

Insurance.

GENERAL PROVISIONS.

CHAPTER 69.

AN ACT to Revise and Amend Article 11 of Chapter 3, Title 2 of Part 3 of Division Second of the Civil Code, entitled "Insurance Corporations."

Be it enacted by the Legislative Assembly of Dakota :

§ 1. MAY FORM COMPANIES.] That any number of persons, not less than seven, may associate, form and incorporate a company for the following purposes, to-wit : To make insurance upon dwelling houses, stores and all kinds of buildings, and upon household furniture and other property, against loss or damage by fire, lightning, cyclone, tornado or hail, and the risks of inland navigation and transportation. Any and all insurance companies incorporated under the provisions of this act shall, in a declaration and charter provided to be filed, have expressed an intention to make an insurance, or which shall have power to make insurance against loss or damage by the risks of inland navigation or transportation, shall have power to make insurance upon vessels, boats, cargoes, goods, merchandise, freights and other property, against loss and damage by all or any of the risks of lake, river, canal and inland navigation and transportation.

§ 2. RE INSURANCE.] Any companies organized under this act shall have power to effect re-insurance of any risks taken by them respectively.

§ 3. DECLARATION TO BE FILED.] Such persons shall file in the office of the territorial auditor a declaration, signed by all the incorporators, expressing their intention to form a company for the purpose of transacting the business of insurance, as expressed in the first section of this act, which declaration shall also comprise a copy of the charter proposed to be adopted by them, and shall publish a notice of such intention, once in each week, for at least four weeks, in a public newspaper published in the county in which such insurance company is proposed to be located.

§ 4. CHARTER—WHAT TO CONTAIN.] The charter comprised in such declaration shall set forth the name of the company, the place where the principal office for the transaction of its business shall be located, and the mode and manner in which the corpor-

ate powers granted by this act are to be exercised, the mode and manner of electing directors, a majority of whom shall be citizens of this territory, and filling of vacancies—and each director of the company shall be the owner, in his own right, of at least five hundred (500) dollars worth of the stock of such company—and the period for the commencement and termination of its fiscal year and the amount of capital to be employed in the transaction of its business; and the territorial auditor shall have the right to reject any name or title of any company applied for, when he shall deem the name too similar to any one already printed or likely to mislead the public in any respect.

§ 5. COMPANY MAY NOT ENGAGE IN TRADE.] No company formed under this act shall, directly or indirectly, deal or trade in buying or selling any goods, wares, merchandise or other commodities whatever, except such articles as may have been insured by such company and are claimed to be damaged by fire, lightning, cyclone, tornado, hail or water.

§ 6. CAPITAL STOCK.] No company shall be incorporated under this act with a capital less than one hundred thousand (100,000) dollars, actually paid in cash, and shall at all times, be provided with cash on hand equal, at least, to twenty per centum of its capital. No joint-stock fire, cyclone, tornado, hail, inland or marine insurance company, of any other state, territory, or nation, shall do business in this Territory, unless it has at least one hundred thousand (100,000) dollars capital, actually paid in cash.

§ 7. LIMIT OF RISK.] No fire insurance company organized under this act, or transacting business in this Territory, shall expose itself to any loss by any one fire or inland navigation risk or hazard, to an amount exceeding ten per centum of its paid up capital; and it shall be lawful for any company doing business in the Territory to insure houses, buildings, and all other kinds of property against loss or damage by fire, lightning, cyclone or tornado, and to make all kinds of insurance on goods, merchandise or other property in the course of transportation, whether on land or water, or any vessel or boat, wherever the same may be. To insure growing crops against damage or loss by hail, to insure horses, cattle and other live stock, against loss or damage by accident, theft, or any other unknown or contingent event whatever, which may be subject to legal insurance, and to cause itself to be insured against any loss or risk it may have occurred in the course of its business, and upon any interest which it may have in property, and generally to do and perform all other matters and things proper to promote these objects, and no company organized under this act for transacting business in this Territory, shall expose itself to loss on any one risk or hazard, to an amount exceeding ten per centum of its

paid up capital, unless the excess shall be re-insured in some other good reliable company.

§ 8. STOCK BOOKS.] It shall be lawful for the individuals associated for the purpose of organizing any company under this act, after having published the notice and filed the declaration and charter as required by the third section of this act, and also on filing in the office of the territorial auditor, proof of such publication, by the affidavit of the publisher of said newspaper, his foreman or clerk, to open books for subscription to the capital stock of the company so intended to be organized, and to keep the same open until the full amount specified in the charter is subscribed.

