
TRUSTS

CHAPTER 258.

[S. B. No. 311—Koffel]

TRADE DISCRIMINATION AND UNFAIR COMPETITION.

AN ACT to Prohibit Discrimination Between Different Sections, Communities or Localities, Unfair Competition and Providing Penalties for the Violation Thereof.

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

§ 1. UNFAIR COMPETITION. PENALTY.] Any person, firm or corporation, foreign or domestic, doing business in the state of North Dakota and engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally, for the purpose of destroying or preventing competition, discriminate between different sections, communities or cities of this state by selling any such commodity at a lower rate or price in one section, community or city, or any portion thereof, than is charged for such commodity in any other section, community or city, after equalizing the distance from the point of manufacture, production or distribution and freight rates therefrom, or who shall willfully for the purpose of such discrimination and unfair competition, refuse to sell any commodity in general use, and in the manufacture, production or distribution of which such person, firm or corporation may be engaged, to any other person, firm or corporation which may desire to purchase the same and who shall comply with all reasonable regulations of such person, firm or corporation and who shall tender payment therefor, shall be deemed guilty of a misdemeanor.

§ 2. CORPORATION FORFEITS CHARTER, WHEN.] If any complaint is made to the secretary of state that any corporation chartered in this state, or authorized to do business therein, is or has been guilty of unfair discrimination within the terms of this act, it shall be the duty of such secretary to at once institute an inquiry as to such discrimination, giving the corporation complained of notice of such complaint and an opportunity to be heard, and if in the opinion of such secretary of state, any corporation, foreign or domestic, shall have been guilty of any such unfair discrimination under the terms of this act, the said secretary shall so find, and shall make a record of such finding upon the records in his office, and shall at once forfeit the charter of such

corporation, if it be a domestic corporation, or if it be a foreign corporation he shall immediately revoke and forfeit its permit to do business in this state.

§ 3. ATTORNEY GENERAL BRINGS ACTION, WHEN.] If, after the revocation of such charter in the case of a domestic corporation, or of its permit if it be a foreign corporation, any such corporation shall continue or attempt to do business within this state, it shall be the duty of the attorney general of this state by a proper action commenced in the name of the state, to oust such corporation from any and all business of any kind or character within the state of North Dakota.

§ 4. PENALTY.] Any firm, person or corporation violating any of the provisions of this act, shall upon conviction thereof forfeit to the state of North Dakota a sum not less than two hundred nor more than five hundred dollars for each and every violation of this act, said sum to be recovered by action commenced by the attorney general in the name of the state of North Dakota in any court of competent jurisdiction. All sums so collected shall be credited to the general school fund of this state.

§ 5. CUMULATIVE REMEDIES.] Nothing in this act contained shall in any manner be construed as repealing or in any manner altering any other act or part of act heretofore adopted by the legislature of this state, but the remedies herein provided shall be cumulative to all other remedies now existing.

§ 6. EMERGENCY.] Whereas, an emergency exists for the reason that no adequate remedy exists to prevent or punish unjust and unfair discrimination, this act shall take effect from and after its passage and approval.

Approved March 20, 1907.

CHAPTER 259.

[S. B. No. 72—Palmer]

POOLS AND TRUSTS DEFINED.

AN ACT Defining Pools and Trusts and Providing the Penalties and Remedies Therefor, and to Repeal Chapter 53 of the Penal Code of the Revised Codes of 1905.

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

§ 1. POOLS AND TRUSTS. PENALTY.] Any corporation organized under the laws of this state or any other state or country for transacting or conducting any kind of business in this state, or any partnership, association or individual, creating, entering into or becoming a member of, or a party to any pool, trust, agree-

ment, contract, combination, confederation or individual, to regulate or fix the price of any article of merchandise, commodity or property, or to fix or limit the amount or quantity of any article, property, merchandise or commodity to be manufactured, mined, produced, exchanged or sold in this state, shall be guilty of a misdemeanor.

§ 2. DEFINING POOLS AND TRUSTS.] A pool or a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade.
2. To limit or reduce the production, or increase or reduce the price of property, merchandise or commodities.
3. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, upon any property, article or commodity of merchandise, produce or manufacture intended for sale, use or consumption in this state; or to establish any pretended agency whereby the sale of any such property, article or commodity shall be covered up or made to appear to be for the original vendor, for a like purpose or purposes.
4. To make or enter into or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any property, commodity or article of trade, use, merchandise, commerce or consumption below a common standard figure, or card price list, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any property, article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any article or commodity that its price might in any manner be affected.

§ 3. PUNISHMENT OF CORPORATIONS.] Every corporation, whether organized under the laws of this state or any other state or country, doing business in this state, and every person, partnership or association of individuals so doing business, violating any of the provisions of this chapter, is guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars.

