
BANKS AND BANKING

CHAPTER 92

(S. B. No. 210—Ingerson and Page.)

DEFINING AND REGULATING STATE BANKING ASSOCIATIONS

An Act Defining State Banking Associations and Regulating and Limiting the Power of Such Associations to Re-Discount, to Borrow Money, to Pledge Assets, Forbidding Contracts to Re-Purchase Assets. Providing Procedure for the Foreclosure of Pledges with Redemption Therefrom, Declaring Void Pledge Contracts in Violation of the Provisions of the Act, Providing a Penalty for Borrowing Money and Pledging Assets in Violation of the Act and Repealing Laws in Conflict.

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

§ 1. REDISCOUNTS, BORROWING, PLEDGING.] No State banking association, as defined herein, shall, directly or indirectly, either within or without the State, make any re-discount, or contract to borrow, or borrow money, or pledge or hypothecate, or contract to pledge or hypothecate any of its assets, except in accordance with the provisions of this Act.

§ 2. NORMAL AND EMERGENCY BORROWING POWER, LIMITATION.] Any State banking association, as defined herein, shall have power to contract to and borrow money as follows:

1. A sum equal to twenty per centum of its deposits without the prior authorization therefor by the State Examiner.

2. A sum in excess of the preceding limitation only after prior authorization by the State Examiner, granted upon the application of such banking association, for the following purposes only:

- (a) Restoring depleted legal reserve, or in anticipation of such depletion within thirty (30) days,—
- (b) to protect the assets of such bank,—
- (c) to avert any other actual or imminent emergency which, in the judgment of the State Examiner, would be dangerous to the interests of such bank, or its depositors and other creditors.

Such authorization shall be granted by the State Examiner only after examination by him of the affairs of such banking association, and such authorization shall be granted and exercised under rules

and regulations adopted, and orders prescribed by the State Banking Board. This section shall not apply to loans made before this act takes effect, nor to renewals thereof, nor to renewals of loans made hereunder.

§ 3. RATIO, PLEDGE, ASSETS.] It shall be unlawful for any State banking association, as defined herein, to pledge or hypothecate more than one and one-half dollars of the face value of any of its assets for each one dollar of money borrowed, excepting for money borrowed upon authorization of the State Examiner, who shall fix the amount and kind of assets which may be pledged or hypothecated for such purpose.

§ 4. RE-DISCOUNTS, CONTRACTS TO PURCHASE.] In addition to its power to borrow as herein prescribed, any State banking association, as herein defined, shall have power to incur liability in an amount equal to ten per centum of its deposits, upon endorsement of notes and bills re-discounted, but no liability or obligation upon endorsements in excess of such ten per centum of its deposits shall be binding upon such association, and it shall have no power to incur any obligation or liability to re-purchase loans and discounts, bills receivable or other assets disposed of by it. The State Examiner, under rules and regulations prescribed by the State Banking Board, shall have power to increase the limit of liability upon endorsements by such State banking associations upon notes and bills re-discounted as in his judgment seems best. The discount of bills of exchange, drawn in good faith against agricultural products, raw or manufactured, and other commodities of trade, in transit, shall not come within the provisions hereof.

§5. DIRECTORS AUTHORIZE. OFFICERS EXECUTE. RECORD.] Every State Banking association as defined herein, shall, prior to the borrowing of money, or re-discounting bearing endorsement, receive approval by action of its Board of Directors, to be evidenced by resolution recorded upon its minute book, and no banking association shall have power to contract and to pledge or hypothecate any of its assets without resolution of its Board of Directors authorizing the same, spread upon its minute book, and each proposed loan, either with or without security, or re-discount with endorsement, shall be acted upon separately by such Board. Instruments evidencing such loans, pledges and hypothecations and endorsement upon re-discounts, shall be executed by the officer and officers designated in such resolution, and all such loans and re-discounts shall immediately be entered and carried upon the account books and records of the Association as Bills Payable, or re-discounts as the case may be. Copies of such minutes, books and records authenticated by the oath of an officer of such association shall be sufficient to support such loan, rediscount or pledge. A complete record and

description of the pledged assets and re-discounts shall be entered and maintained by such banking associations in a book devoted to the purpose, the form of which shall be prescribed by the State Examiner.

