

and the consideration entering into such designation, the provision of section five, with reference to counties in which but one bank or in which no bank is located and functioning, the amount to be deposited in each bank designated, the contents of the notice that proposals will be received, including the probable amount to be deposited on time and subject to draft, and the minimum rates of interest on each class of deposits, the inspection of reports of national banking corporations by the bank examiner in which state funds or the funds of state institutions are deposited in case that the funds to be deposited under the previous section be the funds of the state or of a state institution as defined herein, shall govern insofar as applicable to the designation of depositories and the deposit of public funds therein by such board, commission, bureau or individual.

Sec. 20. REPEAL.) Sections 147, 147a, 147b, and 370 to 374, inclusive, Sections 1472 to 1488, inclusive, Sections 3315 to 3329, inclusive, of the Compiled Laws of 1913; Chapter 59 of the Session Laws of 1915; Chapter 56 of the Session Laws of the State of North Dakota for the year 1921, are hereby repealed; and all acts and parts of acts inconsistent with this act are hereby repealed.

Approved March 8th, 1923.

DEPOSITORS' GUARANTY FUND

CHAPTER 200.

(S. B. No. 250—Majority of Banking Committee.)

DEPOSITORS' GUARANTY FUND.

An Act to Amend and Re-enact Chapter 126 of the Laws of 1917, as Amended by Chapter 110 of the Laws of 1919 and as Further Amended by Chapter 21 of the Laws of 1921.

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

Chapter 126 of the Laws of 1917 as amended by Chapter 110 of the Laws of 1919 and further amended by Chapter 21 of the Laws of 1921 is hereby amended and re-enacted to read as follows:

Sec. 1. GUARANTY FUND COMMISSION. DEPOSITORS' GUARANTY FUND COMMISSION. ESTABLISHED. COMPENSATION. EXPENSE.) There is hereby established a Depositors' Guaranty Fund Commission of the State of North Dakota to be com-

posed of five (5) members, viz: The Governor of the State of North Dakota, the Manager of the Bank of North Dakota, and three members to be appointed by the Governor of the State. All appointments to membership of said commission, whether to fill a vacancy or otherwise, shall be made by the Governor of the State of North Dakota from a list of names of nine men furnished by the banks directly affected by the provisions of this Act. All members of this commission shall be residents of the State of North Dakota and all members except the Governor shall have at least five years' experience in the management of some bank or banks located within the State of North Dakota. The present appointive members shall serve out the term for which they were appointed and each succeeding appointment except to fill a vacancy caused by death, resignation or removal of a member shall be for a period of three years. The Governor shall be the Chairman of said Commission, and the Attorney General shall be ex-officio the attorney for the Commission, and the State Treasurer shall be its Treasurer, and the Secretary shall be appointed by the Commission, and the Commission shall have power to fix the compensation of such secretary to be paid from the Depositors' Guaranty Fund, which shall not in any case exceed the sum of \$2,000.00 per annum. The State Examiner may be appointed as such secretary. The members of the Commission, other than the Governor, shall receive for their services five (\$5.00) dollars per day for the time actually served and their actual expenses incurred in the performance of their duties, the same to be paid out of the general fund of the State. Said Commission shall have the supervision and control of the Depositors' Guaranty Fund and shall have power to adopt all necessary rules and regulations, not inconsistent with law, for the management and administration of said fund.

Sec. 2. COMMISSIONERS. QUALIFICATIONS. OATHS AND FILING THEREOF.) The members of the Depositors' Guaranty Fund Commission, other than the Governor, shall take and subscribe the oath of office prescribed by the Constitution, and shall take oath to keep secret all the facts and information obtained in the performance of their duties in like manner as is provided for the State Examiner in the State Banking Laws, and subject to like penalties, and each shall be bonded to the State of North Dakota under the State Bonding Act as elected State Officers, in the amount of ten thousand (\$10,000.00) dollars. The Secretary and all other persons appointed shall take the oath herein prescribed, and be bonded under the State Bonding Act, in amount fixed by the Commission, in no event less than ten thousand (\$10,000.00) dollars. The oath of office of each of such Commissioners and persons appointed by them, shall be filed with the Secretary of State.

