

BANKS.

CHAPTER 27.

[S. B. No. 35.]

ORGANIZATION OF STATE BANKS.

AN ACT to Amend Chapter 23 of the Laws of 1890, Entitled "An Act to Provide for the Organization and Government of State Banks."

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. BANKING ASSOCIATIONS—WHO MAY FORM.] Associations for carrying on the business of banking under this title may be formed by any number of natural persons not less than three, two-thirds of whom shall be residents of the State. They shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed by the persons uniting to form the association, and a copy of them shall be forwarded to the Secretary of State of the State of North Dakota.

§ 2. ORGANIZATION CERTIFICATE—CONTENTS.] The persons uniting to form such an organization shall, under their hands, make an organization certificate which shall specifically state:

First. The name assumed by such association, which name shall not be that of any other bank in the State.

Second. The place where the business of discount and deposit are to be carried on.

Third. The amount of the capital stock, and the amount into which its shares are to be divided.

Fourth. The names and places of residence of the shareholders and the number of shares held by each of them.

Fifth. The period at which such banks shall commence and terminate business.

§ 3. AUTHENTICATION AND RECORD.] The organization certificate shall be acknowledged before a clerk of some court of record, or notary public, and shall be, together with the acknowledgment thereof, authenticated by the seal of such court or notary, recorded in the office of the register of deeds in the county where such bank may be established, and such certificate thus authenticated shall be transmitted to the Secretary of State, who shall record and carefully preserve the same in his office.

§ 4. POWERS.] Upon duly making and filing articles of association and an organization certificate, the association shall become as from the date of the execution of the same, a body corporate, and as such, and in the name designated in the certificate, it shall have power:

First. To adopt and use a corporate seal.

Second. To have succession for a period of twenty-five years from its organization, unless it is sooner dissolved, according to the provisions of this act, or unless its franchise becomes forfeited by some violation of law.

Third. To make contracts.

Fourth. To sue and be sued, complain and defend in any court of law or equity as fully as natural persons.

Fifth. To elect or appoint directors, two-thirds of whom shall be residents of this State, and by its board of directors to appoint a president and vice-president, who shall be members of said board, a cashier and assistant cashier and such other help as may be required, define their duties, require bonds of them and fix the penalty thereof, dismiss such officers or any of them and appoint others to fill their places.

Sixth. To prescribe, by its board of directors, by-laws not inconsistent with the law, regulate the manner in which its stocks shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its business conducted, and the privileges granted it by law, exercised and enjoyed.

Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, bills of exchange, drafts and other evidence of debt, by receiving deposits, by buying and selling exchange, coin and bullion, by loaning money on personal security; but no association shall transact any business, except such as is incidental and necessarily preliminary to its organization, until it has been authorized by the Secretary of State to commence the business of banking, and the Secretary of State may withhold from any association his certificate authorizing commencement of business whenever he has reason to suppose that the shareholders have formed the same for any other than legitimate objects as contemplated by this act.

§ 5. REAL ESTATE, POWERS RELATING TO.] Banking associations formed under this act shall have power to purchase, hold and convey real estate for the following purposes, and no other:

First. Such as may be necessary for its immediate accommodation in the transaction of its business, not exceeding in value, 30 per cent. of its capital.

Second. Such as shall be mortgaged to it, in good faith, by way of security, for debts previously contracted.

Third. Such as shall be conveyed to it, in good faith, in satisfaction of debts, previously contracted in the course of its dealings.

Fourth. Such as it shall purchase at sales under judgments, decrees or mortgages held by the association, or shall purchase to secure debts due to it, but no such association shall hold the possession of any real estate under mortgage or the title and possession of any real estate, purchased to secure any debts due to it for a longer period than five years.

§ 6. CAPITAL, PROPORTIONATE TO INHABITANTS.] Hereafter no association shall be organized under this act in towns containing 1,000 inhabitants, or less, with a capital less than \$10,000; in towns of over 1,000 and not exceeding 1,500 inhabitants, with a less capital than \$15,000; in towns of over 1,500 and not over 2,000 inhabitants, the capital shall not be less than \$20,000; in towns of over 2,000 and not exceeding 2,500 inhabitants, the capital shall not be less than \$30,000; in towns of over 2,500 and not exceeding 3,000 inhabitants, the capital shall not be less than \$40,000; and in towns of over 3,000 inhabitants, the capital shall not be less than \$50,000.