§ 6. PLEDGEE MAY COLLECT, RENEW, ADDITIONALLY SECURE, RELEASE AND ASSIGN. EXPENSE.] Holders of pledged or hypothecated notes or other evidence of indebtedness pledged by State banking associations, as defined herein, shall have the right to collect and enforce payment, and to renew or extend the time of payment thereof, (if no endorser, guarantor or joint maker be, by reason of such renewal, released thereby), and, provided that such extension is for a period of not longer than fifteen (15) months, and to accept from makers of such pledged or hypothecated notes and other evidences of indebtedness, security or additional security for the payment thereof, and upon payment in full by any maker to give and execute discharges and releases of instruments and securities, and shall have the power to sell, assign and transfer any note with the security therefor so pledged, upon payment of the full amount due thereon from the maker. The pledgee shall be entitled to be reimbursed out of the pledged assets, or its proceeds, for his reasonable and necessary expenses incurred and expended in collecting, renewing, securing and otherwise protecting the assets pledged or hypothecated to him.

§ 7. FORECLOSURES.] Other than provided by Section eight (8) thereof no pledge contracts authorized hereby, shall be foreclosed except by an action in equity, brought in the District Court of the County in which the Pledgor association is located, and the Receiver of any such banking association shall have the right to enjoin any foreclosure under Section eight (8) of this Act, of any such pledge contracts, and to require such foreclosure to be by action in equity, where there is a defense or counterclaim to the debt secured, or the pledge contract.

§ 8. FORECLOSURE OF PLEDGE, CLOSED BANKS.] In case of default by the pledgor association, in the hands of a Receiver, after demand for and neglect of payment, the pledgee shall have the right in lieu of foreclosure by the action in equity provided in Section Seven (7) hereof to apply to a Judge of the District Court for the County within which the closed bank is situated for an order authorizing the foreclosure and sale of the pledge. Fifteen days notice of such application shall be given by personal service or registered mail to the State Examiner and to the Receiver of the closed pledgor association.

The State Examiner, or receiver, or any of the depositors or other creditor of such closed bank may contest the granting of such

order. Such order shall not be granted unless it appear by competent evidence that all reasonable efforts for the collection of the pledged paper have been made, and that there is no reasonable probability of further collection thereof within a reasonable period, and at reasonable expense, nor unless it shall appear that it is to the best interest of the pledgee, the said closed bank or its successor, or receiver, and the depositors and creditors thereof that such foreclosure and sale shall be had. The order for foreclosure and sale shall direct the Sheriff of the County to make the sale, and the notice to be given thereof, and the newspaper wherein such notice shall be published, which notice shall not be less than fifteen (15) days, and shall be served personally or by registered mail upon the State Examiner, and the Receiver, and by publication at least for two successive weeks prior to the sale. All sales shall be made at the front door of the Court House of the County within which said Pledgor association is situated, beginning at the hour of two o'clock in the afternoon of the day specified, separately, article by article, for cash, to the highest bidder. Any amount received from said sale in excess of the debt secured shall be paid to the Receiver, upon confirmation of the sale. Within five (5) days after the sale the Sheriff shall report the same in detail to the Clerk of the District Court, and file a copy thereof with the State Examiner and the Receiver. The pledgee may purchase at such sale, and upon confirmation, if the successful bidder, the amount of such bid shall be credited upon the debt secured.

