

§ 8. REPEAL.] That Sections 708, 709 and 710 of the Compiled Laws of North Dakota for the year 1913 are hereby repealed.
Approved, March 3, 1915.

BONDING FUND

CHAPTER 62.

[S. B. No. 78—Ellingson.]

CREATING STATE BONDING FUND.

AN ACT to Establish a State Bonding Fund in the Office of the Commissioner of Insurance, Providing for the Maintenance Thereof, and Creating a Reserve Therefor; Prescribing the Duties of the Officers Connected Therewith; Providing for the Payment of Premiums and Indemnities for Losses; and Providing for the Disposal of the Surplus after said Reserve has been Created.

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

§ 1. ESTABLISHING A STATE BONDING FUND.] A State Bonding Fund is hereby established for the purpose of providing a fund for the bonding of such officers of counties, cities, towns, villages, school districts and townships as are, or may hereafter be required by law to furnish official bonds.

§ 2. COMMISSIONER OF INSURANCE TO ISSUE BONDS.] It shall be the duty of the Commissioner of Insurance, as provided in this Act, to issue official bonds to all county officials, city officials, town officials, village officials, school district officials and township officials required by law to furnish official bonds except as hereinafter otherwise provided. No such bonds shall be issued by the Commissioner of Insurance for the bonding of any official for a greater amount than \$50,000; and any official required by law to be bonded in any greater amount than \$50,000, shall be bonded in the sum in excess of \$50,000 with a duly authorized surety company or by personal sureties. The premiums on such excess bonds, except in the case of personal sureties, shall be paid out of the county, village, city, town, school district or township treasury as the case may be.

If an official who is bonded by both the state bonding department and other surety makes default, then the loss shall be borne between the state bonding department and such other surety in proportion to the amount of bonds furnished by the various parties.

§ 3. PREMIUMS; AMOUNT; TO WHOM PAID.] The premiums of such bonds shall be twenty-five cents per hundred dollars per year on all bonds issued. Such premium shall be paid in advance by the proper authorities of each county, city, town, village, school district or township, from its respective treasury to the State Treas-

urer, who shall issue receipts therefor as hereinafter provided. The minimum on small bonds and short term officers' bonds shall not be less than \$2.50.

§ 4. Whenever there shall be paid into the state treasury, money for premiums for bonding officials as provided in this Act, it shall be known as the State Bonding Fund, and shall be used as provided for in this Act.

§ 5. It shall be the duty of the State Treasurer, whenever there is any money paid into the state treasury for premiums on bonds, to at once issue quadruple receipts therefor. One he shall issue to the official for whom the premium is paid, one he shall file in his office, one he shall file with the Commissioner of Insurance, and one he shall file with the State Auditor. Such receipt shall state the amount and date of the bond, name of the officer bonded, and his official duties, his post office address and the county in which he resides.

§ 6. PERIOD OF BONDS.] All bonds executed and furnished hereunder by the Commissioner of Insurance shall be made to run until the expiration of the officer's term of office, and where such term is less than one year, a full year's premium shall be charged.

§ 7. FORM OF BONDS.] All counties, cities, towns, villages, school districts and townships in the state shall be insured as herein provided against loss by the default of any officer of such counties, cities, towns, villages, school districts and townships who is by law required to furnish a bond, by and through a bond executed by the officer to be bonded and the Commissioner of Insurance in his official capacity, which bond shall be payable in case of default out of the State Bonding Fund. Said bonds shall be substantially in the following form, the blanks being properly filled out and the bond being executed by the official and the Commissioner of Insurance.

§ 8. OFFICIAL BOND.] Know all men by these presents, Thatof.....in the State of North Dakota, hereinafter called the principal, and the State Bonding Fund of the State of North Dakota as surety, are held and firmly bound unto.....in the State of North Dakota, hereinafter called the obligee, in the sum offor the payment whereof to the obligee the principal binds himself, his heirs, executors, administrators and assigns, and the Commissioner of Insurance of the State of North Dakota, binds the State Bonding Fund of the State of North Dakota firmly by these presents.