Sec. 3. DEPOSITORS' GUARANTY FUND COMMISSION. REGULAR MEETING. DATES FIXED. SPECIAL MEETINGS. HOW CALLED. WHERE HELD.) The Depositors' Guaranty Fund Commission created by the provisions of this Act shall hold at least four meetings during each calendar year at stated intervals as follows, to-wit: On the second Tuesday in January, April, July and October, provided that other meetings of the Commission, may be convened upon written request by any two members of the Commission, served upon the chairman of such Commission, who shall upon receipt of such request give notice to the Secretary of the date when a meeting shall be held in accordance with such request, and the Secretary shall in turn give notice thereof to all members of the Commission of the date of such meetings so to be held, as hereinafter provided; and provided further, that whenever a condition exists affecting the general banking business within the state, or when there is sufficient matter in the office of the Secretary entitled to receive consideration and disposition by the Depositors' Guaranty Fund Commission, as contemplated, herein, or when in the opinion of the Secretary it is advisable to convene such Commission for counsel and direction on contingencies that may arise that would tend to prevent best results from being obtained hereunder as contemplated herein, it shall be within his power to convene the Commission and to that end forthwith give notice of the date of such meeting to all members of the Commission. All meetings of the Depositors' Guaranty Fund Commission shall be held at the Capitol of the State, except that meetings may be held elsewhere within the State by consent of the majority of the members of the Commission.

Sec. 4. DEPOSITORS' GUARANTY FUND COMMISSION. SPECIFIC DUTIES.) It shall be the specific duty of the Depositors' Guaranty Fund Commission to pass upon the qualifications of each and every bank for admission under the Depositors' Guaranty Fund and their actions shall be final, both as to immediate admission or what shall be further required of any bank in order to place it in a condition satisfactory to the Commission so that it may be admitted later. When the conditions of any bank heretofore admitted under the Depositors' Guaranty Fund becomes such as to cause the State Examiner to doubt the advisability of permitting it to continue in business, it shall be within his power to require the advice and opinion of the Commission and for that purpose a meeting of the Commission may be called.

Any regular or called meeting of the Depositors' Guaranty Fund Commission as herein provided, at which there is not a full attendance of the membership, it shall be optional with a quorum whether or not any business shall be transacted, and

such quorum may adjourn from time to time until such time as there shall be a full attendance.

Sec. 5. GUARANTY FUND. ASSESSMENT.) For the purpose of providing a Depositors' Guaranty Fund for the protection of depositors in banks, every institution engaged in the business of banking under the laws of this state, shall be subject to assessment to be levied, collected, administered, kept and applied as hereinafter provided.

The Guaranty Fund Commission shall appoint two persons skilled and experienced in bank accounting to be known and designated as inspectors, who shall take and subscribe the oath of office prescribed by the constitution, and shall take oath to keep secret all facts and information obtained in the performance of their duties, in like manner as is provided for the State Examiner in the State Banking Law, and subject to like penalties. Which two inspectors shall be paid out of the funds appropriated for the conduct of the State Examiner's office, the same salaries that are paid to deputy state examiners.

Provided, however, if the Guaranty Fund Commission is unable to procure the services of inspectors, who, in their judgment, possess the requisite skill and ability as bank accountants, it may pay to either or both of such inspectors, from the funds of the Depositors' Guaranty Fund, such additional compensation, as in its judgment, is necessary, not in any case exceeding Four Thousand (\$4,000.00) dollars per year for any such inspector.

If at any time the amount of work involved in the performance of the duties of the Guaranty Fund Commission, as aforesaid, shall be such as to require, in its judgment, more than two inspectors, it shall have authority to appoint not to exceed two assistant inspectors who shall take like oath, and who shall be paid a salary of not to exceed Two Hundred (\$200.00) Dollars per month; which payment shall be made out of the monies of the Depositors' Guaranty Fund.

Every inspector or assistant inspector who makes an examination of the affairs of a bank, shall make a full report of the result of his examination, with comments upon the condition of the bank examined, to the Secretary of the Commission and the State Examiner, who may accept and adopt the examination and report of any such inspector or assistant inspector, in lieu of an examination by one of his deputies; in which case the Guaranty Fund Commission shall pay over to the State Examiner, the charge made for such examination, to the amount that would be legally chargeable for such examination, if made by the State Examiner's office, less the expense of the inspector in connection with such examination; and the amount so collected by the State Examiner shall be accounted for and cov-

ered into the same fund as collections made for the examination of banks by the State Examiner.

It is the purpose and intention of this Act that the work of the inspectors made available to the State Examiner, shall be of the same value to him as the examining work of at least two deputy state examiners, and that the examining force of the State Examiner's Department may be kept correspondingly smaller.

