

BANKS AND BANKING

CHAPTER 99

H. B. No. 211—(Bergesen)

BUILDING AND LOAN ASSOCIATIONS AMENDMENT

An act to amend and re-enact Section 45 of Chapter 94 of the Session Laws of 1931 relating to building and loan associations and making provision for appointment of Federal Savings and Loan Insurance Corporation as receiver or co-receiver of associations in liquidation which are insured by said insurance corporation.

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

§ 1. AMENDMENT.] That Section 45 of Chapter 94 of the Session Laws of 1931 be and the same is hereby amended and re-enacted to read as follows:

§ 45. ILLEGAL, UNAUTHORIZED, UNSAFE OR FRAUDULENT PRACTICES. INSOLVENCY, PROVIDING FOR RECEIVER OR CO-RECEIVER.] Whenever the State Examiner, as the result of any examination, of [or] from any report made to him or to the shareholders, shall find that any association, licensed by him, is violating the provisions of its charter or of the laws of this State provided for its government, or is conducting its business in an unsafe or unauthorized manner, he may, by an order addressed to the association, so offending, direct a discontinuance of such violations or unsafe practices and a conformity with all requirements of law; and if such association shall refuse or neglect to comply with such order within the time specified therein, or if it shall appear to the examiner that such association is in unsafe condition, or is conducting its business in an unsafe manner, such as to render its further proceeding hazardous to the public, or to those having funds in its custody; or if he shall find that its assets are impaired to such an extent that after providing for all liabilities other than to shareholders, they do not exceed in volume the dues or principal payments paid in by shareholders and accredited to or on account of all classes of shares issued and outstanding, he shall in order to prevent waste and diversion of assets, assume and take charge of the affairs and business of such association, and possession of all books, records, and assets of every description of such association, and hold and retain the possession of same pending the further proceedings herein specified. Should the board of directors, secretary or person in charge of such association refuse to permit the State Examiner to take possession as aforesaid, the State Examiner shall communicate such fact to the Attorney General whereupon it shall become the duty of the Attorney General at once to institute such proceedings as may be

necessary to place the State Examiner in immediate possession of the property of such association. Upon taking possession of the effects of the association as aforesaid, the State Examiner shall prepare a full and true statement of the affairs and condition of such association, including an itemized statement of its assets and liabilities and shall receive and collect all debts, dues and claims belonging to it, and pay the immediate and reasonable expenses of his trust. When the condition of such association has been fully ascertained, and it shall appear that the affairs of said association are in fact in an unsound condition, the State Examiner shall at once notify, in writing, the board of directors of such association of his decision, giving them twenty days in which to restore the affairs of such association to a sound condition. Meanwhile, the State Examiner shall remain in charge of the books, records, and assets of every description of such association, attend, or be represented, at all directors' and shareholders meetings held, suggest such steps as he may deem necessary to restore such association to a sound condition; and if same is not done within such twenty days, he may report the facts to the Attorney General, and it shall thereupon become the duty of the Attorney General to institute proceedings in the district court of the county in which such association has its principal place of business, for the appointment of a receiver. Such receiver shall be authorized to collect all moneys due such association, and to do such other acts as are necessary to conserve its assets and business, and he shall, after having furnished a good and sufficient surety bond, proceed to liquidate its affairs. He shall have general power and authority, except as otherwise limited by the terms of this Act, to do any and all acts, to take any and all steps necessary, or, in his discretion desirable, for the protection of the property and assets of such association and the speedy economical liquidation of its assets and affairs and the payment of its creditors, or for the reopening and resumption of business of said association where that is practicable or desirable. He may institute in his name as receiver, or in the name of the association, such suits, actions and other legal proceedings as he deems expedient for such purposes, and by making application to the district court of the county in which such association is located, or to the judge thereof, in chambers, may upon proper and sufficient showing of cause therefor, procure an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell and dispose of any or all the assets, which sale, with the consent of the court, may be made to shareholders, officers, directors, or others interested in such association. On such proceedings the association shall be made a party by notice on order of the court or judge in lieu of summons, but served in like manner, and the hearing of any such application or petition by the receiver may be had at any time either in term or vacation in court, or in chambers, as the court may order, after said association has had five days notice of such application.

