§ 2976v16. BALANCE OF STATUTE NOT TO BE AFFECTED BY UNCONSTITUTIONALITY OF ACT.] If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

§ 2. REPEAL.] All acts and parts of acts in conflict with this act are hereby repealed.

§ 3. EMERGENCY.] An emergency is hereby declared to exist and does exist, and this act shall be in force and effect from and after its passage and approval.

Approved March 7, 1927.

BANKS AND BANKING

CHAPTER 91

(H. B. No. 79—Committee on Banks and Banking)

CERTIFICATES OF AUTHORITY OF BANKS

An Act to Amend and Re-enact Section 5149 of the Compiled Laws of North Dakota for 1913, Relating to the Organization of Banking Associations and Empowering the State Banking Board to Supervise and Control the Issuance of Certificates of Authority Thereto.

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

§ 1. AMENDMENT.] Section 5149 of the Compiled Laws of North Dakota for 1913 is hereby amended and re-enacted to read as follows:

§ 5149. The organization certificate shall be acknowledged before a clerk of some court of record or a notary public and shall be, together with the acknowledgment thereof, authenticated by the seal of such court or notary. The same shall thereupon be transmitted to the State Banking Board with a request for permission to present the same to the Secretary of State, with application to him for the issuance of a certificate of authority. Upon receiving such organization certificate the Board shall cause notice of the application therefor to be published in the official newspaper of the county within which such association is proposed to be established, which notice shall contain a statement of a time and place where the Board will hear such application and that any person objecting thereto may appear and show cause why such application should not be approved. At the time and place so stated the said Board shall diligently inquire whether the place where said Banking Association is proposed to be located is in need of further banking facilities and whether the proposed association is adapted to the filling of such needs, and whether the proposed incorporators are

possessed of such character, integrity, reputation and financial standing as shown by a detailed financial statement that their connection with a Banking Association will not be detrimental to the public welfare of the community in which such bank is proposed to be established. The Board shall hear any reasons advanced by the applicants why they should be permitted to organize the proposed association, and any reasons advanced by any person in opposition thereto why such association should not be permitted to be organized. At the termination of such hearing the Board shall make a brief statement in writing of its conclusions whether such association should be permitted to be organized, and if it finds that it should not, stating briefly the reasons why. A copy of such conslusions shall be either indorsed upon or attached to the organization certificate, together with the refusal or grant of permission to the proposed incorporators to present the said organization certificate to the Secretary of State. PROVIDED, HOWEVER, the determination in favor of such organization must be joined in by all the members of the Board.

If the determination of the Banking Board is in favor of the applicants, the organization certificate and permission of the Board accompanying the same, shall be recorded in the office of the Register of Deeds in the county where such Banking Association is to be established, and the same shall be transmitted to the Secretary of State and received by him, and he shall record and carefully preserve it in his office, and certify the facts to the State Banking Board, and issue a certificate of authority to the corporation, which certificate of authority shall be transmited to and held by the state examiner until an examination is made and the certificate of the state examiner or a deputy examiner procured to the effect that the capital stock has been paid in full and that all conditions of the law have been strictly complied with. But if the determination of the Banking Board is against the said application such organization certificate must not be either recorded in the office of the Register of Deeds, or, if presented, received by the Secretary of State.

§ 2. If any part of this act granting powers to the Banking Board shall be held to be invalid, such part shall not be deemed to have been the inducement to the granting of any other powers, and shall not invalidate the act as to any such other powers.

§ 3. All acts or parts of acts inconsistent herewith are hereby repealed.

Approved February 28, 1927.

CHAPTER 92

(H. B. No. 249—Fowler)

COLLECTIONS BY BANKS AND LIABILITY

An Act to Amend and Re-enact Section 6954A1 Supplement to the 1913 Compiled Laws, Relating to the Collection of Items Through Banking Channels and Establishing the Liability of Collecting Agencies.

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

§ 1. AMENDMENT.] Section 6954A1 Supplement to the 1913 Compiled Laws is hereby amended and re-enacted to read as follows:

§ 6954A1. The Bank of North Dakota, or any national bank doing business in this state, or any state banking association as defined in Section 519A12 (5191A12?) Supplement to the 1913 Compiled Laws, which shall cash, receive for application on an obligation, or for collection or deposit and credit, any check, note, or other negotiable instrument drawn upon or payable at any other bank, savings bank, trust company, or other financial institution located in another city or town, or which should be presented for acceptance or payment in another city or town, whether within or without this state, may, at its option, forward such instrument for presentment or collection directly to the bank on which it is drawn, or at which it is made payable, or may forward it through the Federal Reserve Bank, or other recognized banking agencies, and in payment of such collection such bank or other agency may accept the exchange or draft of the collecting or payor bank. Such method of collection shall, in the absence of a special agreement to the contrary, be deemed to be agreed to by the parties and the forwarding bank and successive agencies shall not be liable to the owner or depositor until actual final payment is received by the collection of such exchange or draft, and until such final collection the depositor, indorser, guarantor, or surety of any check, draft, or other instrument so received, deposited, cashed or credited, shall be liable to the bank to the extent of any money paid out or credit given by it on account of such instrument.

PROVIDED, HOWEVER, the bank and every other agency through whose hands such instrument or the proceeds thereof shall pass shall be charged with ordinary business care, and shall be liable for any lack thereof, or for any default or negligence on its part resulting in loss, but not for the default, negligence or lack of care of any other agencies, and the owner or depositor of such instrument shall have a cause of action directly against such bank, or other agencies, for his damage or loss on account of its default or lack of ordinary care.

§ 2. EMERGENCY.] This act is hereby declared to be an emergency and shall take effect from and after its passage and approval.

Approved March 5, 1927.

