

421.11-2 - Digest of Federal & State Laws

Committee on Branch Group & Chain Banking

TRANSFER

~~11/1/31~~
X X-6931 421.11-2

7/21/31 *Gardea*

DIGEST OF FEDERAL AND STATE LAWS
RELATING TO CONSOLIDATION, MERGER, ETC.,
OF BANKS AND/OR TRUST COMPANIES.

The following is a digest of the laws of the United States and of the several States, as of July 1, 1931, having reference to the consolidation, merger, etc., of banks and/or trust companies, which was prepared in the office of the General Counsel to the Federal Reserve Board, with the assistance of Counsel to the Federal Reserve Banks, pursuant to a request of the Board's Committee on Branch, Group and Chain Banking. Except for provisions covering the conversion of one bank or trust company into another this digest includes every provision of the Federal and State laws under which any bank or trust company, or the assets and liabilities thereof, may be united with, or transferred to, any other bank or trust company, such as the provisions governing consolidations, mergers, purchases of assets, etc.

*Prepared for Committee on Branch
Group & Chain Banking by Counsel's Office.*

Indexed copy filed 412.14-12

NATIONAL BANK ACT.Consolidation of two or more national banks.

The National Bank Act provides for the consolidation with the approval of the Comptroller of the Currency of any two or more national banks located in the same county, city, town or village under the charter of one of the banks. Such consolidation shall be on the terms and conditions agreed upon by a majority of the board of directors of each bank which must be ratified by the shareholders of each bank owning two-thirds of its capital stock at a meeting of the shareholders held after publication of notice in the newspapers for a period of four weeks and after sending notice to each shareholder by registered mail at least ten days prior to the meeting. The act makes provision for the payment to any dissenting shareholders of the appraised value of the stock held by such shareholders and for the disposal of any such shares at public auction. (Act of November 7, 1918; 40 Stat., 1043; U. S. Code, Annotated, Title 12, sec. 33.)

Legal effect - transfer of rights and assets by operation of law.

"All the rights, franchises, and interests of the said national bank so consolidated in and to every species of property, personal and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such national bank into which it is consolidated without any deed or other transfer, and the said consolidated national 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 national bank so consolidated therewith". (Act of

(National Bank Act - cont'd.)

November 7, 1918; 40 Stat., 1044; U. S. Code, Annotated, Title 12, sec. 34.)

Consolidation of State and national banks.

The National Bank Act also makes provision for the consolidation of any State bank or any bank incorporated in the District of Columbia, when not in contravention of the law of the State under which such bank is incorporated, with a national bank and under the charter of the National Bank. The procedure provided for effecting such consolidations is similar to the procedure provided for the consolidation of two or more national banks which is described above. A similar procedure is also provided for the satisfaction of dissenting shareholders. (Act of February 25, 1927; 44 Stat., 1225; U. S. Code, Annotated, Title 12, sec. 34a.)

Legal effect - transfer of assets and rights by operation of law.

"All the rights, franchises, and interests of such State or District bank so consolidated with a national banking association 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 national banking association into which it is consolidated without any deed or other transfer, and the said consolidated national banking association shall hold and enjoy the same and all rights of property, franchises, and interests, including the right of succession as trustee, executor, or in any other fiduciary capacity in the same manner and to the same extent as was held and enjoyed by such State or District bank so consolidated with such national banking association". (Act of February 25, 1927; 44 Stat.,

1225; U. S. Code, Annotated, Title 12, sec. 34a.)

ALABAMA.

Consolidation, merger or transfer of assets of banks and trust companies.

"Any bank or trust company doing a banking business may consolidate or merge with, or transfer its assets and liabilities to, another bank or trust company, * * *." (Civil Code of Alabama, sec. 6403; Banking Law Pamphlet, 1928, sec. 6403, page 41.)

Resolution of board of directors; consideration and approval of by stockholders and superintendent of banks; effect of approval.

In order to effect such consolidation, merger or transfer of assets, the Board of directors of each bank or trust company affected must pass a resolution stating that such consolidation, merger or transfer is desirable and call a meeting of the shareholders of each institution by giving at least thirty days' written notice to each shareholder of the date, place and purpose of the meeting. A copy of the resolution must also be furnished to the Superintendent of Banks and he must investigate the advisability of such consolidation, merger or transfer. On the day of the meeting of the shareholders, a resolution may be prepared setting forth the desirability and terms of the consolidation, merger, or transfer and if a majority of the shareholders of each institution approve the resolution and the superintendent of banks approves all of the proceedings, such resolution shall have the force and effect of consolidating or merging the institutions affected. (Civil Code of Alabama, section 6404; Banking Law Pamphlet, 1928, sec. 6404, page 41.)

Submission of certificate of proceedings to Superintendent of Banks for approval.

A certified copy of the minutes of the board of directors passing

(Alabama - cont'd.)

the resolution for consolidation, merger or transfer of assets and a certified copy of the minutes of the stockholders' meetings must be made under corporate seal and acknowledged by the president and cashier of each institution, and forwarded to the Superintendent of Banks for his certificate of approval. (Civil Code of Alabama, sec. 6405; Banking Law Pamphlet, 1928, sec. 6405, p. 42.)

Certificate of approval by Superintendent of banks; filing of.

If the superintendent of banks approves the entire proceedings, he must issue his written certificate of approval in duplicate, one to be filed in his office and the other to be forwarded to the probate judge of the county for record. (Civil Code of Alabama, sec. 6406; Banking Law Pamphlet, 1928, sec. 6406, p. 42.)

Examination of institutions by superintendent of banks.

Before approving proceedings to consolidate, the superintendent of banks must make an examination of each institution to determine whether the interests of the depositors, creditors and stockholders of each are protected and that such consolidation or transfer is made for legitimate purposes. His approval or disapproval in the premises must be on the basis of such examination and no "consolidation or transfer" can be made without his written consent. (Civil Code of Alabama, section 6407; Banking Law Pamphlet, 1928, section 6407, page 42.)

Appeal from adverse decision of superintendent of banks.

In case the superintendent refuses to give his consent, an appeal may be taken "to the circuit court of the county where such institution is located, said court considering the same in equity." (Civil Code of Alabama,

section 6408; Banking Law Pamphlet, 1928, sec. 6408, page 42.)

ARIZONA.

No provisions applicable to consolidations, mergers, etc.

The laws of Arizona do not contain any provisions specifically providing for the consolidation, merger, transfer of assets, etc., of banks or trust companies.

ARKANSAS.

Definition of the term "bank".

The word "bank" as used in the laws of Arkansas applies to any incorporated bank, trust company or savings bank. (Acts of 1923, Act 627, sec. 17; Crawford and Moses Digest, 1927 Supplement, sec. 674; Banking Law Pamphlet, 1929, p. 14.)

Consolidation of banks.

Any bank may purchase the assets of, or consolidate with, another bank by filing with the commissioner of banks, as an amendment to its articles of agreement, two copies of a resolution to the effect desired, adopted upon two-thirds vote of the stockholders of the respective banks affected, both such copies to be verified by the president and cashier or secretary, one to be retained by the commissioner and the other, upon his approval, to be filed for record with the clerk of the county in which the bank is located. The purchase or consolidation becomes effective only when such resolution is approved by the bank commissioner and so filed with the county clerk. It is further provided that upon the purchase of the assets of another bank, or the consolidation of two or more banks, all or any part of the assets may be accepted in lieu of cash at their actual value.

(Acts of, 1923, Act 627, sec. 4; Crawford and Moses Digest, 1927 Supplement, sec. 674; Banking Law Pamphlet, 1929, p. 10.)

CALIFORNIA.

Definition of word "bank".

The term "bank" as used in the following provisions of the so-called California Bank Act includes commercial banks, savings banks and trust companies. (Cal. Bank Act, sec. 1.)

Consolidation of banks.

Any state bank may consolidate with one or more state banks "its capital stock, properties, trusts, claims, demands, contracts, agreements, obligations, debts, liabilities and assets of every kind and description, * * *." (Cal. Bank Act, sec. 31a.)

Directors' agreement for consolidation; subject to approval of superintendent of banks.

The consolidation may be upon such terms and in such manner as may be agreed upon by the board of directors of the banks involved. An original copy of such agreement must be filed in the office of the superintendent of banks and it does not become valid until it is approved by him. (Cal. Bank Act, 1929, sec. 31a.)

Submission of consolidation agreement to stockholders.

No consolidation can take effect until the agreement has been "ratified and confirmed" by the stockholders of each of the constituent banks, either in writing by two-thirds of the respective stockholders, or by the vote of two-thirds of such stockholders at a special meeting called after two weeks' notice has been given to each stockholder specifying the time, place and object of the meeting and after such notice has been

(California - cont'd.)

published for two successive weeks in a certain designated newspaper.

(Cal. Bank Act, 1929, sec. 31a.)

Agreement for consolidation filed with superintendent of banks must be accompanied with certain papers.

There must be attached to the agreement which is filed with the superintendent of banks, either a memorandum of the ratification and confirmation of the agreement, signed and acknowledged by two-thirds of the stockholders of each bank, or a certificate of the secretary of the bank, under corporate seal and acknowledged by him, certifying that the agreement has been ratified and confirmed as provided above. (Cal. Bank Act, 1929, sec. 31a.)

Articles of incorporation and consolidation, contents of.

Articles of incorporation and consolidation must be prepared which must set forth:

- "First - The name of the new corporation;
- Second - The purpose for which it is formed;
- Third - The place where its principal business is to be transacted;
- Fourth - The term for which it is to exist, which shall not exceed fifty years;
- Fifth - The number of its directors (which shall not be less than three) and the names and residences of the persons appointed to act as such until their successors are elected and qualified;
- Sixth - The amount of its capital stock and the number of shares into which it is divided;
- Seventh - The amount of stock actually subscribed, and by whom;
- Eighth - The names of the constituent corporations."

(California - cont'd.)

The articles of incorporation and consolidation must be signed and countersigned by the president and secretary of each bank and sealed with the corporate seal; and the approval of the superintendent of banks must be attached thereto. (Cal. Bank Act, 1929, sec. 31a.)

Filing of articles of incorporation and consolidation.

The articles of incorporation and consolidation must then be filed with the secretary of state, and a copy of such articles, certified by the secretary of state, must be filed in his office, in the office of the county clerk of the county in which is located the principal place of business of the new corporation and each of its constituents and in the office of the superintendent of banks. The secretary of state must issue over the seal of the state a certificate that the articles have been filed in his office. (Cal. Bank Act, 1929, sec. 31a.)

Certificate of authorization to consolidated bank; issuance and filing of.

Provision is made for the issuance of a certificate of authorization to the consolidated bank by the superintendent of banks; and the superintendent must transmit to the secretary of state a duplicate of such certificate which he must file in his office. The superintendent must also file a duplicate of such certificate in his own office. (Cal. Bank Act, 1929, secs. 31a and 128.)

Certificate of superintendent of banks showing approval and consummation of consolidation.

Whenever two or more banks "authorized and qualified to conduct the business of acting as executor, administrator, guardian of estates, assignee, receiver, depository or trustee" are consolidated into a bank

(California - cont'd.)

"likewise authorized and qualified", the superintendent of banks upon request, must issue a written certificate under his official seal and acknowledged by him, that the consolidation agreement has been filed in his office, that the consolidation has been approved by him and that it has been completed and consummated. He must attach to the certificate a true copy of the consolidation agreement which is on file in his office. Such certificate is prima facie evidence of the regularity of the proceedings and the fact of such consolidation. (Cal. Bank Act, 1929, sec. 31c.)

Recordation of certificate of superintendent; effect of.

"The recordation of such certificate in the office of the recorder of any county shall be, to all persons, in such county, constructive notice that all of the rights, benefits, privileges, duties and obligations of whatsoever kind or nature, held or possessed by or imposed upon the bank * * * that has expired by such consolidation * * *, are retained by and imposed upon the successor bank." (Cal. Bank Act, 1929, sec. 31c.)

Legal effect of consolidation.

When the superintendent of banks authorizes the consolidated corporation to commence business as provided by law "the new or consolidated corporation shall be a body politic and corporate by the name stated in the certificate, and for the term of fifty years, unless it is, in the articles of incorporation and consolidation, otherwise stated and thereupon each constituent corporation named in the articles of incorporation and consolidation must be deemed and held to have become extinct in all courts and places, and said new corporation must be deemed and held in all courts and places

- 10 -

(California - cont'd.)

to have succeeded to all their several capital stocks, properties, trusts, claims, demands, contracts, agreements, assets, choses and rights in action of every kind and description, both at law and in equity, and to be entitled to possess, enjoy, and enforce the same and every thereof, as fully and completely as either and every of its constituents might have done had no consolidation taken place. Said consolidated or new corporation must also, in all courts and places, be deemed and held to have become subrogated to its several constituents and each thereof, in respect to all their contracts and agreements with other parties, and all their debts, obligations, and liabilities, of every kind and nature, to any persons, corporations, or bodies politic, whomsoever, or whatsoever, and said new corporation must sue and be sued in its own name in any and every case in which any or either of its constituents might have sued or might have been sued at law or in equity had no such consolidation been made. Nothing in this section contained shall be construed to impair the obligation of any contract to which any of such constituents were parties at the date of such consolidation. All such contracts may be enforced by action or suit, as the case may be, against the consolidated corporation, and satisfaction obtained out of the property which, at the date of the consolidation, belonged to the constituent which was a party to the contract in action or suit, as well as out of any other property belonging to the consolidated corporation, and the stockholders of each constituent corporation so entering into such agreement shall continue subject to all the liabilities, claims and demands existing against them at or before such consolidation to the same extent as if the same had not

(California - cont'd.)

- 11 -

been made. The right of said new corporation to increase or decrease its capital stock, to change the number of its directors, to amend its articles of incorporation, to change its principal place of business, or its name, or to effect any other organic change shall be governed by the general corporation laws of this state and by the bank act, and the procedure to effect any such change shall be that defined by the general corporation laws and the bank act." (Cal. Bank Act, 1929, sec. 31a.)

Merger of banks.

Any two or more banks empowered by their articles of incorporation and authorized by the so-called Bank Act "to do the business of a commercial bank and savings bank and trust company, or any one or more or all of them, are hereby authorized to merge one or more of such banks into another of them," in accordance with the following requirements. (Cal. Bank Act, sec. 31b.)

Agreement of directors to merge; contents of.

The board of directors of each bank involved, may by a majority of the membership of each board at a meeting duly called and held, make or authorize to be made a duplicate written agreement for the merger of the banks. The agreement must specify the receiving bank and each bank to be merged, "and it shall prescribe the terms and conditions of the merger and the mode of carrying it into effect." The agreement may also provide for any matters to effect and accomplish the merger, not inconsistent with the bank act or other laws of California. (Cal. Bank Act, 1929, sec. 31b.)

Submission of merger agreement to superintendent of banks; approval of necessary.

The merger agreement and sworn copies of the proceedings of the

(California - cont'd.)

boards of directors authorizing the making of the agreement must be submitted to the superintendent of banks in duplicate for his approval "and shall not be valid until such approval is obtained." (Cal. Bank Act, sec. 31b.)

Merger agreement to be approved by stockholders.

The merger does not take effect until the agreement has been "ratified and confirmed" in writing by two-thirds of the stockholders of each bank, or approved by two-thirds of such stockholders at a regular or special meeting. When so adopted, the agreement "shall thereupon become binding upon such banks." (Cal. Bank Act, 1929, sec. 31b.)

Filing of approved merger agreement.

One original duplicate of the adopted agreement with a copy of the written approval of the superintendent of banks and a sworn copy of the proceedings of the meetings at which such agreement was finally approved, made by the respective secretaries, must be filed with the superintendent of banks, and the other original duplicate must be filed in the office of the clerk of the county where the principal place of business of the receiving corporation is located. (Cal. Bank Act, 1929, sec. 31 b.)

When merger takes effect.

Upon filing the duplicates of the agreement as above described, the agreement "shall take effect according to all of its terms and the merger shall thereupon take place as provided in the agreement without further or other act, transfer or substitution," and the merged corporations must surrender their licenses to do a banking business for cancellation to the superintendent of banks. (Cal. Bank Act, 1929, sec. 31b.)

(California - cont'd.)

Issuance of new stock for old; dissenting stockholders, rights of.

Provision is made for the issuance of new shares of stock to stockholders in lieu of the stock held by them in the merging corporations and for the appraisal and payment of the value of the stock held by any stockholder who votes against the merger or dissents thereto in writing after the merger agreement has been adopted by the stockholders.

(Cal. Bank Act, 1929, sec. 31b.)

Certificate of superintendent of banks showing approval and consummation of merger.

Whenever two or more banks "authorized and qualified to conduct the business of acting as executor, administrator, guardian of estates, assignee, receiver, depository or trustee" are merged into a bank "likewise authorized and qualified", the superintendent of banks upon request, must issue a written certificate under his official seal and acknowledged by him, that the merger agreement has been filed in his office, that the merger has been approved by him and that it has been completed and consummated. He must attach to the certificate a true copy of the merger agreement which is on file in his office. Such certificate is prima facie evidence of the regularity of the proceedings and the fact of such merger.

(Cal. Bank Act, 1929, sec. 31c.)

Recordation of certificate of superintendent; effect of.

"The recordation of such certificate in the office of the recorder of any county shall be, to all persons, in such county, constructive notice that all of the rights, benefits, privileges, duties and obligations of whatsoever kind or nature, held or possessed by or imposed upon the bank * * * that has expired * * * by such merger, are retained by and imposed upon the

(California - cont'd.)

- 14 -

successor bank." (Cal. Bank Act, 1929, sec. 31c.)

Legal effect of merger.

"Upon the merger of any corporation or corporations into another, as provided in this section:

(a) "Its corporate existence shall be merged into that of such other corporation, and all and singular its rights, privileges and franchises, and its right, title and interest in and to all property, real, personal or mixed, and choses in action, and every right, privilege, interest or asset, of conceivable value or benefit then existing or which would thereafter inure to it under an unmerged existence shall be deemed fully and finally, and without any right of reversion, interruption, impairment or limitation of title, right or privilege, transferred to and vested in the corporation into which it shall have been merged, without further act or deed, and such last mentioned corporation shall have, hold, possess, enjoy and enforce the same in its own right, as fully as the same was possessed, enjoyed and held by the merged corporation from which it was, by operation of the provisions of this section, transferred.

(b) "Its rights, obligations, properties, assets, investments, deposits, demands, contracts, agreements, court and private trusts, as defined in the bank act, and other relations to any person, creditor, depositor, trustee, principal or beneficiary of any court or private trust, shall remain unimpaired and without change or alteration in any respect, and the corporation into which it shall have been merged shall, by such merger, ipso facto and by operation of law, without further transfer, substitution, act or deed, and in all courts and places be deemed and held to have, and shall become subrogated and shall succeed, to all such rights, obligations,

(California - cont'd.)

properties, assets, investments, deposits, demands, contracts, agreements, court and private trusts and other relations to any person, creditor, depositor, trustee, principal or beneficiary of any court or private trust, obligations and liabilities, of every kind or nature, and shall execute and perform all such court and private trusts in the same manner as though it had itself originally assumed the relation or trust or incurred the obligation or liability; the corporation into which it shall have been merged shall succeed to and be entitled to take and execute and receive the appointment to all executorships, trusteeships, guardianships and other fiduciary capacities in which the merged corporation may be then or thereafter named in wills theretofore or thereafter probated, or in any other instruments; and the liabilities and obligations of such merged corporation to the depositors, beneficiaries, principals and other creditors existing for any cause whatever shall not be impaired by such merger; nor shall any obligation or liability of any stockholder in any corporation which is a party to such merger be affected by any such merger, but such obligations and liabilities shall continue as fully and to the same extent as existed before such merger.

(c) "Any action pending or other judicial proceedings to which any corporation that shall so be merged is a party, shall not be deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order or other decree in the name of the merged corporation, in the same manner as if the merger had not been made, or such merging corporation may be substituted as a party to such action

(California - cont'd)

or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against such merged corporation, if the merger had not occurred." (Cal. Bank Act, 1929, sec. 31b.)

Legal effect of consolidation or mergers on trusts held by the constituent banks.

"Whenever a national banking association authorized and qualified to conduct in this state the business of acting as executor, administrator, guardian of estates, assignee, receiver, depository or trustee under court and private trusts, has been heretofore or is created by the conversion of a state bank likewise authorized and qualified; or whenever one or more state banks or one or more national banking associations so authorized and qualified has been heretofore or is hereafter consolidated with or merged into one or more other national banking associations or into one or more state banks, likewise authorized and qualified, such state bank or national banking association into which such state bank has been or is converted or into or with which such bank or banks has been or are merged or consolidated shall by such conversion, merger or consolidation ipso facto and by operation of law, without further transfer, substitution, act or deed and in all courts and places, be deemed and held to have, and shall become subrogated and shall succeed to, all rights, obligations, properties, assets, investments, deposits, demands, contracts, agreements, court and private trusts, and other relations to any person, creditor, depositor, trustor, principal or beneficiary of any court or private trust, and obligations and liabilities of every kind or nature which such prede-

(California - cont'd.)

cessor bank or banks so converted or merged or consolidated into or with such state bank or national banking association shall have held or enjoyed or been subject to, and shall execute and perform all such court and private trusts in the same manner as though it had itself originally assumed the relation or trust or incurred the obligation or liability. Such state bank or national banking association shall succeed to and be entitled to take and execute and receive the appointment to all executorships, trusteeships, guardianships and other fiduciary capacities in which the bank or banks so converted or merged into or consolidated with such state bank or national banking association may be then or thereafter named, in wills theretofore or thereafter probated, or in any other instruments. When such conversion, consolidation or merger is completed, there may be executed by the president and secretary or cashier of such state bank or national banking association" a certificate certifying that the business formerly conducted by the constituent corporation or corporations has been acquired and is being conducted by the resulting corporation. (Cal. Bank Act, 1929, sec. 31d.)

Recordation of certificate of bank; effect of.

"The recordation of such certificate in the office of the recorder of any county shall be, to all persons, in such county, constructive notice that all the rights, benefits, privileges, duties and obligations of whatsoever kind or nature held or possessed by or imposed upon the bank so converted or consolidated or merged are retained by and imposed upon the successor bank." Such certificate is prima facie evidence of the regularity of the proceedings and the fact of such consolidation or merger.

(California - cont'd.)

(Cal. Bank Act, 1929, sec. 31d.)

Sale of business.

Any bank may sell the whole of its business or the business of any of its departments or branches to any other bank. (Cal. Bank Act, 1929, sec. 31.)

Consent of stockholders necessary to effect sale.

The consent of two-thirds of the stockholders of each of the banks involved is necessary to effect such a sale; and the consent may be either in writing and acknowledged by such stockholders and attached to the instrument of sale, or to a copy thereof, or by vote of such stockholders at a special meeting. (Cal. Bank Act, 1929, sec. 31.)

Agreement for sale and purchase; contents of.

The selling and purchasing banks must enter into an agreement of sale and purchase which must contain all the terms and conditions connected with the transaction. The agreement must contain proper provision for the payment of liabilities of the selling bank and the assumption by the purchasing bank of all fiduciary and trust obligations of the selling bank, and in these particulars, is subject to the approval of the superintendent of banks and does not become valid until such approval is obtained. The agreement may contain provisions for the transfer of all deposits to the purchasing bank, subject to the right of every depositor of the selling bank to withdraw his deposit in full on demand after such transfer, regardless of the terms under which it was deposited. The agreement may also contain provisions for the transfer of all court and private trusts to the purchasing banks, subject to the rights of trustees and beneficiaries after such

(California - cont'd.)

transfer to nominate another and succeeding trustee of the trusts so transferred. (Cal. Bank Act, 1929, sec. 31.)

Filing of agreement for purchase and sale.

The agreement or a duplicate original thereof must be filed in the office of the superintendent of banks immediately after its execution by the banks involved and its approval by the superintendent. (Cal. Bank Act, 1929, sec. 31.)

Publication of notice of agreement for purchase and sale.

Notice of the agreement must be published for four successive weeks in a newspaper in each of the counties in which either of the banks has its principal place of business. An affidavit showing such publication must be filed with the superintendent within ten days after the last publication. (Cal. Bank Act, 1929, sec. 31.)

Obligations and liabilities of selling bank not impaired by sale; liability of stockholders of respective banks.

No obligation or liability of the selling bank or its stockholders and no rights, obligations and relations of any parties, creditors, depositors, trustors and beneficiaries are impaired by any sale, but the purchasing bank succeeds to all such relations, obligations, trusts and liabilities and is liable to pay and discharge all debts and liabilities and to perform all trusts of the selling bank. The stockholders of the respective corporations also continue subject to all the liabilities, claims and demands existing against them as such at or before the sale. (Cal. Bank Act, 1929, sec. 31.)

The affairs of the selling bank shall remain subject to the provisions of the so-called Bank Act. (Cal. Bank Act, 1929, sec. 31.)

(California - continued.)

Actions on account of transferred deposits, obligations, etc.; when es-
topped to bring.

No action can be brought against the selling bank or any of its stockholders on account of any deposit, obligations, trust or liabilities, which have been transferred to the purchasing bank, after the expiration of one year from the last day of the publication above referred to. (Cal. Bank Act, 1929, sec. 31.)

Maintenance of capital and surplus by selling bank.

The selling bank must maintain for a period of one year after the last day of the publication above described such an amount of capital or capital and surplus as the superintendent of banks may deem necessary. (Cal. Bank Act, 1929, sec. 31.)

Certificate of superintendent of banks showing approval and consummation
of sale of business.

Whenever there has been completed the sale of the business of any bank "authorized and qualified to conduct the business of acting as executor, administrator, guardian of estates, assignee, receiver, depository or trustee, to another bank, likewise authorized and qualified", the superintendent of banks upon request, must issue a written certificate under his official seal and acknowledged by him, that the agreement of sale and purchase has been filed in his office, that the sale and purchase has been approved by him and that it has been completed and consummated. He must attach to the certificate a true copy of the sale and purchase agreement which is on file in his office. Such certificate is prima facie evidence of the regularity of the proceedings and the fact of such sale

(California - cont'd.)

and purchase. (Cal. Bank Act, 1929, sec. 31c.)

Recordation of certificate of superintendent, effect of.

"The recordation of such certificate in the office of the recorder of any county shall be, to all persons, in such county, constructive notice that all of the rights, benefits, privileges, duties and obligations of whatsoever kind or nature, held or possessed by or imposed upon the bank so selling its business and assets * * * are retained by and imposed upon the successor bank." (Cal. Bank Act, 1929, sec. 31c.)

Legal effect on trusts held by selling bank.

"Upon the approval by the superintendent of banks of an agreement of sale and purchase and the transfer of the business of a trust department or of a bank having a trust department the purchasing bank shall, ipso facto and by operation of law and without further transfer, substitution, act or deed, and in all courts and places, be deemed and held to have succeeded and shall become subrogated and shall succeed to all rights, obligations, properties, assets, investments, deposits, demands, contracts, agreements, court and private trusts and other relations to any person, creditor, depositor, trustor, principal or beneficiary of any court or private trust, obligations and liabilities of every nature, and shall execute and perform all such court and private trusts in the same manner as though it had itself originally assumed the relation or trust or incurred the obligation or liability." (Cal. Bank Act, 1929, sec. 31.)

COLORADO

Consolidation of banks and/or trust companies.

Any state bank or trust company, or any national bank, "may be

consolidated with any state bank or trust company, or with any national banking association, under the charter of such state bank or trust company, or under the charter of such national banking association, or under a new charter issued to such consolidated state bank or trust company or to such consolidated national banking association, upon such terms and conditions as may be lawfully agreed upon; * * * " (Laws of 1931, ch. 54, sec. 1, p. 161.)

Consent of State Bank Commissioner or Comptroller of Currency necessary.

No state bank or trust company can consolidate with another state bank or trust company "without the written consent of the State Bank Commissioner; and no state bank or trust company shall consolidate with a national banking association, nor shall any national banking association consolidate with any state bank or trust company, without the written approval of the State Bank Commissioner and the Comptroller of the Currency; and no national banking association shall consolidate with any other national banking association without the consent of the Comptroller of the Currency." (Laws of 1931, ch. 54, sec. 1, p. 161.)

Consolidations involving national banks to comply with laws of United States and regulations of Federal Reserve Board.

The consolidation of a state bank or trust company with a national bank must comply with the "Federal banking laws and the rules and regulations of the Federal Reserve Board" and no consolidation of any kind "shall be in contravention of the laws of the United States or of the laws of the State of Colorado." (Laws of 1931, ch. 54, sec. 1, p. 161.)

Legal effect of consolidation

"At any time when such consolidation becomes effective all the property of the merging or consolidating banks, trust companies, or associations, including all right, title, and interest in and to all property of whatever kind of the institutions forming such consolidated bank, trust company, or association, whether real, personal or mixed, and things in action, and every right, privilege, interest, and asset of any conceivable nature, or benefit then existing, belonging or pertaining to the banks, trust companies, or associations forming such consolidated bank, trust company, or association, shall immediately, by proper order of the court, act of law and without any conveyance, transfer, and without any further act or deed, be vested in and become the property of such consolidated bank, trust company or association, which consolidated bank, trust company, or association shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by the institutions, or any of the institutions, forming such consolidated bank, trust company, or association."

"Such consolidated state bank or trust company, or such consolidated national bank or association, shall be deemed to be a consolidation of the entity and of the identity of the institutions forming such consolidated bank, trust company, or association, and all the rights, obligations, and relations of the banks, trust companies or associations forming such consolidated bank, trust company or association, to or in respect to any person, estate, creditor, depositor, trustee, or beneficiary of any trust, and in or in respect to any executorship or trusteeship or

(Colorado - cont'd.)

24 -

other trust or fiduciary function, and in or with respect to any appointment or designation as executor, trustee or other fiduciary, shall remain unimpaired, and the consolidated bank, trust company, or association, as of the time of taking effect of such change or consolidation, shall succeed to all the rights, obligations, designations, appointments, relations and trusts, and the duties and liabilities connected therewith, and shall execute and perform each and every trust or relation in the same manner as if such consolidated bank, trust company, or association had itself assumed the trust or relation, including the obligations and liabilities connected therewith. If any bank, trust company, or association forming such consolidated institution, is acting, or is designated as administrator, co-administrator, executor, co-executor, trustee, or co-trustee, of or in respect to any estate or trust being administered, or to be administered, under the laws of this state, such designation or relation, as well as any other and similar designation or fiduciary relations, and all rights, privileges, duties and obligations connected therewith, shall remain unimpaired and shall continue into and in said consolidated bank, trust company, or association, from and as of the time of the taking effect of such consolidation, irrespective of the date when any such designation or relation may have been made, created, or established, and irrespective of the date of any instrument relating thereto."

"All Acts and parts of Acts in conflict with this Act are hereby repealed". (Laws of 1931, secs. 2-4, ch. 54, pp. 162-164.)

CONNECTICUT.Merger or consolidation.

"Any two or more state banks, trust companies or state bank and trust companies * * *, located and doing business in the same town may, with the approval of the banking commission, merge or consolidate into a single corporation to engage in the business of a state bank or trust company or both". (General Statutes, 1930, sec. 3890.)

Agreement of directors to merge or consolidate.

The directors of the corporations proposing to merge or consolidate may enter into an agreement prescribing the terms and conditions of the merger or consolidation and containing certain prescribed statements of fact with reference to the name and location of the consolidated corporation, the amount of its capital stock, the number of its directors, etc. (General Statutes, 1930, sec. 3891, as amended by Public Acts of 1931, ch. 88.)

Submission of agreement to stockholders.

The agreement must be submitted to the stockholders of each of the corporations involved at a special meeting called after twenty days' notice. Such notice must also be published in a designated newspaper or newspapers for three successive weeks. (General Statutes, 1930, sec. 3892, as amended by Public Acts of 1931, ch. 88.)

Approval of consolidation by stockholders; submission to banking commission.

If the consolidation or merger is approved by two-thirds of the

stockholders of each of the corporations, that fact must be certified under corporate seal upon the agreement by the secretaries of the respective corporations, and such certified agreement must then be submitted to the banking commission. (General Statutes, 1930, sec. 3892, as amended by Public Acts of 1931, ch. 88.)

Consideration and approval of agreement by banking commission; filing of approved agreement.

If the banking commission, after a hearing held after publication for three successive weeks of notice of such hearing, determines that the consolidation or merger "will promote public convenience" and that the terms thereof are reasonable and in accordance with law and sound public policy, it may approve such consolidation or merger. If approval is granted, the banking commission must certify its findings and approval on the agreement and file such agreement in the office of the Secretary of State. When so approved and filed, the agreement "shall evidence the terms and conditions of such consolidation and the legal existence and the organization of said consolidated corporation, and the provisions of the charters or organization certificates of the consolidating corporations in so far as they may be inconsistent therewith shall be inapplicable to said consolidated corporation."

(General Statutes, 1930, sec. 3892, as amended by Public Acts of 1931, ch. 88.)

Increase or reduce capital stock, change of name, or other amendments to agreement; when may be made.

The consolidated corporation, subject to the approval of the

banking commission, may at any time in the future change its name, increase or reduce its capital stock, and make other amendments to the agreement provided such change or amendment is approved at a special meeting by two-thirds of the stockholders "and a certificate setting forth such change or amendments and stating that the same has been adopted by the stockholders shall be made by a majority of the directors, approved by the banking commission and filed in the office of the secretary of state." (General Statutes, 1930, sec. 3892, as amended by Public Acts of 1931, ch. 88.)

NOTE: - The 1931 amendment referred to under the five preceding headings is not yet obtainable; but, inasmuch as the bank commissioner of the State of Connecticut has advised that it is a purely clarifying measure, the provisions as amended probably do not differ substantially from the provisions as above digested.

Legal effect of merger or consolidation.

"Upon the completion of such consolidation as hereinbefore prescribed, the consolidating corporation shall become a corporation by the name so provided and the corporate existence of the consolidating corporations shall be continued by and in the consolidated corporation and the consolidated corporation shall possess all the rights, privileges, powers

(Connecticut - cont'd.)

and franchises of each of the consolidating corporations and the entire assets, business, goodwill and franchises of each of the consolidating corporations shall be vested in the consolidated corporation without any deed or transfer, provided the consolidating corporations may execute such deeds or instruments of conveyance as may be convenient to confirm the same, and the consolidated corporation shall assume and be liable for all debts, accounts, undertakings, contractual obligations and liabilities of every name and nature of the consolidating corporations and shall exercise and be subject to all the duties, relations, obligations, trusts and liabilities of each of the consolidating corporations, whether as debtor, depository, registrar, transfer agent, executor, administrator, trustee or otherwise, and shall be liable to pay and discharge all such debts and liabilities to perform all such duties and to administer all such trusts in the same manner and to the same extent as if the consolidated corporation had itself incurred the obligation or liability or assumed the duty, relation or trust, and all rights of creditors and all liens upon the property of either of such consolidating corporations shall be preserved unimpaired and said consolidated corporation shall be entitled to receive, accept, collect, hold and enjoy any and all gifts, bequests, devises, conveyances, trusts and appointments in favor of or in the name of either of said consolidating corporations whether made or created to take effect prior to or after such consolidation, and the same shall inure to and vest in said consolidated corporation; and no suit, action or other proceeding pending at the time of such consolidation before any court or

(Connecticut - cont'd.)

tribunal in which either of said consolidating corporations is a party shall be abated or discontinued because of such consolidation but may be continued and prosecuted to final effect by or against the consolidated corporation. The consolidated corporation shall have the right to use the name of either of the consolidating corporations whenever it can do any act or discharge any duty or obligation or enforce any right under such name more conveniently or with greater advantage to itself, or to any person to whom it holds any relation of trust or owes any duty under any contract or conveyance, and no other corporation shall take or use the name of either of said consolidating corporations. The consolidated corporation shall possess all the powers granted by the general statutes to banks and trust companies and shall be subject to all provisions of the general statutes relating to such banks and trust companies." (General Statutes, 1930, sec. 3893.)

Exchange of stock of consolidating corporations; stockholders dissenting to consolidation.

Provision is made for the exchange of stock of the consolidating corporations for stock of the consolidated corporation, and for the appraisal and payment of the value of stock held by stockholders who objected to the consolidation. (General Statutes, 1930, sec. 3894, as amended by Public Acts of 1931, ch. 88.)

Restrictions on branches.

The statute further provides that nothing herein shall be construed

(Connecticut - cont'd.)

as giving the consolidated corporation the right to maintain more than one banking house for the conduct of its business. (General Statutes, 1930, sec. 3895.)

Consolidation or merger of savings banks.

Any two or more savings banks located within the same town may merge or consolidate into a single savings bank. (General Statutes, 1930, sec. 4007.)

Procedure to effect consolidation.

The procedure prescribed to effect the consolidation of two or more savings banks is substantially similar to the procedure above described with reference to the consolidation of banks or trust companies, except that in the case of savings banks an appeal from the decision of the bank commissioner upon a protest against such consolidation is allowed to any judge of the Superior Court. (General Statutes, 1930, secs. 4008-4012; Banking Law Pamphlet, 1929, secs. 4008-4012, pp. 73 and 74.)

Legal effect of consolidation.

"Upon the completion of such consolidation, the several savings banks shall become a single savings bank by the name provided in such agreement, which may be a new name or the name of either of the consolidating banks; and said consolidated bank shall have all the powers and authority contained in either of the charters of the banks so consolidating and may proceed to enact such by-laws, rules and regulations for its management as were authorized at the organization of either of said banks.

(Connecticut - cont'd.)

"All liabilities of the respective consolidating banks for current expenses shall be adjusted and paid by them before such consolidation goes into effect; and certificates to that effect, signed by the treasurer of each of said banks, shall be filed with the consolidated bank.

"All the assets of each of said banks shall become the property of the consolidated bank as soon as the certificate of consolidation, approved by the bank commissioner, shall have been filed in the office of the secretary of the state, and thereupon no further business shall be transacted by either of such consolidating banks, except such as may be necessary for the completion of such consolidation; and the consolidated bank shall thereupon become liable for all the deposits and other obligations of each of said consolidating banks." (General Statutes, 1930, secs. 4013-4015; Banking Law Pamphlet, 1929, secs. 4013-4015, pp. 74 and 75.)

DELAWARE.

Consolidation or merger of banks and trust companies; approval of State Bank Commissioner necessary.

"It shall be unlawful for any bank or trust company doing business in this State to merge or consolidate with any other bank or trust company or to take over any substantial portion of the assets of and/or to assume the liabilities, in

(Delaware - cont'd.)

whole or in part, of any other bank or trust company (Whether said other bank or trust company is then doing business or has ceased to do business or has surrendered its charter or has dissolved) unless and until such action shall be approved by the State Bank Commissioner, and the said Commissioner is hereby authorized to require that he be furnished with such information as to the said assets and liabilities and as to the condition of the banks or trust companies concerned as he shall deem necessary or proper to determine whether to give or withhold his approval.

"It shall be the duty of the State Bank Commissioner to refuse his approval whenever in his opinion the transaction will weaken or tend to weaken any bank or trust company concerned.

"No title to any property shall pass where the transaction is in violation of the provisions of this Section."

(Act approved April 25, 1931.)

DISTRICT OF COLUMBIA.

No provisions relating to consolidations, mergers, etc.

The laws of the District of Columbia do not contain any pro-

(District of Columbia - cont'd.)

visions with specific reference to the consolidation, merger, etc. of banks or trust companies.

FLORIDA.Consolidation or transfer of assets.

Any bank which is winding up its business for the purpose of consolidating with some other bank, may transfer its resources and liabilities to the bank with which it is in process of consolidating, but no consolidation shall be made without the consent of the comptroller of the State of Florida, nor shall such consolidation operate to defeat the claim of any creditor or hinder any creditor from collection of his debt against such banks or either of them. (Act of June 7, 1913, sec. 12; Banking Law Pamphlet, 1930, p. 32.)

GEORGIA.Definition of word "bank".

The word "bank" as used in the following provisions of the laws of Georgia includes banks, savings banks and trust companies. (Banking Law Pamphlet, with amendments to August 26, 1925, Art. I, sec. 1, p. 1.)

Merger or consolidation of banks.

Any two or more banks are authorized to consolidate with or merge into another bank. (Banking Law Pamphlet, with amendments to August 26, 1925, Article XIII, sec. 1, p. 49.)

