

LAWS

PASSED AT THE

FIRST SESSION

OF THE

Legislature

OF THE

STATE OF SOUTH DAKOTA,

BEGUN AND HELD AT PIERRE, THE TEMPORARY CAPITAL OF SAID STATE, ON
TUESDAY, THE SEVENTH DAY OF JANUARY, A. D. 1890, AND
CONCLUDED MARCH 7TH, A. D. 1890.

PIERRE, S. D.
STATE BINDERY CO., PRINTERS.
1890.

CHAPTER 154.

Unlawful Trusts and Combinations.

AN ACT, to Declare Certain Combinations, Agreements or Trusts Unlawful, and to Restrain and Punish the Same.

Be it Enacted by the Legislature of the State of South Dakota:

§ 1. DEFINING WHICH TRUSTS ARE UNLAWFUL.] That any combination, agreement or trust, made, entered into or formed between persons, co-partnerships, or corporations in this State, or by and between any persons co-partnerships or corporations within this State with any person, co-partnership or corporations without this State, with intent and which shall in any manner tend to prevent a free, fair and full competition in the production, manufacture or sale of any article or commodity of domestic growth, use or manufacture, or that tends to advance the price to the user or consumer of any article or commodity of domestic growth, use, production or manufacture beyond the reasonable cost of production or manufacture thereof, or that tends to advance the price to the user, purchaser or consumer of farm machinery, implements, tools, supplies, and lumber, wood and coal, imported into this State from any other State, territory or country, beyond the reasonable cost of production and sale or manufacture and sale of the same, or which tends to and does induce and accomplish a sale of wheat, corn, oats, barley, flax, cattle, sheep, hogs, or other farm or agricultural products for less than such farm or agricultural products are really worth at the time of sale, or for a less price than such farm or agricultural products would sell for in open market if such combination, agreement or trust did not exist, or tends to, or shall increase, enhance, or maintain, rates of interest on loans of money, for the forbearance of the payment of any sum of money, or debt, or to prevent a fair competition for a low rate of interest on loans, or for the forbearance of the payment of any debt or obligation, is hereby declared to be against public policy and unlawful and void, and any person or persons who shall be a party to any such unlawful combination; agreement or trust, or who shall in any way assist, aid or abet any such combination, agreement or trust, either as principal, agent, attorney, employee or otherwise, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by a fine not ex-

ceeding one thousand dollars or imprisonment in the State's Prison not exceeding three years, or both such fine and imprisonment at [the] discretion of the court.

§ 2. UNLAWFUL SALE OF ARTICLES OR GOODS.] Any person or persons who shall agree and undertake, as agent, to sell, and shall sell in this State, any of the articles, commodities, products or machinery, implements, tools, supplies or goods, wares and merchandise, mentioned in section one of this act, for a non-resident manufacturer of, or wholesale dealer in such articles, commodities, products, machinery, implements, tools, supplies or goods, wares and merchandise, while at the same time such non-resident, manufacturer or wholesale dealer, refuses to sell at wholesale or manufacturers' prices, such farm implements, tools or supplies, as are furnished to such agent for sale in this State, to responsible and reputable wholesale or retail dealers in this State shall be deemed to have unlawfully combined and agreed within the meaning of section one of this act, with such non-resident manufacturer or wholesale dealer, with intent to prevent a full, free and fair competition in the sale in this State, of any such farm machinery, implements, tools or supplies furnished to such agent as aforesaid, and refused to be sold to wholesale or retail dealers in this State as aforesaid, and with intent to advance the price to the user and purchaser and consumer beyond the reasonable cost of manufacture and sale, as production and sale of such farm machinery, farm tools, farm implements and supplies refused to be sold as aforesaid to dealers in this State as aforesaid, and such agent or agents upon conviction thereof shall be punished by a fine of not more than one thousand dollars or an imprisonment in the State's Prison not more than five years, or both such fine and imprisonment at the discretion of the court.

