

REFERRED MEASURES, APPROVED

CHAPTER 400

H. B. No. 537

SMALL LOANS ACT*

An Act to define, license, and regulate the business of lending in amounts of one thousand dollars or less; to prescribe maximum rates of charge which licensees are permitted to make; to provide for the administration and enforcement of the Act by the state examiner, and to prescribe penalties.

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

§ 1. Definitions.) For purposes of this Act unless the context or subject matter otherwise requires:

1. "Person" means an individual, partnership, association, corporation and any other legal entity;
2. "License" means a permit, issued under the authority of this Act, to make loans in accordance with the provisions of this Act at a single place of business;
3. "Licensee" means a person to whom one or more licenses have been issued.

§ 2. Administration.) The state examiner shall use the facilities of the banking department in administering and enforcing this Act. The state examiner may employ such employees as may be necessary to administer and enforce the provisions of this Act and may delegate his powers and duties under this Act to a deputy state examiner. Such deputy and employees shall not have a financial interest directly or indirectly in any business which is subject to this Act, or in any other business which is supervised by the state examiner, or in any similar business which is conducted under the authority of any law of the United States. All fees received by the state examiner under the provisions of this Act shall be credited to the general fund of this state.

§ 3. Scope.) (a) No person except persons licensed under the provisions of this Act shall engage in the business of lending in amounts of one thousand dollars or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, which in the aggregate are greater than seven percent per annum.

***Note:** This Act was amended by chapter 134 of the 1961 Session Laws.

(b) **Exemptions.)** This Act shall not apply to any person doing business under and as permitted by any law of this state or the United States relating to banking associations, banking institutions, banks, savings banks, trust companies, savings or building and loan associations, mutual investment corporations, mutual savings corporations, or credit unions nor to any person conducting a bona fide pawnbroking business transacted under a pawnbroker's license nor shall such persons be eligible to become a licensee under this Act.

(c) **Evasions.)** The provisions of subsection (a) of this section shall apply to any person who seeks to evade its application by any device, subterfuge, or pretense whatsoever, including, but not limited to: the loan, forbearance, use or sale of credit as guarantor, surety, endorser, co-maker, or otherwise; the use or sale of money, goods, or things in action; the use of collateral or related sales or purchases of goods or services, or agreements to sell or purchase, whether real or pretended; receiving or charging compensation for goods or services, whether or not sold, delivered, or provided; and the real or pretended negotiation, arrangement, or procurement of a loan through any use or activity of a third person, whether real or fictitious.

§ 4. Application and Fees.) Application for a license shall be in writing, under oath, and in the form prescribed by the state examiner. The application shall give the location where the business is to be conducted and shall contain such further information as the state examiner may require, including the names and addresses of the partners, officers, directors, or trustees, and of such of the principal owners or members as will provide the basis for the investigations and findings contemplated by section 5 of this Act. At the time of making such application, the applicant shall pay to the state examiner the sum of three hundred dollars as a fee for investigating the application, and the sum of one hundred dollars for the annual license fee.

§ 5. Investigation of Application; Requirements for Issuance of License; Bond; Denial of License; Public Record.)

(a) Upon the filing of an application and the payment of the fees, therefore, the state examiner shall investigate the facts concerning the application. The state examiner shall notify all licensees having a place of business in a community in which the applicant proposes to do business, of the filing of such application within thirty days after the date of filing such application. If any licensee having a place of business in the same community or other person files an objection within thirty days after the mailing of such notice by the state examiner, or if as the result of a preliminary investigation, the

state examiner has any doubts of the applicant meeting the required standards, the state examiner shall set a date and time for a hearing on such application not less than thirty days nor more than sixty days from the date of mailing the notice of hearing. At such hearing any person may be heard with reference to the facts. The state examiner shall grant or deny each application for a license within thirty days after the hearing unless the period is extended by written agreement between the applicant and the state examiner.

(b) The state examiner may issue a license to operate a small loans business if he shall find:

1. That the financial responsibility, experience, character, and general fitness of the applicant, are such as to warrant the belief that the business will be operated lawfully, and fairly; and
2. That the applicant has net liquid assets of at least ten thousand dollars for the operation of the business; and
3. That the applicant shall have filed with the state examiner a bond to be approved by him in which the applicant shall be the obligor, in the sum of ten thousand dollars, with one or more sureties whose liability as such sureties need not exceed the said sum in the aggregate. This bond shall run to the state examiner for the use of the state and of any person or persons who may have a cause of action against the obligor of said bond under the provisions of this Act. Such bond shall be conditioned that said obligor will faithfully conform to and abide by the provisions of this Act and of all the rules and regulations lawfully made by the state examiner hereafter, and will pay to the state and to any such person or persons any and all moneys that may become due or owing to the state or to such person or persons from said obligor under and by virtue of the provisions of this Act.