Note: The foregoing measure carried the following vote on final passage:

House—92—16—5

Senate—30—17—2

CHAPTER 93

(H. B. No. 293—Committee on Banking)

CONSOLIDATION OR MERGER OF BANKS

An Act Relating to the Consolidation or Merger of Banks.

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

§ 1. Any two or more banks may, with the approval of the State Examiner, consolidate or merge into one bank under the charter of either existing bank, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate or merge, and be ratified and confirmed by the vote of the shareholders of each such bank owning at least two-thirds of its capital stock outstanding, at a meeting to be held on the call of the directors, after sending notice to each shareholder of record by registered mail at least ten days prior to said meeting; provided, that the stockholders may unanimously waive such notice and may consent to such meeting and consolidation or merger in writing. Provided also, that the capital stock of such consolidated bank shall not be less than that required under existing law for the organization of a bank of the class of the largest consolidating bank.

The assets and liabilities of the consolidated bank shall be reported by the surviving bank. All the rights, franchises, and interest of said bank so consolidated in and to every species of property, real, personal and mixed and choses in action thereto belonging, shall be deemed to be transferred to and vested in such bank into which it is consolidated without other instrument of transfer, and the said consolidated bank shall hold and enjoy the same and all rights of property, franchises, and interests in the same manner and to the same extent as was held and enjoyed by the bank so consolidated therewith, provided, however, that the merging bank shall transfer to the surviving bank all of its real property by good and sufficient deed of conveyance and for that and other purposes shall remain a body corporate for a period of at least three years after merger and shall not then dissolve without the approval of the State Examiner.

§ 2. This Act is hereby declared to be an emergency measure and shall be in force and effect upon its passage and approval.

Approved March 5, 1927.

CHAPTER 94

(H. B. No. 152—Thompson of Ramsey)

REGULAR & SPECIAL REPORTS BY BANKS

An Act to Amend and Re-enact Section 5167 of the Compiled Laws of 1913, as Amended by Chapter 94, Session Laws of 1925, 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, as amended by Chapter 94, Session Laws of 1925, 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 a legal 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 February 28, 1927.

CHAPTER 95

(H. B. No. 81—Committee on Banks and Banking)

LIMITATION OF BANK LOANS

An Act to Amend and Re-enact Section 5172 of the Compiled Laws of North Dakota for 1913, Relating to the Limits of Loans by Banking Associations.

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

§ 1. AMENDMENT.] Section 5172 of the Compiled Laws of North Dakota for 1913 is hereby amended and re-enacted to read as follows:

§ 5172. LIMIT OF LOAN TO ONE CONCERN.] The total liability to any Association of any person, corporation, company or firm, including in the liabilities of the firm the liabilities of the several members thereof for money borrowed and paper of the same parties as makers thereof purchased, shall not at any time exceed fifteen per cent of the capital stock and surplus of such Association actually paid in when such surplus does not exceed twenty per cent of the capital stock; and if such surplus exceeds twenty per cent but does not exceed fifty per cent, such liability shall not exceed twelve and a half per cent of the capital stock and surplus; and if such surplus exceeds fifty per cent of the capital stock such liability shall not exceed ten per cent of the amount of the capital stock and surplus. But the discount of bills of exchange drawn in good faith against actual existing values, or loans upon produce in transit or actually in store as collateral security—(provided that all paper relating to such transactions be made payable to and such paper and security therefor be and remain in the possession and control of such Association until the advance or debt be paid) —shall not be considered as money borrowed and such Association may discount commercial or business paper actually owned by the person negotiating the same without it being deemed an addition to the loan to said negotiator.

PROVIDED FURTHER, HOWEVER; That the liability which may be permitted to exist against any Association, corporation, person, company or firm, as hereinbefore provided, shall not be lessened at any time by the increase of surplus, nor be less than the liability permitted by law when this act takes effect.

Approved February 28, 1927.

CHAPTER 96

(S. B. No. 237—Ettestad)

SECURED SAVINGS DEPOSITS

An Act Relating to Banks, Providing for Secured Savings Deposits, Fixing the Reserve, Limiting the Investment of Such Deposits, Exempting the Same from the Depositor's Guaranty Fund Law, Establishing a First Lien on General Assets, Providing Notice of Withdrawal, the Keeping of Separate Books and Records, and Providing a Penalty for the Violation of the Provisions Hereof.

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

§ 1. SECURED SAVINGS DEPOSITS; ESTABLISHED; LIMIT OF AMOUNT; INTEREST.] Any bank or trust company may establish a class of deposits to be known as "Secured Savings Deposits," which shall not exceed in amount for any one depositor the sum of Five Hundred Dollars. Interest thereon shall not be promised or paid, either directly or indirectly, to such depositor in excess of two and one-half per cent per annum, but the same may be compounded quarterly or semi-annually.

Such banks shall maintain and keep as cash reserve an amount which shall equal ten per cent of its total Secured Savings Deposits, four-fifths of which amount shall, as nearly as practicable, consist of balances due from reserve agents to be approved by the State Banking Board, and carried in the name of such bank in an account entitled "Secured Savings Account of ..... Bank of ....., N. Dak.," and as nearly as practicable, not exceeding one-fifth of such reserve provided for herein may be kept in another department of such bank.

§ 2. INVESTMENTS RESTRICTED.] Any bank having Secured Savings Deposits shall invest the deposits received in such department only in bonds or certificates of indebtedness of the United States, the State of North Dakota, any County or School District within the State, or such other political subdivisions of the state, the bonds and certificates of indebtedness of which may, from time to time, be approved for investment of such deposits by the State Banking Board.