Signed, sealed and dated this.....day of.....19....

Whereas, The above named principal has been duly appointed or elected to the office of.....in the State of North Dakota for the term of.....years, beginning on.....

Now, Therefore, The condition of the foregoing obligation is such that if the principal shall faithfully and impartially discharge and perform the duties of his said office, including such duties as are

or may be imposed upon him by law, and shall render a true account of all moneys and property of every kind that shall come into his hands as such officer and pay over and deliver the same according to law, this obligation shall be void, otherwise it shall remain in force.

.....
Principal.
STATE BONDING FUND, Surety,
By.....
Commissioner of Insurance.

Signed, Sealed and Delivered in the presence of

.....
.....

§ 9. APPOINTMENT OF ATTORNEY FOR SERVICE.] The officer to be bonded shall, prior to the execution of such bond, execute and file in the office of the Commissioner of Insurance, an instrument appointing the Commissioner of Insurance and his successors, his true and lawful attorney upon whom all process in any action or proceeding against such officer may be served, and therein shall agree that any process which may be served upon his said attorney shall be of the same force and validity as if served on him personally, and that the authority thereof shall continue in force, irrevocable so long as any liability of such official or of such State Bonding Fund remains. In actions upon such bond when the sheriff files his return that he is unable, after diligent search, to find such bonded officer for the purpose of serving the summons, service upon the Commissioner of Insurance shall be deemed and held to be personal service upon such bonded official. Whenever process against any such bonded official shall be served upon the Commissioner of Insurance, he shall forthwith mail a copy of such process, postage prepaid, directed to such bonded official at the residence of such official stated in such instrument. The Commissioner shall keep a record of all such process which shall show the time and hour of service.

§ 10. BONDS RUN TO WHOM.] All such official bonds shall run to the political sub-division of which the bonded official is an officer, as obligee, and such bonds shall be construed as provided in Section 680 of the Compiled Laws of North Dakota, 1913, and any private corporation or person suing such official may recover under such bond and have the protection of the State Bonding Fund.

§ 11. STATE NOT LIABLE.] Any obligee or private corporation or person may sue upon any such official bond issued by the Commissioner of Insurance and may join the Commissioner of Insurance as a co-defendant with the defaulting officer and in case judgment is obtained against such defaulting officer, the judgment shall further specify that such judgment shall be paid out of any funds on hand in the State Bonding Fund, or that may thereafter accrue to such fund. In case a judgment is paid out of the State Bonding Fund in any such action, the State Bonding Fund shall be subrogated

under the judgment to the right of the judgment creditor to recover against the defaulting officer. In all proceedings to enforce such right of subrogation the Commissioner of Insurance as nominal defendant shall act for and in behalf of the State Bonding Fund; and he may in any action or proceedings appeal from any appealable order or from any judgment against said State Bonding Fund the same as is provided for other parties to civil actions.

§ 12. OTHER BONDS MAY BE FURNISHED.] This Act shall not be construed to prevent any person elected or appointed to office from furnishing in lieu of the bond provided for in this Act, a bond by personal sureties or by a surety company, but no officer or board of any county, city, town, village, school district or township shall have the right to pay for any such bond or bonds out of any public funds, except for such bonds as are procured to cover the excess over \$50,000 as provided in Section 2.

§ 13. BONDS, HOW CONSTRUED.] The bonds issued in pursuance of this Act shall be construed and held to inure to the benefit of not only the political sub-divisions named as obligee but also to the benefit of any person damaged by any wrongful act or omission of the bonded official; and any person so damaged may, in an action upon the bond brought in his own name as plaintiff against the official bonded, join the Commissioner of Insurance as a co-defendant, and thereby subject the State Bonding Fund to the payment of any judgment so obtained.