Agreement to merge or consolidate; contents of.

In order to effect a merger or consolidation, the boards of

(Georgia - cont'd.)

directors of the banks involved may, under their corporate names and seals, enter into an agreement prescribing the terms and conditions of the merger or consolidation and the mode of carrying it into effect. Such agreement "shall be subject to the approval of the Superintendent of Banks", and it must specify the name of the proposed resulting corporation, must name the persons who will constitute the board of directors after the merger or consolidation has taken place and until a new board of directors "shall be elected by the stockholders, and shall provide for a meeting of the stockholders of the merged or consolidated banks within thirty (30) days after the merger or consolidation, to elect such board of directors, with such temporary provisions for conducting the affairs of the merged or consolidated banks meanwhile, as shall be agreed upon." (Banking Law Pamphlet, with amendments to August 26, 1925, Art. XIII, sec. 1, p. 50.)

Submission of agreement to stockholders; filing of certified copies of proceedings approving; effect of.

After the agreement has been approved by the Superintendent of Banks, it must be submitted to the stockholders of the banks involved at a special meeting called after ten days' written notice specifying the time, place and object of the meeting has been given to each stockholder. If it is approved by two-thirds of the stockholders of each bank, "the same shall be the agreement of such banks". A certified copy of such proceedings, signed under corporate seal by the chairman and secretary of each bank is evidence of the holding and action of such meetings. Such certified copies must also be filed in the office of the Superintendent of Banks, "and thereupon such banks shall be merged or consolidated as specified in such agree-

(Georgia - cont'd.)

ment, and the bank into which the other or others are merged, or the consolidated bank, as the case may be, shall thereafter have the new name specified in such agreement, and the provisions of such agreement shall be carried into effect as therein provided." (Banking Law Pamphlet, with amendments to August 26, 1925, Art. XIII, sec. 2, pp. 50 and 51.)

Charter, application for, issuance and recording of.

When the acts described above have been performed, the merged or consolidated bank must file in the office of the Secretary of State a formal application in duplicate accompanied by a fee of \$25.00 in which it must state:

- "(1) The names and locations of the banks which have been merged or consolidated, with the dates of their original charters and all amendments thereto, respectively.
- "(2) The date of the consolidation agreement, and the dates of the approval thereof by the Superintendent of Banks and by the stockholders of the several contracting banks, respectively.
- "(3) The name under which the consolidated bank proposes to do business.
- "(4) The amount of capital stock of the consolidated bank.
- "(5) The number of its Board of Directors."

Immediately upon filing the application, the Secretary of State must transmit one copy to the Superintendent of Banks, and when it has been approved by the latter and a certificate of such approval has been filed by him with the Secretary of State, the "Secretary of State shall issue to the consolidated bank a certificate under the seal of the State,

(Georgia - cont'd.)

certifying that the contracting banks have been merged or consolidated under the name adopted and with the capital stock in said application set forth, which certificate shall be the charter of the consolidated or merged bank; and the Secretary of State shall record the application, the certificate by the Superintendent of Banks approving the same, and his certificate, in the order named." (Banking Law Pamphlet, with amendments to August 26, 1925, Art. XIII, sec. 2-a, pp. 51 and 52.)

Published notice of merger or consolidation necessary.

Notice of the merger or consolidation must be published for a certain prescribed time and in a certain designated newspaper or newspapers. Such notice must give the name and location of the consolidated or merged bank and must state that such bank "has taken over the assets of the banks respectively, entering into the consolidation or merger agreement, and has assumed the liabilities of such banks, including the liability to depositors." (Banking Law Pamphlet, with amendments to August 26, 1925, Art. XIII, sec. 3, p. 52.)

Issuance of new stock for old.

Provision is also made for the issuance of new certificates of stock of the consolidated or merged bank in lieu of original certificates of stock of the merging or consolidating banks. (Banking Law Pamphlet, with amendments to August 26, 1925, Art. XIII, sec. 4, p. 52.)

Legal effect of merger or consolidation.

"Upon the merger or consolidation of any banks in the manner herein provided, all and singular, the rights, franchises, duties and

(Georgia - cont'd.)

liabilities, and the interests of the bank or banks so merged or consolidated, and all the assets of every kind and character, including the real and personal property and choses in action thereunto belonging, shall be deemed to be transferred to and vested in such bank into which the other or others have been merged or in the consolidated bank, without any deed, transfer or assignment, and said bank shall hold, enjoy and be subject to the same in the same manner and to the same extent as the merged or consolidated banks, respectively, had, held, owned, enjoyed, and was subject to the same.

"The rights of creditors of any bank that shall be so merged or consolidated shall not be impaired in any manner by any such merger or consolidation; nor shall any liability or obligation for the payment of any money due or to become due, or any claim or demand in any manner or for any cause existing against such bank, or against any stockholder thereof, be in any manner released or impaired; and all the rights, obligations and relations of all the parties, creditors, depositors, and others shall remain unimpaired by such merger or consolidation. But such bank into which the other or others shall be merged, or the consolidated bank, as the case may be, shall succeed to all obligations, trusts, and liabilities, and be held liable to pay and discharge all such debts and liabilities and to perform all such trusts in the same manner as though such bank into which the other or others shall have become merged, or the consolidated bank had itself incurred the obligation or liability; and the stockholders of the respective banks shall continue subject to all the

(Georgia - cont'd.)

liabilities, claims and demands, existing against them as such at or before such merger or consolidation; and no suit, action, or other proceeding then pending before any court or tribunal in which any bank that may be merged or consolidated is a party shall be deemed to have abated or been discontinued by reason of any such merger, but the same may be prosecuted to final judgment in the same manner as if said bank had not entered into said agreement, or the bank into which the others shall have been merged, or the consolidated bank, as the case may be, may be substituted in the place of any bank so merged or consolidated by order of the court in which such action, suit, or proceeding may be pending. Such bank into which the other or others have been so merged, or the consolidated bank, shall be subject to be sued in any court having jurisdiction, upon any cause of action against any of the banks so merged or consolidated, in the same manner as if such cause of action had originated against such bank into which the other or others have been so merged or against such consolidated bank." (Banking Law Pamphlet, with amendments to August 26, 1925, Art. XIII, secs. 5 and 6, pp. 53 and 54.)

IDAHO.

Definition of word "bank".

The word "bank" as used in the banking laws of Idaho includes commercial banks, savings banks, and trust companies. (Idaho Banking Code, 1925, Art. 1, sec. 2, as amended, Laws of 1929, ch. 192, p. 353; Banking Law Pamphlet, 1925, sec. 2, pp. 5 and 6, as amended, Laws of 1929, ch. 192, p. 353.)

Consolidation or sale of business.

Any bank may sell its business "to any other bank, state or

(Idaho - cont'd.)

national, or may, for the purpose of consolidating with another bank, state or national bank, transfer its affairs, assets and liabilities to the bank with which it intends to consolidate, * * *." (Idaho Banking Code, 1925, Art. 1, sec. 48; Banking Law Pamphlet, 1925, sec. 48, p. 25.)
Consent of stockholders necessary; meeting; notice of.

No state bank, either as purchaser or seller, can enter into a sale, purchase or consolidation unless such action is consented to by two-thirds of the stockholders. Such consent, if acknowledged, may be given in writing by the stockholders, or by a vote at a special stockholders' meeting, if ten days advance written notice of such meeting has been given to each stockholder stating its time, place and purpose. (Idaho Banking Code, 1925, Art. 1, sec. 48; Banking Law Pamphlet, 1925, sec. 48, p. 25.)

Consent of Commissioner of Finance necessary; examination of banks involved; filing of certain documents.

No sale, purchase or consolidation can be made without the consent of the Commissioner of Finance, and before granting his consent he must examine each of the banks involved. He must also, before granting his consent, require each of the banks to file certified copies of all proceedings of their directors and stockholders relating to the transaction, showing a full compliance with the provisions herein digested, and also copies of any agreement or agreements which may have been entered into between the banks. (Idaho Banking Code, 1925, Art. 1, sec. 48; Banking Law Pamphlet, 1925, sec. 48, p. 25.)

(Idaho - cont'd.)

Consent of Comptroller of Currency, when necessary.

The consent of the Comptroller of the Currency to a consolidation, liquidation, or purchase must be furnished to the Commissioner of Finance if either bank concerned is a national bank. (Idaho Banking Code, 1925, Art. 1, sec. 48; Banking Law Pamphlet, 1925, sec. 48, p. 25.)

Rights of creditors not affected.

A sale or consolidation "shall in no wise impair, defeat or defraud any creditors of said bank or either of them." (Idaho Banking Code, 1925, Art. 1, sec. 48; Banking Law Pamphlet, 1925, sec. 48, p. 25.)

ILLINOIS.

Consolidation of banks.

"Whenever the board of directors, managers or trustees of any corporation having any banking powers * * * * may desire * * * to consolidate such corporation with any other corporation having banking powers * * * they may call a special meeting of the stockholders of such corporation for the purpose of submitting to a vote of such stockholders the question of such * * * consolidation with some other corporation * * * ." (Laws of 1929, sec. 12, p. 184.)

Special meeting, notice of.

A special meeting of the stockholders may be called by delivering personally, or by mailing thirty days before the time fixed for the meeting, a notice to each stockholder which must be signed by a majority of the directors, managers or trustees and state the time, place

(Illinois - cont'd.)

and object of such meeting. Notice of such meeting must also be published in a designated newspaper. (Laws of 1929, sec. 12, p. 184.)

Stockholders' approval of consolidation; certificate of, to be filed with Auditor of Public Accounts.

At a special meeting, or at any regular meeting, if two-thirds of the stockholders vote to approve the consolidation, a certificate of such approval, verified under corporate seal by the affidavit of the president or a vice president, must be filed immediately in the office of the Auditor of Public Accounts. (Laws of 1929, sec. 12, pp. 184 and 185.)

Approval of Auditor of Public Accounts; filing of certain papers with recorder of deeds.

If the auditor of Public Accounts gives his written approval to the consolidation such approval together with the certificate of the stockholders' approval, must be immediately filed for record in the office of the recorder of deeds of the county in which the principal business office of such corporation is located, and the consolidation "shall be and is hereby declared accomplished in accordance with the said vote of the stockholders." (Laws of 1929, sec. 12, p. 185.)

Conditions precedent to approval by Auditor of Public Accounts.

Before the Auditor can approve the consolidation, "he shall require to be filed with him a complete record of the proceedings of such consolidation, a list of stockholders, the agreement or articles of consolidation approved by the stockholders, which shall include the amount of capital and surplus of the consolidated corporation, the plan of business, name and time for which such consolidated corporation shall continue,

(Illinois - cont'd.)

which shall comply with the requirements of this Act as to application for and organization in the case of a new association, a detailed financial statement showing the assets and liabilities of such proposed consolidation and such other records as he may deem necessary, verified by the affidavit of one or more of the officers of each consolidating corporation, and shall satisfy himself that said records and list are true and complete and that said financial statement is true and that a sufficient amount is dedicated to the business of such proposed consolidation." The Auditor must also require each director of the proposed corporation to take and subscribe a certain prescribed oath.

(Laws of 1929, sec. 13, pp. 186 and 187.)

Examination by Auditor.

The auditor is given authority to make an examination into the affairs of such corporation. (Laws of 1929, sec. 13, p. 187.)

Publication of change of organization.

After the filing of the above described certificate in the recorder's office, the consolidated corporation must publish the change of organization once each week, for three successive weeks, in a designated newspaper. (Laws of 1929, sec. 12, p. 185.)

Pending suits or rights of persons not affected by consolidation.

The consolidation of one corporation with another does not affect pending suits in which the consolidating banks are involved nor does it affect causes of action or the rights of persons in any particular. (Laws of 1929, sec. 12, p. 185.)

(Illinois - cont'd.)

Dissenting stockholders, rights of.

Detailed provision is made for the payment to any stockholder, who objects to the consolidation within a certain prescribed time, of the stock held by such stockholder. (Laws of 1929, sec. 12, pp. 185 and 186.)

Sale of assets.

With the approval of the Auditor of Public Accounts, which shall state that the proposed sale is in his opinion necessary for the protection of depositors and other creditors, any bank may by a vote of two-thirds of its directors and without a vote of its stockholders, sell all or any part of its assets to another corporation organized under the Laws of Illinois or the United States, provided that such other corporation assumes in writing all of the liabilities of the bank other than its liabilities to stockholders as such. Provision is also made for the payment to any stockholders objecting to such sale of the value of the stock held by such stockholders. (Laws of 1929, sec. 12, pp. 185-186.)

INDIANA.

Consolidation of State bank with national bank.

Any State bank "may be consolidated with any national banking association or associations, under the charter of such national banking association, or under a new charter issued to such consolidated association, upon such terms and conditions as may be lawfully agreed upon".

(Act approved February 21, 1931, sec. 1.)

(Indiana - cont'd.)

Legal Effect of Consolidation.

"Whenever any bank shall have become, or shall have become consolidated with, a corporation for carrying on the business of banking under the laws of the United States, it shall notify the bank commissioner of this state of such fact, and shall file with him a copy of its authorization as a national banking association or a copy of the certificate of approval of consolidation, certified by the controller of the currency. It shall thereupon cease to be a corporation under the laws of this state, except that for the term of three years thereafter, its corporate existence shall be deemed to continue for the purpose of prosecuting or defending suits by or against it, and of enabling it to close its concerns, and to dispose of and convey its property. Such change from a state bank to or consolidation of a state bank with a national banking association shall not release any such bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming, or becoming consolidated with, a national banking association, or any tax imposed by the laws of this state up to the date of its becoming, or becoming consolidated with, such national banking association in proportion to the time which has elapsed since the next preceding payment and assessment therefor, or any assessment, penalty or forfeiture imposed or incurred under the laws of this state up to the date of its becoming, or becoming consolidated with, a national banking association.

(Indiana - cont'd.)

"At such time when the consolidation of a state bank with a national banking association under the charter of the latter company or such charter as may thereafter be issued, becomes effective, all the property of the state bank, including all its right, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately, by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the national banking association which shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by the state bank; and the national banking association shall be deemed to be a continuation of the entity and of the identity of the state bank, and all the rights, obligations and relations of the state bank to or in respect to any person, estate, creditor, depositor, trustee or beneficiary of any trust, and in, or in respect to, any executorship or trusteeship or other trust or fiduciary function, or appointment thereto, shall remain unimpaired, and the national banking association as of the time of the taking effect of such change or consolidation shall succeed to all such rights, obligations, relations, appointments and trusts, and the duties and liabilities connected therewith, and shall execute and perform each and every such trustor relation in the same manner as if the national banking association had

(Indiana - cont'd.)

itself been appointed to and/ or assumed the trust or relation, including the obligations and liabilities connected therewith. If the state bank is acting as administrator, co-administrator, executor, co-executor, trustee or co-trustee of or in respect to any estate or trust being administered under the laws of this state, such relation, as well as any other or similar fiduciary relations, and all rights, privileges, duties, and obligations connected therewith shall remain unimpaired and shall continue into and in said national banking association from and as of the time of the taking effect of such consolidation, irrespective of the date when any such relation may have been created or established and irrespective of the date of any trust agreement relating thereto or the date of the death of any testator or decedent whose estate is being so administered. Nothing done in connection with the consolidation of a state bank with a national banking association shall, in respect to any such executorship, trusteeship or similar fiduciary relation, be deemed to be or to effect, under the laws of this state, a renunciation or revocation of any letters of administration or letters testamentary pertaining to such relation, nor a removal or resignation from any such executorship or trusteeship or other fiduciary relationship, nor shall the same be deemed to be of the same effect as if the executor or trustee or other fiduciary had died or otherwise become incompetent to act.

"All of the rights, powers, privileges, duties, obligations and liabilities conferred on or extended to banking institutions which

(Indiana - cont'd.)

are formed by the consolidation of a state bank with a national banking association, as hereinbefore provided, are hereby conferred upon and extended to state banks which are formed by the consolidation of two or more previously existing state banks". (Act approved February 21, 1931, sec. 2.)

Meaning of Terms.

The words "bank," "banks" or "state banks," as used in this act shall be held to include banks of discount and deposit, loan and trust and safe deposit companies, private banks, and savings banks, or any other corporations or institutions carrying on the banking business under authority of the laws of this state." (Act approved February 21, 1931, sec. 3.)

IOWA.Consolidation or sale of assets of bank or trust company in receivership.

The laws of Iowa do not contain any provisions covering the consolidation, merger, etc., of solvent banks or trust companies. With reference to banks or trust companies in receivership, the laws provide that:

"If a majority of the creditors holding direct unsecured obligations of such bank in excess of ten dollars each, and totaling in the aggregate amount seventy-five per cent of all direct unsecured obligations, shall agree in writing to a plan of

(Iowa - cont'd.)

disposition and distribution of assets through sale to another bank, reopening, reorganization or consolidation of the bank, the district court in which such receivership is pending, upon application of the superintendent of banking, may order a disposition and distribution conforming in general to the provisions of such plan."

(Banking Laws, 1929, ch. 415, sec. 9239-al.)

Secured Creditors, certain rights, not affected.

"Nothing contained in the five preceding sections shall affect the rights of secured creditors in the security pledged, or to share in the capital stock assessment, nor affect the rights of depositors or creditors on bonds or other contracts with third parties."

NOTE: - Section 9239-al above quoted is one of the "five preceding sections" referred to herein. (Banking Laws, 1929, ch. 415, sec. 9239-a6)

Applicability of above provisions to trust companies.

The laws of this State make the provisions above quoted applicable "with equal force and effect to all trust companies organized or reorganized under this chapter". (Banking Laws, 1929, ch. 416, sec. 9304.)

KANSAS.

Consolidation of bank and trust company.

The laws of this State provide that "Any bank or trust company authorized to do business in the state of Kansas is hereby authorized and

(Kansas - cont'd.)

"empowered to consolidate with any other bank or trust company authorized to do business in the state." (Session Laws of Kansas, 1931, p. 148.)

Terms of consolidation; consent of bank commissioner necessary.

Such consolidation must be upon such terms as may lawfully be agreed upon by the two banks or trust companies, and must have the consent of the bank commissioner. (Session Laws of Kansas, 1931, p. 148.)

Location, consolidation conditional upon.

The consolidating banks or trust companies must have their banking houses in the same county in order to consolidate. (Session Laws of Kansas, 1931, p. 148.)

Legal effect of consolidation.

"In case of such consolidation, the consolidated bank and/or trust company shall become, without deed or transfer of any kind, the owner of and entitled to all rights, franchises and interests, which shall be referred to in such agreement, of every bank and/or trust company which shall be subject to the laws of the state of Kansas and which shall so consolidate, including every species of property and everything of value of every kind and description except real estate; and such consolidated corporation shall, without further appointment, act as trustee, executor, administrator or in any other fiduciary capacity in which any such bank or trust company subject to the laws of this state was acting at the time

(Kansas - cont'd.)

"of such consolidation." (Session Laws of Kansas, 1931, p. 148.)

"In case any bank or trust company shall be named as trustee or in any other fiduciary capacity in any trust deed or other writing, or shall be named as executor in any will, and shall afterwards consolidate with any other bank or trust company such consolidated company shall be entitled to be appointed or to act as such trustee, fiduciary, or executor, with the same effect as if such consolidated corporation had been specifically named in the trust deed, writing, or will creating such trust or fiduciary relationship." (Session Laws of Kansas 1931, p. 151.)

KENTUCKY.

Consolidation of two or more trust companies.

The laws of Kentucky do not appear to contain any provisions covering the consolidation or merger of banks; and it has been held that proceedings by the boards of directors of two banks were not sufficient to effect a consolidation. (La Rue v. Bank of Columbus, 165 Ky. 669, 178 S. W. 1033.) With reference to trust companies, however, the laws provide that "any two or more corporations organized under the laws of this State, for the purpose of conducting the business of trust companies, may consolidate their capital stock, assets and management into one organization." (Laws of Kentucky, 1912, ch. 41, sec. 1; Carroll's Ky. Stats., 1930,

(Kentucky - cont'd.)

sec. 603a-1; Banking Law Pamphlet, including 1926 legislation, sec. 603a-1, p. 32.)

Specific legal effect of such consolidation.

"The separate existence of each corporation shall continue and all duties, powers and discretions of the constituent companies as personal representative, trustee, assignee, guardian, agent, or otherwise conferred, shall be imposed upon and may be exercised by the consolidated corporation; and such duty, power or discretion, at the time of consolidation or thereafter imposed upon either of the constituent companies, may be performed

(Kentucky - cont'd.)

or exercised by the consolidated corporation in its own name or in the name of the constituent company upon which was imposed or conferred such duty, power or discretion; or by the constituent company upon which was imposed or conferred such duty, power or discretion; but in every case the consolidated corporation shall be liable for the proper performance of such duty and the proper exercise of such power or discretion."

The method and effect of such consolidation must be as provided in the provisions below digested, (Sections 555, 555a, 556, 557 and 558 of chapter 32, Carroll's 1930 Kentucky Statutes),"except that as above provided, the separate existence of the constituent corporations shall not cease, and the consolidated corporation and the constituent corporations shall continue to exist, the management of said consolidated corporation and each of said constituent corporations being in the directors and officers of the consolidated corporation." (Carroll's Ky. Stats., 1930, secs. 603a-1, 603a-2; Banking Law Pamphlet, including 1926 legislation, secs. 603a-1, a-2, pp. 32 and 33.)

Agreement of directors to consolidate.

A majority of the directors of each corporation proposing to consolidate, may enter into a signed agreement to consolidate. (Laws of Kentucky, 1902, ch. 58, sec. 2, p. 118; Carroll's Ky. Stats., 1930, sec. 555.)

Submission of agreement to stockholders for approval, notice of.

Notice of intention to consolidate must be mailed to each stock-

(Kentucky - cont'd.)

holder at least twenty days prior to entering into the agreement and must be published at least two weeks in a designated newspaper. The written consent of two-thirds of the stockholders of each corporation "shall be necessary to the validity of such agreement." (Laws of Kentucky, 1902, ch. 58, sec. 2, p. 118; Carroll's Ky. Stats., 1930, sec. 555.)

Names and addresses of stockholders not necessary.

All charters or articles of incorporation "heretofore taken out" by two or more state companies consolidating "are hereby declared to be valid, regardless of whether the names and addresses of the stockholders in the consolidating companies be inserted in the articles of consolidation or not; and that all articles of consolidation heretofore taken out are hereby declared to be valid without having the names and addresses of the stockholders inserted therein; and said charters shall be as valid and legal as if each and every stockholder in the companies composing the consolidated company was set out in such articles of consolidation." (Laws of Kentucky, 1906, ch. 131, p. 458; Carroll's Ky. Stats., 1930, sec. 555.)

Additional provisions relating to the legal effect of a consolidation.

Except as provided in the provisions above referred to setting out the specific legal effect of a consolidation or trust companies (Sections 603a-1 and 603a-2 of Carroll's Kentucky Statutes), a consolidation of trust companies also has a further effect under another section of the Kentucky laws. This section provides that "When the agreement is signed, acknowledged and recorded in the same manner as articles of incorporation are required to be, the separate existence of the constituent corporations

(Kentucky - cont'd.)

shall cease, and the consolidated corporations shall become a single corporation in accordance with the said agreement, and subject to all the provisions of this chapter and other laws related to it, and shall be vested with all the rights, privileges, franchises, exemptions, property, business, credits, assets and effects of the constituent corporations without deed or transfer, and shall be bound for all their contracts and liabilities; Provided, that no consolidated company formed under this chapter or the laws of this state shall be required to pay any organization tax on the amount of capital stock on which the organization tax has been paid by the constituent companies prior to the consolidation, and when a foreign corporation consolidates with one or more corporations in this state the organization tax as required by the laws of this state shall be paid on the amount of capital stock of such foreign corporation and the organization tax shall be paid on any increase of the capital stock of the consolidated corporation over the aggregate capital stock of the constituent corporations prior to consolidation." (Laws of Kentucky, 1916, ch. 46, p. 490; Carroll's Ky. Stats., 1930, sec. 556.)

Consolidated corporation subject to State Courts and general corporation laws.

The consolidated corporation becomes a corporation of Kentucky for all purposes and is subject to the jurisdiction of its courts and all its laws regulating corporations. (Carroll's Ky. Stats., 1930, sec. 555.)

Pending suits not affected by consolidation.

Any suit pending by or against any of the constituent corporations may be prosecuted to judgment as if no consolidation had taken place,

(Kentucky - cont'd.)

"or the new corporation may be substituted in its place." (Laws of Kentucky, 1893, ch. 171, p. 612; Carroll's Ky. Stats., 1930, sec. 557.)

Dissenting stockholders, rights of.

Provision is made for the payment within a certain time of the value of stock held by any stockholder who objected in writing to the consolidation and who demands such payment within twenty days after the consolidation agreement has been recorded. (Laws of Kentucky, 1893, ch. 171, p. 612; Carroll's Ky. Stats., 1930, sec. 558.)

LOUISIANA.Sale of assets.

The laws of Louisiana do not contain any provisions specifically covering the consolidation or merger of banks and trust companies; but the laws do permit any State banking association, savings bank or trust company to sell its assets to any other bank after having obtained the consent of two-thirds of the stockholders of both the selling and purchasing banks. The consent must be either in writing and acknowledged by such stockholders and attached to the instrument of sale, or to a copy thereof, or by their vote at special meetings. The agreement for such sale shall contain provisions for the payment of liabilities of the selling bank and it may contain provisions for the transfer of all deposits to the purchasing bank, subject, however, to the unconditional right of every depositor of the selling bank to withdraw his deposit in full on demand after such transfer. (Act 193 of 1910, sec. 3; Banking Law Pamphlet, 1928, sec. 3, p. 50.)

MAINE.Consolidation of savings banks or sale or lease of franchises,
property, etc.

The laws of this state provide that savings banks "may exercise the powers and shall be governed by the rules and be subject to the duties, liabilities, and provisions in their charters, *** and in the general laws relating to corporations, unless otherwise specially provided". (R. S., 1930, ch. 57, sec. 13.)

The "general laws relating to corporations" provide that "No corporation shall sell, lease, consolidate or in any manner part with its franchises, or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation". (R. S., 1930, ch. 56, sec. 63, p. 877.)

Agreement to consolidate, contents of, acknowledgment.

Any two or more state corporations, or any state corporation or corporations and any corporation or corporations of any other state, "may consolidate into a single corporation which may be either one of said corporations, provided the same be a corporation originally organized under the laws of this state, or a new corporation under the laws of this state to be formed by means of such consolidation", by entering

(Maine - cont'd.)

into an agreement authorized by a majority of the directors of each of the corporations involved and signed by the proper officers, "and under the respective seals of said corporations, prescribing the terms and conditions of the consolidation" and the mode of carrying it into effect and whether the consolidated corporation will be one of the constituent corporations or a new one. The agreement must also state such other facts as are necessary to be set out in the certificate of organization of an organizing corporation and as are pertinent in the case of a consolidation, the manner of converting the capital stock of the constituent corporations into stock of the consolidated corporation, together with such other details as are deemed necessary to perfect the consolidation. The agreement must "be acknowledged by one of the executing officers of each of the consolidating corporations" before a person authorized to take acknowledgements of deeds "to be the respective act, deed and agreement of each of said corporations".

(R. S., 1930, ch. 56, sec. 63, p. 877.)

Submission of agreement to stockholders; recordation and filing of; when deemed to be act of consolidation.

The consolidation agreement must be submitted at a special meeting to the stockholders of each corporation involved, and if adopted by a majority of such stockholders, that fact must be certified thereon by the clerk or secretary of each corporation, "and the agreement so signed, acknowledged, adopted and certified, after it has been examined by the Attorney General, and been by him

(Maine - cont'd.)

certified to be properly drawn and signed and to be conformable to the constitution and laws of this state, shall be recorded in the registry of deeds in the county where the said consolidated corporation is located, and within sixty days after the day of the meeting at which such consolidation agreement is adopted by the stockholders, a copy thereof certified by such register shall be filed in the office of the Secretary of State, who shall enter the date of filing thereon, and on the original agreement, certified as aforesaid, to be kept by the consolidated corporation, and shall record said copy. From the time of filing the copy of such agreement in the office of the Secretary of State, said agreement shall be taken and deemed to be the agreement and act of consolidation of the said corporations and the said original consolidation agreement or a certified copy thereof shall be evidence of the existence of such consolidated corporation and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation".

(R. S., 1930, ch. 56, sec. 63, p. 877.)

Legal effect of consolidation.

When the agreement is signed, acknowledged, adopted, recorded and filed, "the separate existence of all of the constituent corporations, or all of such constituent corporations except the one into which such constituent corporations shall have been consolidated, shall cease, and the constituent corporations, whether consolidated into a new corporation

(Maine - cont'd.)

or merged into one of such constituent corporations, as the case may be, shall become the consolidated corporation by the name provided in said agreement, possessing all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and being subject to all the liabilities, restrictions and duties of each of such corporations so consolidated and all and singular the rights, privileges, powers, franchises and immunities of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, and all other things in action of or belonging to each of said corporations, shall be vested in the consolidated corporations; and all property, rights, privileges, powers, franchises and immunities, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective constituent corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in any of such constituent corporations shall not revert or be in any way impaired by reason thereof; provided, that all rights of creditors and all liens upon the property of any of said constituent corporations shall be preserved unimpaired, limited to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said consolidated corporation and may be enforced against

(Maine - cont'd.)

it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it". (R. S., 1930, ch. 56, sec. 63, p. 877.)

Procedure where location of consolidated corporation is different from that of constituent corporations.

"If the location of the consolidated corporation is not the same as that of the constituent corporations, then the clerk of the consolidated corporation shall within sixty days after such consolidation has become effective file a certificate of the consolidation, setting forth the names and locations of the consolidated and constituent corporations, in the registry of deeds of each county, other than that of the consolidated corporation, where the constituent corporations may be located." (R. S., 1930, ch. 56, sec. 63 pp 877-879.)

Dissenting stockholders.

The laws also contain detailed provisions under which stockholders in any of the constituent corporations who dissent or object to the consolidation, sale or lease, may obtain the value of the stock held by them. (R. S., 1930, ch. 56, secs. 63-74, pp. 877-881.)

MARYLAND.

Consolidation of banks and trust companies; transfer of resources and liabilities.

Any banking institution having capital stock incorporated under the laws of Maryland may consolidate with any other banking

(Maryland - cont'd.)

institution of the state having capital stock. The consolidation must be effected in the same manner provided for the consolidation of corporations under the general laws of the state, and the rights of any stockholder of any consolidating banking institution having capital stock who dissents from the plan of consolidation at the stockholders' meeting at which the said plan is submitted to the stockholders shall be the same as the rights of a stockholder of an ordinary business corporation.

No consolidation, however, can be made without the consent of the Banking Commissioner, and not then to defeat or defraud any of the creditors of any of the consolidating institutions. The laws also provide that a banking institution which is in good faith winding up its business for the purpose of consolidating with some other banking institution may transfer its resources and liabilities to the banking institution with which it is in process of consolidation. (Annotated Code of Maryland for 1924, Article 11, Section 59, as amended by laws of Maryland for 1931, Chapter 294, Page 761).

Provisions for the consolidation of corporations.

Since under the above statute the consolidation of banking institutions is regulated by the general law applicable to the consolidation of corporations, the substance of such provisions is set forth below.

Any two or more corporations having capital stock existing or formed under the laws of Maryland which have been or shall have been

(Maryland - cont'd.)

duly authorized by law to carry on in whole or in part any business of the same or a similar nature may consolidate, and by such consolidation form one new corporation. (Annotated Code of Maryland for 1924, Article 23, Section 33).

Proceedings for consolidation.

Such consolidations shall be made in the manner following:

There shall be an agreement of consolidation between the consolidating corporations giving: (a) the terms and conditions of the proposed consolidation; (b) the mode of carrying the same into effect; (c) the name of the new corporation; (d) the postoffice address of the place at which the principal office of the corporation in this State will be located as in the case of a certificate of incorporation and the name or names and postoffice address or addresses of the resident agent or agents who will be in charge thereof, as in the case of a certificate of incorporation; (e) the counties in this State in which any of the consolidating corporations own property, the title to which could be affected by the recording of an instrument among the land records, and if any of the consolidating corporations own such property in the City of Baltimore, the agreement of consolidation shall so state; (f) the number, names and addresses of the directors and the names of the officers, who shall act as such until their successors are duly chosen and qualified; (g) the amount of authorized capital stock of each consolidating corporation and the total amount of authorized capital

(Maryland - cont'd.)

stock of the new corporation and the number and par value of the shares; (h) the total amount of capital stock of the new corporation to be issued for stock of the consolidating corporations; (i) the restrictions, if any, imposed upon the transfer of the shares or of any of them; (j) if the capital stock is classified, the amount, par value, preferences, restrictions and qualifications of each class, specifying the amount of each class authorized and the amount of each class to be issued for stock of the consolidating corporations; (k) the manner of converting the capital stock of each of the consolidating corporations into stock of the new corporation; (l) all such other provisions and details which shall be deemed necessary to perfect the consolidation.

The agreement of consolidation must be first submitted to the boards of directors of the consolidating corporations, which must pass resolutions declaring that such consolidation is advisable and calling separate meetings of the stockholders of the respective corporations to take action thereon. Notice of the meetings of stockholders must be given in the manner provided by law and if the agreement of consolidation is approved by the affirmative vote of two-thirds of all shares (or if two or more classes of stock have been issued, two-thirds of each class) outstanding and entitled to vote of each consolidating corporation, the agreement must then be signed and acknowledged in the name and in behalf of the respective consolidating corporations by their respective president or vice-president and sealed with their respective corporate seals, attested by their

(Maryland - cont'd.)

respective secretaries or assistant secretaries.

The agreement thus executed must have attached to it the affidavits of the chairmen or secretaries of the respective stockholders' meetings, showing that the agreement was duly advised by the boards of directors and approved by the stockholders of their respective corporations. (Annotated Code of Maryland for 1924, Article 23, Section 33).

Legal effect of the consolidation.

When such agreement has been duly filed with the State Tax Commission and the proper fees paid all of the property and assets belonging to said consolidating corporations of whatever nature and description, and all the powers and rights and all debts and liabilities of the said consolidating corporations of whatever nature and description shall be devolved upon said new corporation, which shall be regarded as substituted by operation of law in the room and stead of said consolidating corporations. (Annotated Code of Maryland for 1924, Article 23, Section 34.)

Rights of dissenting stockholders.

Any stockholder of any corporation consolidating as aforesaid, who at such meeting voted against the agreement submitted, may within twenty days after the agreement of consolidation has been delivered to the State Tax Commission, but not afterwards, make upon the consolidated corporation a written demand for the payment of his stock

(Maryland - cont'd.)

and shall thereupon be entitled to receive the fair value thereof. If the stockholder and the corporation are unable to agree upon the fair value of the stock, or if having agreed, the corporation shall fail to tender the amount thereof, the dissenting stockholder may within thirty days after such written demand apply by petition to any court of equity, which must appoint three commissioners to determine the fair value of the stock without regard to depreciation which has occurred since the consolidation, and the award of said commissioners, or the majority of them, when confirmed by the court is final and conclusive on all parties except that the corporation and stockholder have the right of appeal to the court of appeals. (Annotated Code of Maryland for 1924, Article 23, Section 35).

Sale of all assets of a corporation.

Any corporation of the State of Maryland having capital stock may at any meeting duly called in accordance with law sell, lease, or exchange all of its property or assets as an entirety, including its good will and franchises to and with any corporation organized under the laws of Maryland, or of any other state which is duly authorized to acquire and hold such or similar property. An agreement containing the terms and conditions of such proposed sale, lease, or exchange must after approval by the board of directors be submitted for the approval of the stockholders of any corporation organized under the laws of the state, which shall be a party to such agreement at a duly called

(Maryland - cont'd.)

meeting, and if approved by the affirmative vote of two-thirds of all stock (or if two or more classes of stock have been issued of two-thirds of each class) outstanding and entitled to vote, such agreement shall be executed and in terms and conditions performed by the proper officers of the respective corporations. If any stockholder dissents at such meeting or votes against the agreement submitted he may within twenty days after such meeting, but not afterwards, require the payment to him by the corporation of the fair value of his stock, which, if not agreed upon, must be determined in a manner substantially similar to that provided in the case of consolidations. (Annotated Code of Maryland for 1924, Article 23, Section 36).

MASSACHUSETTS.Consolidation or merger of trust companies.

The laws provide that "No trust company shall be merged in or consolidated with another trust company except with the written approval of the commissioner and under the provisions of sections forty-two and forty-six of chapter one hundred and fifty-six, which are hereby made applicable to the sale or exchange of all the property and assets, including the good will and corporate franchise, of a trust company." (General Laws, ch. 172, sec. 44, as amended by Acts of 1931, ch. 11.)

Section 42 of Chapter 156 above referred to provides that

(Massachusetts - cont'd.)

"Every corporation may, at a meeting duly called for the purpose, by vote of two-thirds of each class of stock outstanding and entitled to vote, or by a larger vote if the agreement of association or act of incorporation so requires, change its corporate name, the nature of its business, the classes of its capital stock subsequently to be issued and their preferences and voting power, or make any other lawful amendment or alteration in its agreement of association or articles or organization, or in the corresponding provisions of its act of incorporation, or authorize the sale, lease or exchange of all its property and assets, including its good will, upon such terms and conditions as it deems expedient." (General Laws, ch. 156, sec. 42.)

Section 46 of Chapter 156 provides for the appraisal and payment of the value of stock held by any stockholder who at the stockholders' meeting referred to in section 42 voted against a sale, lease, exchange of property and assets, or a change in the nature of the business of the corporation. (General Laws, ch. 156, sec. 46.)

Legal effect of consolidation or merger.

"The charter of a trust company the business of which shall, on or after July first, nineteen hundred and twenty-two, be consolidated or merged with, or absorbed by, another bank or trust company, or the affairs of which shall, on or after said date, have been liquidated, shall be void except for the purpose of discharging

(Massachusetts - cont'd.)

existing obligations and liabilities." (General Laws, ch. 172, sec. 44, as amended by Acts of 1931, ch. 11.)

Office of consolidating or merging company may be maintained as branch office.

"Any office of a trust company the business of which has been taken over under section forty-four by, or any office of a national bank purchased by or merged in, a trust company located in the same town, may be maintained as a branch office of such corporation, if in the opinion of the commissioner public convenience will be served thereby." (General Laws, ch. 172, sec. 46, as amended by Acts 1922, ch. 396; Trust Company Pamphlet, 1929, sec. 46, p. 24.)

Consolidation or merger of savings banks.

Any savings bank may, if authorized at a special meeting by two thirds of its corporators, be dissolved and liquidate its affairs, "provided, that the (bank) commissioner is satisfied that such savings bank has given at least thirty days' notice to each other savings bank, located within twenty-five miles, of its willingness to enter into negotiations with a view to consolidation or merger and that no consolidation or merger with any such savings bank can be arranged upon terms satisfactory to the commissioner; * * *. If, however, the commissioner is satisfied that a consolidation or merger of the savings bank proposing liquidation

(Massachusetts - cont'd.)

with another savings bank located within twenty-five miles can be effected on terms approved by him and if he finds that such consolidation or merger is in the interest of the depositors of the savings banks concerned, such consolidation or merger may be effected upon such terms and subject to the direction of the commissioner, provided that a vote authorizing the same is passed by at least two-thirds of the corporators of each of the savings banks aforesaid at meetings specially called to consider the subject". (Laws of 1930, ch. 329, p. 377.)

MICHIGAN.

Consolidation under so-called "Bank Act" of bank or trust company with State bank; procedure.

"A bank or trust company which is in good faith winding up its business for the purpose of consolidating with some other state bank may transfer its assets and liabilities to the bank with which it is in process

- 70 -

(Michigan - cont'd.)

of consolidation." Before such consolidation can become effective each bank or trust company concerned must file with the banking commissioner, with the secretary of state and in the office of the clerk of the county in which the bank or trust company is located, certified copies of all proceedings had by its directors and stockholders. The stockholders proceedings must state that stockholders owning at least two-thirds of the stock voted in the affirmative on the proposition of liquidation and consolidation and must also contain a copy of the agreement entered into between the consolidating institutions. Upon filing such stockholders proceedings, the banking commissioner must make an examination of each bank or trust company, and his consent to or rejection of such liquidation and consolidation shall be based thereon. No consolidation can be made without the consent of the banking commissioner, and not then to defeat or defraud any of the creditors of any of the consolidating institutions. (Public Acts, 1929, Act 66, sec. 57; Banking Law Pamphlet, 1929, sec. 66, p. 40.)

