

Calendar No. 357

69TH CONGRESS }
1st Session }

SENATE

} REPORT
No. 473

THE NATIONAL BANK ACT

MARCH 25, 1926.—Ordered to be printed

Mr. PEPPER, from the Committee on Banking and Currency, submitted the following

REPORT

[To accompany H. R. 2]

The Committee on Banking and Currency, to whom was referred the bill (H. R. 2) to amend an act entitled "An act to provide for the consolidation of national banking associations," approved November 7, 1918; to amend section 5136 as amended, section 5137, section 5138 as amended, section 5142, section 5150, section 5155, section 5190, section 5200 as amended, section 5202 as amended, section 5208 as amended, section 5211 as amended, of the Revised Statutes of the United States; and to amend section 9, section 13, section 22, and section 24 of the Federal reserve act, and for other purposes, having considered the same, report it back to the Senate with the recommendation that the bill do pass with the amendments herewith indicated.

The bill is in many respects identical with S. 3316, favorably reported by your committee at the first session of the Sixty-eighth Congress, and H. R. 8887, favorably reported by your committee at the second session of the Sixty-eighth Congress.

COMMITTEE AMENDMENTS

Your committee, after public hearings by a subcommittee and after due deliberation, recommends the following amendments to the bill:

Proposed amendments to section 1:

On page 2, line 4, after the word "same" insert the word "State."

On page 2, line 18, strike out the word "located" and insert the words "situated, and in the legal newspaper for the publication of legal notices or advertisements, if any such paper has been designated by the rules of a court in the county where such association or bank is situated."

On page 3, line 2, after the word "organized" strike out the colon and the words "Provided, That the" and substitute a period and insert the word "The" in said line.

On page 3, line 7, after the word "State" insert the words "or District."

On page 3, line 16, after the word "State" insert the words "or District."

On page 3, line 17, after the word "association" strike out the colon and the words "And provided further, That when" and insert a period and the word "When" in line 18.

On page 3, line 20, after the word "State" insert the words "or District."

On page 4, line 23, strike out the colon and insert a period after the word "determine," and in line 24, strike out the words "And provided further, That the" and insert the word "The" in said line.

On page 5, line 3, after the word "provided" strike out the colon and the words "And provided further, That no" and insert a period and the word "No" in said line.

On page 5, line 5, after the word "incorporated" strike out down to and including line 19 and insert a comma.

On page 5, line 5, after the word "incorporated" insert the following words: "nor shall any such State bank or banks entering into such consolidation be located at a greater distance from such national banking association than is authorized by the laws of the State in case of the consolidation or merger of two or more State banks."

On page 5, at the end of section 1 insert the following:

The words "State bank," "State banks," "bank," or "banks" as used in this section shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.

Proposed amendment to section 2:

On page 5, line 20, strike out the word "section" and insert the words "That section."

Proposed amendment to section 3:

On page 8, line 23, strike out the word "section" and insert the words "That section."

Proposed amendment to section 4:

On page 9, line 3, strike out the word "section" and insert the words "That section."

On page 9, line 5, after the word "No" insert the words "national banking."

On page 9, line 6, strike out the word "banks" and insert the words "such associations."

On page 9, line 10, strike out the words "banks" and insert the words "such associations."

On page 9, line 13, after the word "No" insert the word "such."

On page 9, line 17, after the word "city" strike out the word "banks" and insert the following: "where the State laws permit the organization of State banks with a capital of \$100,000 or less, national banking associations."

Proposed amendment to section 6:

On page 10, line 24, strike out the word "section" and insert the words "That section."

Proposed amendments to section 7:

On page 11, line 6, strike out the word "section" and insert the words "That section."

On page 11, line 8, strike out everything to the end of the page, down to and including line 25, and on page 12 strike out everything down to and including line 9 and insert:

SEC. 5155. The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) A national banking association may maintain and operate such branch or branches as it may have in operation at the date of the approval of this act.

(b) If a State bank is hereafter converted into or consolidated with a national banking association, the said association may retain and operate such branches, if any, as were being maintained and operated by said State bank at the date of the approval of this act.