§ 3. RESERVE AND INVESTMENTS TO BE KEPT SEPARATE; PLEDGING OR LOANING ASSETS PROHIBITED.] The reserve, bonds and investments belonging to the Secured Savings Department of any such bank shall be kept separate and apart from the other reserves, bonds, investments, loans and discounts of the bank, and shall be applicable only to the repayment of such Secured Savings Deposits, and shall not be pledged, loaned or hypothecated as security for loans of such bank or otherwise, excepting as permitted by section one of this act.

§ 4. PROTECTION REMOVED WHERE HIGHER INTEREST RATE PAID; SECURED DEPOSITS NOT SUBJECT TO DEPOSITORS GUARANTY FUND LAW.] The protection provided for in this act to depositors hereunder shall not apply to a depositor who accepts, either directly or indirectly or by whatever device, interest or compensation upon such deposit of a higher rate than provided for in section one herein, but he shall in such event be treated and considered as a common creditor of such bank. The deposits received by any bank under this act shall not be subject to the provisions of the Depositors Guaranty Fund Law, and the amount thereof shall not be included in making return for assessment for account of such Fund.

§ 5. FIRST LIEN ON BANK'S GENERAL ASSETS; EXCEPTION.] The amount of the cash reserve standing to the credit of the Secured Savings Department in any such bank shall be, and is hereby declared to be, secured by a first and paramount lien upon the assets of such bank in favor of such Secured Savings Depositors; save and except funds deposited in such institution belonging to the estate of any insolvent bank, deposited therein by the Receiver or other person officially in charge, which shall have preference over all other claims. In the event of the closing of any bank having Secured Savings Deposits, if it shall appear that such deposits or investments have been wrongfully mingled with the other assets of such bank, or, except as otherwise hereinbefore provided, that such reserves and investments have not been maintained separately, but have been unlawfully co-mingled, such Secured Savings Deposits shall be deemed to be especially secured by a first and paramount lien upon all the other assets of such bank as in this section provided.

§ 6. DEPOSITS; NOTICE OF WITHDRAWAL; RULES AND REGULATIONS TO RECEIVE APPROVAL OF STATE BANKING BOARD.] Deposits received under the provisions of this act shall be paid to the order of the depositor or his representative and shall be kept, maintained and paid out, with interest as herein provided for, under such rules and regulations as the Boards of Directors from time to time prescribe, not inconsistent with the provisions of this act and of the banking laws of the state, and shall be effective upon approval of the State Banking Board, and which shall be printed in a pass book furnished the depositor, and also conspicuously posted in the lobby of the bank in some place accessible and visible to all, and no changes which may at any time be made in such rules and regulations affecting the rights of depositors acquired previously thereto in respect to the deposits or interest thereon shall be operative until approved by the State Banking Board nor until sixty days after the posting of such change; provided, however, that in order to prevent loss to the depositor, by enforced sale of securities below their real value, it shall be lawful for the directors in their discretion, to require notice of one week before the withdrawal of any part of any secured savings deposit of more than twenty dollars and not exceeding one hundred

dollars; of two weeks before the withdrawal of any part of any deposit of more than one hundred dollars and not exceeding two hundred fifty dollars; of three weeks before the withdrawal of any part of any deposit of more than two hundred fifty dollars and not exceeding five hundred dollars, and in case where the deposit has been made on certificate for a definite time and the depositor fails to withdraw the same within ten days after such definite time, then notice for withdrawal may be required as prescribed above, and provided, further, that the directors of any such bank may, and by the written consent of the State Banking Board shall, make any changes deemed necessary in regard to the notices heretofore required to be given by the depositor for the withdrawal of their deposits, by extending the time that notice shall be given by any depositor for the withdrawal of all such deposits, to a period of time not exceeding three months, and provided, further, that the directors may limit the aggregate amount that any depositor may deposit to such sum as they deem expedient to receive, not exceeding the amount limited under section one of this act, and may in their discretion refuse to receive any deposit, and may also, at any time, return all or any part of any deposit and the accrued interest thereon to any depositor without notice.

§ 7. SEPARATE BOOKS TO BE KEPT; REPORTS TO STATE EXAMINER.] Every bank which shall establish and maintain a Secured Savings Department, shall be required to keep separate books and records of the deposits made therein, and of the investments made and belonging to such department, and shall be required to make reports of the condition of such department to the State Examiner on the last business day of each month, and also at the time of making report of the condition of the general business of the bank, and which last mentioned report shall show separately therein the amount of such Secured Savings Deposits, investments and reserves, and upon forms prescribed and approved by the State Banking Board, and such Board may require in the published statement of condition of such bank that the same shall be set forth as separate items in such published report.

§ 8. NOT APPLICABLE UNTIL SECURED SAVINGS DEPARTMENT ESTABLISHED.] This act shall not apply to any deposit originating prior to the taking effect hereof, but shall apply only to new deposits thereafter made, nor shall this act be construed to limit or interfere with the establishing or conducting of a general savings department in State Banks and Trust companies.

§ 9. PENALTY.] Every officer, agent or clerk of any banking association who wilfully and knowingly subscribes or makes any false statements or entries in books of such association, or knowingly subscribes or exhibits any false paper with intent to deceive any person authorized to examine as to the condition of such association, or

wilfully subscribes or makes false reports, shall be punished by imprisonment in the state penitentiary not less than one nor exceeding ten years, or in the county jail not exceeding one year, or by a fine not exceeding ten thousand dollars, or by both such fine and imprisonment.

§ 10. EMERGENCY.] This act is hereby declared to be an emergency measure and shall take effect and be in force upon its passage and approval.

Approved March 5, 1927.

CHAPTER 97

(H. B. No. 80—Committee on Banks and Banking)

SURPLUS OF BANKS

An Act Providing for an Increase of Surplus of Banking Associations and Exempting Such Surplus from Taxation.