At least 50 per cent. of the capital stock of every association shall be paid in before it shall be authorized to commence business; the balance of which shall be paid in by installments of not less than 10 per cent. at the end of each succeeding month from the time it is authorized to commence business. The payment of each installment shall be certified to the Secretary of State, under the oath, by the president, or cashier of the association. For the purpose of this act, the population of a town, city or village, shall be determined by multiplying by five the total vote cast for Member of Congress at the last general election, at such town, village or city, and the result shall be taken as the population of such town, city or village.

§ 7. CERTIFICATE TO BE PUBLISHED.] The association shall cause the organization certificate and the official authorization of the Secretary of State, issued under this section, to be published in some newspaper in the city or county where the association is located, for at least four consecutive weeks next after the issuing thereof.

§ 7. COPY OF ARTICLES, USED IN EVIDENCE.] A certified copy of the articles of incorporation may be used in evidence in all courts for or against such banks or any person for or against whom such evidence is necessary whether on civil or criminal trial.

§ 9. DISPOSAL OF STOCK UNPAID.] Whenever any shareholder or his assignee fails to pay any installment on the stock, when the same is required to be paid, the directors of such association may sell the stock of the delinquent shareholder or as much thereof as is necessary to satisfy the debt, at public auction, after having given three weeks' previous notice thereof in a newspaper published and in general circulation in the city or county where the association is located, to any person who will pay the highest price therefor, to be not less than the amount due there-

on with the expenses of the advertisement and sale, and the excess, if any, shall be paid to the delinquent shareholder. If no bidder can be found who will pay for such stock the amount due thereon to the association and the cost of the advertisement and sale, the amount previously paid shall be forfeited to the association, and such stock shall be sold as the directors may order, within six months from the time of such forfeiture.

§ 10. SHARES—VALUE—TRANSFER OF.] The capital stock of each association shall be divided into shares of one hundred (100) dollars each and be deemed personal property and transferable on the books of the association in such manner as may be prescribed by the by-laws or articles of such association; every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all rights and liabilities of the prior holders of such shares, and no change shall be made in the articles of association by which the rights, remedies or security of the existing creditors of the association shall be impaired.

§ 11. INCREASE OR REDUCTION OF CAPITAL.] Any association formed under this title may, by its articles of association, provide for an increase of its capital stock from time to time as may be deemed expedient, subject to the rules and limitations of this title, but no increase of capital shall be valid until the whole amount shall be paid in in cash and such payment certified, under oath, by the president or cashier of such association, to the Secretary of State, who will give his certificate that the provisions of this section have been complied with and specifying therein the amount of such increase of capital stock, with his approval thereof, and that it has been duly paid in as a part of the capital thereof. Any association formed under this title may, by vote of its shareholders owning two-thirds of its stock, reduce its capital to any sum not below the amount required by this title to authorize the formation of association, but no such reduction shall be made until the amount of the proposed reduction is reported to the Secretary of State, and his approval thereof obtained in writing, and no such reduction shall be construed as affecting the liability of shareholders for any debts of the association incurred prior to such reduction.

§ 12. METHOD OF DISSOLUTION.] Any association organized under the provisions of this act, may be dissolved by [the] district court of the county where its office or principal place of business is situated, upon its voluntary application for that purpose. The application must be in writing and must set forth that at a meeting of the stockholders or members called for that purpose, the dissolution of the association was resolved upon by a two-thirds vote of all the stockholders or members, and that all claims and demands against the association have been satisfied and discharged. The application must be signed by a majority of the board of directors or other officers having the management of the affairs of the association, and must be verified in the same man-