(c) If the state examiner shall find the applicant is not qualified to be issued a license, he shall enter an order denying the application and forthwith notify the applicant of the denial, returning the license fee and the bond but retaining the investigation fee. Within ten days after the entry of such an order he shall prepare official records of his finding and a summary of the evidence supporting them and shall forthwith deliver a copy thereof to the applicant.

(d) The transcript of the hearing and evidence introduced at all hearings before the state examiner and the findings of fact prepared by the state examiner shall be public records open to inspection at all reasonable times.

§ 6. Posting of License; Continuing License: Annual Fee.)

(a) Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a co-partnership or association, the name of the members thereof, and if a corporation, the date and place of incorporation. Each license shall be kept posted in the licensed place of business and shall not be transferable or assignable.

(b) Each license shall remain in full force and effect until surrendered, revoked, or suspended, provided that on or before the tenth day of June of each year the licensee shall pay to the state examiner the sum of one hundred dollars for each license held by him, as a license fee for the succeeding fiscal year, and at the same time he shall file with the state examiner a bond in the same amount and in the same character as is required by subsection b3 of section 5 of this Act.

§ 7. Place of Business; Removal; Residence of Borrower.)

(a) Not more than one place of business for the making and collecting of loans made pursuant to this Act shall be maintained under the same license, but the state examiner may issue additional licenses to the same licensee upon compliance with all the provisions of this Act governing issuance of a single license. Nothing in this Act shall be construed to require a license for any place of business devoted entirely to accounting or other record keeping.

(b) No licensee may move his place of business to a location outside of the original city or town in which he is licensed without the issuance of a new license. When a licensee wishes to change his licensed place of business within the same city or town, he shall give written notice thereof to the state examiner who shall investigate the facts and approve or disapprove the new location for the business.

(c) Nothing in this Act shall be construed to limit the loans of any licensee to residents of the community in which the licensed place of business is situated, nor to prohibit making loans by mail.

§ 8. Revocation of License; Suspension of License; Surrender of License; Pre-existing Contracts: Reinstatement of License.)

(a) The state examiner may, if he has reason to believe that grounds for revocation of a license exists, send by registered or certified mail to the licensee, a notice of hearing stating the contemplated action and in general the grounds thereof and setting the time and place for a hearing thereon. Such hearing shall not be held less than ten nor more than thirty days from the date of mailing such notice. Within ten days after such hearing, the state examiner shall issue a written order

either dismissing the charges or suspending or revoking the license and his grounds therefor. A copy of such written order shall be sent to the licensee. A license may be revoked for one or more of the following reasons:

1. The licensee has failed to pay the annual license fee; or
2. The licensee either knowingly or without the exercise of due care to prevent the same has violated any provision of this Act or any regulation or order lawfully made pursuant to and within the authority of this Act; or
3. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the state examiner in refusing originally to issue such license; or
4. The applicant has failed to open an office for business within one hundred twenty days from the date the license is granted or has failed to keep open a licensed office for a period of one hundred twenty days.

The provisions of chapter 28-32 of the North Dakota Revised Code of 1943, as amended, shall govern all proceedings relating to the suspension or revocation of any license.

(b) If the state examiner finds that probable cause for revocation of any license exists and that enforcement of the Act requires immediate suspension of such license pending investigation he may, upon written notice enter an order suspending such license for a period not exceeding thirty days, pending the holding of a hearing as prescribed in this Act.

(c) Any licensee may surrender his license by delivering it to the state examiner with written notice of its surrender, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto.

(d) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and obligors.

(e) The state examiner may reinstate a suspended license or issue new licenses to a person whose license or licenses have been revoked if in the opinion of the state examiner no fact or condition then exists which clearly would have justified him in refusing originally to issue such license under this Act.

§ 9. Examination of Licensees; Investigations; Access to Records; Witnesses; Cease and Desist Orders; Injunctions; Receivers.)

(a) At least once each year the state examiner or his duly authorized representatives shall make an examination of the place of business of each licensee and of the loans, transactions, books, papers, annual reports, and records of such licensee so far as they pertain to the business licensed

under this Act. The actual cost of every examination shall be paid to the state examiner by every licensee so examined. Such sums shall be paid by the state examiner to the state treasurer to be credited to the general fund of this state.