State bank - consolidation with, or purchase of assets of national bank; absorption of State bank by national bank.

A State bank is given authority to consolidate with or purchase the assets and assume the liabilities of any national bank. In case any State bank is to be absorbed by a national bank, the banking commissioner must require to be filed in his office, with the secretary of state and in the office of the clerk of the county in which the bank is located, certified copies of all proceedings had by the stockholders of each bank,

(Michigan - cont'd.)

which must state that stockholders owning at least two-thirds of the capital stock voted in favor of liquidation and consolidation. Such stockholders' proceedings shall also recite an exact copy of the agreement entered into between the banks. The banking commissioner must also require the national bank to furnish a certified copy of the consent of the comptroller of the currency to such consolidation, liquidation or purchase. In the instance of a State bank absorbing a national bank, the transaction shall not become effective until each bank files with the banking commissioner certified copies of all proceedings had by its stockholders, which proceedings shall set forth that stockholders owning at least two-thirds of the capital stock voted in the affirmative on the proposition of such consolidation or purchase. A copy of the agreement entered into between the stockholders of each bank shall be set forth at length in such stockholders' proceedings. In addition, the national bank is required to furnish a certified copy of the consent of the comptroller of the currency to such liquidation or consolidation under section 5220 of the Revised Statutes of the United States. It is also the duty of the banking commissioner to make an examination of each bank and no such consolidation shall be made without the consent of the commissioner, and not then to defeat or defraud any of the creditors of either of the banks parties to the consolidation. The expenses of the examinations must be paid by the banks but can not exceed ten dollars per day for each examiner and the actual expenses incurred while making the examinations. (Public Acts, 1929, Act 66, sec. 59; Banking Law Pamphlet, 1929, sec. 68, pp. 41 and 42.)

(Michigan - cont'd.)

Legal effect of consolidation under so-called "Bank Act" of State bank or trust company with State bank.

"In the event of any consolidation heretofore or hereafter effected in any manner prescribed by this (bank) act, the consolidated corporation, by whatever name it may assume or be known, shall be a continuation of the entity of each and all of the corporations so consolidated, and as such entity shall hold, exercise and perform all rights, powers, privileges, duties and obligations appertaining to any and all trust, representative or fiduciary relationships of whatsoever nature of each of the consolidating corporations at the time of such consideration, whether the appointment of such consolidating corporation in any such trust, representative or fiduciary capacity shall have been by any court or otherwise and shall hold, exercise and perform all rights, powers, privileges, duties and obligations appertaining to any and all trust, representative or fiduciary relationships whatsoever as to or for which either or any one of the corporations so consolidating may have been appointed, nominated or designated by any will or conveyance or otherwise, whether or not such will, conveyance or other act intended to create such trust, representative or fiduciary relationship shall have been executed or have come into or taken effect at the time of such consolidation; and further, in the event of any such consolidation heretofore or hereafter effected, the consolidated corporation shall succeed to and become the owner of all property, rights, powers, franchises, privileges and appointments, whether existing, contingent or future, corporeal,

(Michigan - cont'd.)

or incorporeal, tangible, or intangible, of every nature whatsoever of each of the consolidating corporations, and if any of the consolidating corporations shall be acting or shall have been nominated, appointed, delegated or designated by any court, person or otherwise irrevocably or contingently to act as trustee, attorney, agent, executor, administrator, receiver, assignee, guardian, or in any fiduciary or representative capacity or relationship, or in any other capacity or relationship whatsoever, the consolidated corporation shall succeed to all of the property, rights, powers, privileges, duties and obligations appertaining to each fiduciary, representative or other capacity or relationship, without further or additional appointment, confirmation or designation whatsoever, and said consolidated corporation shall file with each court or other public tribunal, agency or officer by which any of the consolidating corporations shall have been so appointed and designated, and in the file of each estate, suit or proceeding in which so then acting, a statement setting forth the fact of such consolidation, the name of each other corporation entering therein, the name of the consolidated corporation and its place of business, capital, and surplus; but nothing herein contained is intended or shall be construed to limit or restrict in any wise the powers and authority of any court of competent jurisdiction in respect of any matter arising by reason of any such condition." (Public Acts, 1929, Act 66, sec. 57; Banking Law Pamphlet, 1929, sec. 66, pp. 40 and 41.)

(Michigan - cont'd.)

Consolidation under so-called "Trust Company Act" of trust companies, or of State or national bank with trust company authorized to engage in banking business.

Any two or more trust companies, or a State or national bank and "a corporation organized or existing under this (trust company) act, and which has obtained the consent of the Commissioner of the banking department to engage in the banking business, may consolidate in pursuance of authority granted by the affirmative vote of the holders of at least two-thirds of the capital stock of such corporation, in accordance with either of the following methods:

(a) by the dissolution of each of the consolidating corporations and the conveyance of all of their assets and liabilities to a new corporation which must assume all of the liabilities, duties and obligations of each of the consolidating corporations. The capital and surplus of the new corporation shall be equivalent to the aggregate of the capitals and surplus of the consolidating corporations.

(b) by the acquisition by one corporation of all the assets and liabilities of one or more other corporations, and the dissolution of each of the other corporations. The acquiring corporation shall deliver to the dissolvent corporation or corporations such cash, stock, or property as may be provided in the agreement for consolidation, and shall assume all of the liabilities, duties and obligations of each of the

(Michigan - cont'd.)

dissolving corporations. Each dissolving corporation shall distribute pro rata to its stockholders any cash or property or stock received by it.

No such consolidation is valid unless and until it is approved by the banking commissioner and not then to defeat or defraud any creditors. Such consolidation does not become effective, until each of the consolidating corporations files with the banking commissioner, with the secretary of state, and in the office of the county clerk of the county in which the corporation is located, certified copies of all proceedings had by its directors and stockholders, and the stockholders' proceedings of each such corporation shall set forth that two-thirds of the stockholders voted for the consolidation. Such stockholders' proceedings shall also contain a copy of the agreement for consolidation entered into by the consolidating corporations.

If the consolidation is between a State or national bank and a trust company, the directors' and stockholders' proceedings shall set forth the proportion of the capital of the new or acquiring corporation which will be allocated to the banking business of such corporation. Such allocation is subject to the approval of the banking commissioner.

"For the purposes of this act the words 'consolidate', 'consolidation', 'consolidating', and 'consolidated' shall be construed to include in their meanings the meanings of

(Michigan - cont'd.)

the words 'merge', 'merger', 'merging' and 'merged', respectively." (Public Acts, 1929, Act 67, sec. 30; Banking Law Pamphlet, 1929, sec. 143, pp. 72 and 73.)

Legal effect of consolidation under so-called "Trust Company Act" of trust companies, or of State or national bank with trust company authorized to engage in banking business.

"In the event of any consolidation heretofore or hereafter effected in any manner prescribed by this (trust company) act, the consolidated corporation shall have, possess and be the owner of all property, rights, powers, franchises, privileges and appointments whether existing, contingent or future, corporeal or incorporeal, tangible or intangible, of every nature whatsoever of each of the consolidating corporations, and if any of the consolidating corporations shall be acting or shall have been nominated, appointed, delegated or designated by any court, person or otherwise irrevocably or contingently to act as trustee, attorney, agent, executor, administrator, receiver, assignee, guardian, or in any fiduciary or representative capacity or relationship, or in any other capacity or relationship whatsoever, the consolidated corporation shall have, possess and be vested with all of the property, rights, powers, privileges, duties and obligations appertaining to each such fiduciary, representative or other capacity or relationship, without further or additional appointment, obligation or designation whatsoever. In the event of any such consolidation heretofore or

(Michigan - cont'd.)

hereafter effected in any manner aforesaid, the consolidated corporation, by whatever name it may assume or be known, shall be a continuation of the entity of each and all of the corporations so consolidated, and as such entity shall hold, exercise and perform all rights, powers, privileges, duties and obligations appertaining to any and all trust, representative or fiduciary relationships of whatsoever nature of each of the consolidating corporations at the time of such consolidation, whether the appointment of such consolidating corporation in any such trust, representative or fiduciary capacity shall have been by any court or otherwise and shall hold, exercise and perform all rights, powers, privileges, duties and obligations appertaining to any and all trust, representative or fiduciary relationships whatsoever as to or for which either or any one of the corporations so consolidating may have been appointed, nominated or designated by any will, or conveyance or otherwise, whether or not such will, conveyance or other act intended to create such trust, representative or fiduciary relationship shall have been executed or have come into or taken effect at the time of such consolidation.

"Said consolidated corporation shall file with each court or other public tribunal, agency or officer by which any of the consolidating corporations shall have been so appointed and designated, and in the file of each estate, suit or proceeding in which so then acting, a statement setting forth the

(Michigan - cont'd.)

fact of such consolidation, the name of each other corporation entering therein, the name of the consolidated corporation and its place of business, capital and surplus; but nothing herein contained is intended or shall be construed to limit or restrict in any wise the powers and authority of any court of competent jurisdiction in respect of any matter arising by reason of such condition." (Public Acts, 1929, Act 67, Sec. 30; Banking Law Pamphlet, 1929, sec. 143, pp. 72 and 73.)

Purchase of assets by State bank or trust company of another bank or trust company.

If any State bank or trust company purchases the capital stock of another bank or a trust company for the purpose of retiring such stock and takes over all assets and assumes all liabilities, the banking commissioner must require the stockholders of the bank or trust company selling its business to authorize such sale by a vote of the stockholders owning at least two-thirds of the capital stock; and the commissioner

(Michigan - cont'd.)

may, in his discretion, require authorization of such purchase by the acquiring bank or trust company by a two-thirds vote of its directors or stockholders, and may in his discretion make an examination of any of the institutions involved before consenting to the transaction. Certified copies of all stockholders and directors' proceedings must be filed with the banking commissioner, the secretary of state and in the office of the clerk of the county in which the institutions are located, and shall contain in detail the particulars relating to such sale and purchase, and a copy of any agreement entered into between the stockholders and directors of the institutions. No sale or purchase shall be made without the consent of the commissioner and not then to defeat or defraud any of the creditors of any of the institutions. The expenses of any examinations must be paid by the institutions and shall not exceed ten dollars per day for each examiner and the actual expenses incurred while making the examinations. (Public Acts, 1929, Act 66, sec. 58, and Act 67, sec. 31; Banking Law Pamphlet, 1929, sec. 67, p. 41 and sec. 144, p. 74.)

MINNESOTA.Consolidation of banks and trust companies.

The laws of Minnesota authorize the consolidation of State banks or trust companies with other State banks or trust companies "operating in the same city or village" under such charter as the boards of directors of the consolidating corporations may determine. All consolidations must be made in the manner prescribed below and when completed, the consolidated corporation "shall be governed and conducted in all

(Minnesota - cont'd.)

other respects" by the statutes covering the operation of a corporation of the same class as the corporation whose charter was adopted by the consolidated corporation. (Laws of 1925, ch. 156, sec. 1, Act approved Apr. 8, 1925; Banking Law Pamphlet, 1929, sec. 1, p. 25.)

Agreement for consolidation, terms of; capital stock; name.

A consolidation agreement may be made by the boards of directors of the institutions involved and this agreement must prescribe the terms and conditions of and specify the parties to, the consolidation. The agreement must also prescribe the manner of carrying the consolidation into effect, the name of the consolidated corporation, which may be the name, in whole or in part, of any of the constituent corporations, and the authorized capital stock of the resulting institution, which can not exceed the aggregate authorized capital stock of all of the consolidating corporations; and the city or village in which the principal place of business will be carried on must be specified. The persons who will constitute the board of directors of the consolidated corporation must also be named, but the number and qualifications of such directors shall be in accordance with the statutes relating to the number and qualifications of directors of the class of corporation under whose charter the consolidation is made. (Laws of 1925, ch. 156, sec. 2, Act approved April 8, 1925; Banking Law Pamphlet, 1929, sec. 2, p. 25.)

Approval of superintendent of banks necessary.

The consolidation agreement and certified copies of the proceedings of the boards of directors authorizing the making of the agreement must be submitted to the superintendent of banks for his approval; and the agreement does not become effective until he has approved it.

(Minnesota - cont'd.)

After such documents are received, the superintendent within twenty days must take action on them "and he shall be entitled to such further information from the consolidated corporation as he may request or as he may obtain upon a hearing directed by him." (Laws of 1925, ch. 156, sec. 3, Act approved April 8, 1925; Banking Law Pamphlet, 1929, sec. 3, p. 25.)

The laws of Minnesota also provide that "With the written consent of the examiner, (superintendent of banks), it may effect a transfer of its assets and liabilities to another bank for the purpose of consolidating therewith, but the same shall be without prejudice to the creditors of either." (General Statutes, 1923, sec. 7692; Banking Law Pamphlet, 1929, p. 25.)

Submission to and approval by stockholders of agreement, certificate by superintendent of banks.

Either before or after the agreement has been approved by the superintendent of banks, it must be submitted to a special meeting of the stockholders of each corporation involved and it does not become binding upon the consolidated corporation until it has been approved "by a vote or ballot of the stockholders, holding at least a majority of the amount of stock of the respective corporations". Proof of the holding of such meetings and such action as was taken must be made to the superintendent. After the agreement has been approved by the stockholders and the superintendent, "the latter shall issue a certificate reciting that such corporations have complied with the provisions of this act and declaring the consolidation of such corporations; the name of the consolidated

(Minnesota - cont'd.)

corporation, the amount of capital stock thereof and the names of the first board of directors and the place of business of such consolidated corporation, which shall be within the city or village where any one of said constituent corporations shall have been previously authorized to have its place of business". (Laws of 1925, ch. 156, sec. 4, Act approved April 8, 1925; Banking Law Pamphlet, 1929, sec. 4. pp. 25 and 26.)

When incorporation complete and corporate existence begins.

When the superintendent of banks has issued the certificate above described and it has been filed for record in the office of the Secretary of State, and in the office of the Register of Deeds for the county in which the consolidated corporation will have its principal place of business, "such incorporation shall be deemed to be complete, and such consolidated corporation shall from the date of such certificate have such term of corporate existence as may be therein specified not exceeding the longest unexpired term of any constituent corporation." The certificate of the superintendent is prima facie evidence that all the provisions of the so-called consolidation act have been complied with and "shall be conclusive evidence of the existence of such consolidated corporation". (Laws of 1925, ch. 156, sec. 4, Act approved April 8, 1925; Banking Law Pamphlet, 1929, sec. 4, p. 26.)

Legal effect of consolidation.

"Upon the consolidation of any such corporation, with any one or more corporations, into a consolidated corporation, as herein provided, the corporate existence of each former corporation shall be merged

(Minnesota - cont'd.)

into that of the consolidated corporation, and all and singular its rights, privileges, and franchises, and its right, title and interest in and to all property of whatsoever kind, whether real, personal, or mixed, and all things in action, and every right, privilege interest or asset of conceivable value or benefit then existing which would inure to it under an unmerged or unconsolidated existence shall be deemed fully and finally transferred to and vested in the consolidated corporation without further act or deed and such last mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the former corporation from which it was, by operations of this act, transferred. Its rights, obligations, and relations to any person, creditor, depositor, trustee, or beneficiary of any Trust, shall remain unimpaired and the corporation into which it shall have been consolidated shall succeed to such relations, obligations, trusts, and liabilities and shall execute and perform all such trusts in the same manner as though it had itself assumed the relation or trust, or incurred the obligation or liability; and its liabilities and obligations to creditors existing for any cause whatsoever shall not be impaired by such consolidation, nor shall any obligation or liability of any stockholder in any corporation, which is party to such consolidation, be affected by any such consolidation, but such obligations and liabilities shall continue as fully and to the same extent as existed before such consolidation. The consolidated corporation shall become without further act or deed, the successor of the consolidating corporations in

(Minnesota - cont'd.)

any and all fiduciary capacities, in which each such consolidated corporations may be acting at the time of such consolidation, and shall be liable to all beneficiaries as fully as if such consolidating corporations had continued its separate corporate existence. If any consolidating corporation shall be nominated and appointed or shall have been nominated or appointed as executor, guardian, administrator, agent or trustee, or in any other trust relation or fiduciary capacities in any will, trust agreement, trust conveyance or any other conveyance, order or judgment of any Court, or any other instrument whatsoever prior to such consolidation (even though such will or other instrument shall not become operative or effective until after such consolidation shall have become effective) every such office, trust relationship, fiduciary capacity, and all of the rights, powers, privileges, duties, discretions and responsibilities so provided to devolve upon, vest in, or inure to the corporation so nominated or appointed, shall fully and in every respect devolve upon, vest in, and inure to, and be exercised by the consolidated corporation, whether there be one or more successive mergers or consolidations." (Laws of 1925, ch. 156, sec. 5, Act approved April 8, 1925; Banking Law Pamphlet, 1929, sec. 5, pp. 26 and 27.)

Consolidation does not affect pending judicial proceedings against consolidating corporations.

Any judicial proceeding in which any consolidating corporation is a party is not abated or discontinued because of the consolidation, but it may be prosecuted to final disposition, or the consolidated corporation

(Minnesota - cont'd.)

may be substituted as a party and judgment rendered for or against it.

(Laws of 1925, ch. 156, sec. 6, Act approved April 8, 1925; Banking Law Pamphlet, 1929, sec. 6, p. 27.)

Rights of stockholders objecting to consolidation.

The so-called consolidation act also contains detailed provisions with reference to the rights of stockholders of any of the consolidating corporations in case they object to the consolidation.

(Laws of 1925, ch. 156, sec. 7, Act approved April 8, 1925; Banking Law Pamphlet, 1929, sec. 7, p. 27.)

MISSISSIPPI.No provisions covering consolidations, mergers, etc.

The laws of Mississippi do not contain any provisions specifically covering the consolidation, merger, etc. of State banks or trust companies.

MISSOURI.Banks, Sale of business to, or consolidation or merger with, another bank or trust company.

"Any bank may sell the whole of its business, or the whole of the business of any of its departments, to any other bank or trust company, state or national, or may for the purpose of consolidating or merging with another bank or trust company, state or national, transfer its affairs, assets and liabilities to the bank or trust company with which it intends to consolidate or merge; * * *." (Laws of 1927, sec. 11. p. 232; Rev. Stats. of Mo. 1929, sec. 5379.)

(Missouri - cont'd.)

Consent of stockholders, when necessary.

Unless such sale, merger or consolidation is deemed by the commissioner of finance to be a public necessity or advantage, it can be entered into only after obtaining the consent of two-thirds of the stockholders. This consent may either be in writing, executed and acknowledged by such stockholders, or by a special meeting of the stockholders, prior notice of which, stating the time, place and object, must be given to each stockholder of record. (Laws of 1927, sec. 11, p. 232; Rev. Stats. of Mo., 1929, sec. 5379.)

Consent of Commissioner of Finance finally necessary.

"No such sale, purchase, merger or consolidation shall be made without the consent of the commissioner of finance", and he must, "before granting his consent, require each of the banks or trust companies to file certified copies of all proceedings of their directors' and stockholders' meetings relating to the transaction, showing a full compliance with the requirements of this section, and also copies of any agreement or agreements which may have been entered into between said banks or trust companies." (Laws of 1927, sec. 11, p. 232; Rev. Stats. of Mo., 1929, sec. 5379.)

Commissioner of finance may examine institutions involved.

The commissioner of finance, before granting his consent to such sale, purchase, merger or consolidation, may examine each of the banks or trust companies involved, the expenses of

(Missouri - cont'd.)

which must be paid by such banks or trust companies. (Laws of 1927, sec. 11, p. 232; Rev. Stats. of Mo. 1929, sec. 5379.)

Rights of creditors not affected.

It is further provided that "such sale, merger, or consolidation shall in no wise impair, defeat or defraud any creditor of said bank or trust company or either of them".

(Laws of 1927, sec. 11, p. 232; Rev. Stats. of Mo. 1929, sec. 5379.)

Trust companies - merger or consolidation with each other.

The laws of Missouri also provide that any trust company organized under such laws may be merged in or consolidated with any other such trust company or companies to form a single corporation. (Laws of 1919, p. 160; Rev. Stats. of Mo., 1929, sec. 5470.)

(Missouri - cont'd.)

Agreement to merge or consolidate; authorization for; execution and acknowledgement.

Each trust company which is a party to a merger or consolidation, upon being first authorized by a majority of all the members of its board of directors, must enter into an agreement with the other trust companies which are parties to the merger or consolidation, providing for such merger or consolidation. The agreement must be in writing, and executed and acknowledged under the seals of the trust companies involved in such form as is required by law for the execution and acknowledgement of instruments conveying real estate. (Laws of 1919, p. 160; Rev. Stats. of Mo., 1929, sec. 5471.)

Merger agreement; terms, conditions and contents of.

The merger agreement must set out:

- (1) The names of the merging trust companies;
- (2) The terms and conditions of such merger, and the manner of carrying it into effect;
- (3) The corporate name of the resulting trust company, which may be the name, in whole or in part, of any of the merging trust companies;
- (4) The names of the persons who are to constitute the board of directors, provided that the number and qualifications of such directors shall be in accordance with the provisions of law relating to the number and qualifications of directors of trust companies;
- (5) The agreement shall provide further that the directors named shall, after qualifying, divide themselves into certain classes, and that

(Missouri - cont'd.)

they may adopt new by-laws for the consolidated trust company. (Laws of 1919, p. 160; Rev. Stats. of Mo., 1929, sec. 5472.)

Consolidation agreement; terms and contents of.

The consolidation agreement must set forth:

- (1) The terms and conditions of the consolidation and the method of carrying it into effect;
- (2) The name of the resulting corporation, which may be the name, in whole or in part of any of the consolidating corporations;
- (3) The name of the city or town and county in Missouri in which the consolidated corporation will be located;
- (4) The amount of the capital stock of the corporation;
- (5) The number of shares into which the stock has been divided and the par value thereof;
- (6) That the shares have been subscribed by the persons named therein as the first board of directors as trustees for the stockholders of the consolidating companies, and that all of the capital stock has been paid-up either in lawful money of the United States, or by the capital stock, surplus and undivided profits of the consolidating companies, provided that such part of the capital as is paid for in the latter manner, shall be received only for the amount which may be approved by the bank commissioner;
- (7) That the custody of all such cash and property has been placed in the care and control of the persons named as the board of directors;
- (8) The number, names and addresses of the directors and that said directors shall, after qualifying, divide themselves into classes in

(Missouri - cont'd.)

accordance with the provisions of law and that they may adopt new by-laws for the consolidated company;

(9) The purposes for which the consolidated company is formed, which shall be limited to the purposes then prescribed by law for trust companies;

(10) The number of directors necessary to constitute a quorum;

(11) The duration of the company;

(12) Such other provisions as may be necessary fully to set out the rights of the consolidating companies, their stockholders and creditors and the plan of such consolidation. (Laws of 1919, p. 161; Rev. Stats. of Mo., 1929, sec. 5473.)

Consolidation or merger agreement and directors' proceedings as evidence.

A copy of the minutes of the proceedings of the board of directors authorizing the making of the consolidation or merger agreement and a copy of such agreement certified and verified by the secretaries of the trust companies involved "shall be presumptive evidence of the action of such respective boards". (Laws of 1919, p. 161; Rev. Stats. of Mo., 1929, sec. 5474.)

Consolidation or merger agreement and directors' proceedings must be submitted to and approved by bank commissioner.

A copy of the consolidation or merger agreement and certified and verified copies of the proceedings of the respective boards of directors must be submitted in duplicate to the bank commissioner for approval or disapproval. In case the bank commissioner disapproves the agreement, "the companies which are parties thereto may submit another plan for a merger or consolidation under the provisions of this chapter." (Laws of 1919, p. 161;

(Missouri - cont'd.)

Rev. Stats. of Mo., 1929, sec. 5475.)

Commissioner must certify finding within thirty days.

The approval or disapproval of the bank commissioner of the agreement must be certified by him in writing to each trust company which is a party to the merger or consolidation within thirty days after the agreement has been submitted to him. (Laws of 1919, p. 162; Rev. Stats. of Mo., 1929, sec. 5476.)

Agreement must be submitted to stockholders within sixty days after its approval.

In case the agreement is approved by the bank commissioner, it must, within sixty days after such approval, be submitted at a special meeting to the stockholders of each trust company. Notice of the time, place and object of this meeting must be given two weeks in advance to each stockholder and must also be likewise published once a week for at least two successive weeks in a newspaper in each of the counties in which any of the consolidating or merging trust companies has its place of business, and for the purpose of such notice the city of St. Louis is considered as a county. (Laws of 1919, p. 162; Rev. Stats. of Mo., 1929, sec. 5477.)

Agreement binding if two-thirds of stockholders of respective companies vote favorably.

If two-thirds of the stockholders of each of the consolidating or merging trust companies vote in favor of the agreement "then such agreement shall be valid and binding upon such trust companies". (Laws of 1919, p. 162; Rev. Stats. of Mo., 1929, sec. 5478.)

(Missouri - cont'd.)

When merger agreement becomes effective.

A copy of the minutes of the stockholders' meetings at which an agreement for a merger has been approved, with a copy of such agreement and the bank commissioner's approval thereof, all certified and verified by the secretaries of the respective stockholder's meetings, must be filed with the bank commissioner and with the secretary of each of the trust companies involved. An identical copy of such minutes, agreement and approval, together with an affidavit of the secretary of the resulting company showing the filing of such copies with the bank commissioner and the secretary of each of the merging companies, "shall be filed for record and recorded in the office of the recorder of deeds of each county wherein is located the place of business of each trust company which is party to such agreement, it being understood that the City of St. Louis shall be considered as a county in regard to the filing and recording of such copies". When such copies have been "filed for record in the office of the recorder of deeds, the agreement and merger shall become effective according to its terms." (Laws of 1919, p. 162; Rev. Stats. of Mo., 1929, sec. 5479.)

When consolidation agreement becomes effective.

A copy of the minutes of the stockholders meetings of the consolidating companies at which the consolidation agreement was approved, with a copy of the agreement and the bank commissioner's approval thereof, all certified and verified by the secretaries of such stockholders meetings, must be filed in the office of the bank commissioner and with the secretary of each of the consolidating trust companies. A like copy of such minutes, agreement and approval, with an affidavit of the secretary

(Missouri - con'td.)

of one of the consolidating companies showing the filing of such copies with the bank commissioner and the secretary of each of the consolidating companies, must also be filed and recorded in the office of the recorder of deeds in each county wherein is located the place of business of each of the consolidating companies. The city of St. Louis is considered as a county as far as the filing for record with the recorder of deeds of such copies is concerned. Upon the filing with the recorder of deeds of the agreement, with the approval of the bank commissioner, "and the proceedings above prescribed, the agreement for the consolidation of the trust companies, which are parties thereto, shall take effect according to its terms, and the consolidation shall thereupon be complete, provided the legal fees for the incorporation of such consolidated trust companies shall have been paid to the state bank commissioner, the same as if a new corporation were organized for the same amount of capital authorized for such consolidated company." (Laws of 1919, p. 163; Rev. Stats. of Mo., 1929, sec. 5480.)

New certificates of stock, when resulting company shall issue.

The resulting company may require the return of the original certificates of stock held by the stockholders in either the merging or consolidating companies, unless such certificates have been lost or destroyed, "and shall cancel said original certificates and issue in lieu thereof new certificate or certificates for such number of its own shares as such stockholders may be entitled to receive under the agreement providing for the merger or for the consolidation and according to the terms

(Missouri - cont'd.)

and conditions contained in the agreement for such merger or such consolidation;" but if the original certificates have been lost or destroyed, such loss or destruction must be proved by affidavit or otherwise to the satisfaction of the board of directors of the resulting company, before new certificates in lieu thereof can be issued. (Laws of 1919, p. 163; Rev. Stats. of Mo., 1929, sec. 5481.)

Stockholders dissenting to merger or consolidation; rights, privileges, etc.

There are also detailed provisions giving to stockholders who object to or do not vote for a merger or consolidation the right to receive a reasonable value for their stock, and prescribing the manner for determining the value of the stock, the time within which the dissenting stockholders must assert their rights, the procedure for doing so, etc. (Laws of 1919, pp. 164-166; Rev. Stats. of Mo., 1929, secs. 5482-5485.)

Legal effect of merger or consolidation.

(a) Corporate existence merged into new company - title to property, etc. - "The corporate existence of the merging company or companies shall be merged into that of the receiving trust company, or in the event of consolidation, the corporate existence of the consolidating companies shall be merged into that of the consolidated trust company; and all and singular the rights, privileges and franchises, and the rights, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of conceivable value or benefit then existing to which either of such companies so merging or consolidating shall be entitled at

(Missouri - cont'd.)

law or inequity, shall be fully and finally and without any right of reversion, transferred to and vested in the receiving trust company in case of merger, or in the consolidated trust company, in case of a consolidation, without further act or deed, and such receiving company or such consolidated company shall have and hold the same in its own corporate right as fully as the same was possessed and held by either of the merging or consolidating corporations from which such rights were, by operation of the provisions of this article, transferred." (Laws of 1919, p. 166; Rev. Stats. of Mo., 1929, sec. 5486.)

(b) Trust and fiduciary powers, passage of to new company. -

"The receiving corporation under merger of (or) the new corporation under consolidation, shall become, without further act or deed, the successor of the merging or of the consolidating corporation, in any and all fiduciary capacities in which such merging or consolidating corporation may be acting at the time of such merger or consolidation, and shall be liable to all beneficiaries as fully as if such receiving or consolidating corporations had continued their separate corporate existence. All and singular the rights and privileges and the right, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of conceivable value or benefit then existing to which either of such companies so merging or consolidating shall be entitled at law or in equity, in any fiduciary capacity shall fully and finally, and without any right of reversion, be transferred to and vested in the receiving or consolidated

(Missouri - cont'd.)

corporation, without further act or deed; and such receiving or consolidated corporation shall have and hold the same as fully and in the same fiduciary capacity and for the same purposes, and with the same powers, duties, responsibilities and discretion, as the same were possessed and held by the merging or consolidating corporation from which they were, by operation of the provisions of this article, transferred.

"If any trust company which merges with or shall have merged with another, or if any trust company which consolidates with or shall have consolidated with another or other trust companies to form a consolidated trust company, shall be nominated and appointed or shall have been nominated or appointed as executor, guardian, curator, administrator, agent or trustee or in any other trust relation or fiduciary capacity in any will, trust agreement, trust conveyance or any other conveyance or instrument whatsoever prior to such merger or consolidation (even though such will, trust agreement, trust conveyance, or other conveyance or instrument shall not become operative or effective until after such merger or consolidation shall have become effective) every such office, trust relationship, fiduciary capacity and all of the rights, powers, privileges, duties, discretions and responsibilities, so provided to devolve upon, vest in, or inure to the company so nominated or appointed, shall fully and in every respect devolve upon, vest in and inure to and be exercised by the trust company into which such company so designated in such capacity shall be or shall have been merged, or shall devolve upon, vest in, inure to and be exercised by the consolidated trust company

(Missouri - cont'd.)

formed by any consolidation to which the trust company so designated shall have been a party, whether there be one or more successive mergers or consolidations." (Laws of 1919, pp. 166 and 167; Rev. Stats. of Mo., 1929, secs. 5487-5490.)

(c) Obligations of consolidating companies unaffected.- "The rights, obligations and relations of either of the merged companies or of the consolidating companies, in respect to any person, creditor, depositor, trustee or beneficiary of any trust shall remain unimpaired, and the receiving corporation or the consolidated corporation shall, when the merger or consolidation becomes effective, as in this chapter provided, succeed to all such relations, obligations, trusts, powers and liabilities and shall execute and perform all duties in relation thereto in the same manner as though it had itself assumed or been clothed with such relation, trust or power, or had itself incurred the obligation or liability; and the liabilities and obligations to creditors of either of the merged companies, or of either of the consolidating companies shall not be impaired by such merger or consolidation; nor shall any obligation or liability of any stockholder in any corporation which is a party to such merger or consolidation be affected by any such merger or consolidation, but such obligations and liabilities shall continue as fully and to the same extent as existed before such merger or consolidation." (Laws of 1919, p. 167; Rev. Stats. of Mo., 1929, sec. 5488.)

Merger or consolidation does not affect pending judicial proceedings against consolidating companies.

Any judicial proceeding in which any merging or consolidating

(Missouri - cont'd.)

company is a party is not affected because of the merger or consolidation, but it may be prosecuted to final disposition, or the resulting company may be substituted as a party and judgment rendered for or against it.

(Laws of 1919, p. 167; Rev. Stats. of Mo., 1929, sec. 5489.)

MONTANA.Definition of word "bank".

The word "bank" as used in the laws of Montana, applies to any incorporated bank, trust company or savings bank. (Laws of 1927, ch. 89, sec. 2, Act approved March 8, 1927; Banking Law Pamphlet, 1927, sec. 2, pp. 7 and 8.)

Consolidation of banks.

"Any two (2) or more banks may, with the approval of the Superintendent of Banks, consolidate into one (1) 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, 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 (10) days prior to said meeting; provided, that the stockholders may unanimously waive such notice and may consent to such meeting and consolidation in writing." (Laws of 1927, ch. 89, sec. 94, Act approved March 8, 1927; Banking Law Pamphlet, 1927, sec. 94, p. 56.)

(Montana - cont'd.)

Capital required of consolidated corporation.

The capital stock of the consolidated bank must be not less than that required under law for the organization of a bank of the class of the largest consolidating bank. (Laws of 1927, ch. 89, sec. 94, Act approved March 8, 1927; Banking Law Pamphlet, 1927, sec. 94, p. 56.)

Legal effect of consolidation.

"The assets and liabilities of the consolidated bank shall be reported by the surviving bank. All the rights, franchises, and interests of said bank so consolidated in and to every specie 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 consolidating without other instrument of transfer, and 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 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 (3) years after merger and shall not then dissolve without the approval of the Superintendent of Banks." (Laws of 1927, ch. 89, sec. 94, Act approved March 8, 1927; Banking Law Pamphlet, 1927, sec. 94, p. 57.)

NEBRASKA.

Consolidation of banks - no provisions covering trust companies.

The laws of Nebraska do not contain any provisions covering the

- LOG -

(Nebraska - cont'd.)

consolidation or merger of trust companies; but, with reference to banks, the laws provide that "Any bank which is in good faith winding up its business for the purpose of consolidating with some other bank, may transfer its resources and liabilities to the bank with which it is in process of consolidation but no consolidation shall be made without the consent of the department of trade and commerce, nor shall such consolidation operate to defeat the claim of any creditor or hinder any creditor in the collection of his debt against such banks or either of them." (Comp. Stats. of Nebraska, 1929, sec. 3-160; Banking Law Pamphlet, 1929, sec. 8021, p. 20.)

NEVADA.No provisions covering consolidation, merger, etc.

The laws of Nevada do not contain any provisions specifically covering the consolidation, merger, etc. of banks and trust companies.

NEW HAMPSHIRE.Consolidation of mutual savings banks with trust or banking companies or with other savings banks.

The laws of New Hampshire do not contain any provisions covering the merger or consolidation of so-called trust or banking companies or savings banks with each other; but the laws do provide that "Any mutual savings bank incorporated under the laws of this state, or a majority of the members thereof, and any trust or banking company, or any other savings bank, incorporated under the laws of this state, or a majority of the members or the holders of a majority of the stock thereof, may

(New Hampshire - cont'd.)

apply by petition to the superior court in the county in which either of said petitioning corporations is located, or to any justice of said court in vacation, for a decree authorizing a union of said savings bank with said trust or banking company, or other savings bank, and a dissolution of said first named savings bank in the manner herein provided". (Laws of 1917, ch. 54, sec. 1; Public Laws, 1926, ch. 263, sec. 1; Banking Law Pamphlet, 1929, ch. 263, sec. 1, p. 30.)

Notice and hearing on petition; reference to bank commissioner by court.

When the petition for consolidation is filed, the court or justice "shall fix a time for hearing thereon, and after due notice by publication to all parties interested, and such other notice as the court may order, and hearing the court shall refer said petition to the bank commissioner". (Laws of 1917, ch. 54, sec. 2; Public Laws, 1926, ch. 263, sec. 2; Banking Law Pamphlet, 1929, ch. 263, sec. 2, p. 30.)

Hearing by bank commissioner; character of duties after.

The bank commissioner, after notice and hearing, must ascertain "whether the public convenience and advantage and the interest of said institutions, their members, stockholders and depositors, will be promoted by the proposed union." (Laws of 1917, ch. 54, sec. 3; Public Laws, 1926, ch. 263, sec. 3; Banking Law Pamphlet, 1929, ch. 263, sec. 3, p. 30.)

Appraisal of assets and determination of amount due depositors.

If the bank commissioner approves the petition, "he shall appraise the assets and ascertain the liabilities of said savings bank, and determine the net value thereof for the purpose of liquidation, the total number of depositors therein and the amount of their respective deposits,

(New Hampshire - cont'd.)

and, upon such appraisal and findings, determine the proportionate share of the net deposits due such depositors". The commissioner is authorized to employ expert or other assistance at the expense of the petitioners in making such appraisal. (Laws of 1917, ch. 54, secs. 3 and 4; Public Laws, 1926, ch. 263, secs. 4 and 5; Banking Law Pamphlet, 1929, ch. 263, secs. 4 and 5, p. 30.)

Report to court of findings and determinations.

The Commissioner must "forthwith make a report to the court of his findings and determinations, and of the expense of said hearings, appraisal and findings. Upon due notice to all parties of record the court shall thereupon enter a final decree." (Laws of 1917, ch. 54, sec. 5; Public Laws, 1926, ch. 263, sec. 6; Banking Law Pamphlet, 1929, ch. 263, sec. 6, p. 30.)

Decree of Court, extent of; depositor's option.

After receiving such report, if "it appears that the public convenience and advantage and the interest of said several parties will be promoted by the action sought by said petition the court shall by decree fix a date upon which the funds of the depositors in the savings bank to be liquidated shall cease to draw interest, and shall authorize the trustees or directors of said savings bank to sell and convey all of its assets to said trust or banking company or other savings bank at the value fixed by such appraisal, and to pay said depositors the several amounts found to be their due". Each depositor in the mutual savings bank is given the option to receive in cash from the sale of its assets the amount found to

(New Hampshire - cont'd.)

be due him or to accept a deposit in the consolidated institution for the same amount without loss of interest. (Laws of 1917, ch. 54, sec. 6; Public Laws, 1926, ch. 263, secs. 7 and 8; Banking Law Pamphlet, 1929, ch. 263, secs. 7 and 8, pp. 30 and 31.)

Unclaimed deposits and dividends.

The laws contain provisions prescribing the manner of disposing of unclaimed deposits and dividends in the consolidating mutual savings bank at the time of the consolidation. (Laws of 1917, ch. 54, sec. 7; Public Laws, 1926, ch. 263, secs. 9 and 10; Banking Law Pamphlet, 1929, ch. 263, secs. 9 and 10, p. 31.)

Other orders court may make.

"The court shall make all other and further orders and decrees in respect to the winding up of the affairs of said liquidated savings bank and its dissolution that may be necessary for the protection of all parties interested". (Laws of 1917, ch. 54, sec. 8; Public Laws, 1926, ch. 263, sec. 11; Banking Law Pamphlet, 1929, ch. 263, sec. 11, p. 31.)

NEW JERSEY.Merger of State banks and/or trust companies.

The laws of New Jersey authorize State banks and trust companies having their main offices or places of business in the same municipality to merge into another State bank or trust company. (Laws of 1925, ch. 198, ch. 197 and ch. 203; Banking Law Pamphlet, 1930, sec. 11, p. 59, sec. 19, p. 119 and sec. 1, p. 155.)

Agreement for merger.

The boards of directors of such banks or trust companies may, by

(New Jersey - con'td.)

a vote of two-thirds of the entire membership of each board, make or authorize to be made between such banks or trust companies a written merger agreement in duplicate and under corporate seal. A sworn copy of the proceedings of the directors' meetings "shall be presumptive evidence of the holding and action of such meetings." (Laws of 1925, ch. 198, ch. 197 and ch. 203; Banking Law Pamphlet, 1930, sec. 12, p. 59, sec. 20, p. 119 and sec. 2, p. 155.)