Sec. 6. The Guaranty Fund Commission may from time to time establish rules and regulations as to the payment by banks of the expense of making examinations by its inspectors, but no charge shall be made against any bank for such examination in excess of the amount of Ten Dollars (\$10.00) per day for the services of an inspector, together with his actual traveling and hotel expenses, and it shall have authority to remit all or any part of the per diem and expense charges against any bank, having at all times due regard to whether the affairs of such bank were such as to have warranted an examination; except that where an examination is adopted by the State Examiner, a charge must be made equal to that allowed by law for an examination of such bank by the State Examiner. Any charges made for examinations not adopted by the State Examiner and not rebated, as aforesaid, shall be kept and retained by the Guaranty Fund Commission for the payment of the salaries and expenses of the inspectors, and any deficiency in such salaries and expenses, after applying such fees, shall be paid out of the Depositors' Guaranty Fund.

Sec. 7. Upon the taking effect of this Act, the Commission shall take the necessary steps to become informed, and to thereafter keep informed as to the financial condition and management of all banks that have been admitted under the Depositor's Guaranty Fund, for the purpose of determining whether the interests of said Guaranty Fund or of the depositors in any of the banks protected thereby, are endangered or likely to be endangered by the further guaranteeing of the deposits of any bank.

Sec. 8. For the purpose of acquiring information as to the condition of any such banks, the Commission, by its members or its inspectors, as provided for in this Act, shall have full access to all the records and files of the Banking Department of the State; and it shall also, by its members or its said inspectors, have full power and authority to enter into any bank admitted under said Fund, at any time, and take charge of its assets, papers, documents and records, for the purpose of examination and investigation, during such time as shall be necessary for the purpose of auditing its affairs, and ascertaining its condition and its methods of conducting business; and either the individ-

ual members of the Commission or the inspectors of the Commission shall have power and authority to call and put under oath, and examine any officer, stockholder or employee, creditor or debtor of any bank, in connection with the examination of its affairs, or to obtain explanation of anything connected with its business, records or management; and in case of the refusal of any such person to appear for the purposes of examination, any Judge, Clerk of Court, or Justice of the Peace, within the jurisdiction of whom such bank is located, shall upon request of such Commissioner or inspector, issue a subpoena for such person, commanding him to appear at a time and place stated, and to submit to such examination, and answer questions and sign his testimony, if reduced to writing, and if any person so subpoenaed shall fail to appear or to obey such order, the Judge of the Court from which such subpoena is issued, or the Justice issuing the same, shall have authority and jurisdiction to punish such person for contempt. The testimony so taken may be, by the Commissioner or inspector, reduced, or caused to be reduced, to writing, and at his direction shall be subscribed by the person examined.

Whenever any member of the Guaranty Fund Commission shall acquire information leading him to believe that the condition of any bank is such that an immediate examination of its affairs should be made, he shall have authority to immediately order an inspector or assistant inspector to enter upon an examination of the same, and if he deem it necessary, he may call upon the State Examiner to furnish a Deputy Examiner to work with such Inspector, and the two officers shall as far as practicable co-operate in the examination of such bank.

Sec. 9. Whenever the Commission shall acquire information leading it to believe that any bank admitted under such Fund is being irregularly or inefficiently, or dishonestly conducted, or is insolvent, as that term is defined by the Banking Laws, it shall be its duty to investigate the same as promptly as possible as in Section 8 hereof provided; and at any time during the progress of such investigation if it appears that such bank is probably insolvent, such commissioner or inspector shall have authority to make an order requiring all deposits received during such examination to be set aside and held intact as "Special Deposits," which shall only be used to reimburse the depositor; and if at the close of such examination the commissioner or inspector shall find such bank to be insolvent within the meaning of the Banking Laws, he shall have authority to extend such order for such further period as shall be necessary to enable the Commission to meet and take action with reference to the affairs of such bank; but such meeting and action must be taken within thirty days from the time of extending such order. Upon completing such examination, such commissioner

or inspector shall immediately prepare a report of the result thereof, and submit the same to the Commission and the State Examiner.

If from such report it shall appear to the Commission that the bank is insolvent within the meaning of the Banking Laws, it shall have authority to immediately institute a proceeding in the district court of the county in which such bank is located, (or in any other court that may be by any law then in force, given jurisdiction of such proceeding) to liquidate such bank as an insolvent corporation, and procure the appointment of a Receiver to wind up its affairs, as provided for by Article 3 of Chapter 27 of the Code of Civil Procedure, and the general equitable jurisdiction of courts of equity to appoint receivers and wind up the affairs of insolvent corporations; or if by any law then in existence the exclusive right to institute such proceedings shall be vested in any particular officer or Board, the Commission shall certify the facts to such officer or Board, as the case may be, who must thereupon institute such proceedings.