If such association is an insured institution within the provisions of Title IV of the National Housing Act, as now or hereafter amended, a signed and sealed copy of each order and certificate of the State Examiner mentioned in this section shall be promptly sent by the State Examiner by registered mail to the Federal Savings and Loan Insurance Corporation, Washington, D. C., and if such association has such insurance protection, the Federal Savings and Loan Insurance Corporation is empowered at its option to act as receiver or co-receiver in the liquidation of the association, and shall be appointed as such receiver, or as co-receiver with the State Examiner. If it shall serve as receiver or co-receiver it shall have all rights, privileges and powers granted to the State Examiner as receiver and shall have all the rights, privileges and powers conferred upon it by Federal statutes now or hereafter enacted, and may advance money and make loans on the security of assets in liquidation or may purchase such assets or any part thereof at public or private sale and bid for and purchase at any receiver's sale, and may otherwise liquidate or sell, any part of the assets of the association of which it is receiver or co-receiver. In the event of purchase by said Federal Savings and Loan Insurance Corporation of any of such assets, it shall bid and pay a fair and reasonable price for them. Whether or not said insurance corporation shall serve as receiver or co-receiver of any such insured association in liquidation, whenever it shall pay or provide funds for payment of all or any part of the liabilities of such association, it shall be subrogated to the rights of those benefited by or receiving such payments and it may acquire and have transferred to it all or any part of any shares, share account, or account insured by it, and shall thereupon be subrogated to all the rights of the transferors thereof. Such transfer of such shares, share account or account shall not affect any of the transferor's rights in any uninsured or untransferred portion thereof or his rights to participate in the distribution of the net proceeds of the disposition and liquidation of the assets of such association, in proportion to his interest not so transferred; and the rights of the investors and creditors of such an association shall be determined in accordance with the applicable provisions of the laws of this State.

Approved March 13, 1939.

CHAPTER 100

H. B. No. 176—(Bergesen and Shure)

EXAMINATION OF BUILDING AND LOAN ASSOCIATIONS

An act to amend and re-enact Section 34, Chapter 94, Session Laws of 1931, pertaining to examination of building and loan associations.

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

§ I. AMENDMENT.] That Section 34, Chapter 94, Session Laws of 1931, pertaining to examination of building and loan associations is hereby amended and re-enacted to read as follows:

§ 34. EXAMINATIONS. FEES FOR.] The State Examiner shall examine all domestic building and loan associations doing business in this State as often as he may deem necessary, but at least once a year. In lieu of such examination, the State Examiner may accept any examination made by a Federal Home Loan Bank, the Federal Home Loan Bank Board; or if an insured association, by the Federal Savings and Loan Insurance Corporation. Also, whenever persons holding ten per cent of the subscribed shares of any association file a written application with the State Examiner, requesting him to make examination of any such association, he shall make such examination forthwith. Upon the completion of any examination of any association made by the State Examiner or under his direction, the association so examined shall pay to the Examiner a fee to be determined as follows, viz.:

For the first one hundred thousand dollars of assets, a fee of twenty dollars, and for each additional one hundred thousand dollars of assets, or major portion thereof, an additional fee of ten dollars; provided, however, that the minimum fee for any such examination shall be thirty-five dollars. The Examiner shall report such payments to the Banking Board, and if any such association shall be delinquent more than twenty days in making such payment the board may make an order suspending its functions until such payment of the amount due together with a penalty of five dollars a day additional for the delay. All fees collected by the Examiner shall be by him paid to the State Treasurer.

Approved March 15, 1939.

CHAPTER 101

H. B. No. 210—(Bergesen and Shure)

**AUTHORIZING CERTAIN INVESTMENTS BY FIDUCIARIES,
TRUSTS, INSURANCE COMPANIES AND BANKS**

An act to amend and re-enact Section 14 of Chapter 94, Session Laws of 1931, providing for investment in shares of building and loan associations by fiduciaries, trusts, insurance companies and banks.

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

§ 1. AMENDMENT.] That Section 14 of Chapter 94, Session Laws of 1931, be and the same is hereby amended and re-enacted to read as follows:

§ 14. TRUSTS, FIDUCIARIES, INSURANCE COMPANIES AND BANKS.] (a) Whenever any shares shall be purchased in any building and loan association by any person in trust for another, and no other further notice of the existence and terms of a legal and valid trust shall have been given in writing to the association in the event of the death of the trustee, the same or any part thereof, together with the interest or dividends thereon, may be paid to the person for whom said shares were purchased.