§ 4. PUNISHMENT OF CORPORATE OFFICERS.] Every person who as president, manager, director, stockholder, receiver or agent or other employe of any corporation, on behalf of such corporation

mentioned in the last section, or as a member of any partnership or association of individuals, violates any of the provisions of this chapter, upon conviction, shall be fined not to exceed two thousand dollars, or imprisoned in the county jail not to exceed one year, and, in the discretion of the court, a sentence of both fine and imprisonment may be imposed.

§ 5. FOREIGN OR DOMESTIC CORPORATIONS VIOLATING, PROHIBITED FROM DOING BUSINESS IN THE STATE.] Every domestic or foreign corporation authorized to do business in this state, which shall have been found guilty in any court of competent jurisdiction of violating any of the provisions of this chapter, is hereby denied the right of and prohibited from doing business in this state, and the charter, articles of incorporation or authority granted, authorizing such corporation to do business in this state, shall cease and become void, and it shall become the duty of the secretary of state, upon the filing in his office of a certified copy of such judgment, to immediately cancel the authorization or charter of such corporation and give such corporation written notice of such cancellation.

§ 6. WHAT NECESSARY IN INFORMATION.] In any information or indictment for any offense named in this chapter it is sufficient to state the purposes of the trust or combination and that the accused is a member of, acted with or in pursuance to it, without giving its name or description, or how or where it was created.

§ 7. WHAT NECESSARY TO PROVE IN PROSECUTION.] In prosecutions under this chapter it shall be sufficient to prove that a trust or combination exists and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it or proving or producing any articles of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all, and proof that any person has been acting as agent of any defendant in transacting the business of such defendant in this state, was, while agent of such defendant and in the name, behalf or interest of such defendant, violated any of the provisions of this chapter, shall constitute prima facie proof that the same was the act of such defendant.

§ 8. CONTRACTS IN VIOLATION VOID.] Any contract or agreement in violation of the provisions of this chapter shall be absolutely void and not enforceable either in law or in equity.

§ 9. PURCHASER NOT LIABLE.] No purchaser of any property, article or other commodity from any individual, company, association of individuals or corporation transacting business contrary to any provision of the preceding sections of this chapter, shall be liable for the price or payment of such property, article or commodity, and may plead this chapter as a defense in any suit for such price or payment.

§ 10. TAKING TESTIMONY.] Whenever any proceeding shall have been commenced in any court of competent jurisdiction in this

state by the attorney general against any corporation or corporations, individual or individuals, or association of individuals, copartnership or joint stock company or other association, under any of the provisions of this chapter, and the attorney general desires to take the testimony of any officer, director, agent or employe of any such corporation, individual, copartnership, joint stock company or association proceeded against, or any member or employe thereof in any court in which said action may be pending, or before any person duly authorized by any court to take testimony in any such action and such individual or individuals whose testimony is desired are without the jurisdiction of the courts of this state or reside without the state of North Dakota, or cannot be found within this state, then in such case, the attorney general may file in the court in which said action is pending, in term time or in vacation, or with any judge thereof or with any person duly authorized to take the testimony in such action, an application in writing, stating therein the name or names of the persons or individuals whose testimony he desires to take, and the time when and place where, he desires the said person to appear and testify, and thereupon the court in which said action is pending, or a judge thereof, or the person before whom testimony is being taken, shall immediately issue a notice in writing, directed to the attorney or attorneys of record, if any, in said cause appearing for any such defendant or defendants or to any defendant, agent, officer, or employe of any such defendant or defendants who are parties to said action, notifying said defendant, attorney or attorneys of record for such defendant or other officer, agent or employe of any such party defendant that the testimony of the person or persons named in the application of the attorney general is desired and requiring such persons named to appear at the time and place therein stated then and there to testify in said action, and requiring said defendant, attorney or attorneys of record for any such defendant or such officer, agent or employe of any such defendant to whom said notice is delivered, or upon whom the same is served, to have said officer, agent, employe or representative of such defendant or defendants named in such notice whose evidence it is desired to take, at the place named in said notice and at the time therein fixed, then and there to testify; provided, however, that such notice shall always allow the persons required, to testify such reasonable time for travel to the designated point where such testimony is required to be given as will, in the judgment of the court, be sufficient to permit the person cited to appear, to be present at the time and place designated in such notice; provided, also, that such time shall in no case be less than ten days from the service of said notice. Such notice may be served by any person authorized by law to serve a subpoena.