§ 9. REDEMPTION.] The possession of the property sold, and of the proceeds thereof, shall be retained by the Sheriff unless the Court otherwise directs, until the expiration of the Redemption period herein prescribed, whereupon, and upon the confirmation of the sale the same shall be delivered to the persons entitled thereto. At any time within fifteen (15) days after the sale the Receiver may give notice to the Sheriff of his intention to redeem therefrom, and shall have the full period of five (5) days thereafter to redeem by paying to the Sheriff the amount paid by the purchaser; such redemption may be made of any or all of the articles sold. Redemptions may also be made by depositors or other creditors within ten (10) days after such sale by depositing with the Sheriff the amount paid by the purchaser, and by serving notice of such redemption upon the Receiver and the Sheriff, which said notice shall state the amount which such Redemptioner will credit upon his debt for the privilege of redeeming from the purchaser. Notice of Redemption may be given by more than one creditor for any one note or other article, and the creditor offering the largest credit upon his debt shall be awarded the right of redemption. Provided, however, that the Receiver's right of redemption shall be superior to all other redemption rights. A redemption vests in the Redemptioner or Re-

ceiver the title to said notes or other articles upon confirmation of the sale as provided herein. Report of the sale and of the redemptions thereunder shall be made to the Court by the Sheriff within thirty (30) days after the sale, and the Court may order hearing thereon, with such notice as it may deem proper, not exceeding Twenty (20) days and upon such hearing shall have power, either to confirm or set aside the sale, or to order a new sale, or to direct such other proceedings as may seem to the best interests of the pledgee, the banking association, its successor, Receiver, its depositors and creditors, and thereupon all documents arising from proceedings hereunder shall be filed with the Clerk of the District Court. Upon the confirmation of the sale, out of the proceeds thereof the pledgee shall be reimbursed for the costs and disbursements paid and incurred in connection therewith, including a reasonable attorney's fee, not exceeding Fifty dollars (\$50), to be allowed by the Court in the order of confirmation; Sheriff shall receive the same fees and commissions allowed him in the foreclosure of chattel mortgages, not exceeding fifteen dollars (\$15); the remainder of such proceeds shall be applied upon the debt secured, upon which debt interest shall be computed to the date of such payment, and any residue shall be paid to the Receiver. During the period of foreclosure and redemption any debtor may pay upon his debt to the person having custody of such pledged collateral, which person is hereby authorized to receipt to the person paying, and upon full payment to release and discharge such debt and surrender the evidence thereof.

§ 10. PLEDGED CONTRACTS AND SALES VOID.] Any pledge or hypothecation of any of the assets of a State banking association, or the sale of any of the pledged assets of any such state banking association made in violation of this Act shall be null and void, and of no force and effect, and shall not be binding on any of the parties affected thereby.

§ 11. PENALTIES.] Any officer, director, agent or employee of any State banking association, as defined herein, who shall borrow money for, or on behalf, or in the name of any such State banking association, or who shall obligate any such State banking association upon rediscounts, or who shall pledge or hypothecate any of the assets of such State banking association in violation of the provisions of this Act, or make any false statement, report, record or copy thereof provided for in Section five (5) hereof, and any person who shall counsel, aid or abet, or conspire with, or be accessory thereto, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the State Penitentiary for a term of not less than one year, nor more than five years, or a fine of not less than One Hundred dollars nor more than One Thousand dollars, or by both such fine and imprisonment,

§ 12. DEFINING STATE BANKING ASSOCIATIONS.] For the purposes of this Act every corporation organized under the laws of this State for State Banking Association, Savings Banks, Trust Companies, Building & Loan Associations, and all corporations or other associations, excepting National banks, whose business, in whole or in part consists of the taking of money on deposit, shall be held and are hereby declared to be State Banking associations, and as thus defined shall be subject to the provisions of this Act.

§ 13. REPEALED.] All laws and parts of laws in conflict herewith are hereby expressly repealed.

Approved March 6, 1925.

CHAPTER 93

(S. B. No. 117—Rusch.)

PAYMENT OF DEPOSITS IN TWO NAMES

An Act Relative to Payment of Deposits in Two Names.

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

§ 1. When a deposit has been made or shall hereafter be made in any bank, savings bank, or trust company, transacting business in this state in the names of two persons, payable to either, or payable to either or the survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to either of said persons, whether the other be living or not; and the receipt or acquittance of the person so paid shall be a valid and sufficient release and discharge to the bank, savings bank or trust company, for any payment so made.

Approved March 6, 1925.

CHAPTER 94

(H. B. No. 186—Vogel.)