(b) For the purpose of discovering violations of this Act or of securing information lawfully required hereunder, the state examiner or his duly authorized representatives may at any time investigate the business and examine the books, accounts, papers and records used therein, of any licensee or any other person whom the state examiner has reasonable cause to believe is violating or is about to violate any provision of this Act. Any person who shall advertise for, solicit or hold himself out as willing to make or procure loans in the amount of or of the value of one thousand dollars or less at rates in excess of seven percent per annum shall be presumed to be engaged in a business governed by this Act.

(c) The state examiner is hereby authorized to make any examination of any licensee or his place of business, including all records of such business, or any other witness, at any time he has reason to believe the same is necessary. All examinations of any licensee, witnesses or records of any small loan business shall be conducted in accordance with chapter 28-32 of the North Dakota Revised Code of 1943, as it may be amended.

(d) Whenever the state examiner has reasonable cause to believe that any person is violating or is threatening to violate any provision of this Act, he may, in addition to all actions provided for in this Act and without prejudice thereto, enter an order requiring such person to desist or to refrain from such violation; and an action may be brought in the district court of the county in which the small loan business is conducted or in the district court of Burleigh County by the attorney general and on behalf of the state examiner to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such action is brought shall have power and jurisdiction to impound, and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this Act or to protect the rights of borrowers. Such receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court.

§ 10. Books and Records; Annual Reports.)

(a) Each licensee shall keep and use in his business such books and accounting records as are in accord with sound and accepted accounting practices and as may be prescribed by the state examiner. Such licensee shall preserve such books and accounting records for at least two years after making the final entry on any loan recorded therein.

(b) Each licensee shall annually on or before the fifteenth day of September file a report for the preceding fiscal year with the state examiner. Such report shall give information with respect to the financial condition of such licensee and shall include: the name and address of the licensee, balance sheets at the beginning and end of the accounting period; a statement of income and expenses for said period, a reconciliation of surplus or net earnings with the balance sheets; a schedule of assets used and useful in the small loan business; an analysis of charges, size of loans and types of security on loans of one thousand dollars or less; an analysis of delinquent accounts, an analysis of suits, reposessions and sales of chattels and such other relevant information as the state examiner may require concerning the business and operations during the preceding fiscal year. Such report shall be made under oath and shall be in the form prescribed by the state examiner who shall make and publish annually an analysis and recapitulation of such reports.

§ 11. Regulations and Orders; Certified Copies of Official Documents.)

(a) The state examiner shall have power and authority to promulgate in accordance with chapter 28-32 of the North Dakota Revised Code of 1943 as it may be amended, such rules and regulations as may be reasonably necessary to carry out the provisions of this Act.

(b) On application of any person and payment of the costs thereof, the state examiner shall furnish a certified copy of any license, regulation, or order.

§ 12. Advertising.) No licensee or other person subject to this Act shall advertise, display, distribute, broadcast, or tele-
vise any false, misleading, or deceptive statement or representation with regard to the rates, terms or conditions for loans, or cause or permit the same to be done.

§ 13. Other Business in the Same Office; Business Confined to Licensed Office.)

(a) No business involving the sale of tangible merchandise shall be conducted by any licensee under this Act or any other person within the same office, room, suite, or place in which a small loan business is carried on. If the state exam-

iner shall find, after a hearing, that the conduct of other business by the licensee or any other person has concealed evasion of the Act or of the rules and regulations made hereunder, he shall order such licensee in writing to desist from such conduct.

(b) No licensee shall make loans provided for by this Act under any name, or at any place of business within this state, other than that stated in the license.

§ 14. Maximum Charges Permitted: Refund; Delinquency Charges; Deferment Charges; Installment Payments: Contract Period; Splitting of Loans; No Further Charges.)

