

doing business in this State. It is hereby made the duty of the Attorney General of this State to enforce this provision by due process of law.

§ 3. CONSPIRACY AGAINST TRADE.] That any violation of the provisions of this act shall be deemed and is hereby declared to be destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall, on conviction, be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than one year or not more than ten years; or, in the judgment of the court, by either such fine or such imprisonment.

§ 4. MAY SUE FOR DAMAGES.] That any person or persons, or corporation that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in section 1 of this act, may sue for and recover in any court of competent jurisdiction in this State, or any person, persons or corporations operating such trusts or combinations, the full consideration or sum paid by him or them for any goods, wares, merchandise, or articles, the sale of which is controlled by any such combination or trust.

§ 5. JUDGES SHALL INSTRUCT GRAND JURIES.] That it shall be the duty of the judges of the district courts of this State specially to instruct the grand juries as to the provisions of this act.

Approved March 9, 1897.

TRUST COMPANIES.

CHAPTER 142.

[H. B. 193.]

PROVIDING FOR THE ORGANIZATION OF ANNUITY COMPANIES.

AN ACT to Provide for the Organization and Incorporation of Annuity, Safe Deposit, Surety and Trust Companies, and to Regulate the Management Thereof.

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

§ 1. FORMATION.] Any number of persons, not less than nine not less than three of whom must be residents of this State, may associate themselves, and become incorporated for the purpose of transacting business as an annuity, safe deposit, surety and

trust company, upon complying with the provisions of this act, and any company so formed, and its successors, shall be entitled to the rights and privileges, and subject to the duties and obligations, herein provided, and shall have perpetual succession.

§ 2. APPLICATION OF EXISTING LAWS.] The provisions of chapter 11 of the the Civil Code of the Revised Codes of 1895, of the State of North Dakota shall be applied to and be observed by persons organizing under this act, except as herein otherwise provided, and except as to provisions thereof inconsistent with the provisions of this act.

§ 3. CAPITAL STOCK—MINIMUM AMOUNT—SHARES.] The amount of capital stock of any such corporation hereafter organized shall not be less than one hundred thousand dollars, and the same shall be divided into shares of one hundred dollars each.

§ 4. MINIMUM STOCK SHALL BE SUBSCRIBED FOR.] No such corporation hereafter organized shall be authorized to transact any business or exercise any powers as such until the aforesaid minimum amount of capital stock shall have been subscribed for, and not less than fifty thousand dollars thereof shall have been actually paid in, invested and deposited as hereinafter provided. Said fifty thousand dollars shall be invested in bonds of the United States, or of the State of North Dakota, or in the bonds of other States, which shall have the approval of the State Auditor, and State Examiner, or in the bonds or obligations of townships, school districts, cities, villages and counties within the State of North Dakota, which bonds or obligations have not been issued as a bonus for, or purchase of, or subscription to any railroad or other private enterprise, and whose total bonded indebtedness does not exceed five per centum of the then assessed valuation thereof; or in bonds or promissory notes, secured by first mortgages or deeds of trust, upon unincumbered real estate, situated within the State of North Dakota, worth three times the amount of the obligation so secured, and the deposit of such corporation shall not be permitted, at any time, to be less than fifty thousand dollars, in amount, and not less than one-sixth of its capital stock.

§ 5. CERTIFICATE OF DEPOSIT—INTEREST ON SECURITIES.] Whenever any such corporation shall have so invested fifty thousand dollars of its paid-in capital, and shall assign, transfer, and deliver to the State Auditor, the said securities and all evidences of such investment so made, he shall execute and deliver a certificate of such deposit; and thereupon the said corporation may commence and carry on business under the provisions of this act. The State Auditor and his successors in office shall hold the said securities so deposited with him, as collateral security for the depositors and creditors of said corporation, and for the faithful execution of any trusts which may lawfully be imposed upon and accepted by such corporation; such corporation may from time to time withdraw the said securities from said State

Auditor, or any part thereof, upon depositing with him other securities of equal amount and value and of the kinds specified in section four of this act, and until otherwise ordered by a court of competent jurisdiction, the said State Auditor shall pay over to such corporation, the interest, dividends which he shall collect upon such securities, and any such corporation having a larger deposit with the State Auditor than fifty thousand dollars shall be allowed at any time to withdraw its deposits in excess of said sum; *Provided*, its whole deposit shall at no time be less than one-sixth of its capital stock.