§ 9. INVESTING CAPITAL.] It shall be lawful for any insurance company organized under this act, or any such company incorporated under any law of this Territory, to invest its capital and the fund accumulated in the course of its business, or any part thereof, in bonds and mortgages on improved unincumbered real estate within the Territory of Dakota, worth double the sum loaned thereon (exclusive of buildings, unless such buildings are insured and the policy transferred to said company), and also in the bonds of the Territory, or stocks, or treasury notes of the United States, and also the bank stock of national banks, and also in the stock and bonds of any county or incorporated city in the Territory, authorized to be issued by the legislature; to loan the same, or any part thereof on the security of such stocks, or bonds, or treasury notes, or upon bonds or mortgages as aforesaid, and to change and reinvest the same as occasion may, from time to time, require; but the surplus money over and above the capital stock of such insurance company, incorporated under any law of this Territory, may be invested in or loaned upon the pledge of public stocks or bonds of the United States, or any of the states, or stocks, bonds, or other evidence of indebtedness of any solvent, dividend-paying institution, incorporated under the laws of this Territory, or United States, except their own stock; *Provided, always,* That the market value of such stocks, bonds or other evidence of indebtedness, shall be at all times, during the continuance of such loan, at least ten per centum more than the amount loaned thereon.

§ 10. PURCHASE REAL ESTATE.] No company organized by or under this act shall purchase, hold or convey real estate, except for the purpose and in the manner herein set forth, to-wit:

1. Such as shall be requisite for its convenient accommodation in the transaction of its business; or,
2. Such as shall have been mortgaged to it in good faith as security for loans previously contracted, or for money due; or,
3. Such as shall have been conveyed to it in satisfaction of

debts previously contracted in their legitimate business, or for money loaned ; or,

4. Such as have been purchased at sales upon judgment, decrees or mortgage foreclosures obtained or made for such debts. And it shall not be lawful for any such company to purchase, hold or convey real estate in any other case or for any other purpose.

§ 11. AUDITOR TO ISSUE CHARTER.] The charter or proof of publication herein required to be filed by every such company, shall be examined by the district attorney of the county in which the principal office of the company is located, and if found conformable to this act, and not inconsistent with the laws of the Territory, shall be certified by him to the territorial auditor, who shall thereupon cause an examination to be made, either by himself or three disinterested persons specially appointed by him for that purpose, who shall certify under oath that the capital herein required of the company named in the charter, according to the nature of the business proposed to be transacted by such company, has been paid in, and is possessed by it in money, or in such stocks and bonds and mortgages as are required by the ninth section of this act. Such certificates shall be filed in the office of the said Auditor, who shall thereupon deliver to such company a certified copy of the charter and of such certificates, which, on being filed in the office of the register of deeds of the county where the company is to be located, shall be their authority to commence business and issue policies ; and such certified copy of the charter and of said certificates may be used for or against such company with the effect as the originals, and shall be conclusive evidence of the fact of the organization of such company.

§ 12. BY-LAWS.] The incorporators or directors, as the case may be, or any company organized under this act, shall have the power to make such by-laws, not inconsistent with the laws of this Territory, as may be deemed necessary for the government of its officers and conduct of its affairs, and the same, when necessary, to alter and amend. And they and their successors may have a common seal, and change and alter the same at their pleasure.

§ 13. DIVIDENDS.] It shall not be lawful for the directors, trustees or managers of any insurance company organized under this act, or incorporated under any law of this Territory, to make any dividends, except from the surplus profits arising from their business ; and in estimating such profits there shall be reserved therefrom a sum equal to forty per cent. of the amount received as premiums on all unexpired risks and policies, which amount, so reserved, is hereby declared to be unearned premiums ; and there shall be also reserved all sums due the corporation on bonds, mortgages, stocks and book account of which no part of the principal or interest thereon has been paid during the year preceding

such estimate of the profits, and upon which suit for foreclosure or collection has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and on which interest shall not have been paid.

§ 14. MAY EXTEND CHARTER.] Any existing insurance company heretofore incorporated under the laws of this Territory, or any company organized under this act, having a capital of at least one hundred thousand (100,000) dollars, may, without increasing its capital at any time within two years previous to the termination of its charter, after giving notice at least once a week for four weeks successively, in a newspaper published in the county where such company is located, of such intention, with declaration under its corporate seal, signed by the president and two-thirds of the directors of their desire for such extension—provided such directors have been so instructed by a majority vote of the stock—may extend the term of its original charter in accordance with the provisions of this act, by altering or amending the same so as to agree therewith, and filing a copy of such amended charter, with the declaration aforesaid, in the office of the territorial Auditor, whereupon the same proceedings shall be had as are required in the eleventh section of this act.