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

§ 1. From and after the first day of July, 1927, every Banking Association and trust company doing business shall semi-annually or annually, as its governing board shall deem advisable, ascertain and set apart and convert into a surplus fund at least fifty percent of its net earnings until such surplus shall equal one hundred percent of its capital stock, and no dividends shall be declared upon its stock except from the remaining fifty percent of its net earnings. Such surplus is intended to strengthen the banking associations of the state and safe-guard the depositors and it shall, therefore, be exempt from taxation and not taken into account in determining the taxable value of the shares of stock of banking associations.

§ 2. If at any time the surplus of a banking association shall fall below the highest point it shall have therefore attained, no dividends shall be declared on the capital stock until such surplus has been restored to such highest point, and until it is so restored all of the net earnings shall be converted into such surplus fund.

§ 3. All acts and parts of acts inconsistent herewith are hereby repealed.

Approved February 28, 1927.

CHAPTER 98

(S. B. No. 249—Ployhar)

LIMITATION OF ACTIONS AGAINST INSOLVENT BANKS

An Act Providing a Limitation for Filing and Bringing Suit on Claims Against Insolvent Banks or Their Receivers.

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

§ 1. When any bank shall hereafter become insolvent and go into the hands of a receiver he shall give notice thereof by registered mail to every creditor whose address appears on the records of the bank, or shall be known to the receiver, within sixty days after his appointment. Any claim against such bank not presented to the receiver within two and a half years after his taking possession thereof shall be barred and cannot thereafter be presented or an action maintained thereon. In the case of any bank that has theretofore closed and gone into the hands of a receiver where notice has already been mailed substantially as provided herein, whether within sixty days from the time of the taking possession by the receiver or not, and in which any claim has not been filed, it shall be barred and cannot be presented or an action maintained thereon after two and a half years from the date of the mailing of such notice.

PROVIDED, HOWEVER: no claimant shall have less than six months after the taking effect of this Act within which to present his claim or commence an action thereon; and provided further any person bringing action on a claim against any such receiver must allege in his complaint and prove that the action is not barred under the foregoing provisions.

An emergency is hereby declared to exist and this act shall become effective immediately upon its passage and approval.

Approved March 5, 1927.

CHAPTER 99

(H. B. No. 215—Thatcher and Swett)

ADMINISTRATION AND LIQUIDATION OF INSOLVENT BANKS

An Act Relating to Banking, Regulating the Administration of the Affairs of Insolvent Banks, Providing for Their Liquidation, Vesting the Supreme Court with Jurisdiction of such Liquidation Proceedings and Requesting it to assume Original Jurisdiction in Furtherance of the Public Interest, Creating the Position of Supreme Court Commissioner, Fixing His Compensation and Defining His Powers and Authority, and Providing for the Appointment of Receivers of Insolvent Banks and Continuing Receiverships, and Making an Appropriation to Meet the Expenses Incident to Carrying Out the Purpose of This Act, and Directing the Supreme Court to Exercise its Supervisory Authority Over the District Court in Proceedings for Liquidating the Affairs of Insolvent Banks, and Providing for the Re-opening and Reorganization of Closed or Suspended Banks, and Providing for

Liquidation of Closed Banks by the Depositors Therein, and Designating a Custodian of Records and Property After Winding Up Receiverships, and Providing for the Covering into the General Fund of the State of Unclaimed Dividends.

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

§ 1. JURISDICTION OF SUPREME COURT.] The Supreme Court of the State of North Dakota is hereby given, and requested to exercise, original jurisdiction of the insolvency proceedings to liquidate and wind up the affairs of all insolvent state banks within the State, at the time of the taking effect of this Act, and all such as may become insolvent during its continuance.

§ 2. LIST OF CLOSED BANKS TO BE CERTIFIED TO ATTORNEY GENERAL.] Immediately upon the taking effect of this Act the State Examiner shall certify to the Attorney General a list of all state banks in the State now closed as insolvent, whether in the hands of Receivers, the State Examiner's office, or other trustees or agents of the State (except such banks as are now in process of liquidation by a receiver appointed pursuant to Chapter 137 Session Laws of 1923 and such receiverships shall continue and be governed by the provisions of this Act as though such appointment had been made pursuant to this act) together with a concise statement, showing the time of insolvency, the name of the Receiver in charge, and such other information as the State Examiner believes will be of importance to the Attorney General.

§ 3. PROCEEDINGS FOR WINDING UP.] Immediately upon receiving such certificate the Attorney General shall institute a proceeding in the Supreme Court entitled in the name of the State of North Dakota, for itself, and on behalf of all creditors of such banks, as plaintiffs, against all of said insolvent banks as defendants, for the purpose of declaring them insolvent and winding up their affairs as insolvent banking associations. Such proceedings shall be brought by the filing in the office of the Clerk of the Supreme Court of a complaint reciting briefly the facts as to the insolvency in each of such banks, and the name of the receiver or other officer in charge.

Upon the filing of such complaint the Attorney General shall issue a summons in the usual form of summons issued in actions in the district court of the State, and containing an additional statement to the effect that a petition charging the bank in question with being insolvent is on file in the office of the Clerk of the Supreme Court, and that unless answer is made thereto within 15 days from such service such complaint will be taken as confessed. Such summons, however, as prepared for service on individual banks need only name as a defendant, the particular bank upon which service thereof is to be made, and such service may be made upon any officer of such bank.

Service of such Summons may be made in the same manner as the service of summons in ordinary civil actions is made, and the sheriff of the county in which the bank to be served is located shall upon request of the Attorney General immediately make service, or cause service thereof to be made, as in ordinary actions, but he shall not be entitled to collect any fees or expenses for making such service and he shall make return thereof when served to the Attorney General.