ner as a complaint in a civil action. A verified copy of the application shall be filed with the Public Examiner or such State officer as is by law authorized to examine such associations within ten days after the filing of such application with the district court. If the court is satisfied that the application is in conformity with this act, it must order the application to be filed, and that the clerk give not less than thirty nor more than fifty days' notice of the application by publication in some newspaper published in the county, and if there are none such, then by advertisement posted up in five of the principal public places in the county. At any time before the expiration of the time of publication, any person may file his objections to the application. Before the final hearing and determination of the application, the Public Examiner shall make a thorough examination of the affairs of such association and file a certified statement of such examination with the clerk of the court of the county where such application is made, which statement shall be part of the papers in the case. After the time of publication has expired the court may, upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application, and if all the statements therein made are shown to be true, the court must declare the association dissolved. No stockholder or officer of such association shall be allowed to withdraw from such association, or surrender or dispose of his shares of stock after the filing or making such application for dissolution, and prior to the final determination of the case. Upon the dissolution of such association by the district court, the clerk of said court shall forthwith notify the Secretary of State of such dissolution, by sending a copy of the order of the court, and said order and notice shall be filed by the Secretary of State with the original certificate of organization. The application, notices and proof of publication, objections (if any) and declaration of dissolution, constitute the judgment roll, and from the judgment an appeal may be taken in the same manner as in other actions.

§ 13. DIVIDENDS—PERCENTAGE TO SURPLUS FUND.] The directors of any association organized under this act, may semi-annually declare a dividend of so much of the net profits of the association as they shall judge expedient, but each association shall before the declaration of a dividend, carry one-tenth part of its net profits of the preceding half year to its surplus fund until the same shall amount to 20 per cent. of its capital stock.

§ 14. QUALIFICATIONS OF DIRECTORS.] Every director must own, in his own right, at least ten shares of the capital stock of the association of which he is a director; any director who ceases to be the owner of ten shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place. Every such director, when elected or appointed, shall take an oath, that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such association, and will not knowingly

violate, or willingly permit to be violated, any of the provisions of this act, and that he is the *bona fide* owner of the number of shares of stock required by this act to become a director, standing in his name on the books of the association. Such oath subscribed by the director making it and certified by the officer before whom it is taken, shall at once be transmitted to the Public Examiner to be filed in his office.

§ 15. NO DIVIDEND TO BE DECLARED, WHEN.] No association or any member thereof shall, during the time it shall continue its banking operations, withdraw or permit to be withdrawn, either in form of dividends or otherwise, any portion of its capital; if losses have at any time been sustained by such association, equal or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall be made by any association while it continues its banking business to an amount greater than its net profits, on hand, deducting therefrom its losses and bad debts; all debts due to an association on which the interest is past due and unpaid for a period of six months, unless the same are well secured and in process of collection, shall be considered bad debts within the meaning of this section; but nothing in this section shall prevent the reduction of the capital of the association under Section 11 of this act.

§ 16. LOANS—DISCOUNTS—INTEREST.] Such association may demand and receive for loans on personal security, or for notes, bills, or other evidences of debt, discounted, such rate of interest as may be agreed upon, not exceeding the amount authorized by law to be contracted for, and it shall be lawful to receive the interest according to the ordinary usage of banking institutions.

§ 17. REGULAR AND SPECIAL REPORTS—WHEN MADE.] Every association shall make at least four reports each year to the Public Examiner, according to the form which may be prescribed by him, verified by the oath of the president or cashier and attested by at least two of the directors; such report shall exhibit in detail and under appropriate heads the resources and liabilities of the association at the close of business on any past day by him specified, and shall be transmitted to the Public Examiner within seven days after the receipt of such request from him, and in the same form shall be published in a newspaper published in the city or county where such association is located, at the expense of the association.

The Public Examiner shall also have power to call for special reports from any association, whenever in his judgment the same are necessary, in order to obtain a full and complete knowledge of its conditions; every association which fails to make and transmit any report required under this section shall be subject to a penalty of two hundred (200) dollars for each offense.

§ 18. RESPONSIBILITY OF SHAREHOLDERS.] The shareholders of every association organized under this title shall be individually responsible, equally and ratably, and not one for the other, for

all contracts, debts and engagements of such association made or entered into to the extent of the amount of his stock therein, at the par value thereof, in addition to the amount invested in, and due on such shares.