§ 6. DIRECTORS—QUALIFICATIONS—TERM OF OFFICE.] All the corporate powers of such corporation shall be exercised by a board of directors of not less than nine nor more than fifteen in number, and such officers and agents as they shall elect or appoint. A majority of such directors must be citizens of the State of North Dakota, and each director must own at least ten shares of the capital stock. The articles of association must state the names and residences of the first board of directors, of whom the first named one-third shall serve for a period of three years, the second one-third for a period of two years and the balance thereof shall serve for a period of one year from the date fixed for the commencement of such corporation. In case any of the persons so named shall not become stockholders to the amount required to qualify, or if they fail or refuse to qualify from any cause, the directors who shall qualify may elect qualified stockholders to fill such vacancies, and thereafter, at each annual meeting of the stockholders, directors shall be elected to serve three years in place of those whose terms shall then expire.

§ 7. ELECTION OF DIRECTORS—OFFICERS—BONDS.] An annual election shall be held at the principal office or place of business of the company, which must be within this State, upon a day to be fixed by the articles of the association, and notice of which election shall be given by publication at least ten days prior to such date, in a newspaper printed and published at the county seat of the county in which such company has its principal place of business, at which the directors provided for in section five shall be elected, and in case of a failure to elect on that day or on a day to which such annual meeting may be adjourned, the directors whose regular terms do not then expire shall proceed to elect such number of directors, as shall have failed of election, and any vacancy in the office of director may be filled by the board until the next annual meeting. The board of directors, at their next meeting following the election of directors, and after such directors have qualified, shall elect from their own number a president and vice-president and such other officers as may be necessary to the transaction of their business. They shall define the powers, authority and duties of such officers and employes by by-laws or resolutions, fix the conditions, form and amount of their bonds, and approve the same, but no such officer or employe shall enter

upon the discharge of his duties until such bond shall have been so approved and shall have been filed with the State Examiner, and by him approved.

§ 8. CORPORATE POWERS.] Every such corporation organized under the provisions of this act shall have all the general powers and privileges of a corporation, as the same may be declared heretofore, or hereafter by the general laws of the State of North Dakota, and in addition thereto, it shall have special power and authority:

1. To acquire, lease, purchase, own, hold, use and improve, and for that purpose mortgage, lease, sell and convey, such real estate and personal property as may be necessary for convenient transaction of its business, and for the use and occupation of its officers, agents and employes, and the safe keeping and investment of its assets, deposits and property held in trust. Any estate or interest in real estate which such corporation shall acquire under or by virtue of the foreclosure of any deed of trust, mortgage or other security, or by the compromise, compounding, or settlement of any obligation or security, or otherwise, in the course of its legitimate business, whether as owner or trustee, it may continue to own, hold, use, occupy, lease, bargain, sell and convey the same, as the directors may deem best for the interests of such company, or of the particular estate or trust to which the same belongs; and to that end, it may become a purchaser at any foreclosure sale, or sale under decree or judgment, to which it is a party, as trustee or otherwise. But no part of its capital, accumulations, deposits, trust funds, property, or security owned or held by such company, in trust or otherwise, shall be invested in real estate, except as herein authorized, unless the same is done under and by virtue of a particular contract, agreement or other instrument, which shall confer a special power or authority so to do, and then only with or to the extent of the moneys or funds thereby provided, and belonging to such particular trust; and for the general transaction of its business, to make and deliver, and in like manner, accept and receive, all necessary and proper deeds, conveyances, mortgages, leases and other contracts and writings obligatory, and to have and exercise all necessary rights, franchises, muniments, estate, powers and privileges necessary to that end; and such corporation is authorized to loan money and funds, and secure such loans by mortgage; and shall have power to purchase notes, bonds, mortgages, and other evidences of indebtedness, and other securities, and to convert the same into cash or into other securities.

2. To take, accept and hold by the order, judgment and decree of any court of record of this State or of any other State, or of the United States, or by gift, grant, assignment, transfer, devise, legacy or bequest, from or with any public or private corporation, or persons whomsoever, any real estate or personal property upon trusts created in accordance with, or which shall not conflict with

the laws of the State of North Dakota, or of the United States, and to execute and perform any and all such legal and lawful trusts in regard to the same, upon the terms, conditions, limitations and restrictions, which may be declared, imposed, established by or agreed upon, in or by such order, judgment, decree, gift, grant, assignment, transfer, devise, legacy or bequest. To accept from and execute for, or in behalf of, trusts for married women, in respect to their separate property, real or personal, and antenuptial settlements, or otherwise, to act as agent for them in the management of such property. To act as agent for the purpose of transferring, issuing, registering, or countersigning the certificates of stock, bonds, coupons or other evidences of debt of any corporation, association, person, city, county, town, township, school district, State, or other authority, or to receive and pay out moneys in redemption of the bonds, coupons or other evidences of indebtedness of such public or private corporations or persons.