In lieu of instituting such proceedings, the Commission may, in its discretion, permit such bank, within a time to be prescribed by it, to comply with such conditions as the Commission shall deem necessary to make it a solvent institution, but as a condition of granting such time, such bank must, by a resolution of its directors, endorsed on its minutes, consent to the continuing of the order aforesaid limiting the right to receive deposits, and to such continued supervision of its affairs as the Commission shall prescribe. The granting of such time to said bank to remedy its condition shall not abridge or limit the right of the Commission to institute such court proceedings, at any time it shall appear to its satisfaction that such bank is hopelessly insolvent, or unable to comply with the conditions prescribed.

Provided, however, the pendency of any proceedings for the liquidation of any such bank shall not be a bar to its reorganization or continuance as a banking institution, but at any time before the final disposition of such proceedings, such bank may make application to the Guaranty Fund Commission for leave to reorganize or remedy its condition, and be re-admitted under the Guaranty Fund, and the Commission may thereupon prescribe the conditions as to assets, payment of liabilities, and the character and competency of the managing officers to be placed in charge of the affairs of such bank upon which it may be re-admitted to said Guaranty Fund, which condition shall be submitted to the Court having jurisdiction, and if it approves thereof, it may make an order to that effect, and thereupon and upon such bank complying with the said conditions to the satisfaction of the Guaranty Fund Commission, it shall make an order re-admitting the said bank, and the liquidation proceedings shall

be thereupon discontinued on such terms as the Court shall direct; but no deposits shall be received by such reorganized bank until final approval of the Court is had, and the said proceedings actually dismissed. All expenses incident to such proceedings incurred by the Commission shall be presented to and audited by the State Auditing Board, and be paid out of the General funds of the State, and there is hereby appropriated for the purpose of meeting such expenses, the sum of one thousand dollars per year, or so much thereof as shall be necessary.

Sec. 10. FILING STATEMENTS. ASSESSMENTS.) On June 30th of each year, every state bank engaged in the business of banking in this state shall make and file with the Depositors' Guaranty Fund Commission, a statement in writing, verified by the oath of its president, vice president or cashier, showing the average daily deposits in its bank for the preceding twelve (12) months.

Immediately after the date fixed for the making and filing of such statements, the Depositors' Guaranty Fund Commission shall levy assessments against the assets of each of said banks as follows:

One-twentieth of one per cent on the average daily deposits as shown by the statement of such average daily deposits to be made and filed by the provisions of this section.

For each and every year thereafter one-twentieth of one per cent of the average daily deposits as shown by the statement required to be made and filed under the provisions of this Act in each year, until the total amount of money in the Guaranty Fund reaches two per cent of the average daily deposits; provided, however, that said Depositors' Guaranty Fund Commission shall have power to make and levy additional assessments of one-twentieth of one per cent, but not to exceed four such additional assessments shall be made in any one year.

Due and legal notice of such assessment or assessments shall be deemed to have been given when such notice as shall be prepared by the Secretary of the Commission has been placed in an envelope, securely sealed, and postage prepaid, directed to each of said banks and deposited, in the United States mail, and said banks shall thereupon set apart, keep and maintain in their said banks the amounts thus levied against them and the amounts shall be and constitute what shall be designated as the Depositors' Guaranty Fund, payable to the Depositors' Guaranty Fund Commission on demand, for the uses, and purposes provided. Provided that when the Depositors' Guaranty Fund reaches the total sum of two per cent of the average daily deposits, said assessments shall cease until such time as the Guaranty Fund is depleted below one and one-half per cent of the average daily deposits, when the necessary assessment may

be again levied at one-twentieth of one per cent per annum until said fund again reaches two per cent of the average daily deposits.

The Guaranty as provided for in this Act shall not apply to a bank's obligation as endorser upon bills re-discounted nor to bills payable, nor to money borrowed from its correspondents or others, nor deposits otherwise secured; nor deposits upon which compensation in any manner or form or by whatever device, has been promised or paid in excess of the rate of interest as limited in this act. All other deposits for which money or its equivalent, and for which full value has been received by the bank wherein such deposit is made, shall be guaranteed by this Act. Each guaranteed bank shall certify under oath to the Depositors' Guaranty Fund Commission at the date of statements as hereinbefore provided, the amount of money it has on deposit not eligible to guaranty under the provisions of this Act, and in assessing such bank this amount shall be deducted from the total deposits.