§ 4. TIME TO ANSWER.] Upon the Service of the Summons as aforesaid the defendant bank shall have fifteen days within which to serve and file an Answer denying insolvency, or any other material fact stated in the petition and unless within such fifteen days such answer is served and filed the insolvency of such defendant shall be deemed confessed.

§ 5. COURT COMMISSIONER; QUALIFICATIONS; JURISDICTION; REVIEW OF DECISION OF.] Upon the taking effect of this Act the Supreme Court shall appoint a Court Commissioner who shall have all the qualifications prescribed by law for a Judge of the Supreme Court to whom it may refer any matters committed to the jurisdiction of the Court by this Act, who shall act for and on behalf of the Supreme Court in hearing evidence, finding facts and making orders in any matter arising in connection with the action or actions instituted in such court under the provisions of this Act.

Such commissioner may sit for hearing and determination of any question of law or fact that may arise in such action or actions at any place within the State, and any such hearing may be brought on upon reasonable notice given by the Commissioner to the party in interest of the time and place of such hearing, and in the exercise of the jurisdiction conferred upon him, said Commissioner may permit matters to be brought before him either upon ordinary notice served upon the parties or by order to show cause, according to the practice of the district courts.

Any decision of the Commissioner may be reviewed by the Supreme Court on the action (motion?) of any party aggrieved at such times and under such rules as the Court may prescribe, and unless objected to by motion to review as herein provided, the court may deem the decision of the Commissioner correct and without notice or application affirm the same.

Any party desiring to have a review of the decision of the Commissioner by the Supreme Court must within three days after the making of the same, if he is present personally or by counsel, or within three days after written notice thereof, if not present, file with the Commissioner a brief written statement of the grounds of his

objection and containing the post office address of the party or his attorney upon which notice of hearing shall be served. Such statement shall be filed by the Commissioner with the Clerk of the Supreme Court and Notice of the Hearing of such Motion for review shall be given to the complaining party by letter addressed to him, or his attorney at the place named in such statement. The time of giving notice of such hearing to be fixed by rule or order of the Supreme Court.

§ 6. SAME; SALARY; CLERICAL ASSISTANCE; OATH.] Such Commissioner shall be paid out of the general funds of the State the same salary as is paid to Justices of the Supreme Court and may employ such clerical assistance as shall be allowed by the Court, and shall be reimbursed by the State for all his actual expenses incurred in connection with the performance of his duties to be passed upon by the State Auditing Board as other claims against the state. Such Commissioner shall take the constitutional oath to perform his duties according to the Constitution of the United States and the State of North Dakota.

§ 7. RULES AND REGULATIONS.] The Supreme Court shall make rules and regulations from time to time governing the reference of matters to the Commissioner and the exercise of his jurisdiction and powers and the manner and method of reviewing his decision.

§ 8. RECEIVER; APPOINTMENT OF; SUPERSEDING OTHER RECEIVER.] Upon the filing of the Complaint aforesaid the Court shall appoint a Receiver, or two joint Receivers, of all said insolvent banks, which Receiver shall have all the powers and authorities ordinarily possessed and exercised by receivers of insolvent corporations or prescribed by statute and the Court shall have all the power and authority with regard to the administration and closing of the affairs of such banks as are ordinarily possessed and exercised by courts of equity over the affairs of insolvent corporations. If upon a hearing on an issue raised by answer to the complaint, it shall be established that any Bank proceeded against is not insolvent, then the Receiver shall be deemed to have been a Temporary Receiver, and shall account and be discharged accordingly as to such bank, in all other respects the Receiver shall be deemed to be a Permanent Receiver.

The Receiver so appointed by the Court shall supersede, and supplant any receiver theretofore appointed by the Banking Department, or by any other court, or any examiner or officer of the Banking Department that may be in charge of any of such banks, but until the receiver appointed under this Act shall take possession of any such bank the receiver, or other officer already in charge, shall continue, and it shall be his duty to protect, conserve and administer

its affairs to the best of his ability, and he shall remain liable under his bond for all his acts committed prior to being finally relieved of his trust.

§ 9. PROCEEDING AGAINST OTHER BANKS DEEMED INSOLVENT.] If during the life of this Act any other banking association shall be deemed insolvent by the authorities vested by law with the right to institute insolvency proceedings against the banks, and such authorities desire to institute such proceedings, they shall make report thereof to the Attorney General, with the necessary facts as to insolvency, and he shall file a complaint such as hereinbefore provided for, as to such other association or associations, as to which it is desired to institute proceedings, joining as many as is desirable in one proceeding; and the same proceedings shall be had thereon as is provided with reference to associations already insolvent, and the court shall thereupon in like manner appoint the same receiver, or receivers, for such additional association, or associations, and the original proceeding provided for herein, and all subsequent proceedings that may be taken as in this section provided shall be deemed to be merged and amalgamated into one proceeding, but the affairs of each association shall be kept separate.

§ 10. RECEIVER; APPLICATION TO COMMISSIONER FOR INSTRUCTIONS.] The Receiver appointed hereunder shall from time to time apply to the Commissioner for guidance and instructions and for the purpose of obtaining orders and directions with reference to the administration of the affairs or the disposition of the property of any of the Banks under his control, as receiver, in the same way and as far as may be practicable under the same course of procedure that receivers appointed by district courts apply to such district courts, and the receiver or any other parties aggrieved by any determination of the Commissioner may apply to the Court for a review thereof, as hereinbefore provided for.

§ 11. FIXING AMOUNT OF EXPENSES OF RECEIVERSHIP CHARGEABLE TO DIFFERENT BANKS.] At any time when the affairs of any bank under the receivership aforesaid are ready to be closed, the court shall fix the amount of the expense of the receivership properly chargeable to such bank.

