

No. 356, S.]

[Published August 3, 1929.

CHAPTER 354.

AN ACT to create section 220.15 of the statutes, relating to collections and payment by banks of checks and other negotiable instruments.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. A new section is added to the statutes to read:
220.15 (1) For the purposes of this section:

(a) The term "bank" shall include any person, firm or corporation engaged in the business of receiving and paying deposits of money within this state. A branch or office of any such bank shall be deemed a bank for the purpose of this act.

(b) The term "item" means any check, note or other instrument providing for the payment of money.

(2) Except as otherwise provided by agreement and except as to subsequent holders of a negotiable instrument payable to bearer or indorsed specially or in blank, where an item is deposited or received for collection, the bank of deposit shall be agent of the depositor for its collection and each subsequent collecting bank shall be sub-agent of the depositor but shall be authorized to follow the instructions of its immediate forwarding bank and any credit given by any such agent or sub-agent bank therefor shall be revocable until such time as the proceeds are received in actual money or an unconditional credit given on the books of another bank, which such agent has requested or accepted. Where any such bank allows any revocable credit for an item to be withdrawn, such agency relation shall nevertheless continue except the bank shall have all the rights of an owner therefor against prior and subsequent parties to the extent of the amount withdrawn.

(3) A credit given by a bank for an item drawn on or payable at such bank shall be provisional, subject to revocation at or before the end of the day on which the item is deposited in the event the item is found not payable for any reason. Whenever a credit is given for an item deposited after banking hours such right of revocation may be exercised during the following business day.

(4) An indorsement of an item by the payee or other depositor "for deposit" shall be deemed a restrictive indorsement and

indicate that the indorsee bank is an agent for collection and not owner of the item.

An indorsement "pay any bank or banker" or having equivalent words shall be deemed a restrictive indorsement and shall indicate the creation of an agency relation in any subsequent bank to whom the paper is forwarded unless coupled with words indicating the creation of a trustee relationship; and such indorsement or other restrictive indorsement whether creating an agency or trustee relationship shall constitute a guaranty by the indorser to all subsequent holders and to the drawee or payor of the genuineness of and the authority to make prior indorsements and also to save the drawee or payor harmless in the event any prior indorsement appearing thereon is defective or irregular in any respect unless such indorsement is coupled with appropriate words disclaiming such liability as guarantor.

Where a deposited item is payable to bearer or indorsed by the depositor in blank or by special indorsement, the fact that such item is so payable or indorsed shall not change the relation of agent of the bank of deposit to the depositor, but subsequent holders shall have the right to rely on the presumption that the bank of deposit is the owner of the item. The indorsement of an item by the bank of deposit or by any subsequent holder in blank or by special indorsement or its delivery when payable to bearer, shall carry the presumption that the indorsee or transferee is owner provided there is nothing upon the face of the paper or in any prior indorsement to indicate an agency or trustee relation of any prior party. But where an item is deposited or is received for collection indorsed specially or in blank, the bank may convert such an indorsement into a restrictive indorsement by writing over the signature of the indorser the words "for deposit" or "for collection," or other restrictive words to negative the presumption that such bank of deposit or indorsee bank is owner; and in the case of an item deposited or received for collection payable to bearer, may negative such presumption by indorsing thereon the words "received for deposit" or "received for collection" or words of like import.

(5) It shall be the duty of the initial or any subsequent agent collecting bank to exercise ordinary care in the collection of an item and when such duty is performed such agent bank shall not be responsible if for any cause payment is not received in

money or an unconditional credit given on the books of another bank, which such agent bank has requested or accepted. An initial or subsequent agent collecting bank shall be liable for its own lack of exercise of ordinary care but shall not be liable for the neglect, misconduct, mistakes or defaults of any other bank or of the drawee or payor bank.