(b) Administrators, executors, guardians, trustees, and other fiduciaries of every kind and nature, insurance companies, banks and other financial institutions, charitable, educational, eleemosynary and public corporations and organizations, and municipalities and other public corporations and bodies, and public officials, are authorized to invest funds held by them, without any order of any court, in shares, certificates of deposit and investment certificates of savings and building and loan associations which are under State supervision, and shares of Federal savings and loan associations organized under the laws of the United States and under Federal supervision, and such investment shall be deemed and held to be legal investments for such funds. Whenever under the laws of this State or otherwise, a deposit of securities is required, for any purpose, the securities made legal investments by this section shall be acceptable for such deposits, and whenever, under the laws of this State or otherwise, a bond is required with security, such bond may be furnished and the securities made legal investments by this section in the amount of such bond, when deposited therewith, shall be acceptable as security without other security. The provisions of this section are supplemental to any and all other laws relating to and declaring what shall be legal investments for the persons, corporations, organizations and officials referred to in this section and the laws relating to the deposit of securities and the making and filing of bonds for any purposes.

Approved March 7, 1939.

CHAPTER 102

S. B. No. 149—(Morgan)

SECURITIES FOR PUBLIC DEPOSITS

An act to amend and re-enact Section 714a7 of the 1925 Supplement to the Compiled Laws of North Dakota for the year 1913, relating to securities for public deposits.

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

§ 1. Section 714a7 of the 1925 Supplement to the Compiled Laws of North Dakota for the year 1913 is hereby amended and re-enacted to read as follows:

“§714a7. SUPP. BOND OF DEPOSITORY; APPROVAL OR DISAPPROVAL.] Except as provided in Chapter 99 of the Session Laws of North Dakota for the year 1937, before any deposit shall be made in any depository, except the Bank of North Dakota, by or in behalf of any public corporation, such depository shall furnish a bond payable to the public corporation making such deposit in an amount that shall at least equal the largest deposit that may at any time be in such depository; said bond shall be approved as to form by the State's attorney and as to amount and sufficiency by the board. If the board fails or refuses to approve any such bond the same may be presented to the judge of the district court, upon three days notice to the clerk of the board of the public corporation to which such bond was submitted, and in case of cities involving deposits of municipal funds, the city auditor, respectively, and the judge shall forthwith proceed to hear and determine the sufficiency of such bond and may approve or disapprove the same as the facts warrant. If he approves such bond the said bank shall be declared a depository of the funds of such public corporation. The sureties on all bonds required by public corporations according to the provisions of this law shall justify as required by law in arrest and bail proceedings; provided, however, that in lieu of such personal bond, the board of public corporation involved may require such bank designated as a depository to file a surety bond for a sum equal to the amount of funds such bank may receive according to the provisions of this act. Such bond, when approved, shall be deposited with the county auditor. Such bond shall be continuing bond and shall continue binding until the proper board of the public corporation shall require a new or different bond, but in no case involving the deposit of funds of public corporations shall such bond be continued without a renewal thereof for a longer period than four years.”

Provided, however, that the board of any public corporation, may accept from any banking corporation, as security for repayment of such deposits, a pledge of securities in lieu of a personal or

surety bond. Securities that shall be eligible for such pledge or pledges, shall be notes or bonds issued by the United States Government, its agencies, or instrumentalities, all bonds and notes guaranteed by the United States Government; Federal Land Bank bonds; bonds issued by any State of the United States, or bonds issued by the corporation making such deposit.

Provided, further, that such securities shall be delivered to and held by such trustee as the depository and the public corporation may agree upon, and/or the State Treasurer. It shall be the duty of the State Treasurer to receipt for securities deposited with him and to issue his trust receipt therefor, jointly to the depository and the public corporation.

Provided, further, that all interest that becomes due and is paid on such securities, shall be paid over to the depository bank until such time as it shall default in the repayment of the funds of the public corporation deposited as provided herein. After 30 days from such default, upon demand in writing made by the public corporation involved, the trustee shall sell said securities in the usual manner, delivering to the said public corporation the amount due to it under said pledge, if the net proceeds of the sale of the securities be sufficient, and to pay to the depository banking corporation the residue of the net proceeds of said securities. The State Treasurer shall make no charge for receiving, keeping and selling said securities; other than the expense necessary and incident to the sale of the said securities, if it becomes necessary to sell them.

It shall be the duty of the board of the public corporation, upon the acceptance of any of the within described securities as a pledge for repayment of deposits, to make a complete and detailed record of such acceptance and approval and preserve the same with their other records, and such securities shall be re-approved by the board at least semi-annually.

Whenever any depository banking corporation desires to terminate the liability for any deposits of any public corporation, for which such depository has given a bond and/or pledged assets for the repayment, it shall notify the board of the public corporation affected of such desire. Thereupon such public corporation shall immediately withdraw such funds from such depository and upon withdrawal, shall immediately release and surrender to such depository banking corporation, the bonds and/or securities which are pledged for the repayment of such deposit.

Approved March 13, 1939.