3. To take, accept and hold on deposit, or for safekeeping, any and all moneys, bonds, stocks and other securities, or personal property whatsoever, which any state, county, city, town, township or school district officer, or any corporation, public or private, or private persons shall be authorized, or required by law or otherwise, to deposite in a bank or other safe deposit, or to pay into or deposit in any court of record in this state. And when any such officer, corporation, public or private, or any executor, administrator, guardian, assignee, receiver, trustee or any person acting in a trust capacity of whatsoever nature or any individual shall be authorized, required or permitted by law or otherwise, to pay into or deposit in any court of record in this state any moneys, bonds, instruments in writing, stock or other securities, or personal property whatsoever, the same may instead thereof be paid into or deposited with any corporation organized and acting under this act, which shall be designated for that purpose by the court having jurisdiction of this subject matter, or by the person, corporation, tribunal or body owning or controlling the same. Whenever any executor, administrator, guardian, assignee, receiver, trustee or any person acting in any trust capacity whatsoever, shall deposit any moneys, bonds, instruments in writing, stocks or other securities, or any personal property whatsoever, belonging to his trust with any corporation organized and acting under this act, and shall take the receipt of such corporation therefor, he and his sureties shall thereafter be relieved and discharged from all liability therefor until the same shall again be delivered to him by such corporation.

4. To act as trustee, assignee or receiver, in all cases where it shall be lawful for any court of record, officer, corporation or person to appoint a trustee, assignee or receiver, and to be appointed, commissioned and act as administrator of any estate, executor of any last will or testament of any deceased person, or estate of any

minor or of the estate of any lunatic, imbecile, spendthrift, habitual drunkard, or other person disqualified or unable from any cause to manage their estate. And it shall be lawful for any court in this state, having jurisdiction of the estates or wills of such persons, either within or without this state, to appoint and commission any such corporation, organized under, and acting under, and having qualified with all the provisions of this act, as such administrator, executor, guardian, trustee, assignee or receiver in all cases, where, under the laws of this state, such court could lawfully so appoint and commission any natural person; and in such cases no bond or other security, or oath or other qualification shall be necessary to enable such corporation to accept such appointments and trusts.

5. To act as the general agent and attorney in fact for any public or private corporation or person, in the management and control of real estate or personal property, its sale or conveyance, in the negotiation of and sale of mortgages or other securities, the satisfaction of and discharge of record of such mortgages or other securities, the collection of rents, payment of taxes, and generally to act for and represent corporations and persons under powers and letters of attorney, in all respects as a natural person could do.

6. To make, compile and certify to abstracts of title of real estate, upon such conditions and subject to such liability as may now exist or be hereafter created, by or under the laws of this state relating to abstractors, and under such conditions and restrictions as may be prescribed by its by-laws or by resolution of its board of directors, to insure the validity and genuineness of titles to real property.

7. To insure and guarantee the fidelity and faithful performance of the duties of state, county, township, city, town and school district officers and employes; of the depositories of public funds, and of all persons, firms, companies or corporations who may require or are permitted to make, execute or give bonds or undertakings with security, for the faithful performance of any duty, and any court, board of auditors, board of commissioners, or trustees, or any person or persons who are now or shall hereafter be required to approve the sufficiency of any such bond or undertaking, may in their discretion, accept such bond or undertaking, and prove the same, when the conditions of such bond or undertaking are guaranteed by a corporation duly organized, qualified and acting under the provisions of this act, and all such corporations are hereby vested with full power and authority to guarantee such bonds and undertakings; *Provided*, that nothing herein contained shall apply to bonds given in criminal actions.