What merger agreement must specify.

The merger agreement must name each bank or trust company to be merged and the bank or trust company which is to receive the merging institution or institutions, "and it shall prescribe terms and conditions of the merger and the mode of carrying it into effect." It may specify the name of the receiving corporation, which may be the name of any of the merging corporations; but, in the case of a merger of a bank into a trust company or a trust company into a bank, such name must comply "with the provision of the law under which said continuing corporation is organized." It may also name the persons who will constitute the board of directors of the receiving corporation; but the number and qualifications of such directors must be in accordance with the pertinent provisions of law covering the number and qualifications of directors of the kind of corporation into which the merging corporation or corporations are received; "or such agreement may provide for a meeting of the stockholders to elect a board of directors within sixty days after such merger becomes effective and may make provision for conducting the affairs of the corporation meanwhile." (Laws of 1925, ch. 198, ch. 197, and ch. 203; Banking

(New Jersey - cont'd.)

Law Pamphlet, 1930, sec. 13, p. 60, sec. 21, p. 120 and sec. 3, pp. 155 and 156.)

Merger agreement must be submitted to commissioner of banking and insurance for approval.

The merger agreement and sworn copies of the proceedings of the boards of directors at which the making of the agreement was authorized must be submitted in duplicate to the commissioner of banking and insurance for his approval. (Laws of 1925, ch. 198, ch. 197, and ch. 203; Banking Law Pamphlet, 1930, sec. 14, p. 60, sec. 22, p. 120 and sec. 4, p. 156.)

After approval of commissioner, agreement must be submitted to stockholders.

Within sixty days after notice from the commissioner that the merger agreement has been approved, it must be submitted to a special meeting of the stockholders of the merging corporations, and, if it is approved by two-thirds of the stockholders of each corporation, it then becomes binding upon such corporation. A sworn copy of the proceedings of such meetings is presumptive evidence of the holding and action of such meetings. (Laws of 1925, ch. 198, ch. 197, and ch. 203; Banking Law Pamphlet, 1930, sec. 15, pp. 60-61, sec. 23, p. 121, and sec. 5, pp. 156-157.)

Filing and recording of approved agreement and copies of proceedings.

After the agreement has become binding upon the merging corporations, one copy with a copy of the written approval of the Commissioner of Banking and Insurance, and a sworn copy of the proceedings of the meetings at which the agreement was approved, must be filed in the office

(New Jersey - cont'd.)

of the Commissioner of banking and insurance. An identical copy of such agreement, approval and proceedings "shall be recorded in the office of the clerk of the county in which is located the place of business of the corporations so merged; such record being made in the book provided for the record of certificates of incorporation of corporations organized under the laws of this State." (Laws of 1925, ch. 198, ch. 197, and ch. 203; Banking Law Pamphlet, 1930, sec. 16, p. 61, sec. 24, p. 121 and sec. 6, p. 157.)

When merger becomes effective.

Upon filing and recording the merger agreement with copies of its approval by the commissioner of banking and insurance as above prescribed, "the merger agreement shall take effect according to its terms, and the merger shall thereupon take place as provided in the agreement." (Laws of 1925, ch. 198, ch. 197, and ch. 203; Banking Law Pamphlet, 1930, sec. 17, p. 62, sec. 25, p. 122 and sec. 7, pp. 157-158.)

Legal effect of merger.

Upon the merger of any corporation into another as above provided:

(1) "Its corporate existence shall be merged into that of such other corporation; and all and singular its rights, privileges and franchises, and its right, title and interest in and to all property whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of conceivable value or benefit then existing which would inure to it under an unmerged existence, shall be deemed fully and finally, and without any right of reversion, transferred

(New Jersey - cont'd.)

to and vested in the corporation into which it shall have merged, without further act or deed, and such last-mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the merged corporation from which it was, by operation of the provisions hereof, transferred."

(2) Its rights, obligations and relations to any person, creditor, depositor, trustee or beneficiary of any trust, remain unimpaired, and the receiving corporation succeeds to all such relations, obligations, trusts and liabilities, and shall execute and perform all such trusts, in the same manner as though it had itself assumed the relation or trust, or incurred the obligations or liability. Liabilities and obligations to creditors existing for any cause whatsoever shall not be impaired by such merger, nor "shall any obligation or liability of any stockholder in any corporation which is a party to such merger be affected by any such merger, but such obligations and liabilities shall continue as fully and to the same extent as existed before such merger."

(3) "A pending action or other judicial proceeding to which any corporation that shall be so merged is a party shall not be deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order or decree in the same manner as if the merger had not been made; or the corporation into which such other corporation shall have been merged may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against such other corporation

(New Jersey - cont'd.)

if the merger had not occurred." (Laws of 1925, ch. 198, ch. 197, and ch. 203; Banking Law Pamphlet, 1930, sec. 18, pp. 62-63, sec. 26, pp. 122-123 and sec. 2, pp. 158-159.)

Maintenance of offices of merged corporations; capital required for each office, number further limited according to population.

The resulting corporation, "with the written approval of the Commissioner of Banking and Insurance, may continue to conduct business at the location or locations of the office or offices heretofore established by the merged corporations and under such office designation as the Commissioner of Banking and Insurance may approve"; but the paid-in capital of the resulting corporation must be, if it is a bank, at least fifty thousand dollars, and, if it is a trust company, at least one hundred thousand dollars, for each office thereafter to be maintained. Further limitations on the maintenance of such offices are that the resulting corporation can maintain but one office within the corporate limits of a municipality "where the population by the last decennial census is less than twenty-five thousand; not more than two offices where such population by said census is more than twenty-five thousand and not more than fifty thousand; not more than three offices where such population by said census is more than fifty thousand and not more than one hundred thousand and where such population is more than one hundred thousand only such number of offices as the Commissioner of Banking and Insurance may approve." In case of a merger of trust companies, it is provided further "that the commissioner of banking and insurance shall not approve the maintenance of more offices by the continuing corporation than the corpora-

(New Jersey - cont'd.)

tion into which the other corporation or corporations shall be merged was authorized to maintain prior to the date of the merger agreement, unless at the time of such approval national banking associations organized under the laws of the United States and located in New Jersey shall by an act of Congress be enabled to originally establish branch offices or agencies for the transaction of their business in this State." (Laws of 1925, ch. 198, as amended by Laws of 1927, ch. 21, ch. 197, and ch. 203, as amended by Laws of 1927, ch. 14; Banking Law Pamphlet, 1930, sec. 19, p. 63, sec. 27, p. 123 and sec. 9, p. 159.)

Issuance of new certificates of stock.

The new corporation may require the return of the original certificates by the stockholders in any of the merging corporations and may issue in lieu thereof new certificates. (Laws of 1925, ch. 198, ch. 197 and ch. 203; Banking Law Pamphlet, 1930, sec. 20, p. 64, sec. 28, p. 125 and sec. 10, p. 160.)

Dissenting stockholders, rights of.

There are also detailed provisions giving the right to stockholders of any of the merging corporations who did not vote for or object to the merger to demand payment for their shares of stock, and prescribing the procedure and conditions for securing such payment. (Laws of 1925, ch. 198, ch. 197 and ch. 203; Banking Law Pamphlet, 1930, sec. 21, p. 64, sec. 29, pp. 125-126 and sec. 11, p. 160.)

(New Jersey - cont'd.)

Consolidation of State bank or trust company with national bank;
surrender of charter.

When two-thirds of the stockholders of any State bank or trust company give their written consent to consolidate with a national bank, and the directors of such bank or trust company file in the Department of Banking and Insurance a certificate under their hands that such consent has been given and that the directors intend to act in pursuance thereof, such bank or trust company "shall be deemed and taken to have surrendered its charter". (Laws of 1902, ch. 28 and Laws of 1920, ch. 300, as amended by Laws of 1928, ch. 208 and ch. 207; Banking Law Pamphlet, 1928, sec. 1, p. 47, and sec. 8, p. 98.)

Continuance of corporate existence for three years for certain purpose.

It is provided, however, that every such State bank or trust company "shall be continued a body corporate for the term of three years after the time of such surrender for the purpose of prosecuting and defending suits by or against it, and closing its concerns, but not for any other business or purposes whatsoever". The board of directors of the consolidated bank is to act as, and be taken to be, the board of directors of such bank or trust company while closing its concerns during such three year period. (Laws of 1902, ch. 28, and Laws of 1920, ch. 300, as amended by Laws of 1928, ch. 208 and ch. 207; Banking Law Pamphlet, 1928, sec. 1, p. 48, and sec. 8, p. 99.)

(New Jersey - cont'd.)

Legal effect of consolidation:

(a) of State with national bank.

"When the charter of such bank shall be surrendered to the State, as hereinabove provided, and any such bank shall have been organized as or consolidated with a banking association under the laws of the United States, or have become capable in law as a new or consolidated national bank to take and hold property, all the assets, real and personal, choses in action and all rights and privileges of every nature and description, of any such bank shall immediately, by act of law and without any conveyance or transfer, be vested in and become the property of the said association, formed or consolidated as aforesaid under the laws of the United States, to be held by said association or its stockholders in as ample and beneficial manner for all purposes as the same can, by virtue of the laws of the United States, be held and enjoyed; but nothing in this section shall be so construed as to impair the obligation existing in the first section of this act." (Laws of 1902, ch. 28, as amended by Laws of 1928, ch. 208; Banking Law Pamphlet, 1928, sec. 4, p. 50.)

(b) of trust company with national bank.

In this connection the laws provide " * * * that all rights, privileges, choses in action, property, real and personal, and all trust powers, duties, designations and appointments made or contained by or in any deed, will, instrument, order or decree,

(New Jersey - cont'd.)

executed or made before the filing of such certificate, shall vest in, devolve upon, and inure to the benefit of said new or consolidated national bank." (Laws of 1920, ch. 300, as amended by Laws of 1928, ch. 207; Banking Law Pamphlet, 1928, sec. 8, p. 99.)

Dissenting stockholders, rights of.

The laws also contain detailed provisions with reference to the rights of stockholders who dissent to the consolidation. (Laws of 1902, ch. 28, and Laws of 1920, ch. 300; Banking Law Pamphlet, 1928, secs. 2, and 3, pp. 48 and 49, and sec. 9, p. 99.)

Extent of act relating to consolidation of State bank with national bank.

"The authority conferred by this act may be exercised by the stockholders of any bank incorporated or organized by the authority of this state, notwithstanding said bank may have been converted into a national banking association under the laws of the United States prior to the passage of this supplement." (Laws of 1902, ch. 28; Banking Law Pamphlet, 1928, sec. 5, p. 50.)

Merger or consolidation of corporations "for the insurance or guaranty of title to lands" with trust companies.

The laws of New Jersey also contain detailed provisions providing for and regulating the merger or consolidation of corporations "for the insurance or guaranty of title to lands" with State trust companies which, in many respects, are substantially similar to the

(New Jersey - cont'd.)

provisions digested above. (Laws of 1923, ch. 97; Banking Law Pamphlet, 1930, secs. 1-6, pp. 146-150.)

NEW MEXICO.

Consolidation or merger of banks or trust companies.

The laws of New Mexico covering banks and trust companies do not contain provisions having specific reference to the merger, consolidation, etc., of such institutions; but these laws do provide that "Except as herein limited incorporated banks shall exercise and enjoy all the rights and privileges and be subject to all the liabilities and restrictions provided by law for corporations in general." (Laws of 1915, ch. 67, sec. 55; New Mexico Stats., Annot., 1929, sec. 13-156, p. 325; Banking Law Pamphlet, 1929, sec. 55, p. 20.) These so-called banking laws also provide that the word "bank", as used therein, includes commercial banks, savings banks and trust companies but does not include national banks. (Laws of 1915, ch. 67, sec. 2; New Mexico Stats., Annot., 1929, sec. 13-102, p. 316; Banking Law Pamphlet, 1929, sec. 2, p. 5.)

The law covering "corporations in general" contain elaborate consolidation or merger provisions, (Laws of 1905, ch. 79, secs. 109-115; New Mexico Stats., 1929, secs. 32-213 to 32-219 inclusive) and also provide that such provisions shall be held applicable to banks and trust companies. (Laws of 1905, ch. 79, sec. 131; New Mexico Stats., Annot., 1929, sec. 32-234). Such provisions are set forth below.

Authority for consolidation or merger.

"Any two or more corporations organized under any law or laws

(New Mexico - cont'd.)

of this state for the purpose of carrying on any kind of business of the same or a similar nature may merge or consolidate into a single corporation, which may be either one of said merging or consolidating corporations, or a new corporation to be formed by means of such merger and consolidation." (Laws of 1905, ch. 79, sec. 109; New Mexico Stats., Annot., 1929, sec. 32-213, p. 483.)

Directors' agreement to merge or consolidate; contents of.

The directors of the several corporations involved may under corporate seal enter into a "joint agreement" for the merger or consolidation of such corporations. The agreement must prescribe the terms and conditions of the merger or consolidation, the mode of carrying it into effect, the name of the resulting corporation with the number, names and residences of its first directors and officers, the number and value of the shares of capital stock, the manner of converting the stock of the constituent corporations into stock of the resulting corporation, and, if a new corporation is created, how and when the directors and officers will be chosen or appointed. The agreement may also contain such other provisions as the contracting directors may deem necessary to perfect such merger or consolidation. (Laws of 1905, ch. 79, sec. 110, subd. 1; New Mexico Stats., Annot., 1929, sec. 32-214, subd. 1, pp. 483 and 484.)

Submission of agreement to stockholders; approval of; effect of.

The agreement must be submitted to the stockholders of each of the corporations involved at a special meeting after twenty days' notice of the time, place and object of such meeting has been given to each stock-

(New Mexico - cont'd.)

holder. If two thirds of the stockholders of each corporation vote for the adoption of the agreement, that fact must be certified thereon by the secretary of each corporation under its corporate seal. The agreement so adopted and certified must be filed with the state corporation commission and then must "be deemed and taken to be the agreement and act of merger or consolidation of the said corporations." A copy of this agreement certified under seal by the corporation commission is "evidence of the existence of such new or consolidated corporation." (Laws of 1905, ch. 79, sec. 110, subd. 2; New Mexico Stats., Annot., 1929, sec. 32-214, subd. 2, p. 484.)

Legal effect of consolidation or merger.

"Upon making and perfecting the said agreement and act of merger or consolidation, and filing the same, in the office of the state corporation commission, the several corporations shall be one corporation, by the name provided in said agreement (in case a new corporation shall be created thereby), or by the name of the consolidated corporation into which said other contracting corporation or corporations, shall be so merged or consolidated, as the case may be, and possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so merged or consolidated, except as altered by the provisions of this article." (Laws of 1905, ch. 79, sec. 111; New Mexico Stats., Annot., 1929, sec. 32-215, p. 484.)

"Upon the consummation of said act of merger or consolidation, all and singular, the rights, privileges, powers and franchises of each

(New Mexico - cont'd.)

of said corporations, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations, shall be vested in the consolidated corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in either of such corporations, shall not revert or be in any way impaired by reason of this article: Provided, that all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, and the respective former corporations may be deemed to continue in existence, in order to preserve the same; and all debts, liabilities and duties of either of said former corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it." (Laws of 1905, ch. 79, sec. 112; New Mexico Stats., Annot., 1929, sec. 32-216, p. 484.)

Dissenting stockholders, rights of.

Provision is made for the appraisal and payment of the value of stock held by any stockholder of any of the corporations involved who did not vote in favor of the merger or consolidation. (Laws of 1905, ch. 79, secs. 113 and 114; New Mexico Stats., Annot., 1929, secs. 32-217 and 32-218, pp. 484 and 485.)

(New Mexico - cont'd.)

State corporations authorized to merge with corporations of "other states and territories."

"Corporations organized under the laws of other states and territories may also be merged with corporations organized under the laws of this state, in accordance with the provisions of this article." (Laws of 1905, ch. 79, sec. 115; New Mexico Stats., Annot., 1929, sec. 32-219, p. 485.)

Consolidated corporation authorized to issue bonds and mortgage property.

The consolidated corporation is authorized to issue bonds or other obligations "to an amount sufficient with its capital stock to provide for all the payments it will be required to make or obligations it will be required to assume," in order to effect the merger or consolidation; and to secure the payment of such bonds or obligations it may mortgage its property. The consolidated corporation may also purchase and sell stocks of other corporations and may issue capital stock to the stockholders of the constituent corporations in exchange or payment for their original shares in the manner and on the terms specified in the agreement of merger or consolidation. (Laws of 1905, ch. 79, sec. 115; New Mexico Stats., Annot., 1929, sec. 32-219, p. 485.)

Sale or purchase of assets.

The laws also provide that "any corporation * * * shall have power to sell, convey and transfer or exchange all of its assets, property, rights, privileges, franchises (except its primary franchise), good will, easements, rights of way, and all other property and property rights it

(New Mexico - cont'd.)

may use or possess; Provided, however, that no corporation shall have the right to sell, transfer or exchange any contract, or property, or rights derived therefrom or thereunder, not assignable by its terms."

(Laws of 1927, ch. 85, sec. 1; New Mexico Stats., Annot., 1929, sec. 32-1201, p. 514.)

Any corporation is also empowered "to purchase and acquire all of the assets, property, rights, privileges, franchises (except its primary franchise), good will, easements, rights of way, and all other property and property rights, of any other corporation * * * ". (Laws of 1927, ch. 85, sec. 2; New Mexico Stats., Annot., 1929, sec. 32-1202, p. 514.)

Consent of stockholders necessary.

The consent of two-thirds of the stockholders of the vendor corporation to "such sale or exchange" is required which shall be given at a special meeting called for that purpose, "or if the by-laws fail to provide for special meetings, then according to requirement for notice of annual meeting, which notice shall clearly state the time, place and purpose of such meeting". (Laws of 1927, ch. 85, sec. 3; New Mexico Stats., Annot., 1929, sec. 32-1203, p. 515.)

Dissenting stockholders of the vendor corporation may notify its secretary in writing of the fact of their objection to the proposed sale or exchange on or before the day of the meeting of the stockholders. Within ninety days after the sale or

(New Mexico - cont'd.)

exchange, the vendee corporation, upon demand of such dissenting stockholders and upon their surrender to the vendor corporation of their stock for cancellation, shall pay them the market value of their stock, which in no event can be less than the book value of such stock according to the last balance sheet of the selling corporation. Amounts so paid shall be deducted from the purchase price of the property in question. (Laws of 1927, ch. 85, sec. 3; New Mexico Stats., Annot., 1929, sec. 32-1203, p. 515.)

Limitations on actions to question legality of sale.

Suits to attack any sale or exchange must be brought within three months after the recording of the conveyance or other instrument evidencing such sale in the county wherein the property or any part of it sold or exchanged is located. (Laws of 1927, ch. 85, sec. 4; New Mexico Stats., Annot., 1929, sec. 32-1204, p. 515.)

NEW YORK.Merger of banks and trust companies.

The laws of New York provide that "Any two or more corporations, other than savings banks, organized under any one article of this chapter (ch. 2 of the Consolidated Laws of 1914, ch. 369, as amended) or under the laws of this state for the purposes or any of them mentioned in any one article of

(New York - cont'd.)

this chapter, or for the purposes or any of them mentioned in both articles three (covering banks) and five (covering trust companies) of this chapter, are hereby authorized to merge one or more of such corporations into another of them as prescribed in succeeding sections of this article." (Banking Law, sec. 487, subd. 1.)

With particular reference to savings banks, the laws provide that any two of such banks "located in a city of the first class and in the same county or borough, or any two or more savings banks located elsewhere in the state and in the same or adjoining counties, are hereby authorized to merge as prescribed in succeeding sections of this article." (Banking Law, sec. 487, subd. 2.)

The laws also provide that "Any national banking association is hereby authorized to merge itself into a State bank or trust company located in the same county, city, town or village in the manner prescribed in succeeding sections of this article." (Banking Law, sec. 487, subd. 3.)

Agreement for merger.

The boards of directors of each of the corporations which are a party to the merger, by a vote of the majority, or, if the corporations are savings banks, by a vote of two-thirds of the entire membership of each board of trustees, may make or authorize to be made a written merger agreement in duplicate and under corporate seal. A sworn copy of the proceedings of such meetings, made by the respective secretaries, is presumptive evidence of the holding and action of such meetings. (Banking Law, sec. 488.)

(New York - cont'd.)

What agreement merger must specify.

The merger agreement must specify each corporation to be merged and the corporation which is to receive the merging corporation or corporations "and it shall prescribe the terms and conditions of the merger and the mode of carrying it into effect." It may provide the name of the receiving corporation, which may be the name of any of the merging corporations, and it may also name the persons who will constitute the board of directors or trustees of the receiving corporation; but the number and qualifications of such directors or trustees must be in accordance with the provisions of law relating to the number and qualifications of directors or trustees of the class of corporation into which the merging corporation or corporations are merged; "or, except in the case of savings banks, such agreement may provide for a meeting of the shareholders or stockholders to elect a board of directors within sixty days after such merger, and may make provision for conducting the affairs of the corporation meanwhile." In case of a merger agreement between trust companies, the agreement must provide that the directors named or elected, after qualifying, shall divide themselves into classes as provided by the pertinent provisions of the law covering trust companies, and that they may adopt new by-laws for the resulting corporation. (Banking Law, sec. 488.)

Agreement must be submitted to superintendent for approval.

The merger agreement and sworn copies of the proceedings of the boards of directors or trustees at which the making of the agreement was authorized, must be submitted in duplicate to the superintendent of banks

(New York - cont'd.)

for his approval. (Banking Law, sec. 489.)

Submission of approved agreement to stockholders necessary.

Except in the case of savings banks, the merger agreement must be submitted to a special meeting of the stockholders of the merging corporations within sixty days after notice of its approval by the superintendent of banks. If it is approved by two-thirds of the stockholders of each of the corporations, or in the case of "savings and loan associations by the affirmative vote of at least two-thirds of the members present in person or by proxy at such meetings," provided a copy of the merger agreement shall have accompanied the required notice by mail of such special meetings, it then becomes binding upon the corporations involved in the merger. (Banking Law, sec. 490.)

The merger agreement of savings banks, within sixty days after notice to such banks of its approval by the superintendent of banks, must be submitted to a special meeting of the board of trustees of each of the savings banks. A notice of at least fifteen days specifying the time, place and object of the meeting, and accompanied by a complete copy of the merger agreement, must be given by mail to each trustee. If the agreement is approved by a vote of three-fourths of all the members of each board of trustees, it then becomes binding upon such savings banks. (Banking Law, sec. 491.)

Filing of approved agreement and copies of proceedings.

After the agreement has become binding upon the merging corporations, one copy with a copy of the written approval of the superintendent and a sworn copy of the proceedings of the meetings at which the agreement was approved, made by the respective secretaries, must be filed in the

(New York - cont'd.)

office of the superintendent. Another like copy of such agreement, approval and proceedings must be filed in the office of the clerk of the county in which is located the principal place of business of the receiving corporation. (Banking Law, sec. 492.)

When merger takes effect.

Upon filing of the papers as above prescribed, "the merger agreement shall take effect according to its terms and the merger shall thereupon take place as provided in the agreement." (Banking Law, sec. 493.)

Legal effect of merger.

"Upon the merger of any corporation into another as provided in this article:

"1. Its corporate existence shall be merged into that of such other corporation; and all and singular its rights, privileges and franchises, and its right, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of conceivable value or benefit then existing which would inure to it under an unmerged existence, shall be deemed fully and finally, and without any right of reversion, transferred to and vested in the corporation into which it shall have been merged, without further act or deed, and such last-mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the merged corporation from which it was, by operation of the provisions of this article, transferred.

"2. Its rights, obligations and relations to any person, credi-

(New York - cont'd.)

tor, depositor, trustee or beneficiary of any trust, shall remain unimpaired, and the corporation into which it shall have been merged shall by such merger succeed to all such relations, obligations, trusts and liabilities, and shall execute and perform all such trusts, in the same manner as though it had itself assumed the relation or trust, or incurred the obligation or liability; and its liabilities and obligations to creditors existing for any cause whatsoever shall not be impaired by such merger; nor shall any obligation or liability of any stockholder or shareholder in any corporation which is a party to such merger be effected by any such merger, but such obligations and liabilities shall continue as fully and to the same extent as existed before such merger.

"3. A pending action or other judicial proceeding to which any corporation that shall be so merged is a party, shall not be deemed to have abated or to have discontinued by reason of the merger, but may be prosecuted to final judgment, order or decree in the same manner as if the merger had not been made; or the corporation into which such other corporation shall have been merged may be substituted as a party to such action or proceeding, and any judgment, order or decree may be rendered for or against it that might have been rendered for or against such other corporation if the merger had not occurred." (Banking Law, sec. 494.)

Issuance of new certificate of stock.

The receiving corporation may require the return of the original certificate of stock held by the stockholders in the merging corporations and may issue new certificates in lieu thereof. (Banking Law, sec. 495.)

(New York - cont'd.)

Dissenting stockholders, rights of.

The laws also contain provisions giving to stockholders of any of the merging corporations who did not vote in favor of the merger, the right to object thereto and demand payment for their shares; in the case of savings and loan association or credit unions, if such stockholders are borrowers, to demand liquidation of their obligations and cancellation of their shares. (Banking Law, sec. 496.)

Consolidation of State bank or trust company with national bank.

Whenever a State bank or trust company "shall have become consolidated" with a national bank it must notify the superintendent of banks of such fact "and shall file with him a copy of its authorization as a national banking association or a copy of the certificate of approval of consolidation, certified by the Comptroller of the Currency." (Banking Law, secs. 137 and 226.)

Legal effect of consolidation.

Upon doing the acts above described, such State bank or trust company "shall thereupon cease to be a corporation under the laws of this state, except that for the term of three years thereafter, its corporate existence shall be deemed to continue for the purpose of prosecuting or defending suits by or against it, and enabling it to close its concerns, and to dispose of and convey its property". Such consolidation does not release any such State bank or trust company from its obligations to pay and discharge all the liabilities created by law or incurred by it, or any tax imposed by the laws of this state in proportion to the time which has elapsed since the next preceding payment therefor, or any assessment,

(New York - cont'd.)

penalty or forfeiture imposed or incurred under the laws of this state, up to the date of its becoming consolidated with a national bank.

At the time when such consolidation becomes effective all the property of the State bank or trust company "including all its right, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the national bank, which shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed" by the State bank or trust company. The national bank is a continuation of the entity and identity of the state bank or trust company and "all the rights, obligations and relations of the State bank or trust company to or in respect to any person, estate, creditor, depositor, trustee or beneficiary of any trust, and in, or in respect to, any executorship or trusteeship or other trust or fiduciary function, shall remain unimpaired, and the national bank as of the time of the taking effect of such * * * consolidation shall succeed to all such rights, obligations, relations and trusts, and the duties and liabilities connected therewith, and shall execute and perform each and every such trust or relation in the same manner as if the national bank had itself assumed the trust or relation including the obligations and liabilities connected therewith. If the State

(New York - cont'd.)

bank (or trust company) is acting as administrator, co-administrator, executor, co-executor, trustee or co-trustee, of or in respect to any estate or trust being administered under the laws of this state, such relation, as well as any other or similar fiduciary relations, and all rights, privileges, duties and obligations connected therewith shall remain unimpaired and shall continue into and in said national bank from and as of the time of the taking effect of such * * * consolidation, irrespective of the date when any such relation may have been created or established and irrespective of the date of any trust agreement relating thereto or the date of the death of any testator or decedent whose estate is being so administered." Nothing done in connection with the consolidation of a State bank or trust company with a national bank, "shall, in respect to any such executorship, trusteeship or similar fiduciary relation, be deemed to be or to effect, under the laws of this state, a renunciation or revocation of any letters of administration or letters testamentary pertaining to such relation, nor a removal or resignation from any such executorship or trusteeship or other fiduciary relationship, nor shall the same be deemed to be of the same effect as if the executor or trustee or other fiduciary had died or otherwise become incompetent to act". (Banking Law, secs. 137 and 226.)

Superintendent of banks must post names and locations of merging corporations, and dates of such merger.

The superintendent of banks is required to keep in his office a bulletin board accessible to the public upon which must be posted every Friday the names and locations of all corporations that have been merged

(New York - cont'd.)

under any of the provisions above digested and the dates of such merger. (Banking Law, sec. 82 (12).)

NORTH CAROLINA.

Definition of the word "bank".

The term "bank" when used in the following provisions of the laws of North Carolina "shall be construed to mean any corporation, partnership, firm, or individual receiving, soliciting, or accepting money or its equivalent on deposit as a business; Provided, however, this definition shall not be construed to include building and loan associations, Morris Plan companies, industrial banks or trust companies not receiving money on deposit". (Cons. Stats. of N. C., sec. 216 (a); Banking Law Pamphlet, 1927, sec. 216 (a), p. 3.)

Consolidation or transfer of assets.

The laws of North Carolina provide that "A bank may consolidate with or transfer its assets and liabilities to another bank". (Cons. Stats. of N. C., sec. 217 (k); Banking Law Pamphlet, 1927, sec. 217 (k), p. 7.)

It is further provided that any bank or trust company incorporated under the laws of North Carolina may con-

(North Carolina - cont'd.)

solidate with any national bank under the charter of the latter or under a new charter issued to such consolidated bank upon such terms and conditions as may be lawfully agreed upon, provided the laws of North Carolina governing the consolidation of such banks shall be first complied with as to the consolidation of such bank or trust company. (Laws of 1929, ch. 148, p. 171.)

Proceedings authorizing consolidation or transfer of assets; agreement; filing of.

Before such consolidation or transfer of assets can become effective, each bank involved must file with the commissioner of banks certified copies of all proceedings of its board of directors and stockholders setting forth that two-thirds of the stockholders voted for the consolidation or transfer. The stockholders proceedings must also contain a complete copy of the agreement of consolidation

(North Carolina - cont'd.)

or transfer of assets which was entered into by the banks concerned.

(Cons. Stats. of N. C., sec. 217 (k), as amended by Act of April 2, 1931; Banking Law Pamphlet, 1927, sec. 217 (k), p. 7, as amended by Act of April 2, 1931.)

Examination of banks involved; consent of commissioner of banks necessary to consolidation or transfer; notice of consolidation or transfer must be published.

When the stockholders' and directors' proceedings have been filed as above prescribed, the commissioner of banks must make an examination of each bank to determine whether the interest of the depositors, creditors, and stockholders of each bank are protected, and whether such consolidation or transfer is made for legitimate purposes. No consolidation or transfer can be made without the consent of the commissioner of banks and his consent or rejection must be based upon the examination above referred to. Expenses of such examination must be paid by the banks examined. Notice of the consolidation or transfer must be published for four weeks before or after the same is to become effective, at the discretion of the commissioner of banks, in a newspaper published in a city, town, or county in which each of the banks concerned is located. A certified copy of such published notice must be filed with the commissioner of banks. (Cons. Stats. of N. C., sec. 217 (k), as amended by Act of April 2, 1931; Banking Law Pamphlet, 1927, sec. 217 (k), p. 7, as amended by Act of April 2, 1931.)

Rights of creditors not impaired by consolidation or transfer; corporate existence continued for three years.

In case of either transfer or consolidation the rights of creditors

- 131 -

(North Carolina - cont'd.)

are preserved unimpaired, and the respective companies are continued in existence to preserve such rights for a period of three years. (Cons. Stats. of N. C., sec. 217 (k); Banking Law Pamphlet, 1927, sec. 217 (k), p. 7.)

Legal effect of consolidation.

In case of a consolidation, when the agreement for consolidation is made and a certified copy together with a certified copy of its approval by the commissioner of banks are filed with the Secretary of State, the consolidating banks "shall be held to be one company, possessed of the rights, privileges, powers, and franchises of the several companies, but subject to all the provisions of law under which it is created." Directors and other officers named in the agreement, may serve until the first annual meeting for election of officers and directors, the date for which must be named in the agreement. "On filing such agreement, all and singular, the property and rights of every kind of the several companies shall thereby be transferred and vested in such new company, and be as fully its property as they were of the companies parties to the

(North Carolina - cont'd.)

agreement." (Cons. Stats. of N. C., sec. 217 (1), as amended by Act of April 2, 1931; Banking Law Pamphlet, 1927, sec. 217 (1), p. 7, as amended by Act of April 2, 1931.)

A similar provision is made in the case of the consolidation of a State bank or trust company with a national bank under the charter of the latter or under a new charter; and it is expressly provided that the right of succession as trustee, executor or any other fiduciary capacity shall pass to the consolidated institution. (Laws of 1929, ch. 148, p. 171.)

NORTH DAKOTA.Consolidation or merger of "banking associations".

The laws of North Dakota provide that any two or more State banking associations "may consolidate their capital, assets, and liabilities,

(North Dakota - cont'd.)

or one or more of such associations may be merged into another" in the manner set out below. (Supp. to 1913 Comp. Laws, sec. 5191c1; Banking Law Pamphlet, 1929, sec. 5191c1, p. 52.)

Meaning of terms.

"The term 'consolidation' as used herein shall mean the consolidation of the liabilities, assets and corporate existence of two or more associations into a single association, which shall issue its stock to stockholders in the consolidating associations in return for the assets of the consolidating associations.

"The term 'merger' as used herein shall mean the taking over, or the absorption of the assets of one association by another, and the assumption of the liabilities of the association, or associations, whose assets and liabilities are taken over.

"The term 'old association' where hereinafter used means the associations which are consolidating or merging into the other associations, and the term 'new association' means the association into which the other associations are being consolidated or merged." (Supp. to 1913 Comp. Laws, sec. 5191c2; Banking Law Pamphlet, 1929, sec. 5191c2, p. 52.)

Meeting to act upon consolidation or merger; notice of.

If two or more banking associations desire to consolidate or merge, the directors of each association "shall call a special meeting of the stockholders", the notice of which must state definitely the purpose for which it is called, to act upon the consolidation or merger, or the matters may be acted on at a regular stockholder's meeting. In the latter

(North Dakota - cont'd.)

event, notice that the consolidation or merger will be considered must be given to each stockholder at least ten days prior to the meeting. (Supp. to 1913 Comp. Laws, sec. 5191c3; Banking Law Pamphlet, 1929, sec. 5191c3, p. 52.)

Vote of stockholders.

The stockholders must put the question of the proposed consolidation or merger to a vote and the question so put "shall embody the proposed amount of capital stock of the consolidated or merged corporation"; but such amount may be varied by the State Examiner or court on passing on the consolidation or merger. "The proposal for consolidation or merger shall be deemed lost, unless two-thirds of all the stock shall vote in favor thereof." (Supp. to Comp. Laws of 1913, sec. 5191c4; Banking Law Pamphlet, 1929, sec. 5191c4, p. 52.)

Capital required of new association.

A consolidation can not be made unless the new association "have a capital of at least two-thirds of the aggregate capital of the old associations, but it may have a larger capital than that of the old associations." (Supp. to 1913 Comp. Laws, sec. 5191c5; Banking Law Pamphlet, 1929, sec. 5191c5, p. 52.)

Time of stockholders meeting.

The several stockholders meetings at which the consolidation or merger is acted upon must be held at such times that the result of all of them may be certified to the State Examiner within thirty days from the date of the holding of the first meeting. The result of each meeting,

(North Dakota - cont'd.)

within ten days after it is held, must be certified to the State Examiner by the chairman and secretary of the meeting. (Supp. to 1913 Comp. Laws, sec. 5191c6; Banking Law Pamphlet, 1929, sec. 5191c6, p. 53.)

Examination of consolidating associations.

Upon receiving certificates showing favorable action by all of the consolidating associations, "the state Examiner shall cause a thorough examination of the condition of the said associations to be made with a view of determining whether their condition is such that the proposed consolidation or merger would result in a sound and efficient banking association adapted to the needs of the community in which it is proposed to operate." (Supp. to 1913 Comp. Laws, sec. 5191c7; Banking Law Pamphlet, 1929, sec. 5191c7, p. 52.)

Notice of findings; State Examiner may require changes in conditions.

Upon completing his examination, the State examiner must advise each of the associations if he finds that a consolidation or merger is desirable. If the conditions existing are not desirable for the consolidation or merger, the State Examiner shall indicate any changes therein necessary to correct the situation; and he may prescribe a time within which such changes may be made to warrant his approval. (Supp. to 1913 Comp. Laws, sec. 5191c8; Banking Law Pamphlet, 1929, sec. 5191c8, p. 53.)

Appeal may be taken from adverse decision of State Examiner.

If the State examiner reaches a decision adverse to the consolidation or merger, an informal appeal may be made to the Banking Board, "and the Board shall, as speedily as possible, set a time when it will hear any

(North Dakota - cont'd.)

reasons that may be advanced why the findings of the State Examiner should be reversed; and upon such hearing, it shall make such order as seems proper in the premises." (Supp. to 1913 Comp. Laws, sec. 5191c8; Banking Law Pamphlet, 1929, sec. 5191c8, p. 53.)

Finding favorable to consolidation or merger, representative of participating associations must meet; schedule of assets; proportion of stock to be accredited to old stockholders.

If the State examiner, or the Banking Board on appeal, finds favorably with reference to the consolidation or merger, each of the participating associations, by its Board of Directors, must appoint one or more representatives to meet with the representatives of the other association. These representatives must determine and make a schedule of the assets of each of the participating associations and must also "schedule all the indebtedness of the old associations, and only such assets shall be retained by the old associations as the State Examiner shall deem not proper assets to be held by the new association". In case of a consolidation, the representatives must agree upon the proportion of the stock in the new association to be accredited to the stockholders of each of the old associations; "but the distribution of such stock among the stockholders of the several old associations shall be by the old associations as hereinafter provided for." (Supp. to 1913 Comp. Laws, sec. 5191c9; Banking Law Pamphlet, 1929, sec. 5191c9, p. 53.)

Schedules and agreement must be put in writing; State examiner may approve or disapprove; appeal from decision of.

The schedules and agreement above referred to must be put in writing and signed in duplicate by the representatives of the old associa-

(North Dakota - cont'd.)

tions and are "binding upon them and non-revocable". If the associations cannot agree, no consolidation or merger shall take place. Upon "agreeing and signing the agreement as aforesaid, one of the duplicates shall be delivered to the State Examiner who may either approve or disapprove the same, or make suggestions for the modification thereof as a condition of approval, and he may fix a time within which the conditions shall be met, and likewise agreed to in writing are resubmitted to him. And in this case likewise the association may informally appeal from the decision of the State Examiner to the Banking Board." (Supp. to 1913 Comp. Laws, sec. 5191c10; Banking Law Pamphlet, 1929, sec. 5191c10, pp. 53 and 54.)

Approval of agreement; notice to participating associations.

If the State Examiner, or the Banking Board on appeal, approves the agreement or modified agreement, an endorsement to this effect must be made on the duplicate of the agreement held by the State Examiner, "and each of the associations shall be immediately notified of such approval." (Supp. to 1913 Comp. Laws, sec. 5191c11; Banking Law Pamphlet, 1929, sec. 5191c11, p. 54.)

After notice of approval, petition for decree of consolidation or merger must be filed with district court.

After notice of the above approval has been received by the participating associations, they must "file in the office of the clerk of the district court of the county in which at least one of the associations is doing business, a petition asking for a decree of consolidation or merger". Such petition must set out the "names and location of the new

(North Dakota - cont'd.)

association, and shall recite briefly the taking of the several successive steps hereinbefore provided for and a statement of the amount of the assets and indebtedness of each of the old associations to be transferred to and assumed by the new association, the amount of the capital stock, and the amount thereof to be apportioned to the stockholders of each of the old associations and the names of the first board of directors of the new association." (Supp. to 1913 Comp. Laws, sec. 5191c12; Banking Law Pamphlet, 1929, sec. 5191c12, p. 54.)

Notice of filing of petition to be issued by clerk of court; publication of.

When such petition has been filed, the Clerk of the district court must issue a notice which must set out (1) that the petition has been filed in his office, (2) that the effect of the consolidation or merger will be to transfer the principal assets of the petitioning associations to the new association and to create in the latter association a liability to pay all of the debts of the petitioning associations and to establish a novation by the petitioning associations, creditors, and the new association, and (3) that a hearing in the office of the clerk on the petition will be held on a specified date. This notice must be signed by the clerk and attested by the seal of the court and must be published for a certain length of time "in some newspaper qualified to publish legal notices in the county in which such petition is filed." Proof of such publication must be filed with the clerk of the district court. (Supp. to 1913 Comp. Laws, sec. 5191c13; Banking Law Pamphlet, 1929, sec. 5191c13, p. 55.)