Sec. 11. INTEREST ON DEPOSITS.) No bank transacting a banking business under this Act shall pay interest on deposits, directly or indirectly at a greater rate than four per cent per annum, unless authorized by the Depositors' Guaranty Fund Commission to pay a greater rate which in no case shall exceed six per cent per annum, and said Depositors' Guaranty Fund Commission is hereby authorized and empowered to grant permission to pay such higher rate; provided, that the rate so granted shall be uniform within any county.

Any officer, director or employee of any bank violating the provisions of this section, directly or indirectly, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment in the state penitentiary for a term of not less than one year nor more than three years or both, in the discretion of the court.

Sec. 12. FALSE STATEMENTS. PENALTY.) Any person making oath to any of the statements herein required, knowing the same to false, shall be deemed guilty of a felony and be punished by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the state penitentiary for a term of not more than five years or both, in the discretion of the court.

Sec. 13. VOLUNTARY LIQUIDATION OR CHANGE TO A NATIONAL BANK.) If any bank desires to go into voluntary liquidation or change to a National bank before the assessment provided for in section ten becomes due and payable, the provisions of this Act shall not relieve said bank from the payment of any assessments then due from it to the Depositors' Guaranty Fund,

nor from any liability to become due on account of losses in banks which are closed at the time such bank applies to liquidate or change into a National bank.

Sec. 14. NEW BANKS AND REORGANIZED NATIONAL BANKS.) Any bank organized under the state law, subsequent to the taking effect of this act, and admitted by the Commission to participation under the Depositors' Guaranty Fund, shall pay into such fund an amount equal to three per cent of its capital stock, which amount shall constitute a credit fund subject to adjustment on the basis of said bank's average daily deposits as shown by the first annual statement required by Section 10 of this article. And any National bank that has reorganized as a State bank, shall likewise before engaging in business, set apart and credit to the Depositors' Guaranty Fund such an amount as will place them on an equal footing as respects such fund, with other State banks.

Immediately after being passed upon favorably by the Depositors' Guaranty Fund Commission, the Secretary shall notify such new banks and the State Examiner of such admission, which notification shall be in writing, in the form of a certificate, signed by the Chairman and attested by the Secretary of the Commission. Such certificates shall be by the Bank receiving the same framed and kept at all times displayed in a conspicuous place in the lobby of the bank.

The Depositors' Guaranty Fund Commission is authorized and empowered to make an adjustment of the rates of assessment to be paid by any bank which engages in the banking business subsequent to the passage, approval and taking effect of this Act, which shall have been admitted hereunder and shall require such bank to contribute to the Depositors' Guaranty Fund, a just and equitable sum, and for that purpose shall adjust assessments of such bank so that the first two assessments together with the credit fund of three per cent of the capital stock paid by said bank when it begins business, shall at least equal one-half of one percent of the average daily deposits of said bank as shown by the first annual statement required by section ten of this article.

Provided, however, that said three per cent will not be required of the new banks formed by the reorganization or consolidation of banks that have previously complied with the terms of this Act with reference to the payment of assessments.

Sec. 15. ASSESSMENT. FAILURE TO CREDIT.) Whenever any bank, after due notice from the Secretary of the Depositors' Guaranty Fund Commission shall fail to pay over or credit on its books to the Depositors' Guaranty Fund any assessment as herein provided, for a period of twenty days, such bank shall be subject to a penalty of ten (\$10.00) dollars per day for each

day it so refuses or fails to pay over or credit to such Depositors' Guaranty Fund such assessment and penalty, and at the expiration of thirty days from the date of notice of assessment herein provided if said assessment and penalty still remains unpaid, the bank so delinquent may be deemed insolvent, and in the discretion of the Commission may be liquidated and its business wound up as provided for by the State Banking Laws for the liquidating of insolvent banks.

Sec. 16. DEPOSITOR'S GUARANTY FUND. FIRST LIEN. EXCEPTION.) Whenever any bank doing business in this state under the provisions of this Act shall suspend payment or become insolvent, the amount of money standing to the credit of the Depositors' Guaranty Fund on deposit in such bank shall be a first lien upon the assets of such institution; save and except funds deposited in such institution and belonging to the estate of any insolvent bank, deposited therein by the Receiver or other person officially in charge, which shall have preference over all other claims.