(6) (a) Where an item is received on deposit or by a subsequent agent bank for collection, payable in another town or city, it shall be deemed the exercise of ordinary care to forward such item by mail, not later than the business day next following its receipt either (1) direct to the drawee or payor in the event such drawee or payor is a bank or (2) to another bank collecting agent according to the usual banking custom, either located in the town or city where the item is payable or in another town or city.

(b) Where an item is received on deposit or by a subsequent agent bank for collection, payable by or at another bank in the same town or city in which such agent bank is located, it shall be deemed the exercise of ordinary care to present the item for payment at any time not later than the next business day following the day on which the item is received either (1) at the counter of the drawee or payor by agent or messenger or (2) through the local clearing house under the regular established procedure, or according to the usual banking custom where the collecting or payor bank is located in an outlying district.

(c) The designation of the above methods shall not exclude any other method of forwarding or presentment which under existing rules of law would constitute ordinary care.

(7) Where the item is received by mail by a solvent drawee or payor bank, it shall be deemed paid when the amount is finally charged to the account of the maker or drawer.

(8) Where an agent bank forwards an item for collection, it shall not be responsible for its loss or destruction in transit, or, when in the possession of others, for its inability to repossess itself thereof, provided there has been no lack of ordinary care on its part.

(9) Where ordinary care is exercised, any agent collecting bank may receive in payment of an item without becoming responsible as debtor therefor, whether presented by mail, through the clearing house or over the counter of the drawee or payor,

in lieu of money, either (a) the check or draft of the drawee or payor upon another bank or (b) the check or draft of any other bank upon any bank other than the drawee or payor of the item or (c) such method of settlement as may be customary in a local clearing house or between clearing banks or otherwise; provided that whenever such agent collecting bank shall request or accept in payment an unconditional credit which has been given to it on the books of the drawee or payor or on the books of any other bank, such agent collecting bank shall become debtor for such item and shall be responsible therefor as if the proceeds were actually received by it in money.

(10) Where ordinary care is exercised, any agent collecting bank may receive from any subsequent bank in the chain of collection in remittance for an item which has been paid, in lieu of money, the check or draft of the remitting bank upon any bank other than itself or the drawee or payor of the item or such other method of settlement as may be customary; provided that whenever such agent collecting bank shall request or accept an unconditional credit which has been given to it on the books of the remitting bank or on the books of any other bank, such agent collecting bank shall become debtor for such item and shall be responsible therefor as if the proceeds were actually received by it in money.

(11) Where an item is duly presented by mail to the drawee or payor, whether or not the same has been charged to the account of the maker or drawer thereof or returned to such maker or drawer, the agent collecting bank so presenting may, at its election, exercised with reasonable diligence, treat such item as dishonored by nonpayment and recourse may be had upon prior parties thereto in any of the following cases:

(a) Where the check or draft of the drawee or payor bank upon another bank received in payment therefor shall not be paid in due course;

(b) Where the drawee or payor bank shall without request or authority tender as payment its own check or draft upon itself or other instrument upon which it is primarily liable;

(c) Where the drawee or payor bank shall give an unrequested or unauthorized credit therefor on its books or the books of another bank; or

(d) Where the drawee or payor shall retain such item without remitting therefor on the day of receipt or on the day of

maturity if payable otherwise than on demand and received by it prior to or on such day of maturity.

Provided, however, that in any case where the drawee or payor bank shall return any such item unpaid not later than the day of receipt or of maturity as aforesaid in the exercise of its right to make payment only at its own counter, such item cannot be treated as dishonored by nonpayment and the delay caused thereby shall not relieve prior parties from liability.

Provided further that no agent collecting bank shall be liable to the owner of an item where, in the exercise of ordinary care in the interest of such owner, it makes or does not make the election above provided or takes such steps as it may deem necessary in cases (b), (c) and (d) above.

(12) In case of the dishonor of an item duly presented by mail as provided for in the next preceding section, notice of dishonor of such item to prior parties shall be sufficient if given with reasonable diligence after such dishonor; and further in the event of failure to obtain the return of any such item notice of dishonor may be given upon a copy or written particulars thereof, and delay in giving notice of dishonor caused by an attempt with reasonable diligence to obtain return of such item shall be excused.