§ 3. NON-RESIDENT CORPORATIONS—LIABILITY OF.] Any non-resident corporation, co-partnership or company, or person, who shall ship or bring into this State for sale any of the commodities, products, or goods, wares or merchandise, machinery, tools or implements mentioned in section one of this act, to be sold only and exclusively by an agent or agents, or person or persons selected, appointed and controlled in the sale of such goods by such non-resident corporations, co-partnership, company or person, in violation of the spirit, intent and purpose of this act, may be restrained by an order of injunction from any court of competent jurisdiction in this State from selling or disposing of any such commodities, products, goods wares or merchandise, machinery, tools or implements, or having the same sold in this State until the defendant in such order offer the same for sale, or to be sold, on like and regular terms, and without restrictions except price and terms of payment, to reputable and responsible wholesale or retail dealers of this State, without regard to location, who may desire to purchase the same or any portion

thereof, for sale again. The order of injunction mentioned in this section may be issued upon affidavits which shall show to the satisfaction of the court or judge thereof to whom application is made that the person or persons, or co-partnership or corporation named as defendant in the application and affidavit for an order of injunction has violated some provision of this act. The order of injunction issued upon such affidavits may be served in the manner now provided by law for the service of such orders and in the absence of the defendant therein, or his agent or attorney, such order of injunction may be served on any or all persons in this State having in possession and for sale, or in his possession for the use, or subject to the order or direction of the defendant or defendants in such proceeding, any of said articles or commodities or goods, wares and merchandise mentioned in section one of this act, the sale of which is restrained by this order. On the final hearing by the court if the application for injunction be sustained by the court, the court shall be rendered [render] judgment against the defendant in such proceeding and in favor of the plaintiff therein for all the costs incurred by the plaintiff therein, including such attorney's fee allowed by the court therein. Any judge of a Circuit Court or of the Supreme Court may in like manner enjoin and restrain any manufacturing or wholesale or retail business, being conducted or carried on in violation of any of the provisions or spirit and intent of this act from continuing such manufacturing or wholesale or retail business in this State, and all final restraining orders may be perpetual or for such period, and upon such terms and conditions as the court or judge thereof shall determine. All laws, rules and regulations now in force relative to applications for and granting orders of injunction in this State shall apply to proceedings under the provisions of this act, so far as the same are not different from, or in conflict with the provisions of this act.

§ 4. DUTY OF STATE'S ATTORNEY.] It is hereby made the special duty of each and every State's Attorney of each and every county in this State, who shall have good reason to believe that any of the provisions of section one of this act are being violated by any person or persons in his county, or upon affidavit of two or more reputable persons made and delivered to him showing or stating affirmatively that any person or persons in his county have violated any of the provisions of section one of this act, to make complaint and cause the arrest of such person or persons, and to prosecute him or them diligently to conviction, if proved to be guilty, and also at the request of any citizen of his county, and for good cause shown, apply for an injunctive or restraining order as provided in this act;

Provided, That the provisions of this section shall not be construed to prevent any person from making complaint to any court of competent jurisdiction for any violation of the provisions of this act, and in such case the court shall issue a warrant and pro-

ceed the same as though the State's Attorney had made the complaint, and the [court] may also permit any attorney whom the complainant may employ to appear and prosecute such action at any stage of the proceedings therein, and such attorney's fee in any such action as the court may allow to such attorney shall be deemed a part of the costs of prosecution as mentioned in section one of this act.

§ 5. DUTY OF THE SECRETARY OF STATE.] It shall be the duty of the Secretary of this State on the application of persons for a charter to establish any corporation, to require two applicants therefor to make oath or affirmation that such corporation is not being formed for the purpose of enabling several corporations to avoid the provisions of this act, and if such oath or affirmation is not satisfactory the Secretary is authorized to withhold such charter.

Approved March 7th, 1890.