(c) A national banking association may, after the date of the approval of this act, establish and operate new branches within the limits of the city, town, or village in which said association is situated if such establishment and operation are at the time permitted to State banks by the law of the State in question.

(d) If at the date of the approval of this act there is situated in any State which prohibits branches a national banking association which has one or more branches within the city in which the parent bank is located, any other national bank situated in such city may establish within the limits of such city branches not exceeding in number the aggregate number of branches maintained by such national banking association.

(e) No branch shall be established after the date of the approval of this act within the limits of any city, town, or village of which the population by the last decennial census was less than twenty-five thousand. No more than one such branch may be thus established where the population, so determined, of such municipal unit does not exceed fifty thousand; and not more than two such branches where the population does not exceed one hundred thousand. In any such municipal unit where the population exceeds one hundred thousand, the determination of the number of branches shall be within the discretion of the Comptroller of the Currency.

(f) In cases in which, under the provisions of this section, a national banking association is authorized to establish a branch or branches within the limits of a city, town, or village, the Comptroller of the Currency shall have the discretionary power to authorize the establishment and operation of such branch or branches beyond the boundaries of said city, town, or village as strictly defined by law; but only within the same metropolitan area as that in which the parent bank is situated: *Provided, however,* That he shall in no case authorize such establishment and operation except within the territory of a city, town, or village, the corporate limits of which at some point coincide with the corporate limits of the city or town in which the parent bank is situated, when in his discretion he shall determine, after public hearing, that the banking needs of the inhabitants of said contiguous and urban territory require the establishment of such branch or branches; but no branch shall be established under the authority of this section in any part of a State to which right of State banks, under the State law, to establish branches does not extend.

(g) No branch of any national banking association shall be established or moved from one location to another without first obtaining the consent and approval of the Comptroller of the Currency.

(h) The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid or money lent.

(i) This section shall not be construed to amend or repeal section 25 of the Federal reserve act, as amended, authorizing the establishment by national banking associations of branches in foreign countries, or dependencies, or insular possessions of the United States.

(j) The words "State bank," "State banks," "bank" or "banks" as used in this section shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.

Proposed amendments to section 8:

On page 12, line 10, strike out the word "section" and insert the words "That section."

On page 12, line 14, after the word "certificate" strike out down to and including line 25; and on page 13 strike out, beginning with line 1, down to and including line 26; and on page 14 strike out, beginning with line 1, down to and including line 11.

On page 12, line 14, after the word "certificate" strike out the comma and insert the words "and in the branch or branches, if any, established or maintained by it in accordance with the provisions of section 5155 of the Revised Statutes, as amended by this act."

Proposed amendments to section 9:

On page 14, beginning with line 12, strike out down to and including line 5 on page 16, and insert the following:

SEC. 9. That the first paragraph of section 9 of the Federal reserve act be amended so as to read as follows:

"SEC. 9. Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, desiring to become a member of the Federal reserve system, may make application to the Federal Reserve Board, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. The Federal Reserve Board, subject to the provisions of this act and to such conditions as it may prescribe pursuant thereto, may permit the applying bank to become a stockholder of such Federal reserve bank.

Any such State bank, which, at the date of the approval of this act, has established and is operating a branch or branches in conformity with the State law, may retain and operate the same while remaining or upon becoming a stockholder of such Federal reserve bank; but no such State bank may retain or acquire stock in a Federal Reserve Bank except upon relinquishment of any branch or branches established after the date of the approval of this act beyond the limits of the city, town, or village in which the parent bank is situated. The Federal Reserve Board shall have the discretionary power to define the limits of any such municipal unit in such a way as to include only the territory of a city, town, or village the corporate limits of which at some point coincide with the corporate limits of the city or town in which the parent bank is situated.

Proposed amendment to section 10:

On page 19, line 12, strike out the word "and" and insert "and/or."

Proposed amendment to section 13:

On page 22, line 11, strike out the word "section" and insert the words "That section".