§ 14. CLERICAL HELP PROVIDED, EXPENSES, HOW PAID.] It shall be the duty of the Commissioner of Insurance and the State Auditing Board to estimate at the beginning of each year the amount required for additional clerical help and incidental office expenses made necessary by the additional work devolving upon his office on account of the provisions of this Act for that year, which estimated amount shall be reserved from the premiums paid in and shall not exceed the sum of \$1,500 per annum. The amount of premium receipts remaining shall be used for the payment of losses; *provided* that if the amount reserved for clerical assistance and incidental expenses is more than sufficient to pay the same the excess shall be used to pay losses. The Commissioner of Insurance shall have the authority to engage clerical assistance to conduct the transactions provided for by this Act. He shall also prepare and provide the necessary blanks, books, stationery and postage and cause the same to be delivered to the proper officers and persons. Such expenses and the salaries of such clerical assistance shall be audited and allowed by the State Auditing Board.

§ 15. NOTICE OF LOSS; DUTY OF STATE EXAMINER.] Whenever a loss shall occur in any county, city, village, township or school district by the default of any officer of the same whose fidelity has been insured under the provisions of this Act, it shall be the duty of the County Auditor, City Auditor, Village, Township or School District Clerk or Treasurer in case the defaulting officer is the

Auditor or Clerk, as the case may be, immediately to notify the Commissioner of Insurance. The Commissioner of Insurance shall thereupon notify the State Examiner; and it shall be the duty of the State Examiner when so notified to check the accounts of such defaulting official and file a report with the Commissioner of Insurance.

§ 16. SURPLUS. HOW USED.] Any sum which remains unexpended at the end of any one year shall remain in the State Bonding Fund which shall accrue until it equals in amount \$100,000, after which the surplus in excess of \$100,000 shall be distributed at the close of each year to the various counties, cities, townships, villages, school districts and towns in proportion to the amount of premium paid into the State Bonding Fund. In case there shall not be a sufficient amount in the State Bonding Fund to pay the losses sustained after the reservation of funds to cover clerical assistance and other incidental expenses for the conduct of the bonding department for the year, such losses shall be paid as soon as sufficient funds are accumulated in the State Bonding Fund by collection of premiums.

§ 17. FUND TO DRAW INTEREST.] The State Treasurer shall deposit the State Bonding Fund in approved state depositories at the usual rate of interest paid on other funds of the state, subject to check, but whenever there is in such checking account more than \$10,000 the State Treasurer shall deposit the same upon time certificates of deposit drawing the same rate of interest as other state funds deposited upon time certificates.

§ 18. REPORT.] The Commissioner of Insurance shall, on or about the first day of January in each year, publish in four newspapers of general circulation within the state a copy of the statement of his work and of the condition of the bonding department during the preceding year, and he shall make a biennial report to the Governor and the legislative assembly containing a detailed statement of the work and the condition of said bonding department during the preceding biennial period.

§ 19. MAY REQUIRE STATEMENTS.] The Commissioner of Insurance shall require and obtain, from the various officials bonded, statements annually and as often as he deems necessary, of their receipts, bank accounts and disbursements verified by the County Auditor, City Auditor, or Clerk of each town, village, school district and township. To verify such statements he may communicate with each bank having such deposits and he may require any such official to furnish him with any information concerning the office of which he is an incumbent and said Commissioner shall file all such information in his office in a proper manner and such records and files shall be open for public inspection. The Commissioner of Insurance shall supply to each County and City Auditor and each Town, Village, School District, and Township Clerk, a sufficient number of application blanks.

§ 20. STATE EXAMINER TO CHECK ACCOUNTS.] In case any official shall default, it shall be the duty of the State Examiner immediately to check the accounts of such defaulting official and file a report with the Commissioner of Insurance stating the amount due upon such defaulting officer's bond and for such services he shall be paid out of the State Bonding Fund, the same fees as he is paid for examining the accounts of county officers.