§ 12. PROCEDURE.] So far as practicable, except as herein otherwise provided, and except as may be otherwise provided by the Court, the ordinary rules of procedure applicable to like actions in the district court shall govern the proceedings herein provided for; but the Court may from time to time prescribe such rules of procedure as it shall from time to time find best adapted to the furtherance of the general purpose of expeditiously and economically winding up the affairs of insolvent banks.

§ 13. COMMISSIONER; POWERS OF.] The Commissioner appointed hereunder shall have power and authority to issue subpoenas for witnesses any place within the State, and to administer oaths and to punish for contempt, to the same extent as a Judge of the District Court, subject to a review of his decision by the Supreme Court, as in case of other decisions. At any time when district court is not in session in any county, in which the Commissioner is holding a hearing, he shall have a right to take and use the court room of the district court, and he may call upon the Clerk of such District Court to act as his clerk, in issuing subpoenas, and may call upon the Sheriff of the County to act as his Court officer, and such officer shall perform such service without compensation.

§ 14. PLACE OF HEARING.] The Commissioner shall, as far as practicable, hold his hearings in the County in which the Bank interested is located, and as far as practicable and with fair regard to the convenience and interest of all parties at the most accessible point within the County.

§ 15. WITNESS FEES AND MILEAGE; WHO LIABLE.] In all hearings before the Commissioner the parties procuring the attendance of witnesses shall be liable for their witness fees and mileage, as is allowed in district court, and the Commissioner may make such order with reference to the payment of costs by the different parties as shall be just.

§ 16. JUDGMENTS; INTERLOCUTORY OR FINAL; TRANSCRIPT OF.] The Supreme Court may from time to time as occasion shall require enter interlocutory or final judgments affecting the rights of particular parties to the proceedings without affecting the rights of any other party, and any judgment so entered in the Supreme Court may be at the request of any interested party transcripted to the district court of any county in the State where it shall be docketed by the Clerk of Court, and shall from the time of docketing be taken and considered as a judgment of such district court in all things the same as though originally entered, and it may be enforced as a judgment in such court.

§ 17. APPROPRIATION.] There is hereby appropriated out of the general funds of the State the sum of $10,000.00 per year, or so much thereof as may be necessary to pay the salary of the Court Commissioner and the expenses incident to the performance of his duties hereunder.

§ 18. TRANSFER OF PROCEEDINGS TO BURLEIGH COUNTY DISTRICT COURT; DESIGNATION OF DISTRICT JUDGE; REVIEW OF ACTS OF.] In case the Supreme Court shall be of the opinion that its

original jurisdiction does not extend to the controversy or controversies referred to in this Act, or if for any other reason the Supreme Court shall refrain from exercising its original jurisdiction with respect thereto, the proceeding shall not be dismissed, but all papers and files therein shall be transmitted to the Clerk of the District Court of Burleigh County, and that court shall be and is thereupon vested with full jurisdiction of such proceeding, and thereupon the Supreme Court, in the exercise of its supervisory jurisdiction shall designate some district judge to hear and try said controversy or controversies, and the judge so designated shall give precedence to such controversy or controversies over all other work and in the disposition thereof he shall be governed by the provisions of this Act, and endeavor in every way to carry the same into effect. The District Judge so designated shall perform all of the duties which the Act requires to be performed by the Court Commissioner, and in such case no Court Commissioner shall be appointed. In such case the acts of the District Court shall be subject to review by the Supreme Court in the same manner herein provided for review by the Supreme Court of the acts of the Court Commissioner. Provided that all acts of such district court performed under the provisions of this Act, including the appointment of a receiver, shall be subject to the supervisory control of the Supreme Court. In case of the designation of a District Judge as herein provided for, all his necessary traveling expenses incurred in carrying out the provisions of this Act shall be paid out of the general fund of the State upon vouchers duly presented, as in other cases of the expenses of District Judges. In case of the designation of a District Judge as in this Section provided, all further insolvency proceedings, in this Act hereinbefore provided to be instituted in the Supreme Court, shall be instituted in the District Court of Burleigh County, and conducted in like manner.

In case of the designation of a District Judge as in this Section provided for, the rules of procedure prescribed by the Act for the Court Commissioner shall govern the procedure before such District Judge, and the Supreme Court shall likewise make necessary rules governing the conduct of such proceeding or proceedings.

§ 19. REOPENING WITHOUT RECEIVERSHIP.] Whenever any bank shall for any reason be suspended or closed, or shall be placed on Special Deposit order by the Guaranty Fund Commission pursuant to law, if twenty-five of the depositors therein shall notify the state examiner or the secretary of the Guaranty Fund Commission, as the case may be, that they desire to attempt to reorganize or otherwise reopen or consolidate such bank with some other banking institution, a reasonable time shall be given by the state examiner or

the Guaranty Fund Commission, as the case may be, during which receivership proceedings will not be commenced; and thereupon the depositors must proceed immediately with the perfection of such plan and articles of agreement, outlining in general the proposed plan, which must be signed by deposit creditors representing eighty per cent of the amount of deposits in such bank, exclusive of deposits of public money secured by indemnity bond or otherwise. All other unsecured depositors shall be held to be subject to and bound by the terms of such agreement to the same extent as though they had joined in the execution thereof, and in case of the restoration of said bank to solvency and the re-opening thereof their claims shall be treated in all respects as if they had been parties to the making thereof. If at any time, in the opinion of the Guaranty Fund Commission or state examiner, as the case may be, reasonable progress is not being made in the attempted reorganization the grant of time to depositors may be withdrawn and receivership proceedings immediately instituted.