Proposed new sections:

On page 26, after line 9 insert four new sections, as follows:

SEC. 17. That the last proviso of the second paragraph of section 8 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended, is amended to read as follows:

"And provided further, That nothing in this act shall prohibit any private banker from being an officer, director, or employee of not more than two banks, banking associations, or trust companies, or prohibit any officer, director, or employee of any bank, banking association, or trust company, or any class A director of a Federal reserve bank, from being an officer, director, or employee of not more than two other banks, banking associations, or trust companies, whether organized under the laws of the United States or any State, if in any such case there is in force a permit therefor issued by the Federal Reserve Board; and the Federal Reserve Board is authorized to issue such permit if in its judgment it is not incompatible with the public interest, and to revoke any such permit whenever it finds after reasonable notice and opportunity to be heard, that the public interest requires its revocation."

SEC. 18. That section 5139 of the Revised Statutes of the United States be amended by inserting in the first sentence thereof the following words: "or into shares of such less amount as may be provided in the articles of association," so that the section as amended shall read as follows:

"**SEC. 5139.** The capital stock of each association shall be divided into shares of \$100 each, or into shares of such less amount as may be provided in the articles of association, and be deemed personal property, and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies, or security of the existing creditors of the association shall be impaired."

SEC. 19. That section 5146 of the Revised Statutes of the United States as amended be amended by inserting in lieu of the second sentence thereof the following: "Every director must own in his own right shares of the capital stock of the association of which he is a director, the aggregate par value of which shall not be less than \$1,000, unless the capital of the bank shall not exceed \$25,000, in which case he must own in his own right shares of such capital stock the aggregate value of which shall not be less than \$500," so that the section as amended shall read as follows:

"**SEC. 5146.** Every director must during his whole term of service, be a citizen of the United States, and at least three fourths of the directors must have resided in the State, Territory, or District in which the association is located, or within fifty miles of the location of the office of the association, for at least one year immediately preceding their election, and must be residents of such State or within a fifty-mile territory of the location of the association during their continuance in office. Every director must own in his own right shares of the capital stock of the association of which he is a director the aggregate par value of which shall not be less than \$1,000, unless the capital of the bank shall not exceed \$25,000 in which case he must own in his own right shares of such capital stock the aggregate par value of which shall not be less than \$500. Any director who ceases to be the owner of the required number of shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place."

SEC. 20. That the second subdivision of the fourth paragraph of section 4 of the Federal reserve act be amended to read as follows:

"Second. To have succession after the approval of this act until dissolved by act of Congress or until forfeiture of franchise for violation of law."

Amend the title so as to read: "An act to amend an act entitled 'An act to provide for the consolidation of national banking associations,' approved November 7, 1913; to amend section 5136 as amended, section 5137, section 5138 as amended, section 5139, section 5142, section 5146 as amended, section 5150, section 5155, section 5190, section 5200 as amended, section 5202 as amended, section 5208 as amended, section 5211 as amended, of the Revised Statutes of the United States; and to amend section 4, section 9, section 13, section 22, and section 24 of the Federal reserve act, and section 8 of the act entitled 'An act to supplement existing laws against unlawful restraint and monopolies, and for other purposes,' approved October 15, 1914, as amended, and for other purposes."

COMMENT ON THE BILL AS AMENDED

Every section of the bill is an amendment of the national banking act itself or of provisions of the Federal reserve act which relate directly or indirectly to national banks or of the Clayton Act, as far as it relates to qualification of directors. The general purpose of the bill is to adjust the national banking laws to modern banking conditions along the lines of conservative banking, and without any deviation from the high standard which has been set by the national banking system. Some of the provisions in the bill extend and enlarge the powers of national banks, but only in ways in which State banks and trust companies generally have been successfully operating within recent years. Other sections of the bill affirm and regulate practices which have grown up within the national banking system under the

exercise of incidental corporate powers. These practices are common to both the State and national banks. Other sections of the bill relate entirely to questions of procedure and not to banking powers. An attempt is made to eliminate some of the rigid formalities in this direction. The bill also declares a Federal Governmental policy with reference to branch banking.

Many of the foregoing proposed amendments are solely verbal changes and require no further comment. There are certain others which perhaps require a word of explanation. These will be briefly discussed. A detailed analysis section by section follows.

Section 1: This section relates to a question of procedure. It adds no new power to national banks. Its purpose is to permit State banks to consolidate directly with national banks instead of requiring them, as under present procedure, first to convert into national banks. Section 1, therefore, provides a direct procedure to accomplish the same results which may be accomplished under existing law but in a more indirect manner, and will consequently eliminate delay and expense.