REPORTS TO STATE EXAMINER BY BANKS AND TRUST COMPANIES

An Act To Amend and Re-enact Section 5167 of the Compiled Laws of 1913 Requiring Regular and Special Reports to the State Examiner by Banking Associations, Savings Banks and Trust Companies, and Providing Penalties for Failure to Make the Same.

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

§ 1. AMENDMENT.] That Section 5167 of the Compiled Laws

of North Dakota for 1913 is hereby amended and re-enacted to read as follows:

§ 5167. REGULAR AND SPECIAL REPORTS. PENALTIES FOR FAILURE TO MAKE.] Every banking association, savings bank, and trust company organized under this chapter, shall make three or more reports each year to the State Examiner, the number to be determined by the State Banking Board, in such form as the State Banking Board shall prescribe; such forms to be as nearly as possible like those prescribed by the comptroller of the currency for similar reports for national banks. Such reports shall exhibit in detail, under appropriate heads, the resources and liabilities of the association at the close of the business on a past day by him specified, which shall if practicable, be the same day for which similar reports are required from national banking associations within the state by the comptroller of the currency of the United States. Each report must be verified by the oath of the president or the cashier and attested as correct by at least two of the directors, and must be transmitted to the examiner within seven days after receipt of the request for the same, and an abstract of not less than three of such reports in a form prescribed by the Board, shall be published, at the expense of the association, in some newspaper in the city, town or village where such bank is located, and in case there is no such newspaper, then in the official newspaper of the county in which such association is located. The State Banking Board shall also call for a special report from any association whenever in their judgment the same is necessary in order to obtain full and complete knowledge of its condition. Every association which fails to make and transmit any report required in pursuance of this section, shall forfeit and pay to the state a penalty of two hundred dollars for each delinquency.

Approved March 10, 1925.

CHAPTER 95

(S. B. No. 236—McLachlin.)

LEGAL RESERVE BANKING CORPORATIONS—BANKING

An Act to Amend and Re-enact Chapter 23, of the Laws of the State of North Dakota of the Special Session of 1919.

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

§ 1. AMENDMENT.] Chapter 23 of the laws of North Dakota of the special session of 1919 is hereby amended and re-enacted to read as follows:

§ 1. From and after January 1st, 1926, and up until January 1st, 1927 each banking corporation or association shall at all times have on hand in available funds an amount which shall equal fifteen per cent of its demand deposits and amounts due to other banks and ten per cent of its time deposits, and from and after January 1st, 1927 such banking corporation or association shall at all times have on hand in available funds an amount which shall equal twenty per cent of its demand deposits and amounts due to other banks and ten per cent of its time deposits; three-fifths of this amount may consist of balances due to the corporation or association from the Bank of North Dakota, or good solvent state or national banks or trust companies, which carry sufficient reserve to entitle them to act as such depository banks, and are located in such commercial centers as will facilitate the purposes of banking exchanges, and which depository banks shall have been first approved by the State Banking Board, and the remaining two-fifths of such reserve shall consist of actual cash on hand; Cash items shall not be included in computing reserve, and no corporation or association shall carry as cash, or cash items, any paper or other matter except legitimate bank exchange which will be cleared on the same or next succeeding day. Provided, however, that any state banking corporation or association with the permission of the state banking board may carry not to exceed one-fourth of its legal reserve in United States Certificates of indebtedness, United States Bonds, North Dakota Land series bonds, North Dakota Bank of North Dakota bonds and North Dakota Mill and Elevator bonds. Whenever the available funds within the meaning of this section, shall be below the requirements hereinbefore stated, such corporation or association shall not increase its liabilities by making any new loans or discounts other than by discounting or purchasing bills of exchange, payable at sight, or make any dividend of its profits until the required proportion between the aggregate amount of the deposits and its lawful money reserve has been restored and the State Banking Board must notify any corporation or association whose lawful money reserve shall be below the amount required to be kept on hand to make good such reserve and if such corporation or association shall fail to do so for a period of thirty days after such notice, the State Banking Board may impose a penalty of not less than one hundred dollars or more than five hundred dollars which shall be collected in the same manner as other penalties prescribed in this chapter.

Approved March 10, 1925.