When eighty per cent of the depositors, as aforesaid, have joined in such agreement the same shall be presented to the Guaranty Fund Commission and the state examiner, with a full report of what has been done in adjusting the affairs of the bank in anticipation of reopening; and the state examiner and the Guaranty Fund Commission may thereupon require any further or additional things to be done that in their opinion will be necessary to place the bank in position to open and function as a going concern, and be admitted to participation in the Depositors Guaranty Fund; and the state examiner may then grant such reasonable time as seems necessary to placing the bank in such position and when the requirements of the state examiner and the Guaranty Fund Commission have been complied with said bank shall reopen and become in all things a going bank, subject to all provisions of law and regulations of the banking department and the Guaranty Fund Commission; PROVIDED, HOWEVER, at any time in the opinion of the state examiner the interests of the creditors of said bank are being jeopardized by delay he may immediately withdraw all grants of time and cause receivership proceedings to be instituted.

§ 20. REORGANIZATION AND OPENING OF BANKS.] Any bank coming under the jurisdiction of the Court as provided for in this Act, may be withdrawn from the control of the receiver hereinbefore provided for, and its reorganization and opening may be undertaken by its depositors as follows, to-wit:

A reorganization plan and articles of agreement in writing may be entered into by deposit creditors of such bank representing eighty per cent of the amount of deposits therein, exclusive of deposits of

public money secured by indemnity bond or otherwise. Thereupon all other unsecured depositors shall be held to be subject to such agreement and bound by all terms thereof to the same extent and with like effect as if they had joined in its execution, and in the event of the restoring of such bank to solvency and the reopening of it for business all depositors shall be bound to abide by the terms thereof. Such reorganization agreement shall name a committee of three, who may or may not be depositors, to put such organization into effect. The committee so named shall thereupon present said reorganization plan to the Court, with a written request, which need be in no particular form, for permission to perfect such plan and open such bank, and thereupon the Court shall fix a time and place at the earliest date the business of the Court will permit, when such request will be considered, except that it must permit of the giving of ten days notice thereof to the receiver in charge. If it shall appear to the Court upon such hearing that the committee named in such agreement is prepared to put the plan into operation and that it is in compliance with law, the application shall be granted, unless good reason to the contrary is shown by some objecting party; and an order shall thereupon be made by the Court permitting such reorganization, the withdrawal of such bank from the receivership, and the reopening thereof, when the state examiner and the secretary of the Guaranty Fund Commission shall certify that they have examined its affairs and that it is in condition to open and proceed with business as a solvent bank within the banking and Guaranty Fund statutes, and directing the receiver, upon presentation of such certificates, to turn over to the said bank, or account for all of the assets and effects thereof that have been taken possession of by him, deducting, however, the proper expenses of administration during the time the same has been in his charge, such expenses to be agreed upon by the said committee and the receiver, or in case of disagreement to be fixed by the Court. But the failure of the parties to so agree shall not delay the turning over of the assets other than those which the receiver claims to be entitled to by way of compensation, and the matter of the correctness of such claim shall be thereafter determined. Upon so delivering the assets and effects the receiver shall take the receipt of the said bank and the said committee jointly for the same and he shall thereupon be absolved from all future responsibility on account of the affairs of said bank, and the same shall thereupon become a going banking association, subject to all the rules of law and regulations applicable to other banking associations.

§ 21. LIQUIDATION BY DEPOSITORS.] When any bank shall be closed and taken charge of by the receiver, as provided for in this Act, or while proceedings are pending for taking charge thereof

under this Act, a plan for liquidation and articles of agreement may be executed in writing by deposit creditors thereof representing eighty per cent of the amount of deposits of such bank, exclusive of public money secured by indemnity bonds or otherwise; and all other unsecured depositors shall be held subject to such agreement and all of the terms thereof to the same extent and effect as if they had joined in its execution. Such agreement must provide for a liquidating committee of three, who may or may not be depositors, to be elected by the signers of such agreement, the same to be elected at a meeting held in the town where such bank is located, upon reasonable notice to each signer of the time and place of such election, and the vote of the holders of two-thirds of the amount of deposits represented in the aggregate by such signers shall be necessary to the election of each member of the liquidating committee. A full record of such election must be made in writing and signed by the chairman and secretary of the meeting, and the same must be preserved and presented to the state examiner and the Court in the proceedings hereinafter provided for.

Before the said plan and agreement are presented to the depositors for signing, as aforesaid, the same must be submitted to the state examiner, whose duty it shall be to act in an advisory capacity to the persons interested in the plan, and who shall pass upon the feasibility and practicability of the same, and either approve or disapprove thereof, and if he disapproves the plan, it shall be his duty to formulate and present in lieu thereof a plan and agreement that meet with his approval.

Upon the liquidating committee being elected as herein provided for, it shall present to the Court an application to have the liquidation of the said bank withdrawn from the receivership and vested in it, and the Court shall thereupon make an order fixing a time and place for the hearing of such application, which shall be at as early a date as is consistent with the transaction of the business of the Court, except that it shall be at a date that will permit of the giving of at least ten days' notice thereof to the receiver, which notice must be given by the applicants. Upon the hearing the Court shall advise itself fully in regard to the status of the existing receivership, the feasibility of the proposed plan, and the competency of the liquidating committee and its several members to act in the proposed capacity, and it shall have power to prescribe the terms and conditions upon which the liquidation of the affairs of such bank will be transferred from the receivership to such committee, and it may permit the applicants, with the consent of the state examiner, to modify or amend the said proposed plan. If no good reason is made to appear why the application as originally made or amended should not be granted, the Court must make its order appointing the

members of the said committee as joint receivers of said bank in the place and stead of the existing receiver, prescribe the amount of the bond, if any, they should be required to give upon qualifying as receivers, and the manner of their reporting and accounting to the Court, and directing the existing receiver to account to them and turn over all of the assets of the receivership, first deducting the proper expenses and charges for administration of the receivership up to such time, the amount thereof to be agreed upon between the existing and the new receivers, or in case of disagreement to be settled by the Court; but the failure of the parties to so agree shall not delay the transfer of the assets and effects to the new receivers, except such thereof as are claimed by the old receiver as compensation, as aforesaid, and the correctness of such claim shall be subsequently determined by the Court.