Two amendments to section 1 which perhaps require an explanation are the insertion of the word "State" on page 2, line 4, and the insertion of the following words on page 5, lines 23 to 25, and page 6, lines 1 to 3 "nor shall any such State bank or banks entering into such consolidation be located at a greater distance from such national banking association than is authorized by the laws of the State in case of the consolidation or merger of two or more State banks." These amendments are in harmony with the policy of the section as originally drafted. They would permit a State bank to consolidate with a national bank regardless of county lines if the State law permitted State banks to consolidate with each other regardless of county lines. For example, if a State bank and a national bank in such a State desired to merge into one institution it could be readily done by the national bank first converting into a State bank and both State banks consolidating and the consolidated State bank converting back into a national bank. It also could be accomplished by the State bank consolidating with another State bank in the same county in which the national bank is located and the consolidated State bank, converting into a national bank, could then consolidate with the national bank.

It will be seen, therefore, that the insertion of the word "State" followed by the restrictive language above quoted does not alter the substantive policy of the bill, but simply gives the national-banking system the benefit of a more direct procedure. Under these amendments no consolidation can be effected which could not at the present time be effected under State laws.

Section 2: Section 2 is divided into two subsections (a) and (b).

Subsection (a) is not an enlargement of the powers of a national bank but extends the term of its charter to an indefinite number of years subject to forfeiture of the charter by reason of violation of law, subject to termination by act of Congress at any time and to termination through the appointment of a receiver on account of insolvency. This extension of the life of the charters of national banks is along the line of State legislation for the State banks in Arkansas, Connecticut, Florida, Illinois, Kentucky, Maine, Massachusetts, Minnesota, Nebraska, New Hampshire, New Jersey, New

York, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, and West Virginia. It will be noted that these States include the important cities of New York, Buffalo, Boston, Chicago, St. Paul, Minneapolis, Cleveland, Cincinnati, Louisville, Omaha, Providence, Nashville, Richmond, and a number of other lesser financial centers

One of the principal advantages of the indeterminate charter is to enable the bank to administer long-term and perpetual trusts. Many of these trusts are in the nature of educational and charitable foundations.

Subsection (b): This subsection is divided into two provisos, each of which recognizes and affirms the existence of a type of business which national banks are now conducting under their incidental charter powers. They may be said to liberalize, in that they confirm the conduct of this character of business; on the other hand, they are restrictive in that the business is confined to definite limits by law.

The first proviso referred to recognizes the right of national banks to continue to engage in the business of buying and selling investment securities but at the same time it makes a general definition of the term "investment securities" and gives the comptroller the authority to make a further definition by regulation. This would give the comptroller the authority to exclude by definition the right of a national bank to purchase undesirable or unsafe investment securities. This provision also limits the total amount which a national bank may take of any one issue of such securities to 25 per cent of its capital and surplus. In this connection it may be noted that this is a business regularly carried on by State banks and trust companies and has been engaged in by national banks for a number of years. The national banks hold to-day in the neighborhood of \$6,000,000,000 of investment securities. The effect of this provision, therefore, is primarily regulative.

The second proviso regulates the safe-deposit business of national banks and prohibits them from investing an amount in excess of 15 per cent of capital and surplus in a corporation organized to conduct a safe-deposit business in connection with the bank. This is a business which is regularly carried on by national banks and the effect of this provision is also primarily regulative.

Section 3: Section 3 is in the nature of a liberalization to the extent that it would permit a national bank to purchase a piece of real estate for expansion of its banking matters without making it mandatory upon the banks to make immediate use of the property for banking purposes. In other words, the section simply strikes out the word "immediate" from the law. The existing law has operated as a hardship upon national banks in this respect.

Section 4: Section 4 provides for the organization of banks in the outlying districts of a city with a capital of \$100,000 where the population is in excess of 50,000.

The amendment proposed on page 10, lines 8 to 10, of the amended print, is designed to limit the organization of national banks with reduced capital of \$100,000 in the outlying districts of cities of more than 50,000 population to those cities in which the State laws do not require a greater amount of capital for the State banks.