§ 15. MAY INCREASE CAPITAL STOCK.] Any existing insurance company or any company formed under this law, may at any time increase the amount of its capital stock, after giving notice once a week for four consecutive weeks in any newspaper published in the county where such company is located, of such intention, with the written consent of three-fourths in amount of its stock, unless otherwise provided in its charter or by-laws, by altering or amending its charter or by-laws in this respect, upon filing a copy of its charter or by-laws so amended, together with the declaration under its corporate seal, signed by its president and directors of their desire to do so, with such consent of three-fourths in amount of its stock to such increase, in the office of the territorial Auditor, and upon the same proceedings had as are required by the eleventh section of this act.

§ 16. ANNUAL STATEMENT.] Every insurance company doing business in this Territory must transmit to the territorial Auditor a statement of its condition and business for the year ending on the preceding thirty-first day of December, which shall be rendered on the first day of January in each year, or within one month thereafter, except that foreign insurance companies shall transmit their statement of business other than that taken in the United States prior to the following first day of May; such statement must be published at least three times in a newspaper of general circulation, printed and published in each judicial district of this Territory in which said insurance company shall have an agency, and

a duplicate thereof, upon which shall be indorsed the names of the attorneys on whom process of law can be served as required by this act, shall be filed in the office of the register or deeds of the county wherein the agency may be established, but the provisions of this section as to the appointment of attorneys shall not apply to companies organized within this Territory. Statements for publication shall be made out on blanks furnished by the territorial Auditor, and the territorial Auditor's certificate of authority for the company to do business in this Territory shall be published in connection with the said statement of each company doing business in this Territory. Proof of publication, to-wit: the printer's affidavit of the fact, shall be filed with the territorial Auditor in all cases; *Provided*, The territorial Auditor shall select three newspapers of general circulation, published in each of the judicial districts, from which said company shall select one in which said statement shall be published.

§ 17. WHAT TO CONTAIN.] The annual statements required by the last action must be in form, and state particulars, as follows:

1. The name of the company and where located.
2. The name and residence of the attorney for this Territory.
3. The amount of capital stock actually paid in cash.
4. The property or assets of the company, specifying:
 - (a) The value, as nearly as may be, of the real estate owned by the company.
 - (b) The amount of cash on hand, in office.
 - (c) The amount of cash on deposit in banks.
 - (d) The amount of cash in hands of agents and in course of transmission.
 - (e) The amount of loans secured by bonds and mortgages, being first lien on real estate worth double the amount of the sum loaned thereon.
 - (f) The amount of stocks and bonds owned by the company, specifying the amount, number of shares, and market value of each kind of stock, on the day of making the statement.
 - (g) The amount of stocks held by them, as collateral security for loans, with the amount loaned on each kind of stock, par value and market value thereof on the day the statement is made.
 - (h) The amount of all other sums due the company.
5. The liabilities of such company, specifying:
 - (a) The amount of losses unpaid.
 - (b) The amount of claims for losses, resisted by the company.
 - (c) The whole amount of unearned premiums on outstanding risks.
 - (d) The amount of dividends declared and due and remaining unpaid.

(e) The amount of dividends, if any, declared and not yet due.

(f) The amount of money borrowed and remaining unpaid, and the securities, if any, given for the payment thereof.

(g) The amount of all other existing claims.

6. The income of the company during the preceding year, specifying :

(a) The whole amount of cash premiums received, stating separately the amount of premiums received on policies written in the Territory of Dakota.

(b) The whole amount of interest money received, stating separately the amount of interest received on loans in the Territory of Dakota.

(c) The whole amount of income received from all sources.

7. Expenditures during the preceding year, specifying :

(a) The whole amount of losses paid during the preceding year, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement ; also stating separately the amount of losses paid upon risks taken in this Territory, and how much accrued prior, and how much subsequent, to the preceding statement.

(b) The amount of dividends paid during the preceding year.

(c) The whole amount of fees and commissions paid to officers and agents during the preceding year.

(d) The amount of taxes paid during the preceding year, stating separately the amount paid in this Territory.

(e) The amount of fees paid the auditor of this Territory, not including taxes.

(f) The whole amount paid for salaries of officers and agents during the preceding year.

(g) The whole amount of all other expenditures.

8. Specifying :

(a) The gross amount of risks taken during the preceding year, stating the amount in this Territory separately.

(b) The whole amount of risks outstanding.

(c) The whole amount of losses incurred during the year, including those claims not yet due, stating separately those incurred in this Territory.

(d) The number of agents in this Territory.

§ 18. SPECIAL STATEMENTS.] The territorial Auditor may require at any time statements from any company doing business in this Territory, or any of their officers and agents, on such points as he may deem necessary to elicit a full exhibit of its business and standing.

§ 19. VERIFICATION OF STATEMENTS.] The statements required under this act must be verified by the signature and oath of the

president or vice president, with those of the secretary or actuary, or by the manager or general agent of a foreign company doing business in this Territory; and it shall be the duty of the territorial Auditor to cause the information contained in the statements required by this act to be arranged in a tabular form and printed annually, and transmitted to the territorial legislature with his biennial report; also for distribution to the companies doing business in the Territory.