(North Dakota - cont'd.)

Decree of court permitting consolidation or merger.

If no objection has been made to the petition within twenty days after its last publication, "the court shall at once upon the showing of the default, make its decree permitting the consolidation, or merger, as the case may be." (Supp. to 1913 Comp. Laws, sec. 5191c14; Banking Law Pamphlet, 1929, sec. 5191c14, p. 55.)

Opposition to petition; stay of proceedings, bond; decree.

Any opposition to the petition made by any creditor will be heard by the court and the only cause for denying the petition "shall be that the objecting creditor is in danger of being substantially damaged in his financial rights". If the creditor establishes this fact, the court may order the proceedings to be stayed; but if a bond of indemnity is given to the creditor to the effect that all of his legal claims will be paid by the new association when due "the proceedings shall be considered as though no opposition had been made thereto" and the court shall accordingly enter its decree permitting the consolidation or merger. (Supp. to 1913 Comp. Laws, sec. 5191c15; Banking Law Pamphlet, 1929, sec. 5191c15, p. 55.)

General effect of decree.

"The effect of a decree permitting consolidation, or merger, shall be to bar forever all objections thereto, and to establish a complete novation between the old associations, and creditors, and the new association to the end that from that time henceforth, the old associations are relieved of all liability to creditors, all such creditors having a valid and legal claim against the new association to the full extent that they had

(North Dakota - cont'd.)

a claim against any of the old associations, and the new association is liable for all indebtedness of all the old associations to the same extent that they were liable, and all of the stockholders' liability, as stockholders, in the several old associations are merged into their stockholders' liability as stockholders in the new association." (Supp. to 1913 Comp. Laws, sec. 5191c16; Banking Law Pamphlet, 1929, sec. 5191c16, pp. 55 and 56.)

Conclusiveness of decree.

The decree of the district court is "final and conclusive, not subject to appeal, nor to motion to vacate or set aside, and not subject to be set aside or vacated on motion for a new trial." (Supp. to 1913 Comp. Laws, sec. 5191c17; Banking Law Pamphlet, 1929, sec. 5191c17, p. 56.)

Objections, who may make; dissenting stockholders, rights of.

No stockholder who voted, or refrained from voting, for a consolidation or merger, can object thereto; but any stockholder who voted against such consolidation or merger, at any time prior to the filing of the petition in court, may file objection and appear before the State examiner or Banking Board and show cause why the consolidation or merger should not be allowed, "but the determination of the State Examiner or the Banking Board shall be conclusive of his rights." No action or proceeding in court can be maintained by any person questioning the validity of the consolidation or merger, or to recover anything on account thereof, unless such action or proceeding was commenced prior to the time of entry of the decree of consolidation or merger. The court in which the petition for consolidation or merger is filed or the appropriate federal court has

(North Dakota - con'td.)

"exclusive jurisdiction of such action or proceedings." (Supp. to 1913 Comp. Laws, sec. 5191c18; Banking Law Pamphlet, 1929, sec. 5191c18, p. 56.)

Decree of merger or consolidation, when necessary to do further acts after; contents of decree of consolidation; filing of certified copy of decree; issuance of certificate of authority.

When a decree of merger has been entered, "no further act shall be necessary to be done, except to make the transfers of the assets from the old associations to the association into which they are merged;" but in case of a consolidation, the decree must specify the name and location, and the amount of capital stock of the new association with the proportions in which it is allotted to each of the old associations. The decree must also name the first board of directors, or in case of death or disability of any of such directors, "shall substitute another or others to be nominated by the petitioners."

"A certified copy of such decree" with a fee of five dollars must then be filed in the office of the Secretary of State, "and such new association shall thereupon become a banking association in all things the same as though originally organized under the Banking Laws and the Secretary of State shall thereupon issue to it a certificate of authority, as in the case of the incorporation of other banking associations, which certificate should be delivered to the State Examiner to be in turn delivered by him to the said new association upon its being made to appear to him that all the terms and conditions of the consolidation have been complied with." (Supp. to 1913 Comp. Laws, sec. 5191c19; Banking Law Pamphlet, 1929, sec. 5191c19, p. 57.)

(North Dakota - cont'd.)

Election of officers.

As soon as the certificate of authority has been delivered to the directors they must meet and elect officers, and until such election the directors shall supervise and conduct the business of the new association. (Supp. to 1913 Comp. Laws, sec. 5191c20; Banking Law Pamphlet, 1929, sec. 5191c-20, p. 57.)

Consolidation or merger, operation of old corporations must cease; officers and directors to continue; when corporate existence extinguished.

When either a consolidation or merger has been consummated, "the old associations shall cease to operate as banking associations or to transact any business other than to administer any assets that under the terms of the consolidation or merger have not been transferred. They shall not elect any new officers or directors, but the directors and officers holding at the time of the consolidation or merger shall continue and the corporation itself shall remain in existence for a period of one (1) year during which time its remaining assets, if any must be disposed of, and the proceeds distributed among its stockholders, and at the end of one year from the filing of the decree of consolidation or merger, the said old associations shall cease to exist, unless upon good cause shown, and before the expiration of the said period of one (1) year any of said old associations shall obtain from the court an order extending the time of their existence, which order shall only be granted upon a showing of a substantial reason therefor." (Supp. to 1913 Comp. Laws, sec. 5191c21; Banking Law Pamphlet, 1929, sec. 5191c21, p. 57.)

(North Dakota - con'td.)

Statement as to new stock due to old stockholders; proportionment of.

When a consolidation has been completed, the board of directors of each of the old associations must furnish to the board of directors of the new association a statement of the amount of stock due to each of the stockholders of the old associations and the new association must then issue stock proportioned upon their former holdings to such stockholders. Provision is also made for the issuance of stock to stockholders where the amount to which they are entitled does not consist of even multiples of one hundred dollars. (Supp. to 1913 Comp. Laws, sec. 5191c22; Banking Law Pamphlet, 1929, sec. 5191c22, p. 57.)

Remedial purpose of above provisions; liberal construction required.

"The purpose of the Act is remedial, and it is intended to remedy a well understood condition existing in the banking business of the State of North Dakota, a part of which condition is the need of larger and stronger banking institutions, and the supplying of more efficient banking service, to various communities, and to the end that such conditions may be remedied to the utmost extent possible, this Act shall be in all things liberally construed, for the accomplishment of its ultimate purpose." (Supp. to 1913 Comp. Laws, sec. 5191c23; Banking Law Pamphlet, 1929, sec. 5191c23, p. 58.)

Additional authorization for consolidation or merger of banks.

Additional provisions covering the consolidation or merger of banks, which were enacted in 1927, provide that "any two or more banks" with the approval of the State Examiner, may consolidate or merge under the charter of either existing bank. The merger or consolidation may be

(North Dakota - cont'd.)

on such terms as may be agreed upon by the majority of the board of directors of each bank, and must be "ratified and confirmed" at a special meeting by two-thirds of the stockholders of each bank. Notice of such meeting must be given to the stockholders "at least ten days prior to said meeting"; but the stockholders "may unanimously waive such notice and may consent to such meeting and consolidation or merger in writing."

(S. L. 1927, ch. 93; Banking Law Pamphlet, 1929, p. 58.)

Capital stock required of consolidated institution.

The capital stock of the "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." (S. L. 1927, ch. 93; Banking Law Pamphlet, 1929, p. 58.)

Report of assets and liabilities.

"The assets and liabilities of the consolidated bank shall be reported by the surviving bank." (S. L. 1927, ch. 93; Banking Law Pamphlet, 1929, p. 58.)

Legal effect of consolidation or merger under chapter 93 of laws of 1927.

"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 hold and enjoyed by the bank so consolidated therewith, provided, however, that the merging bank shall

(North Dakota - cont'd.)

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."

(S. L. 1927, ch. 93; Banking Law Pamphlet, 1929, p. 58.)

Additional provisions with reference to legal effect of consolidation or merger of "corporations, including banks and trust companies."

Additional legislation enacted in 1927 provides further with reference to the legal effect of a consolidation or merger that "Whenever any two or more corporations, including banks and trust companies, organized under the Laws of this State have heretofore consolidated, merged or otherwise transferred, or shall hereafter consolidate, merge or otherwise transfer, its business to another corporation, including bank or trust company, organized, or to be organized, under the laws of this State, the consolidated or new corporation, by whatever name it may assume, or be known, shall, unless otherwise provided in the agreement or order of merger or consolidation, be a continuation of the entities of each and all of the corporations, including banks and trust companies, so consolidated, merged or otherwise transferred to such consolidated or new corporation for all purposes whatsoever, and all of the rights, franchises and interests of said corporations, including banks and trust companies, so consolidated, merged or transferred in and to every species of property, real, personal and mixed and choses in action thereto belonging shall be deemed to be so transferred to and vested in the corporation which acquires the same on such consolidation, merger or other transfer without any assignment, deed

(North Dakota - con'td.)

or other transfer, and such corporation 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 corporation, or corporations, including banks and trust companies, so consolidated, merged or otherwise transferred, including the holding and performing by any bank or trust company of any and all trusts and fiduciary relations whatsoever as to or for which either or any of the banks or trust companies so consolidating, merging or otherwise transferring may have been, or may be appointed, nominated or designated by any will, agreement, conveyance, or otherwise, whether or not such trust or fiduciary relation shall have come into being, or shall have taken effect at the time of such consolidation, merger or other transfer." (S. L. 1927, ch. 108; Banking Law Pamphlet, 1929, pp. 58 and 59.)

OHIO.Definition of word "bank".

The term "bank" when used in the following provisions of the laws of Ohio includes commercial banks, savings banks and trust companies. (General Code, sec. 710-2; Banking Law Pamphlet, 1928, sec. 710-2, p. 5.)

Consolidation or transfer of assets.

The laws of Ohio provide that "A bank may consolidate with or transfer its assets and liabilities to another bank". (General Code, sec. 710-86; Banking Law Pamphlet, 1928, sec. 710-86, p. 33.)

Proceedings authorizing consolidation or transfer of assets; agreement; filing of.

Before a consolidation or transfer of assets can become effective,

(Ohio - cont'd.)

each corporation concerned must file with the superintendent of banks, "certified copies of all proceedings had by its directors and stockholders which such stockholders' proceedings shall set forth that holders of at least two-thirds of the stock, voted in the affirmative on the proposition of consolidation or transfer." The stockholders' proceedings must also contain a complete copy of the agreement for consolidation or transfer of assets which was entered into by the corporations involved. (General Code, sec. 710-86; Banking Law Pamphlet, 1928, sec. 710-86, p. 33.)

Consent of commissioner of banks necessary to consolidation or transfer; appeal from adverse decision of; examination of corporations involved; publication of notice of consolidation or transfer.

When the stockholders' and directors' proceedings have been filed as above prescribed, the superintendent of banks must make an examination of each corporation "to determine whether the interests of the depositors and creditors and stockholders of each bank are protected and that such consolidation or transfer is made for legitimate purposes." No consolidation or transfer can be made without the consent of the superintendent of banks and his consent or rejection must be based upon the examination above referred to. If he refuses to give his consent, an appeal may be taken in the manner as is provided in the case of a refusal by the superintendent to certify that a new bank may commence business. Expenses of such examination must be paid by the corporations examined, and notice of the consolidation or merger "shall be published for four weeks, before or after the same is to become effective, at the discretion of the superintendent of banks, in a newspaper published in a city, village or county, in which each of such banks is located, and a certified copy thereof shall

(Ohio - cont'd.)

be filed with the superintendent of banks." (General Code, sec. 710-86; Banking Law Pamphlet, 1928, sec. 710-86, p. 33.)

Rights of creditors.

"In case of either transfer or consolidation, the rights of creditors shall be preserved unimpaired and the respective companies deemed to be in existence, to preserve such rights." (General Code, sec. 710-87; Banking Law Pamphlet, 1928, sec. 710-87, p. 33.)

Legal effect of consolidation.

"In case of consolidation, when the agreement of consolidation is made and a duly certified copy thereof is filed in the office of the secretary of state, together with a certified copy of the approval of the superintendent of banks to such consolidation, the banks, parties thereto, shall be held to be one company possessed of the rights, privileges, powers and franchises of the several companies, but subject to all provisions of law relating to the different departments of its business. The directors and other officers named in the agreement of consolidation shall serve until the first annual election, the date for which shall be named in the agreement. On filing such agreement all and singular the property and rights of every kind of the several companies, including the exclusive right in and to the corporate name of each of the banks parties to such agreement shall thereby be transferred to and vested in such new company, and be as fully its property as they were of the companies parties to such agreement. The secretary of state shall not file or record any articles of incorporation of any company organized to do the business of a bank, a building and loan association, or a mortgage or investment company, within the county within which said consolidated bank is situated, if such name,

(Ohio - cont'd.)

or the distinguishing part thereof, is that of any bank party to such agreement, or so similar thereto as to be likely to mislead the public, unless the written consent of the consolidated bank, signed by its president and secretary, be filed with such articles." (General Code, sec. 710-88; Banking Law Pamphlet, 1928, sec. 710-88, pp. 33, and 34.)

OKLAHOMA.No provisions covering consolidation, merger, etc.

The laws of Oklahoma do not contain any provisions having specific reference to the consolidation, merger, etc., of banks and trust companies.

OREGON.Consolidation of bank or trust company: transfer of assets and liabilities including trusts and fiduciary business.

The laws of Oregon provide that if two-thirds of its stockholders vote to do so, "any bank or trust company may consolidate with any other bank or trust company doing business under the laws of this state or under the laws of the United States". The written consent of the superintendent of banks is also necessary to such consolidation and it must be "upon such terms and conditions as he shall require and not otherwise". Any such bank or trust company

(Oregon - cont'd.)

may transfer its assets and liabilities, including its trusts and fiduciary business, to the proposed successor corporation; but if any trust or fiduciary business is transferred, the latter corporation must have at the time of the transfer authority from the superintendent of banks to do a trust business. When the superintendent is satisfied that the consolidation "has been completed and is effective he shall furnish the successor corporation a certificate bearing the seal of the state banking department to the effect that such consolidation has taken place and is effective". Provision is made for the recordation of this certificate and it "shall be prima facie evidence that such consolidation has been made and is effective". (Oregon Code, 1930, sec. 22-1703, as amended by General Laws, 1931, ch. 278, sec. 25, p. 466.)

The Oregon laws also provide that any bank or trust company in the process of voluntary liquidation may sell or transfer its deposit liabilities or its trust and fiduciary business to some other bank or trust company by a resolution of its board of directors authorizing such sale or transfer, and surrender its certificate of authority to the superintendent of banks; but no such sale or transfer can be made without first having obtained the written approval and consent of the superintendent of banks, and then only upon such terms and conditions as he shall require. The purchasing corporation to which any trust or fiduciary business is transferred must have at the time of such transfer authority from the superintendent of banks

(Oregon - cont'd.)

to do a trust business. When the superintendent is satisfied that the sale or transfer has been completed and is effective, "he shall furnish the purchasing corporation with a certificate bearing the seal of the state banking department to the effect that such sale or transfer has taken place and is effective". Provision is made for the recordation of this certificate and it "shall be prima facie evidence that such sale or transfer has been made and is effective". (Oregon Code, 1930, sec. 22-1702, as amended by General Laws, 1931, ch. 278, sec. 24, p. 465.)

Legal effect of sale of assets or consolidation.

If any bank or trust company sells all or any of its assets to another bank or trust company which takes over and assumes its deposit liabilities, "such corporation may not thereafter engage in the banking or trust business and shall amend its articles of incorporation by eliminating therefrom the power to engage in a banking and/or trust business or shall be and is dissolved, except for the purpose of winding up its affairs, and shall not thereafter be reinstated and shall surrender its charter. If any bank or trust company shall consolidate with another bank or trust company one of the corporations shall be dissolved, except for the purpose of winding up its affairs, and shall not thereafter be reinstated and shall surrender its charter." (General Laws of 1925, ch. 207, sec. 178, as amended by General Laws of 1929, ch. 380, sec. 40(b), p. 483.)

PENNSYLVANIA.Merger of State banks and trust companies.

The general corporation laws of Pennsylvania provide that any State corporation may

(Pennsylvania - cont'd.)

"merge its corporate rights, franchises, powers, and privileges with and into those of any other corporation or corporations transacting the same or a similar line of business, so that by virtue of this act such corporations may consolidate, and so that all the property, rights, franchises, and privileges then by law vested in either of such corporations, so merged, shall be transferred to and vested in the corporation into which such merger shall be made." (Act of May 3, 1909, P. L. 408, sec. 1; Banking Laws, 1930, sec. 496, p. 269.) ✓

Procedure for merger; agreement of directors, conditions and contents of; approval of stockholders necessary to make effective.

The directors of each corporation are required to enter into a joint agreement, under the corporate seal of each corporation, for the merger and consolidation of such corporations. The agreement must prescribe the terms and conditions of the merger or consolidation, the mode of carrying it into effect, the name of the new corporation, the number, names and residences of its directors and other officers, who shall be the first directors and officers, the number and amount or par value of shares of the capital stock, and the manner of converting the capital stock of each of such corporations into the stock of the new corporation. The agreement must also set out how and when directors and officers shall be chosen, with such other details as shall be deemed necessary to perfect the consolidation and merger; but the agreement does not become effective unless it is approved by the stockholders of such corporations, in the manner hereinafter set forth. (Act of May 3, 1909, P. L. 408, sec. 2; Banking Laws, 1930, sec. 497, pp. 269 and 270.)

(Pennsylvania - cont'd.)

Submission of agreement to stockholders; when deemed to be act of consolidation.

The agreement must be submitted at a special, or any annual, meeting of the stockholders of each of the corporations involved, and advance notice of the time, place and object of such meeting must be given in certain designated newspapers. If a majority of the entire stock of each corporation votes in favor of the agreement, merger and consolidation, then that fact must be certified under corporate seal by the secretary of each corporation. These certificates, together with the agreement, or a copy thereof, must be filed in the office of the Secretary of the Commonwealth, who shall forthwith present the same to the Governor for his approval. When approved by the Governor such agreement "shall be deemed and taken to be the act of consolidation of said corporation." (Act of May 3, 1909, P. L. 408, sec. 2; Banking Laws, 1930, sec. 498, p. 270.)

Certified copy of agreement and secretary's certificate as evidence of merger.

A certified copy of the certificate of the secretary of each of the consolidating corporations that the directors' agreement, merger and consolidation has been approved as aforesaid, and the agreement itself, or a copy thereof, filed in the office of the Secretary of the State, is evidence of the lawful holding and action of such stockholders' meetings, and of the merger and consolidation of the corporations. (Act of May 3, 1909, P. L. 408, sec. 4; Banking Laws, 1930, sec. 500, p. 272.)

Legal effect of merger; issue of "new letters patent"; payment of bonus.

Upon the filing of the papers as above described "and upon the

(Pennsylvania - cont'd.)

issuing of new letters patent thereon by the Governor, the said merger shall be deemed to have taken place, and the said corporations to be one corporation under the name adopted in and by said agreement, possessing all the rights, privileges, and franchises theretofore vested in each of them, and all the estate and property, real and personal, and rights of action of each of said corporations, shall be deemed and taken to be transferred to and vested in the said new corporation without any further act or deed: Provided, That all rights of creditors and all liens upon the property of each of said corporations shall continue unimpaired, limited in lien to the property affected by such liens at the time of the creation of the same, and the respective constituent corporations may be deemed to be in existence to preserve the same; and all debts not of record, duties, and liabilities of each of said constituent corporations shall thenceforth attach to the said new corporation, and may be enforced against it to the same extent and by the same process as if said debts, duties, and liabilities had been contracted by it." Such merger is not complete, however, and no business of any kind may be transacted until the consolidated corporation has obtained from the Governor new letters patent and has paid to the State Treasurer a certain prescribed bonus upon its capital stock, in excess of the amount of the capital stock of the consolidating corporations. New letters patent can not be issued until each of the consolidating corporations has filed with the Secretary of the Commonwealth a certificate from the Department of Revenue, setting forth that all reports required by the Department of Revenue have been duly filed, and that all State taxes due have been paid, up to and including

(Pennsylvania - cont'd.)

the date of the proposed merger. (Act of May 3, 1909, P. L. 408, sec. 3, as amended by Act of April 29, 1915, P. L. 205; Banking Laws, 1930, sec. 499, pp. 271 and 272.)

Dissenting stockholders; rights of.

The laws of Pennsylvania also contain detailed provisions granting to stockholders in any of the consolidating corporations, who have voted against the consolidation and who "shall be dissatisfied with or object to such consolidation", the right within a certain prescribed time and upon compliance with a certain prescribed procedure, to be paid for the stock held by them. (Act of May 3, 1909, P. L. 408, sec. 5; Banking Laws, 1930, sec. 501, p. 273.)

Trust estate and property specifically transferred to and vested in consolidated corporation; obligations, duties and liabilities assumed; substitution of trustees.

Whenever a State bank exercising trust powers, or a trust company, merges or consolidates with another such bank or trust company "all the estate and property, real and personal, held by either of such merging corporations in any trust or fiduciary capacity shall be deemed and taken to be transferred to and vested in the consolidated corporation without any further act or deed or any order or decree of any court or other tribunal, and the consolidated corporation shall have and hold the same as fully as the same was possessed and held by the constituent corporations from which it was, by operation of the provisions of this act, transferred; and said consolidated corporation shall succeed to all the relations, obligations, and liabilities, and shall execute and perform all

(Pennsylvania - cont'd.)

the trusts and duties devolving upon it in the same manner as though it had itself assumed the relation of trust". (Act of May 9, 1923, P. L. 174, sec. 1; Banking Laws, 1930, sec. 502, p. 274.) If within thirty days after notice to any person or corporation interested in any trust involved in the consolidation, such person or corporation files a written objection with the consolidated corporation and applies to the court having jurisdiction of the trust estate for the appointment of a substituted trustee or other fiduciary, such court may appoint another trustee or fiduciary and may "order said consolidated corporation forthwith to file an account of such trust estate and to pay over and transfer the assets

(Pennsylvania - cont'd.)

and property thereof to the substituted trustee or fiduciary so appointed."

(Act of May 9, 1923, P. L. 174, sec. 1; Banking Laws, 1930, sec. 503, p. 275.)

Succession of consolidated corporation to appointments of consolidating corporations.

In all cases where a State bank or trust company or a national bank located in Pennsylvania "has been heretofore, or shall hereafter be, named or appointed executor, guardian, trustee, or to any other fiduciary capacity, by or in any will, deed or other instrument, such nomination or appointment shall not be deemed to have lapsed by reason of the merger or consolidation of such company with another trust company or banking company, incorporated under any general or special law of this Commonwealth, or under any law of the United States, and located in this Commonwealth, where such merged or consolidated company is possessed of fiduciary powers, but such merged or consolidated company shall be entitled to act in the same fiduciary capacity under such instrument as the constituent company could have acted if no such merger or consolidation had been effected." (Act of April 26, 1929, P. L. 839, No. 365; Banking Laws, 1930, sec. 505, p. 276.)

Validation of exercise of fiduciary powers by consolidated corporation.

Wherever a State trust company or banking company, possessed of trust powers, or a national banking company located in Pennsylvania, formed by a merger or consolidation of two or more trust companies, or State banks or national banks, or both, "has heretofore been granted letters testamentary, or has heretofore assumed any fiduciary relationship, and

(Pennsylvania - cont'd.

has heretofore performed any acts pursuant thereto, under the terms of any instrument naming or appointing one of such constituent companies to any fiduciary capacity, such grant of letters, and all relationships of any fiduciary nature heretofore assumed, and all acts heretofore performed pursuant thereto by such merged or consolidated company, shall be taken to be as valid and effectual for all purposes as if such letters had been granted to, and such relationships had been assumed and acts performed by, the constituent company." (Act of April 26, 1929, P. L. 839, No. 366; Banking Laws, 1930, sec. 504, p. 275.)

Merger of national bank with State bank or trust company; definition of term "State bank".

The laws of Pennsylvania provide that the term "State Bank" as

(Pennsylvania - cont'd.)

used in the following provisions, "shall mean a bank, trust company, or bank and trust company, organized under the laws of this Commonwealth." (Act of April 16, 1929, P. L. 522, sec. 1; Banking Laws, 1930, sec. 506, p. 277.)

Authority for merger of national bank with State bank or trust company.

Any national bank located in the State of Pennsylvania "may be merged and consolidated with any state bank, under the charter of such state bank, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of the national banking association and of the state bank to be merged and consolidated". (Act of April 16, 1929, P. L. 522, sec. 2; Banking Laws, 1930, sec. 507, p. 278.)

Confirmation of agreement by stockholders; notice of meeting.

Before the directors' agreement for merger and consolidation becomes effective, it must be ratified and confirmed by two-thirds of the stockholders of each of the merging corporations at a meeting called by the directors, after publishing notice of the time, place and object of the meeting for two weeks in certain designated newspapers. A copy of such notice must also be sent to each shareholder at least two weeks prior to the day fixed for such meeting. Where notice of such meeting is waived in writing by all of the stockholders, the advertisements and personal notices above provided for are not required. (Act of April 16, 1929, P. L. 522, sec. 3; Banking Laws, 1930, sec. 508, p. 278.)

Capital stock of resulting corporation.

"The capital stock of the merged and consolidated state bank

(Pennsylvania - cont'd.)

shall not be less than that required for such institutions under the laws of the Commonwealth." (Act of April 16, 1929, P. L. 522, sec. 4; Banking Laws, 1930, sec. 509, p. 279.)

Compliance with laws of United States; approval of merger agreement by Secretary of Banking.

The merger and consolidation must not be in contravention of the laws of the United States and does not become effective until the national bank has fully complied with the laws of the United States relating to the merger of national banks with State banks or providing for their liquidation or the shares thereof, "nor until the agreement entered into by the boards of directors of the institutions so merging and consolidating and ratified by the shareholders as before provided has been submitted to and approved by the Secretary of Banking". (Act of April 16, 1929, P. L. 522, sec. 5; Banking Laws, 1930, sec. 510, p. 279.)

Dissenting shareholders, rights of.

After the completion of the merger, any shareholder of the merging corporations "who has not voted for such merger and consolidation" may give notice within a certain prescribed time that he dissents from the merger and is then entitled to receive the value of the shares held by him. Detailed provision is also made for the appraisal, payment and disposition of the shares held by such dissenting stockholder. (Act of April 16, 1929, P. L. 522, sec. 6; Banking Laws, 1930, secs. 511 and 512, pp. 279 and 280.)

Legal effect of merger.

"All the rights, franchises, and interests of such national banking association, so merged and consolidated with a state bank, in and

(Pennsylvania - cont'd.)

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 state bank into which it was merged and consolidated, without any deed or other transfer; and the said merged and consolidated state bank shall hold and enjoy the same, and all rights or property, franchises and interests, including the right of succession as trustee, executor or in any tother fiduciary capacity, if qualified by its charter under the laws of this Commonwealth, in the same manner and to the same extent as was hold and enjoyed by such national banking association". (Act of April 16, 1929, P.L. 522, sec. 7; Banking Laws, 1930, sec. 513, p. 280.)

Salc, assignment, etc., of franchises and property by one trust company to another.

The laws of this State also contain what is known as the "Short Merger Act". This act makes it lawful, among other things, for one trust company to sell, assign, dispose of and convey its franchises and property to another trust company, the pertinent provisions providing as follows:

"Any corporation created under the provisions of this act (the creation of banks not being provided for thereunder), and any corporation of the classes named in the second section hereof, (trust companies, i. e., title insurance companies which have accepted the provisions of subsequent supplementary acts giving them trust powers), that is now in existence by virtue of any law of this Commonwealth, may reduce its capital stock or alter and change the par value of the shares theroof,

(Pennsylvania - cont'd.)

by a vote of the stockholders taken in the manner and under the regulations prescribed in the eighteenth, nineteenth, twentieth, twenty-first and twenty-second sections of this act; and it shall be lawful for any corporation in the same manner to sell, assign, dispose of and convey to any corporation created under or accepting the provisions of this act, its franchises, and all its property, real, personal and mixed, and thereafter such corporation shall cease to exist, and the said property and franchises not inconsistent with this act, shall thereafter be vested in the corporation

so purchasing as aforesaid: * * * (Act of April 29, 1874, P.L. 73, sec. 23, as amended by Act of April 17, 1876, P. L. 30, sec. 5, and Act of June 2, 1915, P.L. 724, No. 333; Banking Laws, 1930, sec. 272, p. 153.)

RHODE ISLAND.Sale, lease or exchange of assets; no provisions covering consolidation or merger.

The laws of Rhode Island do not contain any provisions having specific reference to the consolidation or merger of banks or trust companies. The laws do provide that "Every bank, savings bank, and trust company * * * shall have all the powers, rights, and privileges, and be subject to all the duties, restrictions and liabilities, set forth in chapter two hundred and forty-eight so far only as is not repugnant to or inconsistent with the provisions of this title." (General Laws of 1923, ch. 271, sec. 1.); and chapter 248, (Section 55), as amended by P.L. 1927, ch. 1008, empowers a corporation to sell, lease or exchange all or substantially all of its assets and property, including good will "upon such terms and conditions as

(Rhode Island - cont'd.)

it deems expedient" if the holders of two-thirds of each class of its capital stock outstanding vote therefor, unless a higher proportion of affirmative votes is required by the articles of association. Section 56 of the same chapter outlines the procedure as to dissenting stockholders in such a case.

SOUTH CAROLINA.

Consolidation of State banks and trust companies with national banks and other State banks and trust companies.

With specific reference to banks and trust companies, the State of South Carolina, in an act approved April 7, 1930, provides that any State bank or trust company "may be merged or consolidated with any national banking association or associations under the charter of such national banking association or under a new charter issued as may be lawfully agreed upon," or such bank or trust company "may be merged with or consolidated"

(South Carolina - cont'd.)

with any other State bank or trust company, "provided that the laws of South Carolina governing the consolidation of State banks and trust companies shall first be complied with as to the consolidation of such banks or trust companies." (Act approved April 7, 1930, sec. 1.) The laws further provide that "All acts or parts of acts in conflict with this act are hereby repealed." (Act approved April 7, 1930, sec. 2.)

General legal effect of consolidation of banks and trust companies under provisions of act approved April 7, 1930.

When a consolidation under the provisions of the act approved April 7, 1930, "shall have been effected and approved as provided by law, all the right, franchises and interests of such bank or trust company so consolidated with the national banking association or national banking associations, or state bank or trust company, 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 national banking association, or in such state bank or trust company into which it is consolidated, without any deed or other transfer, and the said consolidated national banking association or consolidated state bank or trust company shall hold and enjoy the same and all rights of property, franchises, and interests, or in any other fiduciary capacity in the same manner, and to the same extent, as was held and enjoyed by such bank or trust company so consolidated. In case of such consolidation the rights of creditors of such bank or trust company shall be preserved unimpaired and all lawful debts and liabilities of such bank or trust company shall be deemed to have been assumed by such consolidated national banking

(South Carolina - cont'd.)

association and such consolidated state bank or trust company." (Act approved April 7, 1930, sec. 1.)

Legal effect of merger or consolidation of trust companies on trust powers and property.

"When any trust company organized under the laws of this State shall have been appointed executor of the last will of any deceased person, or administrator, with or without the will annexed, of the estate of any deceased person, or as guardian, trustee, receiver, assignee, or in any other fiduciary capacity, if such trust company has heretofore merged or consolidated with or shall hereafter merge or consolidate with any other trust company organized under the laws of this State, then, at the option of said first-mentioned company and upon the filing by it with the court having jurisdiction of the estate being administered, of a certificate of such merger or consolidation, together with a statement that such other trust company is to thereafter administer the estate held by it and an acceptance by said latter trust company of the trust to be administered, such certificate, statement and acceptance to be executed by the president or vice-president of said respective companies and to have affixed thereto the corporate seals of said respective companies, attested by the secretary thereof, and further upon the approval of said court, all the rights, privileges, title and interest in and to all property of whatever kind, whether real, personal or mixed, and things in action, belonging to said trust estate, and every right, privilege or asset of conceivable value or benefit then existing which would inure to said estate under and unmerged or unconsolidated existence of said first mentioned company, shall be fully and finally and without right or reversion trans-

(South Carolina - cont'd.)

ferred to and vested in the corporation into which it shall have been merged or with which it shall have been consolidated, without further act or deed, and such last-mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the corporation from which it was, by operation of the provisions of this section, transferred, and said corporation shall succeed to all the relations, obligations and liabilities, and shall execute and perform all the trusts and obligations devolving upon it, in the same manner as though it had itself assumed the relation or trust." (Code of 1922, ch. XI, sec. 10(6); Banking Law Pamphlet, 1928, sec. 10(6), p. 118.)

Certain provisions of act covering consolidation of corporations in general also apparently applicable.

Other than the provisions set forth above, the laws of South Carolina contain no further provisions specifically covering the merger of consolidation of banks and trust companies. These laws, however, contain rather elaborate provisions covering the consolidation of corporations in general (Act approved April 14, 1925); and because the above digested provisions of the act approved April 7, 1930, require consolidating banks and trust companies to comply with the "laws of South Carolina governing the consolidation of State banks and trust companies", and, particularly, because none of the provisions above digested prescribes the machinery for effecting a consolidation or covers the matter of a consolidation in as elaborate a manner as the act approved April 14, 1925, it would seem that the provisions of the latter act are the "laws of South Carolina" referred to in the act approved April 7, 1930, and that, therefore, such

(South Carolina - cont'd.)

provisions are also applicable, wherever they may be made so, to the consolidation of banks and trust companies.

The act approved April 14, 1925, except in some few irrelevant cases, specifically authorizes any two or more corporations to "consolidate into a single corporation which may be either one of said consolidated corporations or a new corporation." (Section 1.) This provision and other provisions prescribing in detail the procedure for effecting a consolidation and defining the powers, duties, rights and liabilities of the consolidated corporation are digested below.

Agreement for consolidation of corporations in general.

All or a majority of the directors of the corporations desiring to consolidate "may enter into an agreement signed by them under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation, the mode of carrying the same into effect and the manner and basis of converting the shares of each of the old corporations into the new corporation, with such other details and provisions as are deemed necessary or desirable." (Act approved April 14, 1925, No. 169, sec. 1.)

Agreement must be submitted to stockholders; notice of meeting; approval or rejection of agreement; certification of agreement to Secretary of State; recording of; charter fees.

The consolidation agreement must be submitted to a special meeting of the stockholders of each of the corporations involved, and advance notice of the time, place and object of such meeting must be given by publication at least once a week for four consecutive weeks in one or

(South Carolina - cont'd.)

more newspapers published in the county in which each corporation either has its principal office or conducts its business. A copy of such notice must also be mailed to each stockholder at least twenty days prior to the meeting. At such meeting, if a majority of the stockholders of each corporation vote to adopt the agreement, that fact must be certified under corporate seal on the agreement by the secretary of each corporation. Such certified agreement must then be signed under corporate seal by the president or vice-president and secretary or assistant secretary of each of the corporations and acknowledged under oath by such president or vice-president" to be the act, deed, and agreement of each of said corporations, respectively, and the agreement so certified and acknowledged shall be filed in the office of the Secretary of State and shall thereupon be taken and deemed to be the agreement and act of consolidation of the said corporations". A copy of the agreement and act of consolidation, certified by the Secretary of State under the seal of his office, must also be recorded with the Clerk of the Court of the county in which the principal office of the consolidated corporation is or is to be established, and with the Clerks of the Courts of the counties where the original charters of the consolidating corporations have been recorded. If any of the corporations have been created by a special act of the General Assembly the agreement must be recorded in the county where such corporation had its principal office. Such record, or a certified copy thereof is "evidence of the existence of the corporation created by the said agreement and of the observance and performance of all antecedent acts and conditions necessary to the creation thereof: Provided, That the Secretary of State shall collect charter fees as now fixed by law for granting new charters on their having the total

- 169 -

(South Carolina - cont'd.)

capital stock of the consolidated corporation". (Act approved April 14, 1925, No. 169, sec. 1.)

Legal effect of consolidation under provisions of act approved April 14, 1925.

When the agreement is signed, acknowledged, filed and recorded, "the separate existence of the constituent corporations shall cease, and the consolidating corporations shall become a single corporation in accordance with the said agreement, possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all the restrictions, disabilities and duties of each of such corporations so consolidated, and all and single, the rights, privileges, powers and franchises of each of said corporations: Provided, however, where there is a right enjoyed by one corporation and a restriction as to the same matter enjoined on the other or either of the others, the latter shall prevail; and all property, real, personal and mixed, and all debts due on whatever act, and all other things, action or belonging to each of such corporations shall be vested in the consolidated corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this State, vested in either of such corporations, shall not revert or be in any way impaired by reason of this Act; provided, that all rights of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired, limited in lien to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective former corporations shall thenceforth

(South Carolina - cont'd.)

attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it." (Act approved April 14, 1925, No. 169, sec. 2.)

Dissenting stockholders, rights of.

If any stockholder in the consolidating corporation, entitled to vote, votes against the consolidation, or if any stockholder not entitled to vote, at or prior to the taking of the vote, objects thereto in writing, and, within twenty days after the consolidation agreement has been filed and recorded, demands payment of the stock held by him, the consolidated corporation "shall within thirty days thereafter pay to him the value of the stock at the time of the consolidation". Detailed provision is made for

(South Carolina - cont'd.)

the appointment of appraisers to appraise the value of the stock in case of disagreement as to its value. Stockholders who do not vote against or object to the consolidation as set forth above, cease to be stockholders in the constituent corporations and are deemed to have assented to the consolidation. (Act approved April 14, 1925, No. 169, sec. 3.)

Actions pending.

"Any action or proceeding pending by or against either of the corporations consolidated may be prosecuted to judgment, as if such consolidation had not taken place or the new corporation may be substituted in its place." (Act approved April 14, 1925, No. 169, sec. 4.)

Certain liabilities and rights not affected by consolidation.

The liability of corporations, "or of the stockholders or officers thereof, or the rights or remedies of the creditors thereof or of persons doing or transacting business therewith, shall not in any way be impaired or diminished by the consolidation of two or more such corporations under the provisions thereof." (Act approved April 14, 1925, No. 169, sec. 5.)

Bond and stock issues by consolidated corporations.

When two or more corporations are consolidated, the consolidated corporation, subject to State laws, may issue bonds or other obligations with or without coupons or interest certificates attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make or obligations it will be required to assume, in order to effect such consolidation. To secure the payment of such bonds and obligations it may mortgage the corporate franchise, rights, privileges and property. The consolidated corporation may also issue capital stock

(South Carolina - cont'd.)

to such amount as may be necessary, to the stockholders of such consolidated corporation in exchange or payment in whole or in part for the original shares in the manner and on the terms specified in the agreement of consolidation. (Act approved April 14, 1925, No. 169, sec. 6.)

Matters prohibited by certain sections of laws not validated.

"No consolidation or merger under the terms of this Act shall render valid any matter or thing declared unlawful under any provisions of Article XIV, Section 3530-3554, Volume 3, Code of Laws of South Carolina, 1922, relating to Trusts, Pools and Monopolies, or any amendment thereof now effective or hereafter adopted, and no consolidation or merger under the provisions of this Act shall be deemed to be lawfully accomplished if in contravention of any provision of Article XIV, Sections 3530-3554, Vol. 3, Code of Laws of South Carolina, 1922, relating to Trusts, Pools and Monopolies, or any amendment thereof now effective or hereafter adopted, every provision of which shall remain in full force and effect after the passage of this Act and shall in no respect be impaired thereby". (Act approved April 14, 1925, No. 169, sec. 6a.)

SOUTH DAKOTA.Consolidation of banks.

The laws of South Dakota provide that a State bank "which is in good faith liquidating its business, may for such purpose consolidate with some other bank in the same city or town by transferring its resources and liabilities to such bank with which it is in process of consolidation, but no consolidation shall be made without due notice in writing of such

(South Dakota - cont'd.)

intention, to the superintendent of banks, and not then until a thorough examination has been made by him and his consent in writing obtained; provided, that in no case may any bank consolidate for the purpose of defrauding or delaying any of its creditors." (Laws of 1909, ch. 222, art. 2, sec. 24, as amended by Laws of 1915, ch. 102, art. 2, sec. 27; South Dakota Rev. Code of 1919, sec. 8974; Banking Law Pamphlet, 1927, sec. 8974, p. 24.)