Sec. 17. DEPOSITS. PAYMENT. APPROVAL OR REJECTION OF LIABILITY. ISSUANCE OF CERTIFICATES OF INDEBTEDNESS.) When any bank doing business under the provisions of this Act suspends or becomes insolvent and shall have closed, the Commission shall, without unreasonable delay, cause each deposit in such closed bank to be examined, audited and shall determine such as may be qualified for guarantee under this Act and certify the acceptance or rejection of each deposit to the Secretary of the Commission, who shall give notice, by registered mail, to the persons whose deposits have been rejected, at their last known post office address, or to each thereof, in care of the Receiver of such closed bank. The action of the Commission in certifying acceptance or rejection as herein provided shall be final unless, within ninety days from date of mailing notices of rejection, written demand for hearing is served upon the Secretary of the Commission.

Sec. 18. The Commission shall make rules and regulations and shall prescribe the manner by which proof of claims of depositors for allowance of claims guaranteed under this Act shall be made, and shall designate the form and manner of verification of such proof of claim.

Sec. 19. The Commission may provide for hearing upon rejected claims, either before the Commission or any member thereof, or a referee to be appointed by the Commission, at the State Capitol, or elsewhere within the State upon majority vote of the Commission.

Sec. 20. At any hearing where testimony is taken the Commission or its referee shall have authority to administer oaths

and may require a stenographic report to be taken and transcribed, or the testimony reduced to writing and subscribed by the witness. The Commission shall after hearing upon such rejected claims enter their order determining whether such rejected deposits shall be finally rejected or allowed as guaranteed.

Sec. 21. The Secretary of the Commission shall issue a Certificate of Indebtedness upon the Treasurer to the person entitled thereto for the amount of all such accepted deposits.

If there be not sufficient funds available in the fund to pay such Certificate of Indebtedness, the Treasurer shall endorse the same "presented for payment" and date and sign such endorsement, and such Certificate shall thereafter be payable out of money in the Guaranty Fund, by order of the Commission, pro rata, upon all outstanding Certificates of Indebtedness. Notice of the amount of each dividend to be paid upon such certificate, and the date when such payment is to be made, shall be published in a newspaper in the place where the closed bank was located. If no newspaper is published at the place where such closed bank was located, then such notice shall be published in an official newspaper of the county wherein such bank was located. Notice shall be published in like manner of the date upon which payment of any balance due on such certificate of indebtedness will be made.

Sec. 22. SUBROGATION.) To the extent of the deposits accepted and allowed as guaranteed, the Depositors' Guaranty Fund Commission, for the use and benefit of said Fund, shall be subrogated to all the rights of such guaranteed depositors thus accepted, to participate in the assets of such closed bank, and the same shall be enforced and collected by the Secretary of the Commission accordingly; and from time to time as collected shall be distributed pro rata as payment upon the certificates of indebtedness issued to the guaranteed depositors of the closed bank from which such payment had been received, until full payment is made to the holder of such certificate. Any surplus remaining after payment in full to holders of such certificates shall be turned into the depositors' guaranty fund and be thereafter held and distributed as herein otherwise provided.

All monies received shall be deposited in the solvent banks subject to the provisions of the Depositors' Guaranty Fund, proportionate as to the several deposits to the assessment levied against each of said banks.

Sec. 23. REPORTS.) The receiver or other official in charge of any suspended or insolvent bank, possession of which has been taken under the provisions of this Act, shall make to the

Depositors' Guaranty Fund Commission not less than one report quarterly, according to such form as may be prescribed, such report to be verified by his oath.

Sec. 24. NOTICES NOT OTHERWISE PROVIDED FOR.) Whenever notice is required by the provisions of this Act, and such notice is not otherwise provided for as to form or manner of service thereof, the same may be served in the manner now provided for the service of summons in civil action, or by registered mail, and an affidavit of such mailing of such notice by the person giving or serving same, shall be prima facie evidence of the service of such notice.

Sec. 25. FORMS. APPROVAL.) The Depositors' Guaranty Fund Commission shall prescribe all such forms as may be useful, or necessary in carrying out the provisions of this Act.

Sec. 26. PUNISHMENT. WHERE NOT OTHERWISE PROVIDED.) Where no other punishment is provided herein, any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty (\$50) dollars nor more than three hundred (\$300) dollars, or by imprisonment in the county jail for not less than thirty nor more than ninety days, or both, in the discretion of the court.

Sec. 27. SAVING CLAUSE.) Nothing in this act contained repealing any act for the regulation or conduct of banking, shall be construed, to release any person from punishment for any acts heretofore committed violating said act or acts nor affect in any manner any existing indictment or prosecution by reason of such repeal; and for that purpose such acts shall continue in force and effect notwithstanding such repeal.