§ 20. COMPANY PROHIBITED FROM DOING BUSINESS, WHEN.] No company having neglected to file the statements required from it within the time and manner prescribed, shall do any new business after a notification by the Auditor, while such neglect continues.

§ 21. FORFEIT FOR NEGLECT.] Any company willfully neglecting to make and transmit any statement required by this act shall forfeit one hundred (100) dollars for each week's delay.

§ 22. AUDITOR MAY PREVENT PUBLICATION.] The territorial Auditor has authority to prevent the publication of any part or all of the statement of any company made under this act until its annual report is made.

§ 23. REPRESENTATIVE OF COMPANY RETIRING FROM BUSINESS.] In case any insurance company not incorporated in this Territory shall cease to transact business in this Territory according to the laws thereof, the attorney last designated shall be deemed to continue the attorney for such corporation, for the purpose of serving papers or process for the commencement of any action or proceedings for any violation or any liability accruing on their policies while transacting business in this Territory, and service of such papers in the action or proceedings aforesaid, upon any such attorney, shall be deemed valid and personal service upon such corporation.

§ 24. SHALL FILE STATEMENT AND COPY OF CHARTER.] And every company or association shall also file a certified copy of its charter, together with a statement, under oath of the president (or vice president) and secretary, stating the name of the company and where located, the amount of its capital, with a detailed statement of its assets, showing the amount of cash on hand, in bank, or in the hands of agents; the amount of real estate, and how much the same is incumbered by mortgage; the number of shares of stock of every kind owned by the company; the par and market value of the same; amount loaned on bond and mortgage; the amount loaned on other security, stating the kind and the amount loaned on each, and the estimated value of the whole amount of such securities and other assets or property of the company; also stating the indebtedness of the company; the amount of losses adjusted

and unpaid; the amount incurred and in process of adjustment; the amount resisted by the company as illegal and fraudulent, and all other claims existing against the company; also a report of the last annual report, if any, made under the laws of the state or county, and under which such company was incorporated. And no agent shall be allowed to transact business for any such company whose capital is impaired to the extent of twenty per cent thereof while such deficiency continues.

§ 25. AGENT TO PROCURE CERTIFICATE.] It shall not be lawful for any agent or agents to act for any company or companies referred to in this act, directly or indirectly, in taking risks or transacting the business of fire, cyclone, tornado, hail and inland navigation insurance in this Territory, without procuring from the territorial Auditor a certificate of authority, stating that such company has complied with all the requisites of this act which applies to such company. The statements and evidences of investment required by this act shall be renewed from year to year, in such manner and form as required by this act, and the Auditor on being satisfied with the capital, securities and investments remaining secured as hereinbefore provided, shall furnish a renewal of the certificate as aforesaid.

§ 26. PENALTY.] Any violation of any of the provisions of this act shall subject the party violating the same to a penalty of five hundred (500) dollars for each violation, and to the additional sum of one hundred (100) dollars for each month during which any such agent shall neglect to file such affidavits and statement as herein required.

§ 27. PROVISIONS SHALL APPLY TO ALL COMPANIES.] The provisions of this act shall apply to all foreign companies, partnerships, associations and individuals, whether incorporated or not. All insurance companies, associations or partnerships incorporated or organized under the laws of any other state or territory of the United States or any foreign government, transacting the business of fire, cyclone, tornado, hail or marine insurance, or any other kind of insurance, in this Territory, shall make annual statements of their condition and affairs to the Auditor, in the same manner and the same form as similar companies organized under the laws of this Territory.

§ 28. REVOCATION OF AUTHORITY.] If the Auditor has, or shall have at any time after examination, reason to believe that any annual statement or other report required or authorized by this act, made or to be made out by any officer or officers, agent or agents of any corporation, association or partnership, incorporated by or organized under the laws of any state or territory of the United States or any foreign government, is false, it shall be the duty of said Auditor to immediately revoke the certificate

of authority granted on behalf of such corporation or association' and mail a copy of such revocation to such company, and the agent or agents of such corporation, association or partnership, after such notice, shall discontinue the issuing of any new policies or of the renewal of any policy previously issued; and such revocation shall not be set aside nor any new certificate of authority be given until satisfactory evidence shall have been furnished to said Auditor that such corporation or association is in substance and in fact in the condition set forth in such statement or report, and that all requirements of said act have been fully complied with.

