, true and correct copy of an Act, entitled, "An Act in relation to negotiable instruments," approved March 9, 1882, and of record in my office.

ATTEST: My hand and the Seal of the Territory, this 12th day of March, A. D. 1882. ARTHUR L. THOMAS, Secretary of Utah Territory.

HARNESSES.

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