Section 5: Section 5 is also in the nature of a confirmation and regulation of an existing practice. It permits national banks to con-

tinue to pay stock dividends but provides a definite procedure and regulations of amount of surplus which the bank must have at the time of the increase.

Section 6: This section does not add any new charter powers, but is simply a clarification of an ambiguous provision of law relating to the status of the chairman of the board of directors. It provides that the president of the bank shall be a member of the board of directors but not necessarily chairman thereof.

BRANCH BANKING

Sections 7, 8, and 9 are those that deal with the all-important subject of branch banking.

The branch banking provisions of the bill relate both to national banks and to State member banks of the Federal reserve system. In the bill as it passed the House, these provisions as to the national banks are found as provisos in section 1, section 7 and section 8. As a matter of form and in order to facilitate a more ready analysis, your committee thought it best to assemble in one section all of the conditions under which national banks may have branches. These now appear in the committee amendment of section 7. The conditions under which State member banks of the Federal Reserve System may have branches are, as in the House bill, set forth in section 9.

Your committee is in agreement with the fundamental branch banking policy of the House bill by which branch banking in the future would, in the Federal reserve system, be restricted to the confines or the limits of the city in which the parent bank is situated.

Under the House bill national banks would be permitted to keep the branches they now have, branch banking would be permitted for national banks in cities having more than 100,000 population at the discretion of the Comptroller of the Currency in cities where State banks can have branches, and national banks would be denied the right to have branches at all in any State which denied to State banks the right to have branches. These provisions are all embodied in the amendments recommended by your committee.

In the bill as herewith reported there are recommended, however, the following modifications of the branch banking policy which, in the opinion of your committee, are entirely in harmony with the general purpose of the bill. It is proposed that the original recommendation of the Comptroller of the Currency be followed by permitting State banks, upon converting into or consolidating with a national bank or upon becoming a member of the Federal reserve system, to retain the branches now in existence regardless of their location. The bill as it passed the House denies the right to retain branches now existing if they be located outside of the city in which the parent bank is situated. Your committee feels that this restriction is not only unfair to the banks which are now legally operating outside branches but is inconsistent with the general branch banking policy of the bill. The exclusion of such banks from the national system and from the Federal reserve system would encourage them to continue to increase the number of state-wide branches, whereas if they are permitted to come in they have the choice between the establishment of additional branches and joining the national or Federal reserve systems.

The amendment proposed by your committee would have the effect, therefore, of discouraging the further extension of branches. It would also put nonmember State banks upon the same footing as to branches, with respect to the Federal reserve system, as the member banks. It would further permit State member banks of the Federal reserve system to become national banks and retain all of the branches they now have. If it is sound policy to permit them to keep these branches in the Federal reserve system (and your committee agrees with the House position in this respect), it seems illogical to bar them from the national system. The purpose of the bill is to fix a policy for future branches and not to debar those already legally established.

There are one or two cities in the United States in which there is a national bank having one or more branches which were originally established under a State law not now in force. It is proposed to permit any other national bank in such a city to establish not more than the maximum number of branches possessed by such other State bank.

Your committee further recommends that the Comptroller of the Currency and the Federal Reserve Board, respectively, be given authority to define the term "municipal limits" to include incorporated suburbs, the boundary of which at some point coincides with that of the city in question. This would, in certain cases, in those States where the State law permits similar action, allow branches to be established outside of the strictly defined legal city limits but not outside of the city as an economic unit. Such branches would still be home city branches.

Finally, there is another amendment proposed which your committee believes to be of the greatest importance. It is the omission of the so-called Hull amendments. These amendments would deny to national banks and to State member banks of the Federal reserve system the right to have branches inside city limits (as well as outside) in any State which now prohibits branch banking, but which in the future may permit branch banking. For example, if the State of Illinois, which now prohibits branch banking, should in the future permit State banks in Chicago to have home city branches, under the Hull amendments only State banks not members of the Federal reserve system could have such branches. The national banks and the State banks in the Federal reserve system in the city of Chicago would be denied that right. Proponents of these amendments admit under such circumstances it would be necessary for Congress to enact a special law to relieve these banks of their handicap.