Sec. 28. FEDERAL GUARANTY LAW.) Whenever by Act of Congress or by decision of the Federal Court, or departmental construction of the National Banking Act, National Banking Associations located and doing business within this State are permitted to avail their depositors of the protection of the Depositors' Guaranty Fund, established by the law of this State for the re-payment of deposits in closed banks, such association, after examination at its expense by the Commission, as in this Act provided for State Banks and, upon its approval as to its financial condition by the Commission, may participate in the assets and benefits of the Depositors' Guaranty Fund upon terms and conditions in harmony with the banking law of this state to be fixed by the said Depositors' Guaranty Fund Commission, provided that in the event national banking associations shall be required by federal enactment to pay assessments to any Depositors' Guaranty Fund of the Federal Government

and thereby the Depositors in such association in this state shall be guaranteed by virtue of the Federal laws, the association having availed themselves of the benefits of this Act, may withdraw therefrom and have paid to them the unused portion of all assessments levied upon and paid by such association.

Sec. 29. UNAPPROPRIATED ASSESSMENTS REFUNDED. WHEN.)

If any bank organized under the laws of this State, having paid any assessment or assessments to the Depositors' Guaranty Fund shall liquidate and go out of business, or shall desire to organize as a national bank and withdraw from the protection of the Depositors' Guaranty Fund for its depositors the portion of such assessment or assessments, which shall not have been used under the provisions of this Act shall be refunded to any bank by the Depositors' Guaranty Fund Commission. Provided, that no such bank shall be released from its proper proportion of all outstanding certificates of indebtedness of the Depositors' Guaranty Fund, issued to the depositors of failed banks under the provisions of this Act, nor until it shall have received permission in writing so to do from the Depositors' Guaranty Fund Commission of this State and after an examination of its condition.

Sec. 30. MAY RESUME BUSINESS.) Such bank or trust company may upon re-payment of any money advanced by the Depositors' Guaranty Fund to such bank or trust company, with the consent of the Depositors' Guaranty Fund Commission resume business upon such conditions as may be approved by said Commission.

Sec. 31. DEFINING BANKS AND BANKING FOR THE PURPOSE OF THIS ACT.) For the purpose of this act every corporation, except national banks whose business, in whole or in part, consists of the taking of deposits or buying and selling exchange shall be held to be and is hereby declared to be a bank, and as thus defined shall be subject to the provisions of this act, provided further, that trust companies doing a general banking business as defined in this section separate and apart from the writing of surety bonds and other general business, and building and loan associations receiving savings deposits, shall be declared to be a bank and shall also be subject to the provisions of this act.

Sec. 32. ORGANIZING.) Any banks organized and authorized to do business under the provisions of the State Banking Laws on and after the passage, approval and taking effect of this act shall sell the capital stock thereof at three (\$3.00) dollars per share above par and the amount received as a result of such advance shall be credited on the books of such bank to the Depositors' Guaranty Fund as hereinbefore provided.

Sec. 33. The Depositors' Guaranty Fund Commission shall have the right and authority to examine, by any member or inspector, the affairs of closed banks and investigate the conduct of the receivership thereof and make report thereon to the Commission.

Sec. 34. There is hereby appropriated out of the Depositors' Guaranty Fund twenty thousand dollars (\$20,000.00) per year, or so much thereof as shall be necessary to meet the expenses of the Guaranty Fund Commission herein provided for, and any amount of such appropriation not so used, shall be at the end of each year, covered into the said Depositors' Guaranty Fund.

The expenses of the Guaranty Fund Commission herein provided for shall be presented to the State Auditing Board for allowance, as claims against the State are presented, and when allowed, shall be paid as other claims against the State are paid.

Sec. 35. The term "Special Deposit" used in this Act shall be construed to mean, a deposit received in either cash, check, draft, or other common medium of exchange, but to be kept separate and apart from the general funds of the bank receiving the same; and to be kept on hand in the bank in cash, and not be considered as a part of its cash reserve; and not to be devoted to any purpose other than returning it on demand to the depositor; or permitting it to be withdrawn on order of the depositor, which order may be in the form of a check or other writing; and no part of such deposit shall be used, or the possession thereof parted with by the bank, except the checks, drafts, and other common mediums of exchange included in such deposits, shall be collected and converted into money as in the ordinary course of banking business, and the money so obtained, held in said deposit in lieu of such medium of exchange, and so long as the requirement of receiving Special Deposits continues, the full amount thereof must be kept on hand by the bank, except as paid out to, or on the order of the depositor; or deposited in a bank within the state, as a special deposit therein, as may be designated by the Commission or its Inspector and it shall be a Special Trust Fund not subject to claims of creditors of the bank.