(a) Every licensee may make loans in any amount not exceeding one thousand dollars, and may contract for, receive or collect on such loans, charges not in excess of two and one-half percent per month on that part of the unpaid balance of principal not exceeding two hundred and fifty dollars; two percent per month on that part of the unpaid balance of principal exceeding two hundred and fifty dollars but not exceeding five hundred dollars; one and three-fourths percent per month on that part of the unpaid balance of principal in excess of five hundred dollars but not exceeding seven hundred and fifty dollars; and one and one-half percent per month on that part of the unpaid balance of principal exceeding seven hundred and fifty dollars but not exceeding one thousand dollars. For the purpose of computing charges for a fraction of a month, whether at the maximum rate or less, a day shall be considered one-thirtieth of a month. Amounts to be charged for any small loan by a licensee under this Act may also be calculated and charged on a stated dollar per hundred basis but such charges over the entire term of the loan shall not be in excess of the equivalent percentage charges on the monthly unpaid balances of principal authorized in this section. In the event charges are calculated and charged on a dollar per hundred basis, the loan shall be repayable in substantially equal periodic installments of principal and charges, and the annual percentage simple interest equivalent shall be conspicuously stated in the note or small loan contract executed in connection with the loan.

(b) When any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis is paid in full by cash, a new loan, renewal or otherwise, one month or more before the final installment date, the licensee shall refund or credit to the borrower a portion of the total charges which shall be at least as great as the sum of the full periodic installment balances scheduled to follow the installment date following the date of prepayment in full bears to the sum of all the periodic installment balances of the loan contract, both sums to be determined according

to the payment schedules which had been agreed upon in the loan contract. Charges during the month of payment shall be pro rated in the proportion that the number of days remaining in the installment period bears to the total days of the installment period. No refund of one dollar or less need be made.

(c) On any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis, a licensee may charge, collect and receive on any installment of principal and charges continuing unpaid for five or more days from the date such payment is due a sum which shall not exceed the amount of charges during the final full month of the loan before maturity. Such charge may not be collected more than once for the same default. The charge may be collected at the time of such default or any time thereafter provided, however, that if such charge be taken out of any payment received after a default occurs and if such deduction results in the default of a subsequent installment no charge shall be made for such subsequent default.

(d) On any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis, if the payment date for any scheduled installment is deferred one or more full months and a corresponding deferment is made for all subsequent installments, the licensee may charge and receive a deferment charge which shall not exceed one-twelfth of the charges authorized in subsection (a) of this section applied to the balance of principal and charges due at the date of the deferment multiplied by the number of full months during the deferment in which no payment is made. Thereafter, charges shall be made over the remaining extended life of the loan in the same manner and at the same ratio as though no deferral or extension had been granted. Such charges may be collected at the time of such deferment or any time thereafter. If the loan is prepaid in full during the deferment period the borrower shall receive in addition to the refund required under subsection (b) of this section a refund of that portion of the deferment charge applicable to any unexpired months of deferment period.

(e) No licensee shall enter into any contract of loan under this Act which the borrower agrees to make any scheduled payment of principal and charges more than twenty-four and one-half calendar months from the date of making such contract. Every loan contract shall require payment of principal and charges in installments which shall be payable at approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for shall be substantially larger than any preceding installment. When a loan

contract provides for monthly installments, the first installment may be payable at any time within forty-five days after the date of the loan.

(f) No licensee shall induce or permit any person, or husband and wife, jointly or severally, to be obligated, directly or indirectly, under more than one contract of loan at the same time if such multiple loans result in a higher rate of charge than would otherwise be permitted by this Act.

(g) No further amount whatsoever in addition to the charges provided for in this Act shall be directly or indirectly charged, contracted for or received. However, such restrictions shall not apply to court costs, lawful fees for the filing, recording or releasing in any public office of any instrument securing a loan, and the identifiable charge or premium for insurance provided for in section 18 of this Act. If any sum in excess of the amounts authorized by this Act is charged, contracted for or received, the contract of loan shall be void and the licensee or any assignee or other person shall have no right to collect or receive any principal, charges or recompense whatsoever.

§ 15. Requirements for Making and Payments of Loans; Confessions of Judgment; Incomplete Instruments; Validity of Chattel Mortgage.)

(a) Every licensee shall:

1. Deliver to the borrower at the time of making a loan under this Act, a statement showing in clear and distinct terms the amount and date of the loan and the date of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, the agreed schedule of payments on such loan and the annual simple interest percentage that is equivalent to the total of all charges that are made;
2. Give a receipt to the person making a cash payment on account of any loan unless payment is made by check or money order;
3. Permit payment to be made in advance in an amount equal to one or more installments on any contract of loan at any time during regular business hours and allow a pro rata credit or refund to the borrower of the charges accruing during the period covered by the prepayment;
4. Upon repayment of the loan in full, mark plainly every obligation and security signed by any obligor with the word "Paid" or "Canceled", release any mortgage or deed of trust no longer securing any in-

debtedness, restore any pledge and cancel and return any note and any assignment given to the licensee.