8. The directors of any such corporation shall have discretionary power to invest all moneys received by it on deposit or in trust, and the investment or deposit of which shall not be otherwise limited or directed, in such securities as are not here-

inafter expressly prohibited; and it shall be held responsible to the owners, or *cestui que* trust of such moneys, for the validity, regularity, quality, value and genuineness of all such investments and securities at the time said investments are so made, and for the safe keeping of the evidences and securities thereof. But if any special direction, limitation, agreement or trust is imposed upon, made or conferred in and by the order, judgment, decree, will or other document, contract, deed, conveyance or other written instrument, as to the particular manner in which or the particular class or kinds of securities, funds or property, whether real or personal, the same shall be invested in, then the said corporation shall follow and carry out such order, judgment, decree, contracts, deed or other written instrument or instruction, and in case of such special direction or limitation, such corporation shall not be held liable or responsible for any loss, damage or injury which may occur to or be incurred by any person or *cestui que* trust by reason of its proper performance of such trust as aforesaid.

9. It shall be lawful for any such corporation organized, qualified and acting under the provisions of this act, to become the assignee under any assignment for the benefit of creditors, or to act as receiver, or to accept any other trust which it is authorized to accept under this act, whether conferred by any person, corporation or court, without giving any bond or other security which would be otherwise necessary under the laws of this State, to enable a natural person to execute such trust. It shall also be lawful for any such trust company to become the sole surety upon any bond or undertaking for or on behalf of any person, persons or corporation, in any suit, action or special proceeding, in any court in this State, where bond or undertaking shall be necessary under the laws of this State, or in any other matter, municipal or otherwise, where a bond or undertaking shall be required, without any other bondsman or surety, and without justification or qualification. In case where a bond or new sureties to a bond may be required by a judge of any court of this State, or by the provisions of any statute of this State, from any person, persons or corporation, acting in any trust capacity whatever, if the value of the estate or fund is so great that the judge of the court having jurisdiction of the proceedings deems it inexpedient to require security in the full amount prescribed by law, he may direct that any securities for the payment of moneys belonging to the estate or fund be deposited, subject to the order of such person acting in such trust capacity, countersigned by a judge of said court, with any trust company organized and qualified to do business under the provisions of this act. After such deposit has been made, said judge may fix the amount of the bond, with respect to the value of the remainder only of such estate or fund.

10. Any such corporation, organized and incorporated under the provisions of this act, having made the deposit and received the cer-

tificate of the State Auditor as provided in section 4 of this act, and which shall hereafter be appointed to execute any trust, or to act as herein authorized in any capacity, by any court, or by any public or private corporation, or by any person, and which shall accept and enter upon the duties of any such trust, shall thereafter be fully qualified to fully discharge and perform such trust, without entering into or giving any sale bond, replevin bond, attachment bond, injunction or appeal bond, or other bond, undertaking, or security whatsoever, which a natural person would be required to furnish or enter into, in the progress of the execution of any trust, or in any suit, action or special proceeding, during the performance of any such trust, in any court in this State.

11. Any executor, administrator, guardian, trustee, assignee or receiver, now or hereafter to be appointed, may resign his trust in favor of a corporation organized, acting and qualified under this act, and thereupon such corporation may be appointed, by any court having jurisdiction of the subject matter of such trust, upon such terms and conditions as such court may prescribe.

12. For the faithful performance of any trust, duty, obligation or service so imposed upon, conferred or accepted by any such corporation, it shall be entitled, to ask, demand, and receive such reasonable compensation therefor as the same shall be worth, or such compensation as may have been or may be fixed by the contract or agreement of the parties, as well as any and all advances necessarily paid out and expended in the discharge and performance thereof, and to charge legal interest upon such advances unless otherwise agreed upon, and any compensation or commission paid, or agreed to be paid, for the negotiation of any loan, or the execution of any trust by any such company shall not be deemed interest within the meaning of any law of this State. Nor shall any excess thereof, over any rate of interest permitted by the laws of this State be decreed or held in any court of law or equity to be usury; and such company shall have a lien upon all moneys, securities and all property of every description which may come into its possession while in the performance of such trust for the payment of all sums due or to become due to it, for services, expenses and advances, and the costs and expenses of enforcing such payment.

§ 9. INVESTMENT OF TRUST FUNDS.] Any sum of money, not less than one hundred dollars, which shall be collected or received by any such corporation in its true capacity, and which money shall not be required for the purposes of such trust, or is not to be accounted for within one year from the date of such collection, receipt or deposit, shall be invested by such corporation as soon as practicable, and in such securities as are mentioned in section 4 of this act, and the net interest and profits of such investments, less the reasonable charges and disbursements of said company in the premises, shall be accounted for and paid over as a part of such trust; and the net accumulations of such interest and profits

thereon shall likewise be invested and reinvested as a part of such principal and such investments shall be received and allowed in the settlement of such trust.