§ 29. AUDITOR TO MAKE EXAMINATION.] It shall be the duty of the territorial Auditor, whenever he shall deem it expedient to do so, in person or by one or more persons appointed by him for that purpose, not officers or agents of, or in any manner interested in, any insurance company doing business in this Territory, except as policy holders, to examine into the affairs of any company incorporated under this act in this Territory, or companies of other states or territories or any foreign companies doing business by its agents in this Territory; it shall be the duty of the officers or agents of any such company, doing business in this Territory to cause their books to be opened for the inspection of the Auditor or persons so appointed, and to otherwise facilitate such examination so far as it may be in their power to do, and pay all reasonable expenses incurred therein, in no case to exceed ten dollars per diem. And for that purpose the said Auditor, or person or persons so appointed by him, shall have the power to examine, under oath, the officers and agents of any such company, relative to the business of said company. And whenever the said Auditor shall deem it for the best interests of the public so to do he shall publish the result of such investigation in two newspapers in this Territory.

§ 30. DUTY OF AUDITOR IN CERTAIN CASES.] And whenever it shall appear to said Auditor, from such examination, that the assets of any such company incorporated in this Territory are insufficient to justify the continuance in business of any such company, he may direct the officers thereof to require the stockholders to pay in the amount of such deficiency within such a period as he may designate in such requisition, or he shall communicate the fact to the District Attorney, whose duty it shall be to apply to the district court of the county in which the principal office of the company shall be located, for an order requiring them to show cause why the business of such company shall not be closed; and the court shall thereupon proceed to hear the allegations and proof of the respective parties; and in case it shall appear to the satisfaction of said court that the assets and effects of

said company are not sufficient, as aforesaid, and that the interests of the public so require it, the said court shall decree the dissolution of said company and a distribution of its effects. The said district court shall have the power to refer all applications for distribution to a referee, who shall inquire into and report upon the facts stated therein. Any company receiving the aforesaid requisition from such Auditor, shall forthwith call upon the stockholders for such amount as shall make the capital equal to the amount fixed by the charter of said company. And in case any stockholder of such company shall refuse or neglect to pay the amount so called for, after notice personally given, or by advertisement in such time and manner as the Auditor shall approve, it shall be lawful for said Auditor to require the return of said original certificate of stock held by said stockholder, and in lieu thereof to issue new certificates for such number of shares as said stockholder may be entitled to, in the proportion that the ascertained value of the funds of said company may be found to bear to the original capital of said company; the value of such shares for which the new certificates shall be issued, to be ascertained under the direction of said Auditor, and the company paying for the fractional parts of shares; and it shall be lawful for the directors of such company to create new stock, dispose of the same and issue new certificates of stock to the amount sufficient to make up the original capital of the company.

§ 31. WHEN DIRECTORS LIABLE.] And it is hereby declared that in the event of any additional losses incurring upon new risks, taken after expiration of the period limited by said Auditor, in the aforesaid requisition for the filling up of the deficiency in the capital of said company, and before said deficiency shall have been made up, the directors shall be individually liable to the extent thereof.

§ 32. WHEN TRANSFER WILL NOT RELEASE.] No transfer of the stock of any company organized under this act, made during the pendency of any such investigation, will release the party making the transfer from his liability for the losses which may have occurred previous to the transfer.

§ 33. AUDITOR TO REVOKE.] And whenever it shall appear to said Auditor, from the report of the person or persons appointed by him, that the affairs of any company not incorporated by the laws of this Territory are in unsound condition, he shall revoke the certificates granted in behalf of said company, and shall cause a notification thereof to be published in any newspaper of general circulation published at the capital, and mail a copy thereof to each agent of the company. The agent or agents of such company shall, after such notice, be required to discontinue the issuing

of new policies and the renewal of any policies previously issued.

§ 34. PENALTIES, HOW RECOVERED.] Every penalty provided for by this act, shall be sued for and recovered in the name of the Territory by the district attorney in whose jurisdiction the company or agent or agents so violating shall be doing business, and one-half of all such penalties shall be paid, when recovered, into the treasury of said county, and the other half to the informer; and in case of the non-payment of such penalties, the party so offending shall be liable to imprisonment for a period not exceeding six months, in the discretion of any court having cognizance thereof.

§ 35. DURATION OF CHARTERS.] All companies incorporated or extended under this act, may provide in their charter for not more than thirty years' duration, but the legislature may at any time alter or amend this act, and provide for the closing up of the business and affairs of any company formed under it. Nothing herein contained shall be so construed as to prevent the subsequent extension of the charter of companies organized or extended under this act.