Whenever the term "Commissioner" is used in this Act, it shall be deemed to mean a member of the Guaranty Fund Commission; and whenever the word "Commission" is used, it shall be deemed to mean the Guaranty Fund Commission.

Whenever the term "Fund" is used in this Act, it shall be deemed to mean the Depositors' Guaranty Fund.

Sec. 36. Any officer of any bank who shall receive any general deposit, while an order is in force, as hereinbefore pro-

vided, as to the taking of Special Deposits, or who shall, while such order is in force, after the receiving of any such Special Deposits, mingle the same with the general funds of the bank or pay out, or use, or part with the possession of the same, except as in this Act provided, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than One Thousand (\$1,000.00) Dollars, or by imprisonment in the County Jail for a term of not to exceed one year, or by both such fine and imprisonment, or by being confined in the Penitentiary for not less than one, or more than five years; and in addition thereto, such officer shall be civilly liable to any depositor whose deposit shall be thus unlawfully diverted.

Sec. 37. If any section, provision, clause, sentence or part of this Act shall be declared violative of any "constitutional" provision, the Act shall be deemed and held to have been enacted independent of the part so declared unconstitutional, and any operative part thereof that may remain shall be nevertheless given full force and effect, to the end that the ultimate purpose of the Act shall be as far as possible accomplished; and if that part of the Act which permits the Guaranty Fund Commission to resort to the Depositors' Guaranty Fund to pay any part of the expenses incident to the performance of its duties as herein provided for, shall be declared invalid, it shall nevertheless be lawful for the Guaranty Fund Commission to employ the inspectors herein provided for, and pay their salaries and expenses, and to pay any other expenses herein provided for, out of their own funds, or out of the funds of individuals or banking corporations voluntarily contributed for that purpose; and the official character of such inspectors and their powers and authority shall nevertheless be, in all things, the same as though they were fully paid and compensated out of the funds sought to be appropriated for that purpose.

Sec. 38. TEMPORARY POWERS OF COMMISSION.) The Depositors' Guaranty Fund Commission shall have the power and authority to employ any of the funds under its control for the purpose of paying off the claims of Bills Payable holders in closed banks whenever in its judgment and sound discretion the security behind such Bills Payable is sufficient to pay the same in full, and leave a substantial amount of security of the kind and character that could reasonably be expected to be collected upon and liquidated within one year from the expiration of the time limit of this section.

The Commission is empowered to deposit funds in banks operating under this Act, temporarily in aid of open banks, in such amounts; and upon such terms and conditions, and upon such security as it may determine and designate. And such banks shall be required to conduct their affairs in accordance with and under the direction of the Commission until such

temporary aid has been withdrawn. It shall require the consent of four members of the Commission before funds can be employed as provided for in this section.

This Section of this Act shall continue in force and effect until July 1st, 1927, unless sooner repealed, but at that time it shall expire and cease to be operative without any repeal and the powers and authorities conferred therein shall terminate without in any way limiting any other provisions of the Act.

Sec. 39. FORBIDDING CERTAIN ADVERTISING.) Any officer, director, stockholder, agent or employee, of a Bank whose deposits are guaranteed under the provisions of this Act, who shall state or represent in any advertisement, pamphlet, book, sign, or other manner, in writing or printing, that the deposits of such bank are guaranteed by the State of North Dakota shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not less than one hundred (\$100.00) dollars nor more than five hundred (\$500.00) dollars.

Approved March 6th, 1923.

ELECTIONS

CHAPTER 201.

(H. B. No. 169—Kopp.)

ASSISTING ELECTOR TO MARK BALLOT.

An Act To Amend and Re-enact Section 988 of the Compiled Laws of North Dakota for the Year 1913, Relating to the Disability of Electors in Marking their Ballots.

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

Sec. 1. AMENDMENT.) That Section 988 of the Compiled Laws of North Dakota for the year 1913 be amended and re-enacted so as to read as follows:

Sec. 988. In case of disability of elector, any voter, who declares to the judges of election or when it appears to the judges of election that he cannot read that by blindness or other physical disability he is unable to mark his ballot shall upon request receive the assistance of either his Father, Mother, Husband, Wife, Son or Daughter in the marking of his ballot; and no one assisting, under this act, any voter in marking his ballot shall give information regarding the same. The judges may in their discretion require such declaration of disability to be made by the voter under oath and they are authorized to