(b) No licensee shall:

1. Take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor
2. Take any note or promise to pay or other instrument of security that does not disclose the amount of the loan; a schedule of payments or a description thereof, and the agreed charges; or in which blanks are left to be filled in after execution, however such details need not appear on a certificate of title to a motor vehicle, a policy or certificate of insurance, a chattel mortgage or deed of trust covering future advance in accordance with the law of the district or state where the property is located, or customary powers in connection with bonds or stocks which may be pledged as collateral; nor
3. Take any instrument in which blanks are left to be filled in after the loan is made.

(c) No licensee shall at the time a loan is made or subsequently thereto take any chattel mortgage or other lien on household furniture then in possession and use of the obligor unless it is in writing and signed by the obligor, and in the case of a married obligor, signed by both husband and wife; provided however, that both husband and wife need not sign when such husband and wife have been legally separated by decree of separation by a court of competent jurisdiction, or in the event such spouse has been declared to be legally incompetent.

§ 16. Indebtedness of More Than One Thousand Dollars.) A licensee may make loans in amount greater than one thousand dollars and as to that portion of said loan which exceeds one thousand dollars, may charge interest only as permitted by the general interest laws of this state. If the borrower or the borrower and his spouse, indirectly or directly, have two or more loans outstanding to the same licensee at the same time with total principal balances aggregating in excess of one thousand dollars then neither loan shall bear the charges authorized by this Act.

If the proceeds of any loan made under this Act are used to discharge a pre-existing debt of the borrower for goods or services owed directly to the person who provided such goods or services and the licensee accepts from such person a guaranty of payment of the principal of such loan with interest

at a rate not in excess of that permitted by the usury law of this state, the acceptance of one or more such guaranties in any aggregate amount shall not affect the right of such licensee to make the charges against the primary borrower authorized by this Act. In the event that a licensee shall make a bona fide purchase of the business and all or substantially all of the loans receivable from another licensee, or other lender not affiliated with the purchaser and such licensee or other lender shall have an existing loan outstanding to one or more of the borrowers whose contracts are purchased, such licensee making such purchase shall be entitled to liquidate and collect the balances due on such contracts, including all lawful charges and interest at the rate or amounts agreed upon in such loan contracts.

§ 17. Future Assignments of Wages, Salaries, and Commissions Prohibited.) It shall be unlawful for any person engaged in the small loans business under this Act to take, as security or otherwise, in consideration of a small loan, any assignment of unearned or future salaries, wages, or commissions.

§ 18. Insurance; Requiring of Insurance; Sale of Insurance by Licensee; Existing Insurance.)

(1) The following types of insurance may be written in connection with loans made by licensees under this Act, provided that they are properly licensed by the state insurance commissioner to write such insurance:

- (a) In the case of motor vehicles, fire, theft, and windstorm; or comprehensive, including fire, theft and windstorm; fifty dollars or more deductible collision; and bodily injury liability and property damage liability;
- (b) Fire and extended coverage insurance upon tangible personal property; and
- (c) Life, health and accident insurance or any of them, may be written, upon or in connection with any loan in an amount not exceeding the total amount to be repaid under the loan contract, and for a term not extending beyond the final maturity date of the loan contract; provided, that in the event of a renewal or prepayment of a contract or loan, this type of insurance shall be canceled and a refund of the unearned premium shall be credited or paid the borrower.

(2) Notwithstanding any other provision of this Act, any gain or advantage in the form of commission or otherwise, to the licensee or to any employee, affiliate, or associate of the licensee from such insurance or its sale shall not be deemed to be an additional or further charge in connection with the

contract of loan. The insurance premium for such insurance may be collected from the borrower or included in the contract of loan at the time the loan is made. No licensee shall collect from the borrower at the time the loan is made any sum in excess of the premium then due, and no premium covering an insurance period of more than one year shall be collected.

(3) Insurance permitted under the provisions of this section shall be obtained through a duly licensed insurance agent, agency, or broker. Premiums shall not exceed those fixed by law or current applicable manual rates and when written by a licensee, employee, affiliate or associate, they shall be approved by the state examiner. Insurance written, as authorized by this section, may contain a mortgage clause or other appropriate provision to protect the insured's interest of the licensee.