The real purpose of the Hull amendments, as shown by the testimony given before your committee, is to bring pressure to bear upon the leading bankers in States which now prohibit branch banking by depriving them of the motive to seek a change in the State laws favorable to branch banking. It is to coerce them to remain silent. Your committee feels that this is an unprecedented policy for the Federal Government to pursue and constitutes an unwarranted interference with the rights of citizens of these States in their relationship to the State legislatures. Apart from the unwisdom of interference in this manner with the enactment of local legislation, the Hull amendments have no logical place in the bill. With them excluded no state-wide branches could be established by national or State member banks.

The only effect of the Hull amendments, therefore, is to declare unlawful home city branches in certain States even though the State law declares them lawful for State banks. Congress, under such conditions, would find itself declaring home-city branches lawful in New York City and Los Angeles, but unlawful in Chicago and St. Louis, assuming that Illinois and Missouri enacted a branch banking law. In this respect your committee is of the opinion that the bill is sufficiently restrictive when it declares unlawful the establishment of branches by national banks in any city in which the State banks are denied that right by State law and properly permissive when it permits national and State member banks to have branches in any city in which it is lawful for State banks to have branches.

Section 10: This section is designed to restate and clarify section 5200 of the Revised Statutes which governs the amount of money which a national bank may lend to any one person. The existing law is composed of the original provisions of 1863 with a number of amendments and provisos added from time to time and stands in need of clarification to clear up certain ambiguities. It is not the purpose of this section to make any substantial liberalization or restriction upon the business of national banks and the language of the bill is therefore substantially identical in effect with that of the existing law.

Subsection 4 is in the nature of a restriction upon the discount of noncommercial paper. Through a loophole in the existing law there is at present no limit upon the amount of this type of paper which a national bank may discount since the limitation of the law runs against the maker only and not against the indorser. This subsection is designed to cure this defect in the law.

Under subsection 6 there is an enlargement of the power of national banks in the matter of loans upon the security of nonperishable staple commodities stored in bonded warehouses. This section would permit a gradual increase of the loan up to an amount not exceeding 50 per cent of the capital and surplus of the bank provided each increase in the amount of the loan shall be accompanied by an increase in the value of the commodity collateral in proportion to the face amount of the additional loan.

Section 11: This section is designed to cure a typographical error in the agricultural credits act of 1923, and relates to the total liabilities of national banking associations.

Section 12: Section 12 is designed to clarify and correct a criminal provision in section 5208, Revised Statutes, relating to the over-certification of checks.

Section 13: Section 13 relates to a matter of procedure and gives the board of directors of a national bank the right to permit a junior officer to certify reports to the comptroller in the absence of the president and cashier.

Section 14: This section is in the nature of a liberalization for both State and National banks in that it empowers the Federal reserve banks to rediscount for any member bank an amount of eligible paper equal to the amount which a national bank could lawfully discount for its customers. Under the existing law a Federal reserve bank can only discount an amount of eligible paper of any one borrower not exceeding 10 per cent of the capital and surplus of the member bank. This section does not change the character

of classes of eligible paper. If the paper is already eligible for discount, and the national bank act considers it safe for a national bank to take it in certain stated amounts, it is considered by this section to be safe for the Federal reserve banks to rediscount it in the same amounts. The paper itself is considered liquid and in addition has the indorsement of the member bank upon it when presented for rediscount.

Section 15: This section simply adds an additional criminal provision providing for the punishment of a national-bank examiner who commits a theft from a bank examined by him.

Section 16: This section is a restatement of the existing law relative to loans by national banks upon the security of real estate. It broadens the powers of national banks as to the time limit of the loans upon city property but at the same time makes restrictions by way of definitions. At the present time a national bank may make a loan upon first mortgage upon city property for a period not exceeding one year. This section increases this period to five years as a maximum. At the same time it defines a real-estate loan to be one with respect to which the bank takes the entire obligation at the time of making the loan. The purpose of this definition is to prevent the possibility of a bank from purchasing real-estate bonds under the guise of making loans upon the security of real estate. Such real-estate bonds as may be purchased by a bank (should the comptroller determine that any such bonds are "investment securities") would be acquired under section 2 (b) of the bill.