Consolidation of trust companies.

Any trust company "which is in good faith liquidating its business for the purpose of consolidating with some other like corporation may transfer its assets and liabilities to the corporation with which it is in the process of consolidation; but no such consolidation of corporations shall be made without the consent of the superintendent of banks, and not then to delay or defraud any of the creditors of either corporation." (Laws of 1911, ch. 255; South Dakota Rev. Code of 1919, sec. 9061; Banking Law Pamphlet, 1927, sec. 9061, p. 70.)

TENNESSEE.Definition of word "bank".

The laws of Tennessee provide that the word "bank" as used in the following provisions, "shall signify, mean, cover and include every trust company, loan company, mortgage security company, safe deposit company, receiving money on deposit, and every individual, firm, corporation, association or company doing a banking, loan or discount business and receiving money on deposit and performing functions of a bank."

(Tennessee - cont'd.)

(Public Acts of 1913, ch. 20, sec. 44; Banking Law Pamphlet, with amendments to and including 1923, sec. 44, p. 28.)

Consolidation or merger of banks.

No State bank "shall have authority or power to * * * consolidate or merge with any other bank, except in pursuance of the provisions of this (1913 bank) act; * * *." (Public Acts of 1913, ch. 20, sec. 23; Banking Law Pamphlet, with amendments to and including 1923, sec. 23, p. 21.)

Procedure to merge or consolidate; application, examination, issuance of certificate by superintendent of banks, filing of.

A written application setting out all of the facts of the merger or consolidation must be filed with the superintendent of banks by the bank desiring to merge or consolidate "and before such * * * merger or consolidation becomes effective, the Superintendent of Banks must examine into the proceedings to * * * the consolidation or merger, and must issue his certificate in triplicate certifying that the * * * consolidation or merger has been in pursuance of the requirements of law." One of the certificates must be kept on file in the office of the Superintendent, one must be filed for record in the office of the Register of Deeds, of the County in which is located the bank's principal place of business, and one must be filed with the bank. The superintendent "shall issue his certificate, if the requirements of the law have been complied with * * * for such consolidation or merger, but shall refuse to issue his certificate unless the requirements of the law have been complied with; provided, however, that the capital stock of no bank shall be decreased below the minimum amount required by law for the incorporation of banks in this State." (Public Acts of 1913, ch. 20, sec. 23; Banking Law Pamphlet, with

(Tennessee - cont'd.)

with amendments to and including 1933, sec. 23, p. 21.)

TEXAS.Purchase of assets of another bank.

The laws of Texas do not contain any provisions having specific reference to the consolidation or merger of banks or trust companies; but they do provide that "Any State bank or bank and trust company which purchases the assets of any other bank shall, before the purchase of the assets of such other bank, increase its capital to such an amount that the same will have the ratio to the total deposits of the bank, the assets of which it has purchased, as defined and required in Article 506". (Acts of 1909, 2nd C. S.; Banking Law Pamphlet, 1929, Art. 513, p. 44.)

UTAH.Consolidation of banks.

The laws of this state specifically covering banks and trust companies do not contain any provisions expressly authorizing the consolidation, merger, etc., of such institutions; but these laws do provide that "corporations to conduct commercial or savings banks or banks having departments for both such classes of business may be formed under the provisions of chapter 1, of title 19, Compiled Laws of Utah, 1917 (Sections 860-899), respecting corporations for pecuniary profit, and all the rights, privileges, and powers, and all the duties and obligations, of such corporations and the officers and stockholders thereof shall be as provided in said chapter, except as in this chapter otherwise provided; * * *." (Comp. Laws of Utah, 1917, Title 19, ch. 6, as amended, sec.

(Utah - cont'd.)

979; Banking Law Pamphlet, 1927, sec. 979, p. 6.) "This chapter" does not provide "otherwise", so it would seem that "commercial or savings banks or banks having departments for both such classes of business" may consolidate under the following provisions.

Consolidation of corporations.

State corporations "of the same kind, engaged in the same general business, in the same vicinity, * * * may consolidate * * *."

(Laws of 1921, ch. 22, p. 76.)

Stockholders must agree.

The consolidation may be "upon such terms and conditions conformable to the law as shall be agreed upon" by a majority of the stockholders of each corporation at a special meeting after notice stating the time, place and object of such meeting has been published at least thirty days prior thereto in a newspaper in the county in which each corporation has its principal place of business. (Laws of 1921, ch. 22, p. 76.)

Consummation of consolidation.

The "consolidation may be effected either by joining two or more corporations together or by formation of a new corporation under the laws of this State for the purpose of buying in and taking over and operating the properties, rights and franchises of the corporation desiring to consolidate." And if by purchase, such purchase may be made at a private sale or any public judicial sale, "or in the enforcement of mortgages or liens". If the sale is a so-called private one, it must be approved by at least a majority of the stockholders of the selling companies, unless the

(Utah - cont'd.)

articles of association provide how and by whose authority it shall be made. In the latter event, the sale must be in accordance with such provision. If the consolidation is effected by forming a new corporation to purchase, the articles of association of the new corporation must contain, in addition to the regular contents, a provision that the corporation is formed for the purpose of purchasing in and taking over the properties, rights, privileges, and franchises of such corporations so desiring to consolidate. Such articles of association must be filed in the office of the Secretary of State, and upon his filing of the articles and issuing a certificate of incorporation to the corporation, "the association shall without further act be deemed and held to have been duly formed and created a corporation with all the powers specified," that are not inconsistent with the state constitution or laws. If the consolidation is effected by joining two or more companies together, "such consolidation shall be evidenced by a certificate under the corporate seals of the respective corporations, signed by the president and secretary of each, briefly reciting the act or acts sought to be accomplished, and describing in a general way, the property sought to be consolidated, together with the name of the corporation thus formed by amalgamation or consolidation, with such other provisions as the law may require to be inserted in the original articles of incorporation, and such others being conformable to law, as may be deemed necessary to perfect such consolidation". This certificate must be filed and recorded in the same manner as original articles of incorporation, and a copy, certified by the county clerk, must be filed with the secretary of state, "whose

(Utah - cont'd.)

certificate shall constitute such consolidated corporations, a new corporation". Any consolidated corporation has the right to work, operate, and maintain the properties acquired, and all the rights, privileges, franchises and powers named in the new articles of incorporation, including those formerly enjoyed by the original corporations. (Laws of 1921, ch. 22, pp. 76-77.)

Legal effect of consolidation.

"Upon the consummation of such consolidation, all the rights, privileges, and franchises of each of said consolidating corporations, and all the property, real and personal, and all subscriptions and debts due on whatever account, shall be deemed to be transferred to and vested in such new corporation without further act or deed; and such consolidation shall not relieve the consolidating corporations, or either of them, or the stockholders, from any liabilities, nor shall it extinguish or limit any franchise or right; but all debts, liabilities, and duties of either of said corporations shall henceforth attach to such new corporation, and be enforceable against it to the same extent as if incurred or contracted by it." (Comp. Laws of Utah, 1917, Title 19, Ch. 6, Sec. 889.)

VERMONT.

Sale, lease or exchange of assets.

The banking laws of this State do not contain any provisions specifically covering the consolidation or merger of banks; but such laws do provide that "A savings bank or trust company shall not make a sale,

(Vermont - cont'd.)

lease or exchange of all of its assets pursuant to the provisions of section four thousand nine hundred and twenty-six, except with the consent of the bank commissioner given on petition and after hearing. Such notice of the hearing shall be given as the commissioner directs". (General Laws, 1917, ch. 225, sec. 5351; Banking Law Pamphlet, 1918, sec. 5351, p. 5.)

Section 4926 above referred to provides that "A corporation having a capital stock and able to meet its liabilities then matured may, subject to the rights of creditors, sell, lease or exchange all its assets, including its franchises, to any other corporation authorized to do business under the laws of this state and to acquire such assets, for cash, stock of other corporations or other property. Such sale, lease or exchange shall first be authorized by such vote of the stockholders of both corporations as is provided in their articles of association, or, if provision is not so made therein, then by the vote, at meetings called upon twenty days' notice for such purpose, of the holders of two-thirds of the outstanding stock, of both corporations, or, if the stock is divided into classes, then by the vote of the holders of two-thirds of each class of outstanding stock entitled to vote, or, if the purchasing corporation is organizing and issuing stock for the property to be acquired, then by the vote, at a meeting called upon twenty days' notice for such purpose, of all the incorporators of such corporation. If stock of another corporation is received in full or part payment, all of such stock must be disposed of within two years from the time it was acquired. Failure to make such disposition shall be cause for the dissolution of the corporation, under the provisions of

(Vermont - cont'd.)

section four thousand nine hundred and forty-four. A corporation having a capital stock and unable to meet its liabilities then matured may, subject to the rights of creditors, so sell, lease or exchange all its assets, including its franchises, by the vote of the holders, at a meeting called upon twenty days' notice for such purpose, of the holders of a majority of the stock represented at such meeting and entitled to vote." (General Laws, 1917, Ch. 210, sec. 4926, as amended by Public Acts, 1919, No. 125.)

- 131 -

VIRGINIA.Merger or consolidation of banks.

Any State bank is authorized to merge or consolidate with another State bank, or national bank doing business in Virginia, "upon compliance with the provisions of sections thirty-eight hundred and twenty-one, and thirty-eight hundred and twenty-two of the Code of Virginia relating to mergers or consolidations of corporations, except that such mergers or consolidations of banks shall be ratified and confirmed by an affirmative vote of the shareholders of each of such banks owning at least two-thirds of its capital stock outstanding and having voting power. The provisions of sections thirty-eight hundred and twenty-three, thirty-eight hundred and twenty-five, and thirty-eight hundred and twenty-six of the Code of Virginia shall apply to such merged or consolidated corporation, except as otherwise provided in this act; * * *." (Va. Code of 1930, sec. 4149 (10), p. 1047.)

Legal effect of merger or consolidation.

"In the event of any such merger or consolidation, the merged or consolidated corporation (whether it be one of said merging or consolidating banks, or a new bank, State or national, formed by means of such merger or consolidation) shall succeed to, and be vested with, without further act or deed, all offices of trust or of a fiduciary nature with which any one or more of the banks, parties to such consolidation or merger, were vested immediately prior to the time at which such consolidation or

(Virginia - cont'd.)

merger became effective." (Va. Code of 1930, Sec. 4149(10), p. 1047)

The sections of the laws of Virginia referred to in the provision first above quoted, which banks proposing to merge or consolidate must comply with, are digested under the following captions.

When merger or consolidation may be effected.

Any State corporation "may merge or consolidate into a single corporation with any other corporation organized for the purpose of carrying, on the same or a similar business" under any State or Federal law "which said consolidated corporation shall upon the payment of a proper charter fee, thereby become a domestic corporation of this State and be subject to its laws, and to the jurisdiction of its courts, and may be either one of said merging or consolidating corporations, or a new corporation to be formed by means of such merger or consolidation, and by virtue of this charter, and the proceedings had pursuant thereto, such corporation shall be consolidated and merged, so that all property, rights, franchises, and privileges by law vested in such corporations so merged or consolidated shall be transferred to and vested in the corporation into which such consolidation or merger shall be made." (Va. Code of 1930, sec. 3821, p. 840.)

Agreement of directors to merge or consolidate.

The board of directors of each of the corporations proposing to merge or consolidate may under corporate seal enter into a joint agreement for the merger or consolidation of such corporation. The agreement must prescribe the terms and conditions of the merger or consolidation, the mode of carrying it into effect, the name of the resulting corporation,

(Virginia - cont'd.)

the number, names and residences of its board of directors and principal officers, the aggregate amount and rate of interest of any of its bonds, the number and par value of its shares of stock, the manner of converting the stock of its constituents into new stock, and, if a new corporation is created, how and when the directors and principal officers to succeed those named in the agreement are to be chosen or appointed. The agreement may also contain such other provisions as the contracting board of directors deem necessary or convenient to perfect the merger or consolidation. (Va. Code of 1930, sec. 3822 (a), p. 941.)

Submission of agreement to stockholders and State corporation commission for approval.

The agreement must be submitted at a special meeting to the stockholders of each of the corporations involved. Notice of the time, place and object of such meeting must be given by publication at least six times a week for two successive weeks in a certain designated newspaper, and by mailing a copy of such notice at least ten days prior to such meeting to each stockholder. If a majority of the votes cast at each of these meetings be in favor of the agreement, consolidation and merger, then that fact must be certified by the president or one of the vice-presidents of the corporation, and attested by each secretary under corporate seal. Such certificates, acknowledged by the president or vice-president signing them and by the respective secretaries, must be presented to the State corporation commission, which must ascertain and declare whether the corporations, by complying with the legal requirements, have entitled themselves to the merger or consolidation. (Va. Code of 1930, sec. 3822(b), p. 941.)

(Virginia - cont'd.)

Certificate of merger or consolidation, issuance of by State corporation commission; filing and recordation of; effect of.

If the corporation commission issues a certificate of merger or consolidation, it and the agreement must be certified by the commission to the Secretary of State and recorded in the same manner as an original certificate of incorporation or articles of association. When so filed for recordation, "the said merger or consolidation shall be complete and the merged or consolidated corporation may proceed to carry out the details of said merger and consolidation according to the terms of the agreement and to transact and carry on the business for which it was formed; * * *." (Va. Code of 1930, sec. 3822(b), p. 941.)

Dissenting stockholders, rights of.

Detailed provision is made for the appraisal and payment of the value of stock held by any stockholder who did not vote for the merger or consolidation and who dissents to such merger or consolidation within a certain prescribed time. (Va. Code of 1930, sec. 3822, pp. 941-943.)

Effect of merger or consolidation under general corporation law; rights of former corporations vest in new corporation; rights and liabilities assumed.

"Upon the perfecting, as aforesaid of the said merger or consolidation, the several corporations parties thereto shall be deemed and taken as one corporation, upon the terms and conditions and subject to the restrictions set forth in said agreement, and all and singular the rights, privileges, and franchises of each of said corporations, parties to the same, except as restricted by law, and all property, real and personal, and all debts due on whatever account, as well of stock subscriptions as

(Virginia - cont'd.)

other things in action, belonging to each of such corporations, shall be taken and deemed as transferred to and vested in such new corporation without further act or deed; and all property, all rights of way, and all and every other interest shall be as effectually the property of the new corporation as they were of the former corporations parties to the said agreement; and the title to real estate, either by deed or otherwise, under the laws of this State vested in either corporation, shall not be deemed to revert or be in any way impaired by reason of this chapter; but, the rights of creditors and all liens upon the property of either of said corporations shall be preserved unimpaired; and the respective corporations shall be deemed to continue in existence to preserve the same; and all debts, liabilities, and duties of either of said companies shall thenceforth attach to said new corporation and be enforced against it to the same extent as if the said debts, liabilities, and duties had been incurred or contracted by it." (Va. Code of 1930, sec. 3823, p. 944.)

Suits against new corporation; effect of merger or consolidation on pending suits.

Suits can be maintained against the new corporation in any of the courts of Virginia in the same manner as against any other corporation, and suits pending by or against any of the constituent corporations can be prosecuted as if a consolidation had not taken place or the new corporation may be substituted as a party. (Va. Code of 1930, secs. 3825 and 3826, p. 944.)

WASHINGTON.

Transfer of assets for purpose of consolidation.

The laws of Washington provide that "a bank or trust company may

(Washington - cont'd.)

for the purpose of consolidation or voluntary liquidation transfer its assets and liabilities to another bank or trust company, by a vote, or with the written consent of the stockholders of record owning two-thirds of its capital stock, but only with the written consent of the supervisor of banking and upon such terms and conditions as he may prescribe." (Laws of 1923, p. 312, sec. 12; Rem. 1927 Sup., sec. 3282; Banking Law Pamphlet, 1929, sec. 97, p. 45.)

Certificate of authority and corporate existence, termination of.

When a bank or trust company has transferred all of its assets and liabilities, or has been liquidated or is no longer engaged in business as a bank or trust company, "the supervisor of banking shall terminate its certificate of authority, which shall not thereafter be revived or renewed." When any such corporation has had its certificate of authority revoked, "it shall forthwith collect and distribute its remaining assets, and when that is done the supervisor of banking shall certify the fact to the secretary of state, whereupon the corporation shall cease to exist and the secretary of state shall note that fact upon his records." (Laws of 1923, p. 312, sec. 12; Rem. 1927, Sup., sec. 3282; Banking Law Pamphlet, 1929, sec. 97, p. 45.)

Report required showing entire net income; taxation of consolidated corporation.

Every bank or corporation which acquires by merger or by consolidation, the major portion of the assets or franchises of another bank or corporation in this state, or which merges or consolidates with another bank or corporation, must in its annual report show its own and the consolidated

(Washington - cont'd.)

entire net income of all such banks or corporations for the preceding fiscal or calendar year to the extent that all such income has not been used or included in measuring a tax under this act. In any event, it is liable for and must pay all taxes that would have been due and payable by the bank or corporation whose assets or franchises were acquired or which was merged or consolidated, had it continued in business. (Laws of 1929, ch. 151, sec. 20; Banking Law Pamphlet, 1929, sec. 20, p. 135.)

WEST VIRGINIA.

Consolidation or sale of assets.

Any banking institution may at any time with the consent in writing of the Commissioner of Banking take over the business and assets and assume the liabilities of another banking institution, all of the terms or conditions of any such purchase or consolidation to be first approved by the Commissioner of Banking. (Code of West Virginia for 1931, Chapter 31, Article 8, Section 29.)

Legal effect of consolidation or sale.

Upon the completion of any such purchase or consolidation and by operation of law the purchasing or consolidated banking institution shall be substituted in the room and stead of each of the participating institutions in all fiduciary relationships, and all and singular the titles, properties, offices, appointments, rights, powers, duties, obligations, and liabilities of each participating institution as trustee, executor, administrator, guardian, depository, registrar, transfer agent, or other fiduciary shall be vested in and devolve upon the purchasing or

(West Virginia - cont'd.)

consolidating institution, and such purchasing or consolidating institution shall be entitled to take, receive, accept, hold, administer, and discharge any and all grants, gifts, bequests, devises, and conveyances, trusts, and appointments made by deed, will, agreement, order of court, or otherwise in the future or in the name of any such participating institution, whether made, executed, or entered into before or after such purchase or consolidation, and whether to vest or become effective before or after such purchase or consolidation as fully and to the same effect as if the purchase or consolidated institution had been named in such deed, will, agreement, order, or other instrument instead of another participating institution. (Code of West Virginia for 1931, Chapter 31, Article 8, Section 29).

No corporation except consolidating or purchasing corporation may use the name of participating corporation.

After a purchase or consolidation no other corporation shall be allowed to take or use the name of any institution participating in such purchase or consolidation. (Code of West Virginia for 1931, Chapter 31, Article 8, Section 29).

General laws relating to consolidation of corporations.

A note by the Committee of the Legislature appointed to consider the report of the revisers who prepared the draft for the Code of 1931 indicates that the above quoted provisions of law are supplementary to the general provisions of law relating to the consolidation of corporations. Under these general provisions of law any two or more corporations organized or existing under the laws of West Virginia for the purpose of carrying on any kind of business may consolidate or merge into a single corporation,

(West Virginia - cont'd.)

which may be any one of such constituent corporations or a new corporation to be formed by such consolidation or merger, as shall be specified in the agreement mentioned below.

Proceedings for consolidation.

The directors or a majority of them of such corporation as desire to consolidate or merge must enter into an agreement signed by them and under the corporate seals of the separate corporation, prescribing the terms and conditions of consolidation or merger, the mode of carrying same into effect, and stating such other facts required or permitted by law to be set out in an agreement of incorporation as can be stated in the case of a consolidation or merger, stated in such altered form as the circumstances of the case may require, as well as the manner of converting the shares of the constituent corporations into shares of the consolidated corporation, with such other details as are deemed necessary.

Such agreement shall be submitted to the stockholders of each constituent corporation at a meeting thereof called separately for the purpose of taking same into consideration. Due notice of the time, place, and object of said meeting must be given by publication at least once a week for four successive weeks in one or more newspapers published in the county wherein each such corporation has its principal office or conducts its business, and a copy of such notice shall be mailed to the last known post-office address of each stockholder or such corporation at least twenty days prior to the date of meeting.

At such meeting the said agreement must be considered and a vote by ballot in person or by proxy taken for the adoption or rejection thereof,

(West Virginia - cont'd.)

each share entitling the holder thereof to one vote. If the votes of stockholders of each of such corporations representing two-thirds of the total number of shares of its capital stock shall be for the adoption of such agreement, then that fact must be certified on such agreement by the secretary of each such corporation under the seal thereof, and the agreement so adopted and certified shall be signed by the president and secretary of each of such corporations under the corporate seals thereof and acknowledged by the president of each such corporation, and the agreement must be filed in the office of the secretary of the state and recorded as provided by law. When such agreement has been so filed and recorded such record is evidence of the agreement and act of consolidation or merger of such corporation and the observance of all acts and conditions to have been observed and performed precedent to such consolidation or merger. (Code of West Virginia for 1931, Chapter 31, Article 1, Section 63.)

Sale of entire assets and franchises.

Every corporation organized and existing under the laws of West Virginia may at any meeting of its board of directors sell, lease, or exchange all of its property and assets, including its good will and its corporate franchises, upon such terms and conditions and for such consideration as its board of directors shall deem expedient and for the best interest of the corporation when and as authorized by the affirmative vote of sixty per cent of the stock issued and outstanding having voting power given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of sixty per cent of the voting stock issued and outstanding, unless the certificate of incorpora-

(West Virginia - cont'd.)

tion requires the vote or written consent of the holders of a larger proportion of the stock issued and outstanding. (Code of West Virginia for 1931, Chapter 31, Article 1, Section 64).

(West Virginia - cont'd.)

Consolidated or purchasing corporation may use name of participating corporations.

The purchasing or consolidated corporation is given the right to use the name of any of the participating corporations but no other corporation can take or use the name of any of such participating corporations.

(Laws of 1929, ch. 23, sec. 31.)

WISCONSIN.

Consolidation of banks.

The laws of Wisconsin provide that "A bank, which is in good faith winding up its business, for the purpose of consolidating with some other bank, may transfer its resources and liabilities to the bank with which it is in process of consolidation; but no consolidation shall be made without the consent of the commissioner of banking, and not then to defeat or defraud any of the creditors in the collection of their debts against such banks, or either of them." (Wisc. Stats., sec. 221, 23.)

The laws further provide that, with the approval of the commissioner of banking, any two or more banks located in the same county, city, town or village may consolidate under the charter of any of the consolidating banks. (Wisc. Stats., sec. 221. 25 (1).)

Terms of consolidation; agreement of directors; ratification by stockholders.

The consolidation may be on such terms and conditions as may be agreed upon by a majority of the board of directors of each consolidating bank and must be "ratified and confirmed" by two-thirds of the outstanding stock of each bank at a meeting called by the directors, after sending notice

(Wisconsin - cont'd.)

of the time, place and object of the meeting to each shareholder by registered mail at least thirty days prior to the meeting. (Wisc. Stats., sec. 221.25(1).)

Capital stock required of consolidated bank.

The capital stock of the consolidated bank "shall not be less than that required under existing law for the organization of a state bank in the place in which it is located; * * *." (Wisc. Stats., sec. 221.25 (1).)

Dissenting stockholder, rights of.

Within twenty days after the commissioner of banking has approved the consolidation, any stockholder of the consolidating banks who has not voted for the consolidation may give notice to the directors of the consolidated bank that he dissents from the consolidation whereupon he becomes entitled to receive the value of the shares held by him. Provision is made for an appraisal of such shares and for a re-appraisal in case the value first appraised is not satisfactory. (Wisc. Stats., sec. 221.25(1).)

Liquidation not essential; report of assets and liabilities of consolidating banks.

"The bank or banks consolidating with another bank under the provisions of the preceding subsection (Sec. 221.25(1).) shall not be required to go into liquidation but their assets and liabilities shall be reported by the bank with which they have consolidated; * * *." (Wisc. Stats., sec. 221.25(2).)

(Wisconsin - cont'd.)

Legal effect of consolidation of banks.

"All the rights, franchises and interests of said banks so consolidated in and to every species of property, 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 any deed or other 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 or banks so consolidated therewith." (Wisc. Stats. sec., 221.25(2).)

Consolidation of trust companies.

Any State trust company "may consolidate with any other similar corporation in the same county, city, town or village in the manner provided for the consolidation of banks under section 221.25; * * *." (Wisc. Stats., sec. 223.11.)

Legal effect of consolidation of trust companies.

"In the event of such consolidation the consolidated corporation, by whatever name it may assume or be known, shall be a continuation of the entity of each and all of the corporations so consolidated for all purposes whatsoever, including holding and performing any and all trusts and fiduciary relations of whatsoever nature of which the corporations so consolidating, or either or any of them, was fiduciary at the time of such consolidation, and also including its appointment in any fiduciary capacity by any court or otherwise, and the holding, accepting and performing of any and all trusts and fiduciary relations whatsoever as to or for which either or any one of the corporations so consolidating may have been appointed, nominated or designated by any will or conveyance or otherwise, whether or

(Wisconsin - cont'd.)

not such trust or fiduciary relation shall have come into being or taken effect at the time of such consolidation." (Wisc. Stats., sec. 223.11.)

WYOMING.Definition of "State bank".

"Every bank, banker or corporation in this state doing a banking business under the provisions of this Act, shall be known as a state bank; and any and all reference herein made in this Act to state banks shall apply to every individual, firm or corporation doing a banking business under the provisions of this Act". (Laws of 1925, ch. 157, sec. 5, as amended by Laws of 1929, ch. 54, sec. 1.)

Definition of "bank" or "banking business".

"Any person, firm or corporation (except national banks) having a place of business within this state where credits are opened by the deposit or collection of money or currency or negotiable paper subject to be paid or remitted upon draft, receipt, check, or order, shall be regarded as a bank or banker, and as doing a banking business under the provisions of this Act." (Laws of 1925, ch. 157, sec. 10; Banking Law Pamphlet, with 1927 amendments, sec. 10, p. 13.)

The laws also provide "that the term 'trust company' may be used by a person, firm or corporation when the business transacted is in no sense a banking business". (Laws of 1925, ch. 157, sec. 11; Banking Law Pamphlet, with 1927 amendments, sec. 11, p. 13.)

Transfer of assets and liabilities for purpose of consolidation.

"A state bank which is in good faith winding up its business for

(Wyoming - cont'd.)

the purpose of consolidating with some other bank may transfer its assets and liabilities to the bank with which it is in process of consolidation, upon receiving written consent of the State Examiner, and not otherwise."

(Laws of 1925, ch. 157, sec. 109; Banking Law Pamphlet, with 1927 amendments, sec. 108, p. 39.)

421.11-2

X-6812

~~Garden~~

File date 6-30-31

DIGEST OF STATE LAWS RELATING TO
PRIVATE BANKS OR BANKERS.

The following is a digest of the laws of the several States having reference to the organization and operation of private banks or bankers, which was prepared in the office of the General Counsel to the Federal Reserve Board with the assistance of the Counsel for the various Federal reserve banks.

Only the provisions of State laws pertaining to the organization and operation of private banks or bankers and the nature and scope of the supervision of them exercised by the State banking authorities have been covered in the digest; and no attempt has been made to digest in detail any provisions pertaining to liquidation. The laws of some States require private banks or bankers to conduct their business in accordance with the provisions covering incorporated banks. In such cases, this general requirement has been digested, but no attempt has been made to digest the provisions covering incorporated banks.

In preparing this digest, it has been assumed that the terms "private bank" and "private banker" are generally understood to embrace all persons, firms, partnerships, associations or other organizations engaged in one or more of the generally recognized phases of the banking business without being incorporated. Where, however, the term "private bank" or "private banker" is defined in the State laws, such definition is summarized in the digest.

indexed copy filed 412.14-9

ALABAMA.

Private banks subject to same general provisions as incorporated banks and to certain additional specific provisions.

The laws of this State create a banking department which is "charged with the execution of all laws relating to *** individuals doing or carrying on a banking business in the State of Alabama." The laws also provide that "The word 'bank' as herein used means any person, firm, partnership or corporation doing or carrying on a banking business, * * *, unless used in such connection and so as to express a different meaning", indicating that so-called private bankers are subject to the same general provisions as are made applicable to incorporated banks. (Civil Code, Sec. 6275; Banking Laws, 1928, sec. 6275, p. 3). In addition, the laws also contain provisions specifically covering the organization, operation and liquidation of private bankers, and these provisions are set forth below.

Organization; notice of intention to commence business; publication of.

"No individual or individuals or partnership shall commence the carrying on of the banking business without first giving notice of intention to organize and carry on such business by publication at least once a week for four successive weeks in a newspaper to be designated by the superintendent of banks published in the city or town or county where such bank is proposed to be located. Such notice shall specify the name or names of the individual or individuals proposed to be interested in such bank, what interest each will have, the amount of the capital proposed to be used in the proposed banking business, the name under which and the place where the business will be carried on, and the bona fide cash value of the assets and property of each individual to be interested in the bank, over and above all indebtedness. Copy of such published notice * * * shall be made and filed with the superintendent of banks." (Civil Code, sec. 6349; Banking Laws, 1928, sec. 6349, p. 24.)

Investigation by superintendent of banks.

"The superintendent of banks shall investigate and ascertain whether the character and general fitness of the individuals named are such as to command the confidence of the community in which said bank is proposed to be located, and that there is public necessity for said bank, and sufficient business to support the same in said community, the same as is required preliminary to the incorporation of a bank under the provisions of this article." If, after such investigation, the superintendent is of the opinion that the facts do not warrant the establishment of such bank, "he shall issue under his hand and official seal, in duplicate, a refusal to permit the individuals proposed to be interested in the proposed bank from operating the bank, and shall **** transmit to the probate judge of the county in which the bank is proposed

to be located and do business, one of the duplicates of his refusal, which the probate judge shall file and record in his office, and the other duplicate of his refusal the superintendent shall file in his office." (Civil Code, sec. 6350; Banking Laws, 1928, sec. 6350, p. 24.)

Application for permit to commence business.

"Before any *** individual banker shall transact any business as a bank, such *** individual shall file with the superintendent request for a permit to commence business." (Civil Code, sec. 6351; Banking Laws, 1928, sec. 6351, p. 24.)

Written approval of superintendent of banks required.

"No *** individual or individuals shall transact any business as a bank in this State other than such as relates to the formation of such bank without the written approval of the superintendent of banks and without his written certificate stating that such *** individual banker has complied with all the requirements of law and is authorized to transact business within this State as a bank and that such business can be safely entrusted to it, which certificate shall be recorded in the office of the superintendent in a book to be kept by him for that purpose, and a certified copy thereof under the hand and official seal of the superintendent shall be filed and recorded in the office of the probate judge of the county wherein the *** individual is to have its, his or their principal place of business, at the expense of the bank". (Civil Code, sec. 6352; Banking Laws, 1928, sec. 6352, p. 25.)

Examination by superintendent as to payment of capital.

"The superintendent shall, before issuing his permit to any *** individual banker to commence business, examine or cause an examination to be made in order to ascertain whether the requisite capital of such bank has been paid in in cash. The superintendent shall not authorize such *** individual banker to commence business unless it appears to his satisfaction from such examination, or other evidence satisfactory to him, that the requisite capital has, in good faith, been subscribed, and paid in cash." (Civil Code, sec. 6353; Banking Laws, 1928, sec. 6353, p. 25.)

Transacting business without permit; penalty.

"Any person who shall hereafter transact any business as an officer or agent *** of an individual banker hereafter commencing business, before such *** individual banker is authorized to transact business as a bank by the permit of the superintendent of banks, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred nor more than one thousand dollars." (Criminal Code, sec. 3400; Banking Laws, 1928, sec. 3400, p. 63.)

Individual may appeal from decision of superintendent refusing permit.

An individual may appeal to the State Banking Board and a court of competent jurisdiction from a decision refusing him the right to establish an individual bank. (Civil Code, sec. 6356; Banking Laws, 1928, sec. 6356, p. 25.)

Annual assessments for expenses of banking department.

Each private banker on the call of the superintendent of banks, is required to pay a certain amount into the treasury of the State, between the first day of January and the first day of April of each year, or at such other time as the superintendent may designate, to be used as an aid in defraying the expenses of the banking department. (Civil Code, sec. 6287; Banking Laws, 1928, sec. 6287, p. C). Each bank failing to pay this assessment "shall forfeit to the State five (\$5.00) dollars for each day after it is (in) default, ***". (Civil Code, sec. 6288; Banking Laws, 1928, sec. 6288, p. 7).

Examinations; number and nature of.

"The superintendent of banks shall either personally, or by competent examiner appointed by him, visit and examine *** every individual banker doing a banking business, in and under the laws of the State of Alabama, at least twice in each year. On every such examination, inquiry shall be made as to the condition and resources of the corporation (or the individual or individuals in case of individual bankers), the mode of conducting and managing the affairs of the bank, ***, the investment of the funds of the bank, the safety and prudence of the management of the bank, and whether the requirements of its charter and of law have been complied with in the administration of the affairs of the bank, and as to such other matters as the superintendent of banks may prescribe. In addition, the superintendent of banks shall in like manner examine or cause to be examined into the affairs of every *** individual banker doing a banking business whenever in the judgment of the superintendent the management and condition of the bank is such as to render an examination of its affairs necessary or expedient, or whenever in the opinion of the superintendent the interest of the public demands an examination." (Civil Code, sec. 6289; Banking Laws, 1928, sec. 6289, pp. 7 and 8).

Reserve requirements.

"No bank, firm, person or corporation doing a banking business shall reduce, or be allowed to reduce the cash of the bank or hand below fifteen per cent of demand deposits, provided that three-fifths of said fifteen per cent reserve may consist of the balance due by banks and bankers to said bank when payable on demand." (Civil Code, sec. 6337; Banking Laws, 1928, sec. 6337, p. 19).

Failure of private banker to pay over money on demand.

Any private banker who sells or disposes of property for another, and refuses for three days after demand made by the person entitled to make such demand or his agent or attorney, to pay the amount to which such person is entitled, must on conviction, be fined not more than one thousand dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county for not more than six months. (Code of Alabama, 1923, sec. 3976.)

Impairment of capital; power and duty of superintendent.

"Whenever the superintendent of banks shall have reason to believe that the *** capital of any individual banker is reduced by impairment or otherwise below the amount of its paid-up capital stock, he shall require such *** individual banker to make good the deficit within thirty days after the date of the requirement by him, which requirement shall be in writing. The superintendent may examine or cause to be examined into the affairs of any such bank to ascertain the amount of such impairment or reduction of capital and whether the deficiency has been made good as required by him". (Civil Code, sec. 6297; Banking Laws, 1928, sec. 6297, p. 9).

Superintendent must request correction of unsafe practices.

"The superintendent of banks shall submit to the *** governing body of any individual banker, and request a correction of any matter in the conduct of the affairs of the bank which, in his opinion, is unsafe." (Civil Code, sec. 6298; Banking Laws, 1928, sec. 6298, p. 9).

Unsafe or unsound condition or other matters of default or misconduct; superintendent may take possession.

"Whenever it shall appear to the superintendent of banks that any *** individual banker has violated its charter or any law of the State, or is conducting business in any unauthorized manner, or if the capital of *** any individual banker is impaired and not made good under the requirement of the superintendent within the required time, or if any such *** individual banker shall refuse to submit its papers, books and concerns to the inspection of the superintendent or any examiner, or if any officer thereof shall refuse to be examined on oath touching the conduct of any such *** individual banker or if any such *** individual banker shall suspend payment of its obligations or if from any examination the superintendent shall have reason to conclude that such *** individual banker is in an unsound or unsafe condition to transact the business for which it was organized, or that it is unsafe for it to continue business, or if any such *** individual banker shall neglect or refuse to observe any order of the superintendent directing or requiring the doing of any particular thing required to be done by law, the superintendent may call a meeting of the banking board and submit to said board matters of default or misconduct in the affairs of the banks of which the bank shall have notice and upon which the bank may be heard in person or by counsel, and if said board or a majority of said board, so directs, the superintendent shall forthwith take possession of the property and business of such *** individual banker and retain such possession until such *** individual banker shall resume business or its affairs be finally liquidated, as herein provided". (Civil Code, sec. 6299; Banking Laws, 1928, sec. 6299, pp. 9 and 10).

Superintendent not to take charge of individual banker unless directed to do so by banking board.

"The superintendent of banks shall not take possession of the property and business of any bank under the provisions of this article unless *** directed so to do by the banking board. On taking possession of the property and business of any such *** individual banker, the superintendent shall give notice of such fact to all banks and other parties or corporations holding or in possession of any assets of such *** individual banker." (Civil Code, sec. 6303; Banking Laws, 1928, sec. 6303, p. 11).

When business may be resumed.

"After the superintendent has taken possession of *** (the) business of an individual banker, the superintendent may permit such *** individual banker to resume business upon such condition as may be approved by him including an observance of all the requirements of law, and making good all deficits in the previous observances of law." (Civil Code, sec. 6305; Banking Laws, 1928, sec. 6305, p. 11).

Liquidation of affairs by superintendent.

"Upon taking possession of any of the property and business of any *** individual banker, the superintendent may collect moneys due to such *** individual banker and do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof as hereinafter provided. The superintendent shall collect all debts due and claims belonging to the bank." (Civil Code, sec. 6306; Banking Laws, 1928, sec. 6306, p. 11). The laws also contain detailed provisions relating to the powers and duties of, and the procedure to be followed by, the superintendent of banks in the actual liquidation of the affairs of an individual banker. (Civil Code, sec. 6304, 6307-6319 and 6325; Banking Laws, 1928, secs. 6304, 6307-6319 and 6325, pp. 11-14 and 16).

ARIZONA.

Private or partnership banks expressly prohibited.

The laws of this State provide that "The establishing or maintenance of private or partnership banks is hereby expressly prohibited; PROVIDED, that all such banks now in operation shall retire from business or incorporate under the provisions of this Chapter within a period of five years from and after the approval of this Chapter". (Banking Laws, 1922, sec. 30, p. 24; Senate Bill No. 26, First Special Session of the Fifth Legislature of Arizona, sec. 30).

ARKANSAS.

Private banks permitted, but subject to same provisions as incorporated banks.

The laws of this State, in defining the word "bank", recognize a private banking business but indicate that such business is subject generally to the same provisions as those which cover incorporated banks. This definition reads in part as follows:

"Wherever the word 'bank' appears in this (bank) act, it shall be deemed to apply alike to any incorporated bank, trust company, or savings bank, *** and also to any partnership or individual transacting a banking business." (Acts of 1913, Act 113, sec. 10, as amended by Acts of 1923, Act 627, sec. 17; Banking Law Pamphlet, 1929, sec. 20, p. 14).

The following provisions are specifically made applicable to private banks.

Organization; application to bank commissioner.

The laws provide that persons desiring to organize a corporation for the purpose of transacting a banking or trust business "may apply to the (bank) Commissioner to be incorporated and shall submit their proposed articles of agreement" which shall set out certain information. (Acts of 1913, Act 113, sec. 11; C. & M. Digest, sec. 675; Banking Law Pamphlet, 1929, sec. 12, p. 8). If an application to engage in the business of banking is made by a private bank, "it shall be in such form as the Commissioner shall prescribe, and he shall make the same inquiry as is required in cases of incorporation before issuing to such firm or individual his permit of any kind of a bank." (Acts of 1913, Act 113, sec. 14; C. & M. Dig., sec. 678; Banking Law Pamphlet, 1929, sec. 15, p. 11).

With reference to the "same inquiry" which the bank commissioner institutes in the case of an incorporated bank, the laws provide that "the Commissioner shall ascertain, from the best source of information at his command, the character and general fitness of the persons named as stockholders (owners), and their standing in the community in which the proposed institution is to be located, and whether the requisite capital has been in good faith subscribed and paid." (Acts of 1913, Act 113, sec. 12; C. & M. Dig., sec. 676; Banking Law Pamphlet, 1929, sec. 13, p. 9).