§ 36. REDUCING CAPITAL STOCK.] Whenever it shall appear to the territorial Auditor, from examination made by him, in the manner prescribed by law, that the capital stock of any company organized under this act, is impaired to an amount exceeding twenty per cent. of such capital, and he shall be of the opinion that the interests of the public will not be prejudiced by permitting such company to continue business with the reduced capital, it shall be lawful for such company, with the permission of the said Auditor, to reduce its capital stock, and the par value of the shares thereof, to such amount as the Auditor may, under his hand and seal, certify to be proper, and as shall, in his opinion, be justified by the assets and property of such company; *Provided*, That no part of such assets and property shall be distributed to the stockholders; *Provided further*, That the capital stock of any such company shall not be reduced to an amount less than the sum now required by law for the organization of a new company under the general insurance laws, for the transaction of business at the place where such a company is located, and of the kind which said company is authorized to transact. No reduction of the capital of any such company shall be made except upon a resolution of the board of directors, approved by at least two-thirds of the directors, certified under its corporate seal, signed by the president and at least two-thirds of the directors and proved or acknowledged in the manner required by law for the proof or acknowledgment of conveyances, which certificate shall be filed in the office of said Auditor before any action shall be had by him thereon. The territorial Auditor, in case he

shall permit any such company to reduce its capital in the manner provided in this act, shall execute the certificate required by this act in duplicate, and deliver one of said certificates to the officers of said company, who shall forthwith file the same with the clerk of said county in which said company is located, and the other to be filed in the office of said Auditor. Such company upon filing the certificate with the county clerk as required by this act, shall with such reduced capital, possess the same rights and be subject to the same liabilities as it possessed and was subject to at the time of the reduction of its capital, and the charter of such company shall be deemed to be amended in all respects to the amount of capital, and per value of the shares, so as to conform to the reduction. It shall be lawful for the said company to require the return of the original certificate of stock held by each stockholder, in lieu thereof to issue new certificates for such number of shares as each stockholder may be entitled to; in the proportion that the reduced capital may be found to bear to the original capital of the company. It shall be lawful for any such company after its capital shall be so reduced as aforesaid, to increase its capital stock in the manner prescribed by this act.

§ 37. STATEMENT OF RECEIVERS.] It shall be the duty of all receivers of insurance companies, on or before the 1st day of March of each year, and at any other time, when required by the territorial auditor, to make and to file, annually, their statements of their assets and liabilities, and of their income and expenditures, in the same manner and form, and under the same penalties, as the officers of such companies are now required by law to make annual and other statements to the Auditor.

§ 38. PUBLICATION OF STATEMENT.] And the said Auditor shall also require its annual statement, required to be filed by this act, to be published, in conformity with the provisions of section 16 of this act.

§ 39. FEES.] There shall be paid by every company, association, person or persons, or agent, doing business in this Territory, to whom this act shall apply, the following fees:

Upon filing declaration, or certified copy of charter, \$25.

Upon filing the annual statement, \$10.

For each certificate of authority, and certified copy thereof, \$2.

For every copy of any paper filed in the department, the sum of twenty cents per folio; and for fixing official seal to such copy and certifying the same, the sum of \$1.

For official examinations of companies under this act, the actual expense incurred, not to exceed \$10 per diem.

And companies organized under the laws of this Territory, shall pay the following fees:

For filing and examination of the first application of any com-

pany, and the issuing of the certificates of license thereon, \$10.

For filing each annual statement, and the issuing renewal of license required by law, \$3.

For each certificate of authority to its agents, fifty cents. *Provided*: That the net amount of all fees over and above the cost of performing the clerical labor connected therewith shall not exceed under this act, the sum of two thousand dollars, and that any amount above that sum shall be paid over to the territorial Treasurer for the general fund of the Territory.

§ 40. TAX.] Every insurance company doing business in this Territory, except in joint-stock and mutual companies organized under the laws of this territory, shall, at the time of making the annual statement, as required by law, pay into the [territorial] state treasury, as taxes, two and a-half per cent. of the gross amount of premiums received in this Territory during the preceding year, taking duplicate receipts therefor, one of which shall be filed with the Auditor; and upon the filing of said receipts—not until then—the said Auditor shall issue the annual certificate as provided by law; and the said sum of two and a-half per cent. shall be in full of all taxes, state [territorial] and local

§ 41. WHEN COMPANY MAY COMMENCE BUSINESS.] No company formed under this act for the purpose of doing the business of insurance on the mutual plan, shall commence business within this Territory, nor establish agencies for the transaction of business within this Territory, until agreements have been entered into for insurance with at least one hundred applicants, the premiums of which shall amount to not less than fifty thousand dollars, of which ten thousand dollars at least, shall have been paid in cash, and notes of solvent parties, founded on actual and *bona fide* applications for insurance, shall have been received for the remainder, and no one of the notes received as aforesaid, shall amount to more than two hundred dollars, and no two shall be given for the same risk, or be made by the same person or firm, except where the whole amount of such notes shall not be more than two hundred dollars, nor shall any such note be represented as capital stock, unless a policy be issued upon the same within thirty days after the organization of the company, upon a risk which shall not be for a shorter period than twelve months. Each of said notes shall be payable, in part or in whole, at any time when the directors shall deem the same requisite for payment of any loss and such incidental expenses as may be necessary for the transaction of said business. And no note shall be and appear as a help to said capital stock, unless the same shall be accompanied by a certificate of the register of deeds or clerk of the district court of the county where the person making such note shall reside, that the person making the note is, in his opinion, pecuniarily

good and responsible for the same; and no such note shall be surrendered during the life-time of the policy for which it was given.