The State banks and trust companies are authorized to make long-time loans upon the security of first mortgage upon city real estate. National banks, by being limited to a one-year period, have found themselves handicapped in meeting the demands of their customers in this respect. This section limits all such loans to an amount not exceeding one-half of the savings deposits in the bank, and thereby relates the real estate loan business to savings deposits. This is a logical connection. National banks have on deposit about \$5,000,000 of savings deposits from about 11,000,000 depositors. This constitutes a large proportion of the entire savings business in the United States, and it has become necessary to recognize the right of a national bank with certain definite restrictions to use these funds in the same general manner in which the State banks and trust companies are using them, which includes the right to make loans upon city property, as provided above.

Sections 17, 18, 19, and 20 are new sections proposed by your committee.

Section 17 is an amendment to the Kern amendment of the Clayton Act. In effect it would authorize the Federal Reserve Board to permit one person to serve as director on the boards of not more than three banks if the board finds such service not incompatible with the public interest, whereas under existing law the board must find in such a case that no substantial competition exists. This amendment has been recommended by the Comptroller of the Currency and by the Federal Reserve Board.

The Pujo committee was appointed under a resolution of the House to investigate banking conditions in the United States as a basis for remedial legislation. The majority of this committee concluded that there existed an undue concentration of the control of money and

credits, especially in the larger cities. As one of several methods of remedying this evil the committee recommended an amendment to the national banking laws prohibiting interlocking directorates. It was probably because of this recommendation that section 8 was incorporated in the Clayton Antitrust Act, which was approved and became a law October 15, 1924.

This section prohibited a director of a national bank under certain conditions from serving as a director of any other banking institution, State or National. It had no application to directors of banks and trust companies organized under State laws. National banks were accordingly placed under a decided disadvantage in meeting competition of State banks and trust companies. To alleviate this situation the Kern amendment was passed May 26, 1916. Under the amendment a national-bank director is permitted, with the consent of the Federal Reserve Board, to serve on the boards of two other banks if the Federal Reserve Board first determines that such other banks are not "in substantial competition" with the national bank.

The requirement that the board must find that the banks involved are not in substantial competition as a condition precedent to the granting of its consent to a person to serve as a director of more than one bank, has practically destroyed the value of the Kern amendment as a relief measure. As stated by the board in its eighth annual report to Congress (p. 354):

The act in its present form operates in an illogical way and often defeats the very purpose for which it was enacted.

The board has four times recommended to Congress a modification of the Kern amendment, and in its annual reports has explained with great detail the necessity for such modification. The purpose of the Clayton Act was to prevent concentration of the control of money and credit by preserving and fostering competition as between banks. The board shows by concrete illustration that the effect of the Kern amendment in some instances is to encourage the elimination of competition so as to make possible interlocking directorates. It calls attention to the fact that where a director is permitted to serve on two banks which are not in substantial competition, if competition is permitted to develop he thereby may become ineligible, whereas if competition is stifled he may continue to serve both banks. This being true in some cases as the board states:

The Clayton Act operates to favor those persons who have eliminated competition between banks while it penalizes joint directors who have permitted the growth of competition between the banks they serve. (Eighth Annual Report, p. 354.)

As another illustration of the illogical effect of the Kern amendment the board refers to the case of a national bank and trust company not in substantial competition, which were permitted to have common directors. After the board's consent had been granted the trust company, in order to be prepared to meet a threatened emergency, invested in commercial paper which could be rediscounted with the Federal reserve bank, thus creating a secondary reserve. It also made commercial loans in an endeavor to help out the local situation where credit facilities were much strained. These transactions resulted in bringing the trust company and national banks "in substantial competition" within the meaning of that language as inter-

preted by the board. The trust company rather than to lose one of its valuable directors adopted the alternative of reducing its commercial business and suggested making a still further reduction so as to eliminate substantial competition. In commenting on this case the board said:

Surely Congress never dreamed that the enforcement of the act could have such an effect. Somewhat similar cases have come to the board's attention from New York and other places.