Fee required for organization, increase of capital and amendment of charter.

"No corporation, firm or individual shall be allowed to do a banking business of any kind unless it, they, he, or she, shall pay to the Bank Commissioner a fee of one-fifth of one per cent on the authorized capital stock. Fees at the same rate shall be charged for

an increase of capital stock." For each amendment or supplement to the charter, except for an increase of capital stock, a fee of ten dollars shall be charged. (Acts of 1913, Act 113, sec. 16; C. & M. Dig., sec. 680; Banking Law Pamphlet, 1929, sec. 17, p. 11).

Title must show that institution is not incorporated.

Any individual or firm doing business as a private bank shall designate a name for such bank, which shall show that it is not incorporated. (Acts of 1913, Act 113, sec. 15; C. & M. Dig., sec. 679; Banking Law Pamphlet, 1929, sec. 16, p. 11).

Property must be held in name of bank.

All real and personal property owned by a private bank must be held in its name and not in the name of the owner or owners of the bank. (Acts of 1913, Act 113, sec. 15; C. & M. Dig., sec. 679; Banking Law Pamphlet, 1929, sec. 16, p. 11).

When creditor of owner may attach bank's assets.

All of the assets of a private bank are exempt from attachment or execution by any creditor of an owner until all of the liabilities of the bank have been paid in full. (Acts of 1913, Act 113, sec. 15; C. & M. Dig., sec. 679; Banking Law Pamphlet, 1929, sec. 16, p. 11).

Owner may not use bank's funds for private business; note of owner as asset.

"No private banker shall use any of the funds of his bank for private business, and the note of the owner or owners of any private bank shall not be considered or accepted as a part of its assets." (Acts of 1913, Act 113, sec. 15; C. & M. Dig., sec. 679; Banking Law Pamphlet, 1929, sec. 16, p. 11).

When owner's widow can be endowed of bank's property.

"In case of the death of an individual banker, his widow shall not be endowed of any of the property of the bank, except such as remains after the payment of all depositors and other creditors." (Acts of 1913, Act 113, sec. 15; C. & M. Dig., sec. 679; Banking Law Pamphlet, 1929, sec. 16, p. 11).

Acceptances and letters of credit; limit of liability.

"Any *** private bank, *** may accept for payment at a future date drafts drawn upon it by its customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or upon its correspondents at sight or on time not exceeding six months; provided, that no bank shall incur liabilities under this subdivision to an amount equal at any time in the aggregate to more than its paid-up and unimpaired capital stock and certified surplus fund." (Act of March 22, 1919, p. 251, sec. 4; C. & M. Dig., sec. 741; Banking Law Pamphlet, 1929, sec. 30, p. 21).

CALIFORNIA.

Banking business may only be transacted by corporations.

The laws of this State provide that the business of banking may only be transacted by corporations duly organized for that purpose. The provisions in this connection read as follows:

"The word 'bank' as used in this act shall be construed to mean any incorporated banking institution which shall have been incorporated to conduct the business of receiving money on deposit, ***. *** It shall be unlawful for any corporation, partnership, firm or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for such purpose. ***" (California Bank Act, 1929, sec. 2, p. 3).

COLORADO.

Private banking business permitted, but made subject to same provisions as incorporated banks.

The laws of this State provide that where the business of banking is engaged in by persons or copartnerships such business is subject to the same requirements as are made applicable to incorporated banks. The laws in this connection read as follows:

"The word 'Bank,' as used in this Act, shall include every person, co-partnership and corporation, except National Banks, engaged in the business of banking in the State of Colorado". (Laws of 1913, sec. 1, p. 116; Compiled Laws of 1921, sec. 2653; Banking Laws, 1928, sec. 1 p. 3).

"When by the provisions hereof anything is required to be done by any incorporated bank or its board of directors, or any officer, director or employee thereof, or their right or power to do a specified act is denied, the same act shall be done, or not, as the case may be, by individuals or co-partners engaged in the banking business." (Laws of 1913, sec. 2, p. 116; Compiled Laws of 1921, sec. 2654; Banking Laws, 1928, sec. 2, p. 3).

In addition to the provisions applicable to incorporated banks, persons or co-partnerships are subject to the following specific provisions:

Word "State" may not be used as part of title.

"Individuals or co-partnerships engaged in banking shall not use the word 'State' as a part of the bank or firm name." (Laws of 1913, sec. 9, p. 118; Compiled Laws of 1921, sec. 2661; Banking Laws, 1928, sec. 9, p. 7).

Ownership of capital stock by copartners.

"Co-partners conducting a bank shall each own at least two per cent thereof (capital stock) in no wise pledged or incumbered." (Laws of 1919, sec. 1, p. 299, amending Laws of 1913, sec. 12, p. 119; Compiled Laws of 1921, sec. 2664; Banking Laws, 1928, sec. 12, p. 9).

Oath required of owner of unincorporated bank.

"Every owner of any portion of an unincorporated bank actually engaged in the management thereof, shall take and subscribe to an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the bank; that he will not knowingly violate, nor willingly permit to be violated, any provision of the law; that he is the owner in good faith of at least that part of the capital stock of said bank or that portion of the capital employed therein" specified by the provision last above quoted. (Laws of 1913, sec. 14, p. 119; Compiled Laws of 1921, sec. 2666; Banking Laws, 1928, sec. 14, p. 9).

Loans to co-owners prohibited.

"No unincorporated bank shall loan to any person or co-partner owning an interest therein. No individual or co-partner owning an interest in an unincorporated bank shall become endorser for any person, firm or corporation borrowing money therefrom, nor shall any note or obligation of such individual or co-partner be considered an asset of such bank." (Laws of 1913, sec. 33, p. 124; Compiled Laws of 1921, sec. 2687; Banking Laws, 1928, sec. 37, p. 21).

CONNECTICUT.

Private banking business prohibited; exceptions.

The laws of this state provide that "No person, firm, corporation or unincorporated association of persons, other than a private banker who, on May 29, 1925, was engaged in business as a private banker, and, prior thereto, qualified as such by the filing of the bond or securities required by the general statutes, or a person, firm, corporation, or unincorporated association of persons succeeding in ownership to the business of a private banker qualified as above provided, and who shall, upon succeeding to such business, comply with the provisions of law relating to private bankers, shall engage in the business of a private banker, provided nothing herein contained shall prevent any firm, partnership or unincorporated association of persons carrying on the business of a private banker from changing or increasing the membership of such firm, partnership or unincorporated association of persons or from reorganizing into a new firm, partnership or unincorporated association of persons". (General Statutes of Connecticut, Revision of 1930, sec. 3958).

"No private banker shall use, as a part of his name or as a prefix or suffix thereto or as a designation of the business carried on by him, the word 'banker', 'bank', 'banking', 'trust' or 'savings' but he may do so if he qualifies it by the word 'private'". (General Statutes of Connecticut, Revision of 1930, sec. 3950).

Definition of term "private banker".

"The term 'private banker' shall mean any person, corporation, firm, partnership or unincorporated association of persons, engaged in whole or in part in the business of receiving deposits subject to check or for repayment upon the presentation of a passbook, certificate of deposit or other evidence of debt, or for repayment upon request of the depositor, or engaged in the business of receiving money for transmission, other than a bank, trust company or building and loan association organized under the laws of this State or of the United States or express companies having a contract or contracts with a railway or railways covering express transportation." (General Statutes of Connecticut, Revision of 1930, sec. 3949).

Bond must be filed with State Treasurer; purpose of.

Every private banker must deposit with the treasurer of the State a bond executed by the private banker and by a surety company or the owner or owners of real estate within the State, approved by the bank commissioner. This bond shall be conditioned upon the repayment of any money which may be deposited with the private banker and upon the faithful transmission of any money which may be delivered to such banker for transmission to another, "and upon the payment, in the event of the insolvency or bankruptcy of such private banker, of the full amount recoverable under the conditions of such bond to the assignee, receiver or trustee of such private banker for the benefit (1) of the persons making such deposits or delivering money to such private banker for transmission to another and (2) the satisfaction of the general debts and obligations of such private banker". (General Statutes of Connecticut, Revision of 1930, sec. 3951).

Amount of bond dependent upon population.

"The amount of the bond required of each private banker engaged in business in any city or town having a population of twenty thousand or less shall be twenty thousand dollars, and of each private banker engaged in business in any city or town having a population in excess of twenty thousand shall be forty thousand dollars." (General Statutes of Connecticut, Revision of 1930, sec. 3951).

Securities may be deposited in lieu of bonds.

"Any private banker may, at his option, deposit with the treasurer in lieu of such bond, in whole or in part, securities owned by him of a sufficient actual value to aggregate, with any bond so filed, the required amount of such bond, which securities shall be such as shall have been approved by the bank commissioner." (General Statutes of Connecticut, Revision of 1930, sec. 3951).

Release of bond and securities:

Any bond or securities deposited with the treasurer may be released and delivered to the private banker upon the substitution of another bond or securities aggregating the required amount and approved by the bank commissioner. Any bond or securities shall also be released and delivered to a private banker upon the discontinuance of his business and upon delivery by him to the treasurer of the state of a certificate issued by the bank commissioner that all depositors and creditors have been paid in full and all outstanding liabilities have been satisfied. (General Statutes of Connecticut, Revision of 1930, sec. 3951).

Securities and money paid under bond because of default constitute trust fund.

Any security deposited with the State treasurer, and any money which, in case of default, is paid under any bond filed by any private banker "shall constitute a trust fund (1) for the benefit of the depositors of such private banker and the persons who shall deliver money to such private banker for transmission to others, which depositors or persons shall be preferred as to such money and securities so deposited or recovered in proportion to the obligations of such private banker to them arising out of such deposits or receipt of money for transmission and (2) for the benefit of the general creditors of such private banker." (General Statutes of Connecticut, Revision of 1930, sec. 3951).

Real estate of person acting as surety on bond must be described and is subject to a lien.

Whenever the treasurer accepts as surety on any bond any person owning real estate "he shall require such real estate to be described in such bond, and such real estate shall thereupon be subject to a lien to the amount of the obligation of such bond, which lien shall take precedence over any subsequent incumbrance, except liens for taxes or municipal assessments." A certified copy of the bond must be filed and recorded in the office of the town clerk in each town where such real estate is located, and a recording fee therefor must be paid by the private banker. (General Statutes of Connecticut, Revision of 1930, sec. 3951).

Provisions not applicable to certain persons, firms, etc.

The provisions relating to the deposit of a bond with the State "shall not apply to any person, firm, partnership, or unincorporated association of persons engaged solely in the business of forwarding or transmitting money." (General Statutes of Connecticut, Revision of 1930, sec. 3951).

Statement of assets and liabilities must be filed with the bank commissioner.

Every private bank shall "annually, on the first day of November or oftener if required by the commissioner, file with the bank commissioner a statement, under oath, in such form as may be required by the commissioner, showing his assets and liabilities, and giving such other information as may be required by the commissioner. (General Statutes of Connecticut, Revision of 1930, sec. 3954).

Examinations; insolvency or possibility of loss to depositors; bank commissioner may suspend operations.

"The commissioner may cause an examination to be made of the affairs of any private banker at any time at the expense of such private banker, and, if after appraising all the assets of such private banker, including loans on real estate and any real estate owned by such banker, he shall find that such private banker is insolvent, or that the depositors or persons delivering money to him for transmission are liable to suffer any loss, he may deliver to such private banker a written notice to discontinue receiving money from depositors or money for transmission and to discontinue paying depositors or other creditors.*** The written order of the commissioner authorized hereby shall be in effect a temporary injunction restraining such private banker and his employees from receiving money from depositors, or for transmission, and from paying depositors or other creditors until the same shall be vacated by any order of the superior court or a judge thereof." (General Statutes of Connecticut, Revision of 1930, sec. 3955).

Procedure to restrain continuance in business or to obtain appointment of receiver; liquidation.

If the bank commissioner finds that the private banker is insolvent or that the depositors are liable to suffer a loss, he must then make an application to the superior court for the county in which such banker is located setting forth the facts and circumstances and praying for the appointment of a receiver or an injunction restraining such private banker from continuing in business. If it appears to the court, after a hearing on the application, that such private banker is insolvent or can not resume business with safety to the public, such court may issue an injunction restraining the private banker from further carrying on business, and, "if insolvent, from collecting

"or receiving any debts or from paying out; selling, assigning or transferring any of the assets, moneys, funds or lands belonging to him until the court shall otherwise order." The court at the time of ordering the injunction, or at any time during the continuance of such injunction, may appoint a receiver for the insolvent private banker. The receiver has the powers conferred by law upon receivers of insolvent banks and trust companies. The court may limit the time for filing claims against such receiver and the winding up of the business of the private banker, "the liquidation of his property and assets and the distribution of the avails thereof among the creditors of such private banker". (General Statutes of Connecticut, Revision of 1930, section 3955).

Distribution of assets.

The "avails" shall be applied as follows: (1) To the expenses of settling the affairs of the private banker; (2) to the payment of the deposits and the money entrusted to the banker for transmission; (3) to the payment of all other liabilities of the banker. The balance of such avails shall be paid to such banker. (General Statutes of Connecticut, Revision of 1930, sec. 3955).

Receiver required to file bond.

The receiver must file a bond in such form and in such amount as the court may direct before taking control of the assets of any private banker. (General Statutes of Connecticut, Revision of 1930, sec. 3955).

Additional provisions regarding power of bank commissioner and superior court to suspend business in order to preserve assets or protect depositors.

"The commissioner may issue a temporary order restraining any *** private banker *** from paying out any funds *** or receiving deposits, or may take possession of *** such private banker's business until such time as a hearing may be arranged before a judge of the superior court, who may, upon application of the commissioner, *** or private banker, whenever, in the opinion of such commissioner, *** or private banker, it may be necessary to preserve assets or protect depositors, make an order restraining any *** private banker from paying out the funds of such *** private banker, or any portion thereof, or from declaring or paying dividends on any deposits or capital stock for such time as such judge shall deem necessary. Such order shall be in writing directed to the *** private banker to be affected thereby, and a copy of the order attested and left by the commissioner *** with such private banker shall be sufficient notice thereof. Before issuing such restraining order, the judge shall cause reasonable notice to be given to the *** private banker to be affected thereby. *** notice to an agent of any private banker shall be notice to such private banker. Notice may be waived by any such *** private banker or agent. Before *** any private banker shall apply to any judge for such

"restraining order, notice shall be given in writing to the bank commissioner of intention to so apply at least ten days before such application shall be made. If, in the opinion of the bank commissioner, (or) private banker *** such order should be revoked or modified, any judge of the superior court may, on application of such commissioner, (or) private banker *** revoke or modify the original order, and notice of such revocation or modification shall be given to the *** private banker affected thereby in the same manner as in the case of the original order." (General Statutes of Connecticut, Revision of 1930, sec. 3870).

Annual fee must be paid bank commissioner.

Every private banker is required to pay annually to the bank commissioner a fee of fifty dollars. (General Statutes of Connecticut, Revision of 1930, sec. 3957).

Purchase of real estate without approval of bank commissioner prohibited.

"No private banker doing business in this state *** shall purchase any real estate without first obtaining the approval of the bank commissioner." (General Statutes of Connecticut, Revision of 1930, sec. 3952).

Reserve fund required.

"Each such private banker shall maintain a reserve fund of twelve per centum of the demand deposits and five per centum of the time deposits held by him." (General Statutes of Connecticut, Revision of 1930, section 3953).

What reserve fund shall consist of.

"Such reserve fund shall consist of gold and silver coin, the demand obligations of the United States or national bank currency or federal reserve notes and federal reserve bank notes and be held by such private banker in his place of business and of balances with reserve agents, subject to demand draft or bonds which are legal investments for savings banks of this state, provided each such reserve agent shall be a depository approved by the bank commissioner; and the bonds, held as a part of such reserve, shall, at no time, exceed at par value one-sixth of the total reserve fund." (General Statutes of Connecticut Revision of 1930, sec. 3953).

Dividends or new loans, discounts, etc., prohibited while reserve is impaired.

Whenever the reserve fund of any private banker falls below the requirements, such banker is prohibited from making any new loans, discounts or investments, or any dividend or distribution of profits

until the reserve fund is restored to the required amount. (General Statutes of Connecticut, Revision of 1930, sec. 3953).

Duty of bank commissioner in case of impaired reserve fund.

"The bank commissioner shall notify any private banker whose reserve fund shall fall below said required amount, and, if such private banker shall fail for thirty days thereafter to make good such reserve fund, the bank commissioner may apply for the appointment of a receiver to wind up his business." (General Statutes of Connecticut, Revision of 1930, sec. 3953).

Definition of permanent capital.

"Any real estate, security, personal property or evidence of ownership of property acquired by any unincorporated private banker, with the capital of such banker and cash received on deposit in excess of the total liabilities of such banker, shall be construed and designated as permanent capital." (General Statutes of Connecticut, Revision of 1930, sec. 3960).

Investment of permanent capital.

"Each such banker may, subject to the restrictions provided for herein, invest his permanent capital and the deposits received in such real and personal property, as he may deem advisable, provided the security afforded depositors shall not be imperiled by any such investment." (General Statutes of Connecticut, Revision of 1930, sec. 3960).

Restriction upon lending permanent capital to certain corporations.

"No private banker shall lend, directly or indirectly, to any corporation of which he is the legal or equitable owner of more than twenty-five per centum of the issued capital stock, any part of his permanent capital or capital stock or the deposits received by him." (General Statutes of Connecticut, Revision of 1930, sec. 3961).

Location of property upon which loans are made.

All real property and mortgage loans held by any private banker on May 29, 1925, or acquired with capital or deposits, or to which title has been taken in connection with the business of the private banker, must be located in the State of Connecticut, or in certain counties of the States of Rhode Island, Massachusetts or New York. (General Statutes of Connecticut, Revision of 1930, sec. 3962).

Real estate loans prohibited if aggregate amount exceeds 80% of appraised value of property.

"No private banker shall make a loan, directly or indirectly,

"upon the security of real estate if the total amount of mortgages, liens and encumbrances upon such real estate, including the mortgage loan to be made by such private banker, shall, in the aggregate amount, exceed eighty per centum of the appraised value of such real estate." (General Statutes of Connecticut, Revision of 1930, sec. 3963).

Branch or new place of business prohibited, but location in same town may be changed.

"No private banker shall establish any branch or open any new place of business, provided nothing herein contained shall prevent the change of location of the place of business of any private banker within the town in which such business is located, but nothing herein contained shall permit the change of location of such business from one town to another." (General Statutes of Connecticut, Revision of 1930, sec. 3959).

Penalties for violations.

Any person violating any of the above provisions "or of any other statute concerning the regulation of private bankers or concerning persons engaged in the business of receiving money for forwarding or transmission, shall be fined not more than two thousand dollars or imprisoned not more than one year or both." (General Statutes of Connecticut, Revision of 1930, sec. 3967).

Private bankers may incorporate; conditions precedent.

"Any person, firm or unincorporated association of persons, engaged on May 29, 1925, in the business of private banker ***, may incorporate, for the purpose of conducting such business, in the manner provided by law for the organization of joint stock corporations, except as provided herein. The by-laws of any private banker incorporating *** shall be submitted to the bank commissioner for approval, and no by-laws shall be adopted unless the same shall have been approved by him. Any such person, firm or association intending to incorporate for the purpose of transacting such business shall serve notice upon the commissioner of his intention to incorporate, and shall furnish evidence to the commissioner that the capital stock of such corporation to the amount of at least twenty-five thousand dollars shall have been subscribed for, with capital stock shall not be invested in securities deposited with the state treasurer in lieu of a bond to the state." (General Statutes of Connecticut, Revision of 1930, sec. 3964).

DELAWARE

Banking business must be conducted under corporate charter.

"It shall be unlawful to conduct a banking business or the business of a trust company within this State except under a corporate

"charter valid in this State authorizing the conduct of such business in this State." (Act approved March 31, 1921, Laws of 1921, sec. 2; Banking Laws, 1929, sec. 2, p. 15). "No bank or trust company not actively engaged in business in this State at the time of the adoption of this Act shall open a place of business in this State without having first secured from the State Bank Commissioner a certificate that it has complied with all the requirements of law and that it is authorized to conduct the business specified therein." (Act approved March 31, 1921, Laws of 1921, sec. 3; Banking Laws, 1929, sec. 3, p. 15).

Forming banking company without incorporation; penalty.

"It is unlawful for any persons to associate in forming a banking company without incorporation; and any persons who shall receive subscriptions to the capital stock of such company, or shall subscribe for shares therein, shall forfeit and pay five hundred dollars to anyone who will sue for the same; one-half thereof for the use of the State." (Rev. Code of Del., 1915, sec. 2102; Banking Laws, 1929, sec. 2102, p. 31.)

Unauthorized banking operations or advertising; penalties.

"If any persons, members, or agents, of such (unincorporated banking) association, shall issue any bills, or notes, in the nature of bank notes, payable to bearer or order, or loan money upon actual or accommodation notes, or receive money on deposit, every such person shall forfeit and pay five hundred dollars, to be recovered and applied" as provided in the provision last above quoted. (Rev. Code of Del., 1915, sec. 2103; Banking Laws, 1929, sec. 2103, p. 31). "Any person, firm, or association of individuals * * *, who shall in any manner represent or hold out him, her, themselves or itself, whether by public advertisement, placard, hand bill or otherwise, as engaged in the receipt of deposits of money as a savings fund, bank or trust company or any business substantially similar thereto within the boundaries of the State of Delaware, not being authorized under the laws of this State to engage in such business or any business substantially similar thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding two hundred dollars or imprisoned for a term not exceeding one year, or both, at the discretion of the Court." (Rev. Code of Del., 1915, sec. 3507; Banking Laws, 1929, sec. 3507, p. 39.)

DISTRICT OF COLUMBIA.

No prohibition against private banking business, and, except for taxation provisions, no other provisions applicable.

The laws of the District of Columbia do not contain any provisions prohibiting the transaction of a banking business by a private bank; nor do such laws contain any provisions covering the operation or supervision of such a bank. The laws, however, do contain provisions

defining a private bank and subjecting it to "a tax of five hundred dollars per annum". These provisions are given below.

Rate of taxation; "private bank or banker" defined.

"Private banks or bankers not incorporated shall pay a tax of five hundred dollars per annum. Every person, firm, company, or association not incorporated having a place of business where credits are opened by the deposit or collection of moneys or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes, or where stocks, bonds, bills of exchange or promissory notes are received for discount or for sale, shall be regarded as a private bank or banker." (Act of July 1, 1902, 32 Stats. 621, ch. 1352, sec. 6, par. 14; Code of the District of Columbia, Title 20, sec. 765, p. 255.)

When tax must be paid.

"The taxes for said private banks and bankers, and note brokers shall be paid to the collector of taxes of the District of Columbia, and shall date from the first day of July in each year and expire on the thirtieth day of June following. Said taxes shall date from the first day of the month in which the liability begins, and payment shall be made for a proportionate amount." (Act of July 1, 1902, 32 Stats. 622, ch. 1352, sec. 6, par. 17; Code of the District of Columbia, Title 20, sec. 768, p. 253).

FLORIDA.

Private banking business prohibited.

Under the terms of a statute of this State enacted in 1915, it is provided that, except for persons, firms or companies which were conducting a private banking business on or before June 4, 1915, "no person, firm or company shall be allowed to conduct a banking business in this State without being incorporated under the banking laws of this State." (Acts of 1915, ch. 6812, sec. 1; Banking Laws, 1930, Article 14, sec. 4202, p. 55).

Persons, firms or companies conducting a private banking business as of June 4, 1915, could have been permitted by the Comptroller of the State, up to November 1, 1915, to continue such business if they had a capital of \$15,000; but if authority to continue in business had not been obtained prior to November 1, 1915, the laws required that a receiver be appointed for such private banks. For private banks which were authorized to continue in business, the laws provide that they "shall be governed and controlled by the Banking Laws of this State, in so far as the same may be applicable, as fully and completely as if incorporated as a banking company, and shall be subject to all the penalties of said laws, and to the supervision, control and direction of the Comptroller." (Acts of 1915, ch. 6812, secs., 2,3,4 and 5; Banking Laws, 1930, Article 14, secs. 4203,4205 and 4206, pp.55 and 56).

GEORGIA

No provisions covering operation except restrictions against using certain advertising or banking terms.

"No private person, firm, or voluntary association engaged in the business of banking in this State not subject to the supervision of the Superintendent of Banks, and no private corporation except a bank duly chartered and organized under the laws of this State or under the Acts of Congress" shall make use of any advertising importing a corporation or indicating that the business engaged in is that of regularly chartered bank. Private banks are also prohibited from using the words "bank", "banker", "banking company", "banking house", or any other similar words indicating that the business done is that of a bank, without also using therewith the words "plainly written or printed, so that the same may be readily read, 'Private Bank, Not Incorporated', and every person, firm, association, or private corporation other than a regularly chartered bank, advertising to receive, or receiving deposits, shall at the window or desk at which such deposits are received place, a conspicuous sign with letters not less than one inch in height, upon which shall be printed the words, 'Private Banker, Not Incorporated'." Private bankers engaged in business at the time of the passage of the act containing these provisions (August 16, 1919) are not required to change the names in use by them and "may continue to use, without further qualification or restriction, the word 'Banker' or 'Bankers', where the use of their names conveys unmistakably that they are not incorporated." (Banking Law Pamphlet, with amendments to August 26, 1925, Article 1, sec. 4, pp. 3 and 4.) A violation of these provisions constitutes a misdemeanor. (Banking Law Pamphlet, with amendments to August 26, 1925, Article 20, sec. 35, p. 95).

Private bank may be converted into a bank.

The laws of this State also contain provisions permitting a private bank to convert into a bank upon complying with the laws covering the incorporation of banks. (Banking Law Pamphlet, with amendments to August 26, 1925, Article 11, secs. 1 to 3 inclusive, pp. 47 and 48.)

IDAHO

Private banking prohibited; but certain private bankers may continue in business.

The laws of this State provide that "it shall be unlawful for any corporation, partnership, firm or individual to engage in or transact a banking or banking and trust business within this state except by means of a corporation duly organized for such purpose, except that any individual, co-partnership or unincorporated association actually transacting a banking or banking and trust business as herein defined within this state on the date this act becomes effective, may continue in such

"business at the places where they are then located, under and subject to the provisions of this act." (Banking Laws, 1925, sec. 2, p. 5; Idaho Banking Code, 1925, ch. 133, sec. 2.) The word "bank", as used in these laws, "shall be construed to include any individual, co-partnership, or unincorporated association engaged in the banking business as herein defined." (Banking Laws, 1925, sec. 2, p. 5; Idaho Banking Code, 1925, ch. 133, sec. 2).

Definition of banking business.

"The soliciting, receiving or accepting of money or its equivalent on deposit as a regular business shall be deemed to be doing a banking business, whether such deposit is made subject to check, or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing; Provided, that nothing herein shall apply to or include money or its equivalent left in escrow or left with the agent pending investment in real estate or securities for or on account of his principal. (Banking Laws, 1925, sec. 2, p. 5; Idaho Banking Code, 1925, ch. 133, sec. 2.)

Banking business must be authorized by law; penalty.

"It shall be unlawful for any individual, copartnership, association, firm or corporation to receive money upon deposit or transact any other form of banking business except as authorized by this act. Any person violating any provision of this section, either individually or as an interested party in any co-partnership, association, firm or corporation, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in the sum of not less than \$300 nor more than \$1,000, or by imprisonment in the county jail not less than thirty days nor more than one year, or by both fine and imprisonment." (Banking Laws, 1925, sec. 102, p. 47; Idaho Banking Code, 1925, ch. 133, sec. 102).

Advertising banking business not authorized by law; penalty.

"Any person, firm, or corporation, other than a national bank, not authorized to do a banking or trust business under this act, that uses or advertises as part of his or its firm or corporate name the word 'bank', 'banker', 'trust company', 'savings bank', or any other word or words of similar import, is guilty of a felony. Provided, however, this section shall not apply to title or trust companies incorporated under Chapter 194 of the Idaho Compiled Statutes 1919, nor to any company which prior to the passage of this act has lawfully assumed and used as a part of its name the word 'trust' or 'trust company'". (Banking Laws, 1925, sec. 103, p. 47; Idaho Banking Code, 1925, ch. 133, sec. 103.)

ILLINOIS

Banking business forbidden to natural persons, firms or partnerships.

"After January 1, 1921 no natural person or natural persons, firm or partnership shall transact the business of banking or the business of receiving money upon deposit, or shall use the word 'Bank' or 'Banker' in connection with said business; provided, that nothing herein

contained shall be construed to prohibit banks incorporated under the laws of this State or of the United States from appointing natural persons as agents to receive deposits of savings in and through the public schools." (Act of June 4, 1929, sec. 15 $\frac{1}{2}$; Laws of 1929, sec. 15 $\frac{1}{2}$, p. 188, made effective by popular vote as of December 2, 1930.)

Penalty for violation.

"Any person or persons violating this section shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment, and the Attorney General or State's attorney of the county in which any such violation occurs may restrain such violation by a bill in equity to be filed in the Circuit Court of such county." (Act of June 4, 1929, sec. 15 $\frac{1}{2}$; Laws of 1929, sec. 15 $\frac{1}{2}$, p. 188, made effective by popular vote as of December 2, 1930.)

(Note: -- Sec. 15 $\frac{1}{2}$ of the Illinois Laws of 1929, as it appeared in the laws of 1919, p. 235, prohibited the transacting of the business of transmitting money to foreign countries and buying and selling foreign money or receiving money on deposit to be transmitted to foreign countries (express, steamship and telegraph companies excepted).

The Supreme Court of Illinois in the case of *Wedesweiler vs. Brundage*, 297 Ill. 228, 130 N.E. 520, (April 5, 1921) held that these restrictions rendered the section unconstitutional on the grounds that it embraced a subject not mentioned in the title of the act, that it granted a special privilege in violation of sec. 22 of Art. IV of the Illinois Constitution, that it deprived the Appellees of the right to continue the business in which they were engaged without due process of law, and that it deprived them of equal protection of the laws in violation of Sec. 2, Art. II of the State Constitution and of Sec. 1 of the 14th Amendment to the Federal Constitution. The court further held that, in the absence of a statute, the right of an individual to engage in the banking business in all or any of its departments is unrestricted, but that the business is of a public character and is properly subject to statutory regulations for the protection of the public; and, that an individual is not engaged in the banking business because he does some of the things which are frequently or usually done by banks, such as loaning money and taking bonds and mortgages therefor and in transmitting money to foreign countries or buying and selling foreign exchange. This case is cited for the purpose of showing that the scope of the present section appears to be somewhat limited.)

INDIANA

Private banks must be authorized to transact banking business.

"It shall be unlawful for any individual, (or) firm *** to

hereafter engage in a banking business after the enactment of this act (1915) without first receiving from the (State) charter board the approval of their application ***. When in the judgment of said charter board it is advisable to make a personal investigation as to the need and necessity of establishing (a) * * * private bank, * * * , then the board may appoint some person to make a thorough investigation, and said person shall make a written report of his findings and file same with the charter board; *** ". (Acts of 1915, sec. 3, p. 550; Banking Laws, 1929, sec. 3, p. 77.)

Penalty for violation of above provision.

"Any person violating the provision of this (above quoted) section either individually or as an interest (ed) party, shall be guilty of a misdemeanor, and upon conviction thereof", shall be subject to certain prescribed penalties. (Acts of 1915, sec. 3, p. 550; Banking Laws, 1929, sec. 3, p. 77).

Applicability of provisions of act of 1907.

The Act of 1907, provides "That every partnership, firm or individual transacting a banking business within this state, or using the word bank, banker, or banking in connection with his or its business, shall be subject to the provisions of this act." (Acts of 1907, sec. 1, p. 174; Banking Laws, 1929, sec. 1, p. 43.)

Capital required; investment of; segregation of

"It shall be unlawful for any partnership, firm or individual to transact a banking business in this state, or to advertise as a banker unless said partnership, firm or individual has at least ten thousand (\$10,000) dollars of cash capital invested in well secured notes in state or municipal bonds, or in bank building, furniture or fixtures, and shall be set apart for the security of the creditors of said bank; * * *". (Acts of 1907, p. 174, sec. 2; Banking Laws, 1929, sec. 2, p. 43.)

Real estate investments; restrictions upon and conditions regarding.

" * * * not more than one-third of the capital * * * fixed in the detailed statement of such partnership, firm, or individual shall be invested in real estate: * * *". If any part is invested in real estate, the real estate must be conveyed to the private bank in its own name by a deed signed and acknowledged by the members of the bank and their wives. The deed must give a description of the real estate and its value, must convey a good fee simple title, shall be recorded in the recorder's office of the county where the land is located and "a copy thereof filed with the bank commissioner: Provided, That no part of the capital, surplus or undivided profits of said bank, except as aforesaid, may be invested in real estate except it be taken in settlement of a doubtful claim, or purchased at judicial sale on a judgment or a decree of foreclosure in favor of said bank; and when so taken, it must be by deed made to such; and the president and cashier of such bank are hereby empowered and authorized to execute good and sufficient deed or deeds therefor, in the name of such bank, upon proper order made therefor by the board of directors of such bank. All mortgages held by or to secure money loaned by the bank shall be satisfied of record upon the payment thereof, by a release or satisfaction of mortgage executed in the name of the bank by its president, vice president or cashier." (Acts of 1907, p. 174, sec. 2; Banking Laws, 1929, sec. 2, pp. 43 and 44.)

Increase or decrease of capital stock.

The capital stock of any private banker may be increased by an agreement in writing signed by the partners or owners holding two thirds of the capital stock and paying into the bank in money the amount of the increase. This amount and a certificate by the cashier or manager of the bank of its payment, shall, within five days thereafter, be filed with the bank commissioner. The capital stock may be decreased but at no time below \$10,000, upon a written petition of the partners or owners

holding two-thirds of the capital stock to the bank commissioner. The bank commissioner, after an examination of the bank may approve or refuse the reduction. If approved, that fact must be indorsed upon the petition, and notice of such reduction must immediately be published for thirty days in some newspaper published in the town where the bank is located, or, if no newspaper is published in the town, then in one published at the county seat. (Acts of 1907, p. 174, sec. 2; Banking Laws, 1929, sec. 2, p. 44).

Statement required to be filed.

Every private banker is required to file with the bank commissioner a detailed sworn statement of:

First. The name of the bank.

Second. A copy of the articles of copartnership or agreement under which the business is being, or is to be conducted, which shall be executed and acknowledged by all the parties interested in the bank, and at least one of whom shall be a resident of the State of Indiana. If a bank business is being or is to be transacted or carried on by an individual, such individual must be a resident of the State of Indiana, and the statement must so show.

Third. The county and city or town in which the bank is to be located, and the business carried on.

Fourth. The amount of the capital paid into the business and to be kept and maintained at all times in the business.

Fifth. That the aggregate responsibility and net worth of the individual members of such firm, partnership or individual is equal to an amount at least double the amount of the capital paid into the bank.

Sixth. The names of the officers who are to manage the business. (Acts of 1907, p. 174, sec. 3; Banking Laws, 1929, sec. 3, p. 44).

Certificates of stock must be issued to individuals forming bank and deemed capital stock.

Each private bank shall issue certificates of stock to the individual or individuals forming the bank "in an amount equal to the capital of said bank, which certificates of stock shall be deemed and considered the capital stock of such bank, * * * ". (Acts of 1907, p. 174, sec. 4; Banking Laws, 1929, sec. 4, p. 45.)

Certificate from bank commissioner to transact banking business; when issued; fee required.

After the filing of the statement referred to above and the "payment to the bank commissioner (of) a fee of one-tenth of 1 per cent,

of such capital stock, and the filing with the bank commissioner, (of) the oath of some member of the partnership, firm or individual, that the capital has been paid in as provided for and in compliance * * * (with) this act, then the bank commissioner shall, without unnecessary delay, issue to such partnership, firm or individual, a certificate authorizing such partnership, firm or individual to transact a banking business." (Acts of 1907, p. 174; sec. 5; Banking Laws, 1927, sec. 5, p. 45.)

List of owners must be posted and changes must be reported to bank commissioner.

A list of the owners of any private bank, and a statement to the effect that the institution is a private bank, must be posted in the room of every such bank. Any subsequent changes in the owners must be shown on the list and a report of all such changes must be made to the bank commissioner. (Acts of 1907, p. 174, sec. 6; Banking Laws, 1927, sec. 6, p. 45.)

Report showing resources and liabilities must be made to bank commissioner; number required and contents of.

Every private banker "shall make to the bank commissioner two reports during each and every year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president, cashier or other managing agent of such bank, which report shall exhibit in detail the resources and liabilities of the bank at the close of business on any past day to be by him specified; * * *". These reports must be made within five days after they have been called for by the bank commissioner and a verified copy must be published in a newspaper. (Acts of 1907, p. 174, sec. 7; Banking Laws, 1927, sec. 7, p. 46.)

Commissioner may call for special reports.

The commissioner is empowered to call for special reports "whenever, in his judgment, the same shall be necessary, in order to arrive at a full and complete knowledge of its (the private bank's) condition". (Acts of 1907, p. 174, sec. 7; Banking Laws, 1927, sec. 7, p. 46.)

Capital stock, surplus and undivided profits must be given as items.

Each private bank "in making any statement of the liabilities and assets of said bank, shall give the amount of its capital stock, its surplus and undivided profits as items thereof." (Acts of 1907, p. 174, sec. 4; Banking Laws, 1927, sec. 4, p. 45). "In no reports filed * * * shall real or personal property of an individual or individuals owning said bank, except the title is in the bank, be permitted as an asset." (Acts of 1907, p. 174, sec. 7; Banking Laws, 1927, sec. 7, p. 46.)

Penalty for failure to transmit or publish reports of condition.

Any private bank failing to make and publish any report of condition within five days after a request is made therefor is subject to a penalty of not less than one hundred dollars nor more than five hundred dollars. (Acts of 1907, p. 174, sec. 7; Banking Laws, 1929, sec. 7, p. 46).

Additional penalties prescribed for violations.

"Any person, firm or copartnership violating any of the provisions of this (1907) act shall be fined in any sum not exceeding one thousand dollars, to which may be added for the second offense imprisonment for any term not exceeding two years." (Acts of 1907, p. 174, sec. 9; Banking Laws, 1929, sec. 9, p. 46.)

Property held in trust.

If property is held in trust by a private banker, complete information regarding the trust must be set forth in an instrument which must be recorded in the recorder's office of the county in which the private bank is located and the instrument together with a certificate showing that it has been recorded must be filed with the bank commissioner. If the instrument is not recorded and filed, the property held in trust "shall be considered a part of the assets" of the private bank in case the affairs of the bank are wound up and the "remaining assets are not sufficient to pay in full the bona fide claims of all depositors." (Acts of 1907, p. 174, sec. 10; Banking Laws, 1929, sec. 10, p. 47)

Depositors have lien on assets.

The depositors in any private bank "shall have a first lien on the assets of such bank in case it is wound up, to the amount of their several deposits. And for any balance remaining unpaid, such depositors shall share in the general assets of the owner or owners, alike, with general creditors." (Acts of 1907, p. 174, sec. 11; Banking Laws, 1929, sec. 11. p. 47)

Private banks may sue and be sued; service of process; effect of judgments.

Any private banker "shall have the right to sue, and be sued, under the name under which such bank is authorized to transact its business. Service of summons or other process of court upon the officer or agent in charge of the business of such bank shall be good and sufficient service to give the court jurisdiction, and any judgment obtained against such bank shall be valid and binding against all the persons interested therein." (Acts of 1907, p. 174, sec. 12; Banking Laws, 1929, sec. 12, p. 47.)

Loans to officers restricted.

No private banker nor any of its officers "shall loan any of the funds of said bank in any amount exceeding thirty (30) per cent of the capital stock of said bank to any officer or officers thereof". (Acts of 1907, p. 174, sec. 13; Banking Laws, 1929, sec. 13, p. 48.)

Branch offices prohibited.

It is unlawful for any private banker "to open, or establish a branch bank or branch office: Provided, That the provisions of this section shall not apply to branch banks or branch offices for which charters have heretofore been granted." (Acts of 1921, p. 367, sec. 1; Banking Laws, 1929, p. 139.)

Trust powers may be executed.