§ 19. SECURITY.] No association shall make any loans or discounts on the security of the shares of its own stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall within six months be sold or disposed of at public or private sale.

§ 20. RESERVE FUND—AMOUNT.] Each association shall at all times have on hand in available funds an amount equal to 20 per cent. of its deposits, one-half of which may consist of balances due to the association from good, solvent banks, and one-half shall consist of cash on hand; whenever the available fund shall be below 20 per cent. of its deposits, such association shall not increase its liabilities by making any new loans or discounts, otherwise than by discounting or purchasing bills of exchange payable at sight, nor make any dividends of its profits until the required proportion between the aggregate amount of deposits and its lawful money reserve has been restored; and the Public Examiner may notify any association whose lawful money reserve shall be below the amount above required to be kept on hand, to make good such reserve, and if such association shall fail so to do for a period of thirty days after such notice, the Public Examiner may impose a penalty of not less than one hundred (100) dollars, or more than five hundred (500) dollars, which shall be collected in the same manner as other penalties prescribed in this act.

§ 21. PENALTIES, HOW RECOVERED.] All fines and penalties heretofore provided for, to which any association organized under this act may become subject to, shall be recovered on complaint of the Public Examiner, before any court having competent jurisdiction, and all fines and penalties so recovered shall be paid into the State treasury.

§ 22. TOTAL LOAN TO ONE CONCERN, PROPORTION OF TO CAPITAL STOCK.] The total liability to any association of any person or company, corporation or firm, for money borrowed, including in the liabilities of a company or firm, the liabilities of the several members thereof shall not at any time exceed 15 per cent. of the capital stock of such association, actually paid in, but the discount of bills of exchange drawn in good faith against actual existing values or loans upon produce in transit or in store as collateral security and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as money borrowed.

§ 23. PENALTY FOR VIOLATIONS.] Any person or persons violating the provisions of this act, not hereinbefore specially provided for, shall, upon conviction thereof, pay a fine of not less than

fifty (50) dollars nor more than five hundred (500) dollars for each offense, to be recovered before any court having competent jurisdiction, and all fines and penalties so recovered shall be paid into the State treasury.

§ 24. FALSE ENTRIES—HOW PUNISHED.] Every officer, agent or clerk of any association under this title, who wilfully and knowingly subscribes or makes any false statements or entries in the books of such association, or knowingly subscribes or exhibits any false paper with the intent to deceive any person authorized to examine as to the condition of such association, or wilfully subscribes or makes false reports, shall be subject to imprisonment at hard labor in the State's prison for such term, not less than one year or more than ten years, as the court trying him may designate.

§ 25. DEPOSITS—NOT TO BE RECEIVED WHEN INSOLVENT.] No banking association shall accept or receive on deposit, with or without interest, any money, bank bills or notes, or United States treasury notes or currency, or other notes, bills or drafts, circulating as money or currency, when such banking association is insolvent.

§ 26. VIOLATION OF SEC. 25—PENALTY.] If any such banking association shall receive or accept on deposit, any such deposits as aforesaid when insolvent, any officer, director, cashier, manager, member, party or managing party thereof, who shall knowingly receive or accept, be accessory or permit, or connive at the receiving or accepting on deposit therein or thereby, any such deposits as aforesaid, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding \$10,000, or by imprisonment in the Penitentiary not exceeding five years, or by both fine and imprisonment as aforesaid.

§ 27. EXISTING BANKS, WHEN TO COMPLY WITH ACT.] It shall be unlawful for any individual, firm or corporation to continue to transact a banking business or to receive deposits for a period longer than six months immediately after the passage and approval of this act, without first having complied with and organized under the provisions of this act. Any person violating the provisions of this section either individually or as an interested party in any association or corporation, shall be guilty of a misdemeanor, and on conviction thereof be fined not less than five hundred (500) dollars nor more than \$1,000, or imprisonment in the county jail not less than ninety days, or either, or both at the discretion of the court.