§ 42. AGENTS' RESPONSIBILITY.] Agents appointed by any company doing business in this Territory, to solicit for applications for insurance, collect the premiums on the same, and transact other duties of agents in such cases, shall be held personally responsible to such company for any money received by them for such company; and in case any such agent shall embezzle or fraudulently convert to his own use, or shall take or secrete the same with the intent to embezzle and convert to his own use, without the consent of such company, any money belonging to such company, which shall come into his possession, or shall be under his care by virtue of his agency, he shall be deemed by so doing to have committed the crime of larceny, and on conviction shall be subject to the fine and penalties provided by the statutes in such cases.

§ 43. RECIPROCAL OBLIGATIONS.] When by the laws of any state or territory, any taxes, fines, penalties, licenses, fees, deposits of moneys or securities, or capital requirements, or other obligations, or prohibitions are imposed or would be imposed on insurance companies of this Territory, doing or that might seek to do, business in such state or territory, or upon their agents therein; so long as such laws continue in force, the same obligations and prohibitions, of whatever kind, shall be imposed upon all insurance companies of such state or territory doing business within this Territory or upon their agents here.

§ 44. ANNUAL STATEMENTS.] All insurance companies heretofore organized in the Territory of Dakota, and now doing business in this Territory, shall be required to make the annual statement provided for and required by companies formed or organized under this act. But this shall not be construed to interfere with, or in any manner abridge, the rights and privileges of any company already in existence, or doing business under any law now or heretofore existing in the Territory.

§ 45. CHANGING PRINCIPAL OFFICE.] It shall be lawful for any insurance company to change the location of its principal office to any place within the Territory of Dakota, by a majority vote of the stock of said company, and said company shall also publish a notice of such change of location for three consecutive months immediately thereafter, in some newspaper of general circulation published in said Territory, a copy of which notice must be filed with the Auditor of the Territory.

§ 46. REPEALED—PROVISO.] All of chapter 69 of the Civil Code, with the amendments thereto regulating insurance companies and the business of insurance is hereby repealed; *Provided*, That nothing contained in this act shall prevent the complete organization

of any insurance company under the laws heretofore in force, where the declaration of intention to form and the charter of such insurance company, was filed in the office of the Auditor of said Territory at the time of the passage of this act.

§ 47. NOT TO APPLY.] This act shall not apply to the organization, duties or powers of county mutual insurance companies.

§ 48. This act shall take effect and be in force from and after its passage and approval.

Approved, March 13, 1885.

COUNTY MUTUAL INSURANCE COMPANIES.

CHAPTER 70.

AN ACT Authorizing the Formation of County Mutual Insurance Companies.

Be it enacted by the Legislative Assembly of the Territory of Dakota :

§ 1. WHO MAY UNITE TO FORM COMPANY.] It shall be lawful for any number of persons, not less than twenty-five (25) residing in any county in this Territory, who collectively shall own property of not less than twenty-five thousand dollars (\$25,000.00) in value, which they desire to have insured, to form themselves into a company for mutual insurance against loss or damage by fire, lightning, hail and tornado, which corporation shall possess the usual powers and be subject to the usual duties of corporations, and the corporate name thereof shall embrace the name of the county in which the business office of the said company shall be located.

§ 2. DIRECTORS.] Every company so formed shall choose of their number not less than five, nor more than nine (9) directors to manage the affairs of such company, who shall hold their office for one year, or until others are elected, and such directors shall choose one of their members president, vice president, secretary and treasurer. Said treasurer shall give such bond as may be required by the board of directors of said company.

§ 3. ARTICLES TO BE FILED.] The directors of such company shall file their articles of association, together with a copy of the

by-laws and the names of the officers of such company, in the office of the county clerk of the county in which such company is located, and shall keep a record of their proceedings in a book kept for that purpose, together with the names of all persons insured, and the amount each person is insured, which record shall be kept open for the inspection of all the members of such company at the office of the secretary.

§ 4. MAY ISSUE POLICIES.] The directors of such company may issue policies, signed by the president and secretary, agreeing in the name of the company to pay all loss or damage by fire or lightning, for a term not exceeding five (5) years, by the holder of such policies and not exceeding the sum named in such policy.