Upon so accounting and surrendering the assets and effects to the said new receivers, the existing receiver shall take their receipt therefor, and he shall be thereupon discharged from all liability and responsibility in connection with the further liquidation of such bank, and the said new receivers shall be deemed to have assumed the same liability, responsibility and accountability to the Court as other receivers.

§ 22. CONSTRUCTION OF ACT.] The provisions of this Act with reference to the withdrawal of banks from the receivership for the purpose of reorganization and opening, or for the purpose of liquidation, shall be deemed to be highly remedial in character and they contemplate the most expeditious disposal of such matters that is practicable, and shall be liberally construed to accomplish this purpose, and it shall be the duty of the Court and all other public officers having any connection therewith to give such matters preference over ordinary matters to the fullest extent that can be done without undue interference with other official and judicial business.

§ 23. CUSTODY OF RECORDS AND ASSETS AFTER TERMINATION OF RECEIVERSHIP.] When the affairs of any closed bank shall be wound up and the receiver discharged, all books, records, documents, and other property of such bank and any dividends unclaimed by the creditors of such bank shall be by such receiver delivered over to the State Examiner and his receipt taken therefor and filed with the Clerk of the Court having jurisdiction of such receivership.

The State Examiner is hereby appointed custodian of all books, records, documents, and other property of such bank and of the dividends unclaimed by creditors upon the winding up of the receivership proceedings. Such custodian shall be vested with the

title to any assets belonging to such bank and not distributed in such receivership, and he shall have full power and authority to convert such assets into cash. He shall also have authority to execute all deeds, satisfactions, assignments or other documents for the purpose of transferring such assets or for the purpose of clearing the records and quieting title to property in which said bank had an apparent interest. Any money collected by such custodian, over and above his necessary expenses, shall be distributed in the same manner as though the receivership had not been terminated. Any dividends remaining unclaimed for a period of two years from the termination of the receivership or other recoveries, shall be by said custodian covered into the Depositors Guaranty Fund of the state.

§ 24. CONSTITUTIONALITY: INVALIDITY OF PART SHALL NOT AFFECT REMAINDER.] Should any section or provisions of this Act be held unconstitutional or invalid, that shall not affect the validity of the Act as a whole or any part thereof, other than the part so held to be unconstitutional.

§ 25. This Act is hereby declared to be an emergency and shall take effect from and after its passage and approval.

Approved March 7, 1927.

CHAPTER 100

(H. B. No. 292—Twichell)

RECORDING SHERIFF'S DEED ACQUIRED BY BANK OF NORTH DAKOTA

An Act Relating to the Recording of Sheriff's Deeds and Other Conveyances of Real Property Acquired by the Bank of North Dakota, as Agent for the State Treasurer as Trustee of the State of North Dakota Under the Provisions of Chapter 154 of the Session Laws of North Dakota for 1919 and Chapter 292 of the Session Laws of North Dakota for 1923, and Acts Amendatory Thereof; Prescribing the Duties of the County Auditor and Register of Deeds in Respect Thereto; and Providing that Section 2212 of the Supplement to the Compiled Laws of North Dakota for 1913 Shall Not Be Applicable Thereto.

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

§ 1. Whenever any Sheriff's deed or other conveyance of real property acquired by the Bank of North Dakota, as Agent for the State Treasurer as Trustee of the State of North Dakota under the provisions of Chapter 154 of the Session Laws of North Dakota for 1919 and Chapter 292 of the Session Laws of North Dakota for 1923 and Acts amendatory thereof, is offered for recording, it shall

be the duty of the County Auditor to enter such transfer and the Register of Deeds to record the same without regard to the payment of any taxes due thereon; and the provisions of Section 2212 of the Supplement to the Compiled Laws of North Dakota for 1913 shall not be applicable thereto. In such case, the County Auditor shall enter on every Sheriff's deed or other conveyances so transferred, over his official signature the words, "transfer entered," and it shall thereupon be the duty of the Register of Deeds to receive and record the same.

Approved March 3, 1927.

BARBERS

CHAPTER 101
(H. B. No. 41—Cox)

BARBERS' EXAMINING BOARD

An Act to Amend and Re-enact Sections 560, 566, 567 and 571 of Article 22 of the Compiled Laws of North Dakota for the Year 1913, Relating to the Barbers' Examining Board of the State of North Dakota; and to Provide for Said Board Adopting Rules and Regulations Relating to Sanitary Conditions in Barber Shops, Prohibiting the Occupation of Barbering Upon Certain People, and Regulating the Power of Said Board in Supervision of Barber Schools.

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

§ 1. REQUIREMENT OF REGISTRATION.] After July 1, 1927, no person, male or female, shall practice or attempt to practice barbering without a certificate of registration as a registered barber issued pursuant to the provisions of this act, by the Board of Barber Examiners hereinafter established.

After July 1, 1927, no person, male or female, shall serve or attempt to serve as an apprentice under a registered barber without a certificate of registration as a registered apprentice by the board.

After July 1, 1927, it shall be unlawful to operate a Barber Shop unless it is at all times under the direct supervision and management of a registered barber.

§ 2. PRACTICE DEFINED.] Any one or any combination of the following practices (when done upon the upper part of the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments, and when done for payment either directly or indirectly), constitutes the practice of barbering: Shaving or trimming the beard or cutting the hair; Giving facial