In its report the board also directs attention to the fact that the Clayton Antitrust Act as interpreted by the Attorney General has no application to State banks and trust companies even though they become members of the Federal reserve system. This, in the opinion of many bankers, gives banking institutions organized under State law a decided advantage over national banks and will unquestionably have the effect of driving some national banks out of the system unless some relief is afforded.

By the passage of the Kern amendment Congress recognized the fact that it is not objectionable per se for the same person to serve as director of a limited number of banks. Interlocking directorates become objectionable when by reason of the common domination of several banking institutions competition is unduly restricted and concentration of the control of credit results. Presumably Congress intended to vest a discretion in the board to determine, within the limits prescribed by it, when it became incompatible with the public interest for the same director to serve on the boards of two or three banking institutions. The test applied, however, namely, the degree of competition existing as between such institutions, has proven impracticable and unworkable. This being true, the Federal Reserve Board, which is charged with the administration of this act in April, 1921, recommended a further amendment to section 8 of the Clayton Act, and a bill amending section 8 was introduced and referred to the Banking and Currency Committee, but was never reported out.

In its eighth annual report, covering operations for the year 1921, the board renewed its recommendation and in its ninth and tenth annual reports, covering operations for the years 1922 and 1923, again renewed its recommendation.

This amendment retains the limit on the number of banks that may have common directors, but vests in the board a discretion to determine when interlocking directorates within the limits imposed by Congress are inconsistent with the purpose of the Clayton Act. This is a question which must be determined by consideration of all the facts in a given case and which can not be determined by the application of any formula.

Sections 18 and 19 give discretionary authority to national banks to issue their capital stock at a par value of less than \$100. The market value of the stock of many national banks is so high that it has become difficult to sell it to purchasers of moderate means. In many instances a smaller par value will make it easier to give the stock a wider distribution.

Section 20 is designed to permit the indeterminate existence of the charters of the Federal reserve banks. The existing charters expire in 1934. Your committee feels that the time is appropriate for

Congress to give this assurance of permanence to the Federal reserve system.

This section of the bill would amend the second subdivision of the fourth paragraph of the Federal reserve act so as to provide that Federal reserve banks shall have succession, after the approval of this act, until dissolved by act of Congress or until a forfeiture of their franchise for violation of law. This is in accordance with the modern tendency of bank legislation to give banks indeterminate charters and would do substantially the same for Federal reserve banks as section 2 of the bill would do for national banks.

The Federal reserve system has demonstrated its usefulness to the country and has been recognized throughout the world as the best banking system ever brought into existence. The Secretary of the Treasury and the American Bankers' Association have gone on record as favoring the early renewal of the charters of the Federal reserve banks in order that the country may be assured of the continued existence of this indispensable feature of our banking and financial system. It is believed that this is fairly representative of the sentiment of the entire country. Your committee believes that this is an appropriate time to accomplish this desired result.

Attention is called to the fact that section 30 of the Federal reserve act expressly reserves to Congress the right to amend, alter, or repeal the act. Congress, therefore, can at any time enact such amendments to the Federal reserve act as it deems desirable. The right to amend would not be impaired in any way by the extension of corporate existence in the manner provided for in this bill.

Your committee believes that the enactment of this bill into law will put new life into the national banking system. The cumulative effect of its provisions will produce a situation in the Federal reserve system where the rights of the national banks will be more nearly on a par with those of the State member banks. When the Federal reserve act was amended to let State banks come into the Federal reserve system with their full charter powers, the national banks, operating under the old national bank act of 1864, found themselves, as compulsory members of the Federal reserve system, placed at a considerable disadvantage. Many of these State banks are operating under modern banking codes. The amendments which had theretofore been made to the national bank act were not sufficient to enable the national banks to compete on terms of equality with such State member banks, while at the same time they were compelled by law to bear the chief burden in supporting the Federal reserve system.

The bill recognizes the absolute necessity of taking legislative action with reference to the branch banking controversy. The present situation is intolerable to the national banking system. The bill proposes the only practicable solution by stopping the further extension of state-wide branch banking in the Federal reserve system by State member banks and by permitting national banks to have branches in those cities where State banks are allowed to have them under State laws.

Your committee feels that the need for this legislation is even more urgent than it was during the last Congress and respectfully urges its passage.