§ 5. OBLIGATION OF INSURED.] Every person so insured shall give his undertaking, bearing even date with the policy so issued to him, binding himself, his heirs and assigns to pay his *pro rata* share to the company of all losses or damages by fire, lightning, hail and tornado, which may be sustained by any member thereof, and every such undertaking shall within five days after the execution thereof be filed with the secretary in the office of said company, and shall remain on file in such office except when required to be produced in court as evidence. He shall also at the time of effecting such insurance pay such percentage in cash and such reasonable sum for a policy as may be required by the rules and by-laws of the company.

§ 6. IN CASE OF LOSS.] Every member of such company who may sustain loss or damage by fire or lightning, shall immediately notify the president of such company, or in case of his absence the secretary thereof, who shall forthwith convene the directors of such company, whose duty it shall be to appoint a committee of not less than three (3) nor more than five (5) members of such company to ascertain the amount of such loss, and in case of the inability of the parties to agree upon the amount of such damages, the claimant may appeal to the probate judge of the county in which the company is situated, whose duty it shall be to appoint three disinterested persons as a committee of reference, who shall have full authority to examine witnesses and to determine all matters in dispute, who shall make their award to the president in writing, or in his absence, to the secretary of such company, which award thereon shall be paid. The said committee of reference shall each be allowed the sum of two dollars per day for each day's service so rendered, and the sum of five cents for every mile necessarily traveled in the discharge of such duties, which shall be paid by the claimant unless the award of such committee shall exceed the sum offered by the company in liquidation of such loss or damage, in which case said expenses shall be paid by the company.

§ 7. MAY CLASSIFY PROPERTY.] The companies under the provisions of this act, may classify the property insured at the time of issuing the policies thereon under different rates, corresponding as nearly as may be to the greater or less risk from fire, and loss which may attach to each several buildings, personal property insured, or damage by hail or tornado. Whenever the amount of any loss shall be ascertained, the president shall convene the directors of said company, who shall make an assessment upon all property insured, taken in connection with the rate of premium, under which it may have been classified.

§ 8. COLLECTING ASSESSMENTS.] It shall be the duty of the secretary whenever such assessment shall have been completed to immediately notify every person composing such company by letter sent to his usual post office address, of the amount of such loss, the sum due from him as his share thereof, and of the time when and to whom such payment is to be made, but such time shall not be less than thirty nor more than sixty days from the date of such notice, and the person designated to have such money by the directors, may demand not to exceed two per cent. in addition to the amount due on each assessment as aforesaid for his fees in securing and paying over the same.

§ 9. SUITS.] Suits at law may be brought against any member of such company who shall refuse or neglect to pay any assessment made upon them by the provisions of this act, and the directors of any company so formed, who shall wilfully neglect or refuse to perform the duties imposed upon them by the foregoing sections of this act, shall be liable in their individual capacity to the persons sustaining such loss.

§ 10. PROHIBITORY.] No company formed under the provisions of this act shall insure any property outside the limits of the county in which said company is located, nor shall they insure any property other than detached dwellings and their contents and farm buildings, and their contents, and live stock when on the premises or running at large, and hay or grain in the bin or stack, and growing grain against damage by hail or tornado, nor shall they insure any property within the limits of any incorporated city in the Territory.

§ 11. ELECTION OF DIRECTORS.] The directors of each company so formed shall be chosen by ballot at the annual meeting thereof, which shall be held on the first Tuesday in January of each year, and every person shall have one vote for each two hundred dollars which he may be insured, but no person shall be allowed to vote by proxy at such election.

§ 12. STATEMENT.] It shall be the duty of the Secretary of every company as aforesaid, to prepare a statement, showing

the condition of such company on the day preceding the annual meeting, which statement shall contain the amount insured, the number of policies issued, and to whom, and the amount insured by each policy and all other matters pertaining to the interests of such company, which statement shall be filed in the office of the county clerk of the county in which such company is located, on or before the 15th day of January in each year, and which statement shall also be read to the members at their annual meeting.

§ 13. WITHDRAWALS.] Any member of such company may withdraw therefrom at any time by giving notice in writing to the president, or in his absence to the secretary thereof, and paying his share of all claims then existing against said company, and the directors or a majority thereof shall have power to annul any policy by giving notice in writing to the holder thereof.

§ 14. NON-RESIDENTS.] Non-residents of any county in this Territory, owning property therein may become members of any company founded under this act, and shall be entitled to all rights and privileges appertaining thereto except that it shall not be lawful for such non-residents to become a director in said company.

§ 15. BY-LAWS.] The company so formed may adopt such by-laws for its regulation as are not inconsistent with the provisions of this act and may therein prescribe the compensation of its officers.

§ 16. No company formed under this act shall continue for a longer term than thirty years.

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

§ 18. This act shall take effect and be in force from and after its passage and approval.

Approved, March 13, 1885.