§ 10. PROHIBITED DEALINGS—INDEBTEDNESS OF AGENTS—PENALTY.] No such company shall engage in any banking, mercantile, manufacturing or other business, except as is hereby expressly authorized. It shall not loan its funds, moneys, capital, trust funds, or other property whatsoever, to any director, officer, agent or other employe thereof, nor shall any such director, officer, agent or other employe become in any manner indebted to said company by means of any overdraft, promissory note, account, endorsement, guaranty, or other contract whatsoever; and any such director, officer, agent or employe who shall become so indebted to said company, shall be deemed guilty of the crime of embezzlement to the amount of such indebtedness from the time such indebtedness shall be created, and upon conviction thereof shall be punished in the manner prescribed by the laws of this state for embezzlement of like amount. The execution and delivery of the official bond from such officer, agent or employe, however, shall not be considered as an indebtedness for the purpose of this section.

§ 11. POWERS OF COURT—ANNUAL REPORT.] Any such corporation shall be subject at all times to the further orders, judgments and decrees of any court of record from which or under which it shall have accepted any trust, appointment or commission as to such trust, and shall render to such court such itemized and verified accounts, statements and reports as may be required by law, or as such courts shall order in relation to such particular trust. It shall also be subject to the general jurisdiction of the district court of the county in which its principal place of business is located. It shall render to the State Examiner, a full and detailed verified account of its condition, on the first day of June, in each year, and such further accounts, either total or partial, or in relation to any particular investments, trusts, funds or other business as the said state examiner may from time to time direct and request; and a condensed statement of such annual report, approved by the State Examiner, shall be published by the said corporation in a public newspaper, printed and published in the county in which its principal place of business is located, and if none, then in such newspaper as the State Examiner shall direct.

§ 12. PUBLIC EXAMINER—DUTIES.] It shall be the duty of the state examiner, once in every six months, and without notice to the officers of such company, to make a full, true, complete and accurate examination and investigation of the affairs of such corporation, and to assume and exercise over such corporation, its business, officers, directors and employes, all the power and authority conferred upon him over banking and other financial or moneyed corporations under the laws of this state.

§ 13. PAID UP CAPITAL—INCREASE OF CAPITAL STOCK—INCREASE OF DEPOSIT—RE-INSURANCE.] Every such corporation, organized under the provisions of this act, shall have the full amount of its subscribed capital stock paid in, within two years after commencement of business, and such payment may be made in such installments as may be prescribed in its by-laws, or by resolution of its board of directors, and such capital stock may be increased from time to time by a majority vote of all the stockholders of such corporation, voting at any regularly called general or special election, in the notice of which election, the object thereof is fully set out, but no such increase of capital stock shall be valid unless paid in cash, and certified to the State Auditor in writing, and under oath; by the president or secretary, or managing officer of such corporation. Whenever it shall appear to the satisfaction of the State Examiner, from an examination of the business of such company, that the deposit made by it with the State Auditor, as hereinbefore provided, is insufficient to insure the safety of its deposits, trust and contingent liabilities, and shall make an order, as hereinafter provided, requiring an increase of such deposits, then such company may deposit with the State Auditor, other and further securities of the kind, class and value designated in section four of this act, in an amount sufficient to comply with said order.

§ 14. DUTY OF STATE EXAMINER.] If it shall appear to the State Examiner from any examination made by him, or from any report of any examination made by him, or from any written and verified information filed with him by any person interested in any trust where any corporation organized under this act shall be charged, that said corporation has committed a violation of the law, or that it is conducting business in an unsafe or unauthorized manner, or that the deposit made by it with the State Auditor as hereinbefore provided, is insufficient to protect the interests of all persons concerned, then the said State Examiner shall, by an order under his hand and the seal of his office, and addressed to such corporation, direct the discontinuance of such illegal or unsafe practice, and conformity with the requirements of the law, and with safety and security in its transactions, or to make a further deposit with the State Auditor in an amount sufficient to insure the safety of its trusts, deposits and liabilities. And whenever any such corporation shall refuse to comply with any such order as aforesaid, or whenever it shall appear to the said State Examiner that it is unsafe or inexpedient for any such corporation to continue to transact business, he shall communicate the facts to the Attorney General, and thereupon he shall be authorized to institute such proceedings against any such corporation as is now, or may hereafter be provided by law, in the case of insolvent corporations or such other proceedings as the case may require.

Approved March 13th, 1897.