(13) (a) When the drawee or payor, or any other agent collecting bank shall fail or be closed for business by the commissioner of banking or by action of the board of directors or by other proper legal action, after an item shall be mailed or otherwise entrusted to it for collection or payment but before the actual collection or payment thereof, it shall be the duty of the receiver or other official in charge of its assets to return such item, if same is in his possession, to the forwarding or presenting bank with reasonable diligence.

(b) Except in cases where an item or items is treated as dishonored by nonpayment as provided in subsection (11), when a drawee or payor bank has presented to it for payment an item or items drawn upon or payable by or at such bank and at the time has on deposit to the credit of the maker or drawer an amount equal to such item or items and such drawee or payor shall fail or close for business as above, after having charged such item or items to the account of the maker or drawer thereof or otherwise discharged his liability thereon but without such item or items having been paid or settled for by the drawee or

payor either in money or by an unconditional credit given on its books or on the books of any other bank, which has been requested or accepted so as to constitute such drawee or payor or other bank debtor therefor, the assets of such drawee or payor shall be impressed with a trust in favor of the owner or owners of such item or items for the amount thereof, or for the balance payable upon a number of items which have been exchanged, and such owner or owners shall be entitled to a preferred claim upon such assets, irrespective of whether the fund representing such item or items can be traced and identified as part of such assets or has been intermingled with or converted into other assets of such failed bank.

(c) Where an agent collecting bank other than the drawee or payor shall fail or be closed for business as above, after having received in any form the proceeds of an item or items entrusted to it for collection, but without such item or items having been paid or remitted for by it either in money or by an unconditional credit given on its books or on the books of any other bank which has been requested or accepted so as to constitute such failed collecting or other bank debtor therefor, the assets of such agent collecting bank which has failed or been closed for business as above shall be impressed with a trust in favor of the owner or owners of such item or items for the amount of such proceeds and such owner or owners shall be entitled to a preferred claim upon such assets, irrespective of whether the fund representing such item or items can be traced and identified as part of such assets or has been intermingled with or converted into other assets of such failed bank.

(14) The provisions of this section shall not apply to transactions taking place prior to the time when it takes effect.

(15) In any case not provided for in this section the rules of law and equity, including the law merchant and those rules of law and equity relating to trusts, agency, negotiable instruments and banking, shall continue to apply.

(16) This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(17) This section may be cited as the bank collection code.

(18) All sections or parts of sections inconsistent with this section are hereby repealed.

SECTION 2. This act shall take effect upon passage and publication.

Approved August 2, 1929.

No. 673, A.]

[Published August 3, 1929.

CHAPTER 355.

AN ACT to appropriate a certain sum of money to B. J. Hughes for damages arising out of a certain automobile accident.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. There is appropriated from the general fund to B. J. Hughes of Mendota, Wisconsin, the sum of one hundred sixty-eight dollars and ninety cents to reimburse him for damages to his automobile as the result of a collision with an automobile owned by the Wisconsin Memorial Hospital on February 25, 1929. Acceptance of the appropriation herein named by the said B. J. Hughes shall operate as a full and complete discharge of all claims of said B. J. Hughes against the state of Wisconsin arising out of said collision.

SECTION 2. This act shall take effect upon passage and publication.

Approved August 2, 1929.

No. 627, A.]

[Published August 3, 1929.

CHAPTER 356.

AN ACT to amend subsection (1) of section 59.97 and to create subsection (2a) of section 59.97 of the statutes, relating to zoning power of counties.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Subsection (1) of section 59.97 of the statutes is amended to read: (59.97) (1) The county board of any county may by ordinance regulate, * * * restrict *and determine the areas within which agriculture, forestry and recreation may be conducted*, the location of roads, schools, trades and industries, and the location of buildings designed for specified uses, and establish districts of such number, shape and area, and may