(b) The licensee shall at the time the loan is made, give to the borrower, or if more than one, to one of them, a statement concerning any insurance procured by or through the licensee, which shall include the amount of any premium which the borrower has paid or is obligated to pay, the amount, the expiration date of the policy, and a concise description of the risks insured. If a borrower procures insurance by or through a licensee, the licensee shall deliver to the borrower within fifteen days after the making of the loan an executed copy of the insurance policy or certificate of insurance.

(c) The licensee shall not require the purchasing of insurance from the licensee or an employee, affiliate, associate or specific companies or agents as a condition precedent to the making of a loan, and shall not decline existing insurance where such existing insurance is provided by an insurance company duly licensed by this state.

§ 19. Loans Made Elsewhere.) No charge, interest, or consideration for any loan made outside this state shall be recovered in any court in this state, in excess of the charges, interest, or consideration authorized by the statutes of this state on loans made within this state.

§ 20. Judicial Review.) Any licensee or any applicant for a license or other person considering himself aggrieved by any order or act of the state examiner or his refusal to act hereunder, shall have a right to judicial review. Such licensee, applicant for a license, or other person may proceed in accordance with the procedures prescribed in and the provisions of chapter 28-32 of the North Dakota Revised Code of 1943, as it may be amended.

§ 21. Status of Pre-existing Obligations.) Nothing in this Act shall be so construed as to impair or invalidate the obligations of any contract of loan which was lawfully entered into prior to the effective date of this Act.

§ 22. Penalty.) Any person who shall violate any of the provisions of this Act or regulations or orders promulgated thereunder shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars or by imprisonment of not more than one year, or both such fine and imprisonment. Any contract of loan or any act in its making or collection which violates the provisions of this Act shall have the result of voiding the contract of loan and the lender shall have no right to collect, receive, or retain any principal, interest or charges whatsoever.

Approved June 28, 1960.

109,225 to 40,914

Note: This measure was No. 5 on the primary election ballot.

CHAPTER 401

S. B. No. 73

CONGRESSIONAL DISTRICTS

An Act to divide the state of North Dakota into two congressional districts, and defining the boundaries thereof.

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

§ 1. State Divided Into Two Districts.) The state of North Dakota is hereby divided into two congressional districts, each of which is entitled to elect one representative to the Congress of the United States.

§ 2. First District Defined.) The counties of Pembina, Cavalier, Towner, Rolette, Walsh, Ramsey, Benson, Pierce, Grand Forks, Nelson, Eddy, Traill, Steele, Griggs, Foster, Cass, Barnes, Stutsman, Richland, Ransom, LaMoure, Sargent and Dickey shall constitute the first congressional district.

§ 3. Second District Defined.) The counties of Bottineau, Renville, Burke, Divide, McHenry, Ward, Mountrail, Williams, Wells, Sheridan, McLean, Mercer, Dunn, McKenzie, Kidder, Burleigh, Oliver, Billings, Golden Valley, Morton, Stark, Logan, Emmons, Grant, Hettinger, Slope, McIntosh, Sioux, Adams and Bowman shall constitute the second congressional district.

Approved November 8, 1960.

133,523 to 109,377

Note: This measure was No. 1 on the general election ballot.

CHAPTER 402

S. B. No. 94

THIRD BRAKEMAN

An Act to amend and reenact section 49-1309 of the North Dakota Revised Code of 1943, relating to the number of brakemen required on trains.

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

§ 1. **Amendment.)** Section 49-1309 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

49-1309. Freight Trains of Over Forty Cars: How Manned.)

No railroad corporation doing business in this state which operates more than four trains in twenty-four hours shall operate over any of its lines or any part thereof outside of the yard limits any freight or mixed trains consisting of more than forty freight or other cars, exclusive of caboose and engine, with less than a full train crew consisting of five persons:

1. One conductor;
2. One engineer;
3. One fireman;
4. One brakeman; and
5. One flagman, such flagman to have at least one year's experience in train service.

This section does not apply to any branch or part of road which does not operate more than four trains in any twenty-four consecutive hours.

§ 2. **Effect of Act.)** No person employed as a brakeman on any railroad in this state on the effective date of this Act shall be discharged or lose his employment by reason of the provisions of this Act. However, whenever a brakeman retires, terminates or leaves his employment the railroad company need not replace the position so vacated, unless it is to fill a mandatory position under section 1 of this Act.

§ 3. **Effect of Invalidity of Part of This Act.)** If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this Act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this Act so adjudged to be invalid or unconstitutional.

Approved November 8, 1960.

154,806 to 108,857

Note: This measure was No. 2 on the general election ballot.