§ 11. FAILING TO TESTIFY.] Whenever any defendant, attorney or attorneys of record, or any agent, officer or employe

of any such party defendant shall have been notified as provided in the preceding section to require any officer, agent, director or other employe to attend before any court or other person authorized to take the testimony as therein provided, shall fail to appear and testify or fail to produce such books, papers or documents as he or they shall have been ordered to produce by the court or the person authorized to take said evidence, then it shall be the duty of the court before whom said action is pending, upon motion of the attorney general, to strike out the answer, motion, reply, demurrer or other pleading then or thereafter filed in said action or proceeding by any such party defendant whose officer, agent, director or employe has neglected or failed to attend or testify or to produce any such book, papers or documents as he or they shall have been ordered to produce in said action by the court or the person authorized to take such testimony, and said court, upon motion of the attorney general, shall render judgment by default against any such defendant. In case any officer, agent, employe, director or other representative of any such defendant as hereinbefore mentioned, who shall reside in or be found within this state, shall be subpoenaed to appear and testify in any suit or proceeding brought under the provisions of this chapter, or to produce such papers, books and documents as shall have been ordered produced by the court, or other person authorized to take such testimony, then the answer, motion, demurrer or other pleading then or thereafter filed by any such defendant shall, on motion of the attorney general, be stricken out and judgment in said cause rendered as on default.

§ 12. INJUNCTION.] The court in which any action or suit is brought under the provisions of this chapter, shall, upon the relation of the attorney general made either at the time of the beginning of said suit or at any time thereafter during its pendency, issue an injunction enjoining any defendant, agents or other employes of any such defendant from selling or assigning or in any other manner disposing of or secreting any of the property or assets of such defendant then situated in this state during the pendency of such suit and enjoining the removal of any such assets or other property from the jurisdiction of this state or the courts thereof; provided, however, that such injunction shall, on motion of any such defendant, be dissolved upon the filing of a bond in an amount to be approved by the court, conditioned that the defendant shall pay any judgment, fine and costs finally entered against the defendant in the action or proceeding in which such bond is filed.

§ 13. JUDGMENT.] Judgment for fine and costs shall be entered in the same manner as in civil cases, and shall be enforced in like manner.

§ 14. ATTORNEY FEES.] In addition to the penalties and costs provided for in this chapter, the court shall allow in any action

brought under the provisions of this chapter, a reasonable attorney's fee, to be assessed as part of the costs of said action, which attorney's fee, so assessed, shall go to the attorney general or state's attorney who conducted the prosecution, and shall be retained by such attorney general or state's attorney as additional compensation to that otherwise allowed by the laws of this state as such attorney general's or state's attorney's salary.

§ 15. REPEAL.] Chapter 53, penal code of the revised codes of 1905, and all acts or parts of acts inconsistent with the provisions of this chapter, are hereby repealed.

Approved March 8, 1907.

CHAPTER 260.

[S. B. No. 151—Talcott]

COMMERCIAL DISCRIMINATION PROHIBITED.

AN ACT to Prohibit Unfair Commercial Discrimination Between Different Sections, Communities or Localities, or Unfair Competition, and Providing Penalties Therefor.

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

§ 1. DISCRIMINATION PROHIBITED.] Any person, firm, company, association or corporation, foreign or domestic, doing business in the state of North Dakota, and engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally, for the purpose of destroying the business of a competitor in any locality, discriminate between different sections, communities or cities of this state, by selling such commodity at a lower rate in one section, community or city, than is charged for said commodity by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful.

§ 2. PENALTY.] Any person, firm, company, association or corporation violating any of the provisions of the preceding section, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same or any individual, found guilty of a violation thereof, shall be fined not less than five hundred dollars, nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or suffer both penalties.

§ 3. CONTRACTS VOID.] All contracts or agreements made in violation of any of the provisions of the two preceding sections shall be void.

§ 4. DUTY COUNTY ATTORNEY AND ATTORNEY GENERAL.] It shall be the duty of the county attorneys, in their counties, and the attorney general, to enforce the provisions of the preceding sections of this act by appropriate actions in courts of competent jurisdiction.

§ 5. DUTY SECRETARY OF STATE.] If complaint shall be made to the secretary of state that any corporation authorized to do business in this state is guilty of unfair discrimination within the terms of this act, it shall be the duty of the secretary of state to refer the matter to the attorney general, who may, if the facts justify it in his judgment, institute proceedings in the courts against such corporation.

§ 6. CHARTER AND RIGHTS FORFEITED.] If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination, such finding shall cause a forfeiture of all the privileges and rights conferred by the laws of this state upon corporations and shall bar its right to do business in this state.

§ 7. DUTY OF ATTORNEY GENERAL.] If any corporation, having been found guilty of a violation of any of the provisions of this act, shall continue or attempt to do business in this state, it shall be the duty of the attorney general by a proper action in the name of the state of North Dakota to enjoin such corporation from transacting all business of every kind and character in said state of North Dakota.

§ 8. REMEDIES CUMULATIVE.] Nothing in this act shall be construed as repealing any other act, or part of act, but the remedies herein provided shall be cumulative to all other remedies provided by law.

§ 9. EMERGENCY.] Whereas, an emergency exists, this act shall take effect and be in force from and after its passage and approval.

Approved March 8, 1907.