§ 21. MAY REQUIRE AN ACCOUNTING.] If at any time the Commissioner of Insurance shall be of the opinion that the interests of the State Bonding Fund are jeopardized by the misconduct or inefficiency of any bonded official, it shall be his duty to cause an action for an accounting to be instituted against such bonded official for the purpose of requiring a complete disclosure of the business of the office of which such official is an incumbent. Such action shall be brought in the name of the Commissioner of Insurance as plaintiff and the court may in such action interplead the obligee and render such judgment as shall protect the rights of all parties concerned. If at any time the Commissioner of Insurance deems it advisable, it shall be his duty to make a complaint to the Governor requesting the Governor to institute an investigation with the purpose of removing from office any defaulting official or any official who so conducts the affairs of his office as to endanger the State Bonding Fund.

§ 22. DUTY OF ATTORNEY GENERAL.] It is hereby made the duty of the Attorney General to act as attorney for the Commissioner of Insurance in any and all actions and proceedings to which the Commissioner of Insurance is a party, on behalf of the State Bonding Fund.

§ 23. COMMISSIONER MAY REJECT APPLICATION.] When any official applies to the Commissioner of Insurance for the issuance to him of an official bond, the Commissioner of Insurance may, after due investigation, reject such application if in his judgment the interests of the State Bonding Fund require such action. In such case the official whose application is rejected may secure a bond executed either by private surety or by a duly authorized surety company, but no officer or board of any political sub-division shall have the power to disburse public funds to pay the premium on such bonds.

§ 24. APPEAL.] The Commissioner of Insurance shall immediately notify the applicant of such rejection by registered mail, and the applicant shall have twenty days after the receipt of such notice within which to take an appeal from such decision of the Commissioner of Insurance to the district judge of the judicial district in which the applicant resides. The judge of said court shall hear such appeal at a day to be fixed by him not less than ten nor more than thirty days after the filing of the appeal with the clerk. The case shall be tried by the court without a jury. Notice of such ap-

peal shall be served by the appellant upon the Commissioner of Insurance.

§ 25. REPEAL.] All Acts and parts of Acts in so far as they conflict with the provisions of this Act are hereby repealed.

§ 26. This Act shall take effect January 1st, 1916.

Approved, March 8, 1915.

CAPITAL PUNISHMENT

CHAPTER 63.

[H. B. No. 33—Torson.]

ABOLISHING CAPITAL PUNISHMENT.

AN ACT Prescribing and Limiting the Punishment for the Crime of Murder in the First Degree and Limiting the Time, Manner and Conditions Whereby such Person may be Pardoned and Repealing Section 9472 of the Compiled Laws of 1913 of the State of North Dakota.

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

§ 1. PUNISHMENT FOR MURDER IN THE FIRST DEGREE.] Every person who has been or may be hereafter convicted of murder in the first degree shall be punished by confinement at hard labor in the State Penitentiary for life.

Provided, That if a person shall be convicted of murder in the first degree while under such life sentence he may be punished by death.

§ 2. PERSONS CONVICTED AND UNDER SENTENCE OF MURDER IN FIRST DEGREE WHEN SUBJECT TO PARDON.] No person hereafter convicted of murder in the first degree shall be eligible to pardon until after he shall have been confined in the State Penitentiary for at least fifty per cent. of the time of his life expectancy, to be determined on the day and date of his age on the date of entry of final judgment of conviction, and such life expectancy shall be based on the life expectancy tables known as the Carlisle tables of mortality, or unless it shall be made to appear to the satisfaction of the Pardon Board that the person convicted is innocent of the charge for which he was convicted.

§ 3. REPEAL.] Section 9472 of the Compiled Laws of 1913 for the State of North Dakota is hereby repealed.

§ 4. EMERGENCY.] An emergency is hereby declared to exist and this Act shall take effect and be in force from and after its passage and approval.

Approved, March 9, 1915.