§ 28. FORFEITURE OF CHARTER.] Every association organized under this title, which shall refuse or neglect to comply with any requirement lawfully made upon it by the Public Examiner, pursuant to this chapter, for the period of ninety days after demand in writing is made, shall be deemed to have forfeited its franchise, and any failure on the part of such association to comply with, or any violation of any of the provisions of

this act shall work a forfeiture of its franchise, and in either case the Attorney General, upon demand of the Public Examiner, shall commence an action for the purpose of annulling the existence of said corporation.

§ 29. PUBLIC EXAMINER—DUTIES—FEES.] The Public Examiner of North Dakota shall be ex-officio superintendent of banks; he shall as often as shall be deemed necessary and proper, and at least once a year, duly examine every bank organized under this law, for which he shall charge the bank so examined a fee for the yearly examination only, and turn the same into the State treasury as follows: Banks, \$10,000 capital or less, a fee of \$10; banks of from \$10,000 to \$20,000 capital, \$15; banks of from \$20,000 to \$40,000 capital, \$20; and banks with a capital of over \$40,000, \$25. He shall have power to make a thorough examination into the affairs of the association, and in so doing may examine any of the officers, agents or clerks thereof, on oath, and shall make a full and detailed report in writing of the condition of the association so examined to the Governor of the State, a copy of which report shall be filed in the office of the Secretary of State, which shall be open to all persons doing business with such association. The Public Examiner shall not be directly or indirectly interested in any association organized under this act.

§ 30. OATHS OF OFFICERS.] Every active officer of any bank organized under this act shall, before entering upon the duties of his office, take and subscribe to an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of such association and that he will not knowingly violate or willing permit to be violated, any of the provisions of this act. All such oaths to be presented to the board of directors and a synopsis thereof recorded on the directors' record and then filed with the papers of the bank.

§ 31. OFFICERS' AND EMPLOYEES' BONDS.] The president and vice president, if active officers of the bank, the cashier, assistant cashier and teller shall, before entering upon their duties, furnish a good and sufficient bond to the association; the minimum amount shall not be less than 20 per cent. of the capital stock of the association, and may be greater, if required by the board of directors. Other employes shall give bonds whenever required by the board of directors; all such bonds to be approved by the board and filed with one of its members, a record of which shall be made on the minutes of the meeting of said board.

§ 32. EXAMINATION BY DIRECTORS—WHEN—REPORT.] It shall be the duty of the board of directors in February and August of each year to proceed and make a careful and thorough examination of all the assets of the bank, examine stock, check certificates of deposits and cashier's checks, count cash, examine loans and discounts of every nature, with the securities and collaterals belonging thereto; compare the aggregate with the records and examine the records and make a complete report of such examination,

with suggestions and criticisms, if in their judgment such are necessary, which report shall be spread on the records of the bank the same as of a regular meeting of the board of directors, and shall be examined by the Public Examiner when making his regular annual examination of the bank.

§ 33. APPOINTMENT OF RECEIVER—WHEN.] The Public Examiner, on becoming satisfied of the insolvency of any bank organized under the provisions of this act, after making an examination of the same and having consulted with the board of directors, may forthwith apply to the district court having jurisdiction of the subject matter for the appointment of a receiver.

§ 34. REPEAL.] All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved, March 13, 1893.

BOILER INSPECTION.

CHAPTER 28.

[H. B. No. 180.]

REPEALING LAW OF 1890.

AN ACT to Repeal Chapter 27 of the Laws of 1890, Entitled "An Act to Establish a Board of Inspectors for Steam Vessels and Steam Boilers, and to Provide for Licensing Engineers of Steam Engines."

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. REPEAL.] That Chapter 27 of the Laws of 1890, entitled "An act to establish a board of inspectors for steam vessels and steam boilers, and to provide for licensing engineers of steam engines," be and the same is hereby repealed.

§ 2. EMERGENCY.] Whereas, the benefit expected to be derived from the said Chapter 27 of the Laws of 1890 has not been attained; therefore, an emergency exists, and this act shall take effect and be in force from and after its passage and approval.

Approved, March 2, 1893.