Private banks may "accept and execute trusts of any and every description which may be committed or transferred to them, under the same rules and regulations as now govern like powers in loan and trust companies." (Acts of 1915, p. 310; Banking Laws, 1929, p. 81.)

Examinations; number and character of.

The affairs of every private bank shall be examined by one of the examiners appointed by the bank commissioner "as often as shall be deemed necessary", and a thorough examination into all the affairs of the bank is required. The examiner may examine under oath any of the bank's officers and agents, has the power to administer oaths to such officers and agents, and must make a detailed report of the condition of the bank to the bank commissioner. Each bank is charged a fee for such examinations according to the amount of its assets. (Acts of 1911, p. 30, sec. 2, as amended by Acts of 1921, p. 816 and by Acts of 1929, p. 495; Banking Laws, 1929, sec. 2, pp. 83-85)

Insolvent or failing condition; receiver may be appointed; duties of examiner and bank commissioner.

If a private bank is in an insolvent or failing condition, or if the assets are being wasted or improperly used, at the time the State bank examiner makes an examination, the examiner is required immediately to notify the bank commissioner. If the commissioner then deems it "necessary and expedient" he may direct the examiner or some other person to take charge and control of the private bank; and the commissioner shall, if he finds it to be to the best interests of the depositors and creditors of the bank, make application to the circuit or superior court of the county where the bank is situated for the appointment of a receiver for it. Notice of such application shall be given to the stockholders and depositors of the bank by publication as

directed by the court. If any private bank becomes in a failing or insolvent condition or fails or suspends between periods of examination, it shall be the duty of its officers immediately to notify the commissioner of such condition, failure or suspension, and the commissioner shall thereupon appoint some proper person to take charge of its assets, pending application for and the appointment of a receiver. Any of the officers failing to so report the suspension or failure of his bank shall be deemed guilty of a misdemeanor and on conviction may be fined not less than one hundred dollars nor more than five hundred dollars. The person appointed to take charge of the assets of any private bank shall receive reasonable compensation to be recommended by the bank commissioner and allowed him by the court having jurisdiction over the receiver, and immediately paid out of the assets before any distribution thereof is made. (Acts of 1911, p. 30, sec. 2, as amended by Acts of 1921, p. 816, and by Acts of 1929, p. 495; Banking Laws, 1929, sec. 2, pp. 83-85).

Failure of bank commissioner to discharge duties with reference to failing or insolvent private banks.

If the bank commissioner fails, neglects or refuses for fifteen days to discharge any duty imposed upon him with reference to failing or insolvent private banks, the depositors and creditors representing 25 per cent of the total deposits and obligations, except stock liability, have the right to petition the Attorney General who shall thereupon perform the duties of the bank commissioner in the particular case and apply for a receiver. (Acts of 1911, p. 30, sec. 2, as amended by Acts of 1921, p. 816, and by Acts of 1929, p. 495; Banking Laws, 1929, sec. 2, p. 85.)

Voluntary liquidation; commissioner may petition for receiver.

When a private bank has been in voluntary liquidation for eighteen or more months, the bank commissioner may petition the court for the appointment of a receiver if he considers that the affairs are not being administered to the best interests of the depositors and stockholders. Upon the appointment of the receiver, he "shall take charge and proceed to administer and terminate the affairs of the institution." (Acts of 1915, p. 546, sec. 1; Banking Laws, 1929, p. 82).

Failure to pay examination fee also cause for appointment of receiver.

A failure to pay any examination fee is also cause for the appointment of a receiver of a private bank. (Acts of 1911, p. 30, sec. 2, as amended by Acts of 1921, p. 816, and Acts of 1929, p. 495; Banking Laws, 1929, sec. 2, p. 85)

Owners may stay or abate appointment of receiver.

Upon the filing of a bond before the court which appointed a

receiver for a private bank, or before which the commissioner's application for the appointment of a receiver is pending, the owners of a private bank may abate or stay the appointment of a receiver. (Acts of 1907, p. 174, sec. 14; Banking Laws, 1929, sec. 14, p. 48.)

Voluntary liquidation.

The laws of this state contain provisions outlining the procedure and the conditions under which a private bank may go into voluntary liquidation. (Acts of 1907, p. 174, sec. 15; Banking Laws, 1929, sec. 15, p. 48.)

Reports and examination of private banks in voluntary liquidation.

Private banks in voluntary liquidation are subject to the same examinations and must, at the discretion of the bank commissioner, make the same reports as solvent private bankers. (Acts of 1911, p. 30, sec. 2, as amended by Acts of 1921, p. 816, and Acts of 1929, p. 495; Banking Laws, 1929, sec. 2, p. 85.)

Taxation of private banks.

There are also provisions covering the taxation of membership shares or certificates of stock of private banks. (Acts of 1919, p. 198; Banking Laws, 1929, pp. 101-108.)

IOWA.

No provisions covering operation except restrictions on the use of certain advertising or banking terms.

The laws of this State provide that "It shall be unlawful for any individual, partnership, or unincorporated association * * * not subject to supervision or examination of the banking department" to make use of the words "bank", "banking", "banker" or any derivative of the word "banking", or to make use of any sign or advertising indicating that the place of business or the business carried on is that of a bank. (Banking Laws, 1929, ch. 412, sec. 9151.) It is also provided that a violation of these provisions constitutes a misdemeanor (Banking Laws, 1929, ch. 412, sec. 9152); but that neither the penalties prescribed for the commission of this misdemeanor nor the above restriction on the use of certain advertising or banking terms "shall be construed as affecting or in any wise interfering with any private bank or private banker that may be engaged in lawful business previous to April 16, 1919." (Banking Laws, 1929, ch. 412, sec. 9153). An additional penalty is prescribed in case "any * * * private banker, or person, not incorporated under the provisions" of law covering savings banks," or any officer, agent, servant, or employee thereof" advertises or exhibits any sign as a savings bank. (Banking Laws, 1929, ch. 413, sec. 9200). The laws also require corporations organized under the general incorporation laws to transact a banking business to have the word "State" as a part of their titles, but these laws specifically deny the right to use this word as a part of its title to any "partnership, individual, or unincorporated association engaged in buying or selling exchange, receiving deposits, discounting notes and bills, or other banking business." (Banking Laws, 1929, ch. 414, secs. 9202 and 9203.)

KANSAS

Corporate charter required to engage in banking business.

"From and after the passage and taking effect of this act, it shall be unlawful for an individual, firm or association to engage in the banking business in the State of Kansas without first making application to and receiving a corporate charter therefor from the State charter board, and procuring a certificate to transact such business from the bank commissioner, as provided by law: Provided, That this act shall not apply to any individual, firm or association now engaged in the transaction of banking business in the State of Kansas as a private bank." (Laws of 1929, ch. 90, sec. 1; Banking Laws, 1929, sec. 95, p. 29). Private bankers engaged in business at the time of the enactment of the above provision of law "shall be amenable to all the provisions" of the so-called bank act. (Laws of 1897, ch. 47, sec. 36, as amended by Laws of 1907, ch. 64, sec. 1; Revised Statutes of Kansas, 1923, sec. 9-138; Banking Laws, 1929, sec. 36, p. 14.)

KENTUCKYPrivate banking business expressly prohibited.

The laws of this State provide "That it shall be unlawful for any person or persons, either as individuals or co-partners, to engage in or conduct the business of private banking in this Commonwealth." (Acts of 1906, Ch. 44, p. 278, sec. 1; Carroll's Ky. Stats., 1930, sec. 602a-1).

Penalty for transacting private banking business.

"Any person or persons who shall engage in such business after this law shall become effective shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty nor more than fifty dollars for each day he or they shall be engaged in said business; after April 15, 1906, to be recovered under indictment in the circuit court of the country where the offense shall be committed." (Acts of 1906, ch. 44, p. 278, sec. 2; Carroll's Ky. Stats., 1930, sec. 602a-2).

Private banking provisions repealed; incorporation required.

"Sections 599, 600, 601 and 602, Kentucky Statutes, relating to private banking are hereby repealed, and persons hereafter conducting or engaging in the banking business in this Commonwealth are required to become incorporated as now provided by law." (Acts of 1906, ch. 44, p. 278, sec. 3; Carroll's Ky. Stats., 1930, sec. 602a-3).

LOUISIANA.Private banking of doubtful legality.

Section 275 of the Revised Statutes of Louisiana (Act 166 of 1855) provides that -

"Any person or association of persons, or corporation formed in compliance with the following provisions, may transact the business of banking in this state, and establish offices of discount, deposits, and circulation for that purpose, upon the terms and conditions, and subject to all the liabilities and penalties herein described."

Section 1 of Act 179 of 1902, as amended by Act 140 of 1906, (Banking Law Pamphlet, 1928, sec. 1, p. 4) provides -

**** that the business of banking shall be carried on only by such incorporated associations as shall have been organized under the laws of this state, and of the United States, by individual citizens of the state and by firms domiciled in the state where active members shall be citizens of this state, provided that no private banker or other person or persons not incorporated under this act shall be permitted to use the title Bank, Banking Association or Savings Bank in connection with its name."

Section 1 of Act 137 of 1918 (Banking Law Pamphlet, 1928, sec. 1, p. 105), provides in part that -

****No person, firm, association, company or corporation, either domestic or foreign, excepting only banks organized under the laws of the United States, not subject to the supervision of the Examiner of State banks, and not required by the laws of the State of Louisiana to report to him, and which has not received from the Examiner of State banks a certificate of authority to do a banking business, *** shall engage in the business of banking, or the business of receiving money on deposit, *** or solicit or receive deposits or transact business in the way or manner of a bank, savings bank or trust company ****"

Section 4 of this Act (Banking Law Pamphlet, 1928, sec. 4, p. 108), also provides that "all laws or parts of laws in conflict herewith be, and the same are hereby repealed."

The provisions of Section 275 of the Revised Statutes and Section 1 of Act 179 of 1902, as amended by Act 140 of 1906, above quoted authorized private bankers to carry on the "business of banking"; but whether private banking can now be transacted lawfully is a doubtful question in view of the fact that the laws do not appear to contain any provisions providing for the supervision of, or the issuance of a certificate of authority to do a banking business to, private bankers by the "Examiner of State banks", which is required by the above quoted provision of Section 1 of Act 137 of 1918, as a condition precedent to the transaction of a banking business by any person or corporation. Furthermore, the Examiner of State banks advises that he will not issue a certificate of authority to a private banker to engage in the banking business. Additional provisions of Act 137 of 1918 affecting the private banking situation are set forth below.

Prohibition against advertising or transacting business as bank, savings bank or trust company.

No person, firm, association, company or corporation, except banks organized under the laws of the United States, not authorized to do business by the State Bank Examiner or reporting to or under his supervision, can "advertise that he or it is accepting money, savings and issuing notes or certificates of deposit or investment therefor * * * or transact business in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank, or trust company, * * * , or use the word, 'Bank', 'Banker', 'Banking', 'Savings Bank', 'Savings', 'Trust', 'Trustee', 'Trust Company', * * * or any other word or words of similar import as part of its name or title, " or make use of any sign or other advertising indicating that the place of business or the business carried on is in any way that of a bank, savings bank, or trust company. (Act 137 of 1918, sec. 1; Banking Law Pamphlet, 1928, sec. 1. pp. 105 and 106.)

Penalty for violation of above provisions; procedure to restrain violation.

The laws prescribe that a penalty of \$100 a day must be paid to the State for each day that a violation of any of the above provisions continues. Upon an action brought by the Attorney General the District Court may issue an injunction restraining the use of words or from further transacting business in violation of the above provisions, and may make such other order as equity and justice may require. (Act 137 of 1918, sec. 1; Banking Law Pamphlet, 1928, sec. 1, pp. 106 and 107.)

Examiner must examine persons or firms suspected of violating above provisions; fees.

Whenever it comes to the notice of the State Bank Examiner that any person, firm, or corporation, is violating the above provisions or is conducting the business of banking, it is his duty to make an immediate examination of the affairs of any such person, firm, or corporation. For the purpose of making such examination, the examiner is given free access to all the books, papers and accounts and has power to administer oaths to any officer, agent, employee, etc., of such person, firm, or corporation, and to any other person whose testimony may be required. The examiner is authorized in his discretion, to assess the same fee for such examination as is assessed for the examination of incorporated banks and trust companies. (Act 137 of 1918, sec. 2; Banking Law Pamphlet, 1928, sec. 2. pp. 107 and 108.)

Refusal to permit examination or answer inquiries.

A refusal to exhibit or turn over any books, accounts and papers for examination or to answer any inquiries of the examiner, constitutes a misdemeanor which, upon conviction, is punishable by a fine of not less than \$100 nor more than \$500. (Act 137 of 1918, sec. 2; Banking Law Pamphlet, 1928, sec. 2, p. 107.)

Examiner to report violations to Attorney General.

Where the State Bank Examiner has duly ascertained that any person, firm, or corporation is engaging in the business of banking or otherwise violating the provisions above referred to, it is his duty to report such violation or violations to the Attorney General, "who shall institute the necessary proceedings to enforce the penalties" above provided for. (Act 137 of 1918, sec. 3; Banking Law Pamphlet, 1928, sec. 3, p. 108.)

MAINEPrivate banking prohibited; some exceptions.General rule:

" No person, copartnership, association, or corporation shall do a banking business unless duly authorized under the laws of this state or the United States, except as provided by section four. The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business by any person, copartnership, association, or corporation, or a corporation intended to derive profit from the loan of money except as a reasonable incident to the transaction of other corporate business or when necessary to prevent corporate funds from being unproductive, shall be deemed to be doing a banking business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a pass-book, a note, a receipt, or other writing; provided that nothing herein shall apply to or include money left with an agent, pending investment in real estate or securities for or on account of his principal.

Whoever violates this section, either individually or as an interested party in any copartnership, association, or corporation, shall be punished by a fine of not less than three hundred dollars nor more than one thousand dollars, or by imprisonment for not less than sixty days nor more than eleven months, or by both such fine and imprisonment." (R.S. of 1930, ch. 57, sec. 3.)

Exceptions:

- (a) Corporations which desire to encourage thrift among their employees may secure right to receive from such employees deposits subject to interest at a specified rate, upon application to the bank commissioner and compliance with certain conditions. (R.S. of 1930, ch. 57, sec. 4.)
- (b) Apparently a foreign person or association may carry on the business of accumulating and loaning or investing the savings of its members or of other persons in the manner of loan or building associations upon compliance with certain conditions.

"The bank commissioner may authorize any such association or corporation duly established under the laws of another state to carry on such business in this state, but said association or corporation shall not transact such business in this state unless it shall first deposit with the treasurer of state, the sum of twenty-five thousand dollars and thereafter a sum equal to fifteen per cent of the deposits made in such association or corporation by citizens of the state, the amount of percentage of deposits so required to be determined from time to time by the bank commissioner; or in lieu thereof the whole or any part of said sum may consist of any of the securities in which savings banks may invest, as regulated in section twenty-seven at their par value, and the said deposit shall be held in trust by said treasurer for the protection and indemnity of the residents of the state with whom such associations or corporations respectively have done or may transact business. Said moneys or property shall be paid out or disposed of only on the order of some court of competent jurisdiction, made on due notice to the attorney-general of the state, and upon such notice to the creditors and shareholders of such association or corporation as the court shall prescribe. For the purpose of ascertaining the business and financial condition of any such association or corporation doing or desiring to do such business, the bank commissioner may make examinations of such associations or corporations, at such times and at such places as he may desire, the expense of such examinations being paid by the association or corporation examined, and may also require returns to be made in such form and at such times as he may elect. Whenever, upon examination or otherwise, it is the opinion of the bank commissioner that any such association or corporation is transacting business in such manner as to be hazardous to the public, or its condition is such as to render further proceedings by it hazardous to the public, said bank commissioner shall revoke or suspend the authority given to said association or corporation; but this section shall not prevent such association, corporation, or institution incorporated under the laws of another state, from loaning money upon mortgages of real estate located within the state." (R.S. of 1930, ch. 57, sec. 122.)

Prohibition of use of words "bank," "savings," "trust" and related words.

"No person or partnership and no association or corporation unless duly authorized under the laws of this state or of the United States to conduct the business of a bank or trust company shall use as a part of the name or title under which such business is conducted, or as designating such business, the word or words 'bank,' 'banker,' 'trust,' 'trust company,' 'banking,' or 'trust and banking company,' or the plural of any such word or words or any abbreviation thereof in or in con-

nection with any other business than that of a bank or trust company duly authorized as aforesaid. Provided, however, that this restriction shall not apply to any such person, partnership, association, or corporation, conducting business under such name or style prior to the twenty-third day of April, nineteen hundred five. No person, partnership, association, or corporation, bank or trust company, except a mutual savings bank organized under the laws of this state, shall use as a part of its name or title the word or words 'saving,' 'savings,' or 'savings bank.' Provided, however, that this restriction shall not apply to any business being conducted under such name or style prior to the twenty-third day of April, nineteen hundred five, nor to any bank or trust company using such word or words prior to the first day of January, nineteen hundred twenty-nine.

Any person, partnership, association, or corporation violating any of the provisions of this section may be enjoined therefrom by any court having general equity jurisdiction, on application of the bank commissioner or any person, corporation, or association injured or affected by such use; and any such court may further enjoin any attempt on the part of any person, firm, or corporation to mislead or give a false impression to the public that such person, firm or corporation is authorized under the laws of this state to conduct the business of a trust company. Any person or persons violating any of the provisions of this section, either individually, as members of any association or copartnership, or as interested in any such corporation, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not less than sixty days nor more than eleven months, or by both such fine and imprisonment." (R.S. of 1930, ch. 57, sec. 5.)

MARYLAND.

No provisions covering operation except restrictions against using certain advertising.

Except for the following provisions, which appear to be applicable to private banks, the laws of this State contain no provisions covering the organization or operation of private banks:

"No person, co-partnership or corporation not subject to the supervision and examinations of the Bank Commissioner, and not required to make reports to him * * *, shall make use of any sign at the place where such business is transacted, having thereon any artificial or corporate name or other words indicating that such place or office is the place or office of a banking institution as defined in this Article"; nor shall such person or persons, make use of or circulate any advertising "indicating that such business is the business of a banking institution! A violation of these provisions constitutes a misdemeanor and subjects the person or persons committing such viola-

tion to certain prescribed penalties, "The provisions of this section shall not apply to persons, copartnerships, or corporations which, at the time this Act takes effect, (June 1, 1918), are engaged in business in incorporated towns or cities of the State of less than ten thousand inhabitants." (Annotated Code of Maryland, 1924, Vol. 1, Article Eleven sec. 78; Laws of 1910, ch. 219, sec. 74, as amended by Laws of 1912, ch. 194, sec. 74 and Laws of 1918, ch. 33, sec. 75; Banking Laws, 1927, sec. 78, p. 36.)

Definition of "Banking Institution."

"the words 'Banking Institutions', as used in this Article, shall be held to mean incorporated Banks, Savings Institutions and Trust Companies, * * * ". (Annotated Code of Maryland, 1924, Vol. 1, Article Eleven Sec. 52; Laws of 1910, ch. 219, sec. 51; Banking Laws, 1927, sec. 52, p. 27.)

MASSACHUSETTS.

No provisions prohibiting private banking business; but certain advertising, and receiving deposits as savings bank or trust company prohibited.

The laws of this State do not contain any provisions with reference to the organization or establishment of private banks or bankers, except as indicated in last paragraph hereof, and except for the prohibitions embraced in the following provisions, the laws are silent with regard to the operation of such banks or bankers. The following provisions prohibit the receipt of deposits as a savings bank or trust company, and the use of any advertising or banking terms indicating that the place of business or the business carried on is that of a savings bank or trust company, by any person, partnership or association other than savings banks and trust companies incorporated under the laws of Massachusetts.

Prohibition against receipt of certain deposits and use of specific banking terms and other advertising.

" * * * no person, partnership or association except savings banks and trust companies incorporated under the laws of this commonwealth", and certain foreign banking corporations, shall hereafter make use of any signs or other advertising indicating that the place of business or business transacted is that of a savings bank; "nor shall any such * * * person, partnership or association, * * * solicit or receive deposits or transact business in the way or manner of a savings bank, or in such a way or manner as to lead the public to believe, or as in the opinion of the commissioner might lead the public to believe, that its business is that of a savings bank; nor shall any person, partnership, * * * or association, (excepting certain institutions not connected with or related to private banks or bankers) * * *

hereafter transact business under any name or title which contains the word 'bank' or 'banking', or any word in a foreign language having the same or similar meaning, as descriptive of said business, or, if he or it does a banking business or makes a business of receiving money on deposit, under any name or title containing the word 'trust', or any word in a foreign language having the same or similar meaning, as descriptive of said business." (General Laws, ch. 167, sec. 12; as amended Act 1921, ch. 78, sec. 1; Act 1922, ch. 114; Banking Law Pamphlet Relating to Savings Banks, 1929, ch. 167, sec. 12, p. 4.)

Bank Commissioner may examine books, accounts, etc. to ascertain whether law is being violated.

"The commissioner or his examiners may examine the accounts, books and papers of any * * * person, partnership or association making a business of receiving money on deposit, or which has the word 'bank', 'banking', 'banker', 'bankers', or 'trust', or any word in a foreign language having the same or similar meaning, in the name under which its business is conducted, in order to ascertain whether such * * *, person, partnership or association has violated or is violating any provision of the preceding section; and any * * *, person, partnership or association refusing to allow such examination or violating any provision of said section shall forfeit to the commonwealth one hundred dollars a day for every day or part thereof during which such refusal or violation continues." (General Laws, ch. 167, sec. 13; as amended Acts 1921, ch. 78, sec. 2; Banking Law Pamphlet Relating to Savings Banks, 1929, ch. 167, sec. 13, p. 4.)

Commissioner shall report violations to Attorney General; procedure to restrain violation.

Any refusal to permit such an examination, or any violation of the provisions first above quoted "shall forthwith be reported by the commissioner to the Attorney General. The said forfeiture may be recovered by an information or other appropriate proceeding brought in the Supreme Judicial or Superior Court in the name of the Attorney General. Upon such information or other proceeding the court may issue an injunction restraining such * * *, person, partnership or association from further prosecution of its business within the commonwealth during the pendency of such proceeding or for all time, and may make such other orders or decrees as equity and justice may require." (General Laws, ch. 167, sec. 13; as amended Acts 1921, ch. 78, sec. 2; Banking Law Pamphlet Relating to Savings Banks, ch. 167, sec. 13, p. 4.)

Further prohibition against use of term "Trust Company" or receiving deposits as trust company.

"No person or association and no bank or corporation, except trust companies, shall use in the name or title under which his or its business is transacted the words 'Trust Company' even though said words

may be separated in such name or title by one or more other words, or advertise or put forth a sign as a trust company or in any way solicit or receive deposits as such. Whoever violates this section shall forfeit one hundred dollars for each day during which such violation continues." Certain foreign corporations are excepted from the provisions of this section. (General Laws, ch. 172, sec. 4; as amended Acts 1923, ch. 41; Trust Company Law Pamphlet, ch. 172, sec. 4, p. 15.)

Persons engaged in the receipt and transmission of funds to foreign countries.

Persons engaged in the business principally or in conjunction with that of selling railroad or steamship tickets or in the supplying of laborers, receiving deposits for safe keeping or transmitting the same or equivalents to foreign countries shall, "before engaging or becoming financially interested or continuing to engage or be financially interested in the business of receiving deposits of money for the purpose of transmitting the same or equivalents thereof to foreign countries, make, execute and deliver to the state treasurer a bond in a sum equal to twice the amount of money or equivalents thereof transmitted to foreign countries by such person in any one week, as determined by the commissioner of banks, in this chapter called the commissioner, but in no event shall the sum of the bond be less than fifteen thousand dollars; provided, that the sum of such bond shall be increased on order of the commissioner at any time to such amount as shall be shown by examination to be necessary. Said bond shall be conditioned upon the faithful holding and transmission of any money or equivalents thereof which shall have been delivered to such person for transmission to a foreign country, and, in the event of the insolvency or bankruptcy of the principal, upon the payment of the full amount of such bond to the assignee, receiver or trustee of the principal, as the case may require for the benefit of such persons as shall have been delivered money or equivalents thereof to said principal for the purpose of transmitting the same to a foreign country." (Acts 1923, ch. 473, sec. 2; Acts 1929, ch. 182, sec. 2.)

MICHIGAN.

Private banks expressly prohibited; exception.

"On and after the effective date of this act (1925), it shall be unlawful for any individual person, or unincorporated association of individual persons, to engage in the business of banking, * * *: Provided, That this act shall not apply to any individual person or unincorporated association of individual persons engaged in the business of banking at the time of the passage of this act." (Public Acts of 1925, Act No. 284, sec. 1; Banking Laws, 1929, sec. 364, p. 105.)

Penalty for establishment of private bank.

"From and after the passage of this act, no person or association of persons, not incorporated under the banking laws of this State

and not now engaged in the private banking business, shall open up or attempt to operate any private bank, and any such operation or attempt shall be deemed a violation of this act, and the persons so operating or attempting to operate shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars or by imprisonment in the State prison for not more than five years, or by both such fine and imprisonment in the discretion of the court: Provided, That nothing in this act contained shall be construed to prohibit the surviving partner or partners of a copartnership from continuing the operation of any private bank operated by such copartnership at the time this act shall take effect." (Public Acts of 1925, Act No. 284, sec. 2; Banking Laws, 1929, sec. 365, p. 105.)

MINNESOTA.

"Individual or co-partnership" prohibited from transacting business of savings bank, safe deposit company or trust company.

From the following provisions, it appears that "a person, firm, individual or copartnership" is prohibited from advertising or engaging in business in any way as a savings bank, safe deposit company or trust company.

Provisions prohibiting business as savings bank, etc.

"No individual, co-partnership or corporation other than a savings bank or safe deposit and trust company subject to and complying with all the provisions of law relating to such bank or safe deposit and trust companies respectively, shall in any manner display or make use of any sign, symbol, token, letterhead, card, circular, advertisement stating, representing or indicating that he, it, or they, are authorized to transact the business which a savings bank, safe deposit or trust company usually does, or under said provision are authorized to do; nor shall any such individual, co-partnership or corporation use the words 'savings' or 'trust' or 'safe deposit' alone or in combination in title or name or otherwise or in any manner solicit business or make loans or solicit or receive deposits or transact business as a savings bank or safe deposit or trust company. * * . Every individual, co-partnership or corporation which shall violate any of the provisions of this section shall forfeit to the State the sum of one hundred dollars for every day such violation shall continue." (Act approved March 21, 1929, Laws of 1929, ch. 77, sec. 1; Banking Laws, 1929, sec. 1, p. 18.)

"Bank", "savings bank", "trust company" and "banking" defined.

"A bank is a corporation under public control, having a place of business where credits are opened by the deposit or collection of money and currency, subject to be paid or remitted upon draft, check, or order, and where money is advanced, loaned on stocks, bonds, bullion, bills of exchange, and promissory notes, and where the same are received for discount or sale; and all persons and co-partnerships, respectively, so operating, are bankers.

"A savings bank is an institution under like control, managed by disinterested trustees solely authorized to receive and safely invest the savings of small depositors.

"A trust company is a corporation under like control, authorized, within prescribed limitations, to act as a safe deposit company, trustee or representative for or under any court, public or private corporation, or individual, and as surety or guarantor." (General Statutes, 1923, sec. 7635; Banking Laws, 1929, p. 7)

"A 'bank' is a corporation having a place of business in this State, where credits are opened by the deposit of money or currency, or the collection of the same, subject to be paid or remitted on draft, check or order; and where money is loaned or advanced on stocks, bonds, bullion, bills of exchange or promissory notes, and where the same are received for discount or sale. A 'savings bank' is a corporation managed by disinterested trustees, solely authorized to receive and safely invest the savings of small depositors. Every 'bank' or 'savings bank' in this State shall at all times be under the supervision and subject to the control of the public examiner, (superintendent of banks) * * * and when so conducted said business shall be known as 'banking'." (General Statutes, 1923, sec. 7636; Banking Laws, 1929, p. 8).

Restriction against use of word "bank".

"Any person, firm or corporation carrying on in this State the business, or any part thereof, defined as 'banking' in the preceding section, who refuses to permit the public examiner (superintendent of banks) to inspect and superintend said business, and to see that the same is carried on in accordance with the banking laws of this State shall not be permitted to use the word 'bank' as the whole or any part of the business name of the place where said business is carried on, nor shall the word 'bank' be used on any stationery or in any advertisement of said business, as the whole or any part of the name or description of said business." (General Statutes, 1923, sec. 7637; Banking Laws, 1929, p. 8.)

MISSISSIPPI.

Banking business may only be transacted by corporations.

The laws of this State provide that "any person or firm now engaged in the banking business" as described below, "shall incorporate within six months after this (banking) act goes into effect. This section shall not apply except when such corporations keep the actual money on deposit or solicit outside deposits, but any person or association of

"persons now engaged in the banking business in this State shall be subject to all the provisions of this (banking) act until such person, persons or associations of persons shall be or become incorporated as provided in this section". Any person or firm is doing a banking business, under the Mississippi laws, when he or it has "a place of business within this state, where credits are opened by the deposit or collection of money or currency or negotiable paper subject to be paid or remitted upon draft, receipt, check or order, or sale of drafts or exchange drawn on local or foreign banks, *** ". (Laws of 1914, ch. 124, sec. 27; Brown's Miss. and Fed. Stats., 1925, sec. 27, p. 43).

MISSOURI.

Private banks may not now be established.

By an act enacted in the year 1915, this state prohibited the establishment of new private banks, the pertinent provision stating "that hereafter no new private bank shall be established". This act also contains detailed provisions covering the organization, operation and supervision of banks and apparently permitted private banks who were engaged in a banking business at the time of its passage to continue the operation of such business upon complying with the provisions covering incorporated banks so far as the same are applicable." In addition, the act contains provisions specifically applicable to private banks, these provisions being set forth below.

Definition of "private bankers".

"Private bankers are declared to be those who carry on the business of banking by receiving money on deposit, with or without interest, by buying and selling bills of exchange, promissory notes, gold or silver coin, bullion, uncurrent money, bonds or stocks, or other securities, and of loaning money, without being incorporated." (Laws of 1915, p. 157; Rev. Stats. of Mo., 1929, sec. 5403; Banking Laws, 1919, sec. 11781, p. 88.)

Capital requirements.

A private banker could not engage in business "without a paid-up capital of not less than ten thousand dollars, and if said banking business is to be carried on in a city having a population of one hundred and fifty thousand inhabitants or more, then without a paid-up capital of not less than one hundred thousand dollars, * * * ". (Laws of 1915, p. 157; Rev. Stats. of Mo., 1929, sec. 5404; Banking Laws, 1919, sec. 11782, p. 88.)

Sworn statement necessary; contents of

Before engaging in business a private banker also had to file "a statement, subscribed and sworn to as correct and true before a notary public by each person connected with such business as owner or partner, setting forth: First, the names and places of residence of all

"persons interested in the business, all of whom shall be residents of this state, the amount of capital invested; and second, the name in which the business is to be conducted and the place at which it is to be carried on; which statement shall be acknowledged, recorded in the office of the recorder of deeds of the county in which the bank is to be located, and a certified copy of such recorded instrument shall be filed in the office of the bank commissioner: * * *". (Laws of 1915, p. 157; Rev. Stats. of Mo., 1929, sec. 5404; Banking Laws, 1919, sec. 11782, pp. 88 and 89).

Cashier must give bond; condition of.

"The cashier of each private bank shall give bond to the state of Missouri, for such sum, and conditioned, as may be required by the commissioner, which shall be approved by the commissioner, and filed in his office." (Laws of 1915, p. 158; Rev. Stats. of Mo., 1929, sec. 5407; Banking Laws, 1919, sec. 11785, p. 90).

License fee or tax.

"No private banker * * *, after having made, recorded and filed the statement required by this article, shall be required to pay any license or tax not required of banks." (Laws of 1915, p. 158; Rev. Stats. of Mo., 1929, sec. 5408; Banking Laws, 1919, sec. 11786, p. 90.)

Provisions covering incorporated banks made applicable.

All of the provisions of law covering the organization, operation and supervision of incorporated banks "shall, so far as the same are applicable, apply to all private bankers doing business in this State; * * * " (Laws of 1915, p. 158; Rev. Stats. of Mo., 1929, sec. 5407; Banking Laws, 1919, sec. 11785, p. 90)

Loan on personal security of owner in excess of 10% of capital prohibited; violation cause for appointment of receiver.

A private banker cannot make any loan or discount on the personal security or obligation of any owner in excess of ten per cent of the paid up capital and surplus of the bank. A violation of this prohibition empowers the bank commissioner "in his discretion, to make application for the appointment of a receiver for such private bank or banker, as now provided by law in case of insolvent banks and trust companies." (Laws of 1915, p. 157; Rev. Stats. of Mo., 1929, sec. 5405; Banking Laws, 1919, sec. 11783, p. 89).

Restriction upon use of funds.

"No private banker shall employ any part of his capital, or any funds deposited with or borrowed by him, in dealing or trading in, buying or selling lands, goods, chattels, wares or merchandise, but he may sell and dispose of all kinds of property which may necessarily come into his possession in the collection of his loans or discounts." (Laws of 1915, p. 158; Rev. Stats. of Mo., 1929, sec. 5406; Banking Laws, 1919, sec. 11784, p. 89.)

Loans to one borrower and other use of funds.

A private banker may not "use or employ his capital or funds deposited with or borrowed by him in any other manner than banks are * * * permitted, or loan a greater amount to any person or loan any sum whatever, except upon like security as is required to be taken by banks." (Laws of 1915, p. 158; Rev. Stats. of Mo., 1929, sec. 5406; Banking Laws, 1919, sec. 11784, p. 89).

Surplus of 20% of capital required before profits may be distributed.

The profits of a private banker may not be distributed "without first setting apart to surplus accounts at least twenty per cent of the net profits each year until the surplus equals twenty per cent of the capital, and said surplus shall not be diminished except for the payment of any losses which may occur; Provided, if there are undivided profits, these shall first be used in payment of such losses." (Laws of 1915, p. 158; Rev. Stats. of Mo., 1929, sec. 5406; Banking Laws, 1919, sec. 11784, p. 89.)

Penalty for violation of provisions.

Any private banker who fails to make and file the statement required of incorporated banks or so much thereof as the bank commissioner may require "or shall fail or refuse to make or render any other report or statement required by the banking laws of this state, or who shall, wilfully and corruptly, make any such statement falsely, or who shall violate any of the provisions of this article (covering incorporated and private banks), he or they, and each of them shall be deemed guilty of a misdemeanor, and, upon conviction thereof, upon information or indictment, shall be punished by a fine, for each offense, not exceeding five thousand dollars nor less than five hundred dollars, or by imprisonment not less than one nor more than twelve months in the city or county jail, or by both such fine and imprisonment." (Laws of 1915, p. 158; Rev. Stats. of Mo., 1929, sec. 5407; Banking Laws, 1919, sec. 11785, p. 90.)

"If at any time the commissioner shall be satisfied that any private banker * to which has been issued an authorization certificate or license, is violating any of the provisions of this chapter, or is conducting its business in an unauthorized or unsafe manner, or is in an unsound or unsafe condition to transact its business, or cannot with safety and expediency continue business, the commissioner may, over his official signature and seal of office notify the holder of such authorization certificate or license that the same is revoked." (Rev. Stats. of Mo., 1929, sec. 5299).

MONTANA.Banking business may only be transacted by corporations; exception.

The laws of this state provide that "It shall be unlawful for any corporation, partnership, firm, or individual to engage in or trans-

act a banking business within this state, except by means of a corporation duly organized for such purpose. * * * this (bank) Act shall not apply to any person, firm or association now doing a private banking business; provided, however, that said private banks hereinabove referred to shall come under all of the provisions of this Act which may be fairly applicable thereto; * * * ". (Laws of 1927, ch. 89, sec. 2; Banking Laws, 1927, sec. 2, p. 8)

Advertising before issuance of charter; penalty

"It shall be unlawful for any individual, firm or corporation to advertise, publish or otherwise promulgate that it is engaged in the banking business without first having obtained authority from the Department of Banking, * * *. Any such individual, or member of such firm, or officer of any such corporation so offending, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided by the laws of this State." (Laws of 1927, ch. 89, sec. 107; Banking Laws, 1927, sec. 107, p. 60)

As stated above, private bankers who were engaged in the transaction of a banking business as of the passage of the so-called bank act, March 8, 1927, are required to comply with such provisions of the bank act as "may be fairly applicable thereto". The bank act also contains other provisions which are specifically applicable to these private bankers, these provisions being set forth below.

Name of private bank.

The name of a private bank must contain the name of the individual conducting the business, or, if a copartnership or association, the name of at least one actual and responsible member thereof, "in addition to which name there shall be no other designation then the words 'bank of', 'Banking house of' 'banker', or 'bankers'. Nothing in this section shall apply to any person, firm or association now conducting a private banking business in this state, which bank is now authorized by the State Banking Department to do a banking business". (Laws of 1927, ch. 89, sec. 82; Banking Laws, 1927, sec. 82, p. 52).

"Approved property or assets" must be owned before deposits may be received.

Every private bank must before receiving any money on deposit "actually own and possess, within the State of Montana, approved property or assets not exempt from execution of the minimum value" of not less than \$20,000; not less than \$30,000 in cities and towns having a population of over 2,000 and up to 5,000; not less than \$50,000 in cities having a population of 5,000 to 10,000; not less than \$75,000 in cities having a population of 10,000 to 25,000; in all cities having a population of 25,000 or over the value of the property or assets must be \$100,000. This financial condition must appear and be carried on the books of every private bank and these provisions "shall extend and be applicable separately to each and every private bank conducted by any person, co-partnership, or association, and no asset or assets shall appear on the books of more than one bank." (Laws of 1927, ch. 89, sec. 83; Banking Laws, 1927, sec. 83, p. 53).

Examinations; power of State Examiner.

Every private bank "shall be subject to examination and visitations of the State Examiner once each year, and oftener when deemed

"necessary by said examiner, who shall have full power and authority to investigate and examine all books, papers, and effects of any such bank or banking house for the purpose of ascertaining the financial condition of any such bank or banks, and shall have the power in aid thereof to administer oaths to any person or persons, or the agent or employees of any person or persons conducting such bank or banking business." (Laws of 1927, ch. 89, sec. 84; Banking Laws, 1927, sec. 84, p. 53).

Reports of condition; number and nature of; publication required.

The cashier of every private bank is required, on call of the superintendent of banks, to make not less than three reports of condition during each year, any one of which must be not less than two months apart. These reports must be verified by the cashier, must be made in such form as the superintendent may prescribe, and must contain a full abstract of the general accounts of the bank and show under appropriate heads the resources and liabilities of the bank. A condensed form of each report must be published in the newspapers and proof of such publication is required to be made to the superintendent. The superintendent also has power to call for special reports whenever he considers that such reports are necessary. (Laws of 1927, ch. 89, sec. 86; Banking Laws, 1927, sec. 86, p. 54).

Penalty for receiving deposits while bank is insolvent or for making false statements or entries.

Any person, or the members of any private bank, who receives deposits when such person or private bank is insolvent "or who subscribes or makes any false statement, or entries in the books of any such bank, or who knowingly subscribes or exhibits any false papers, with the intention of deceiving any person authorizing (authorized) to examine the condition of any bank provided for in this Act, or who wilfully subscribes or makes false reports to the Superintendent of Banks, shall be guilty of a felony, and shall be punishable by imprisonment in the State prison for a term not exceeding five (5) years." (Laws of 1927, ch. 89, sec. 87; Banking Laws, 1927, sec. 87, p. 55).

Pledging of assets.

"No * * * banker * * * shall, except as otherwise authorized by law, pledge or hypothecate as collateral security for money borrowed, its assets in a ratio exceeding one and one half times the amount borrowed (except as otherwise authorized by the Superintendent)." (Laws of 1927, ch. 89, sec. 99; Banking Laws, 1927, sec. 99, p. 58).

Taxation of private banks.

The laws of this state also contain detailed provisions covering the taxation of private banks. (Laws of 1927, ch. 64, sec. 1; Banking Laws, 1927, sec. 1 (2067), pp. 78 and 79).

NEBRASKA.

Banking business may only be transacted by corporations.

The laws of this State provide that the business of banking may only be transacted by corporations duly organized for that purpose. The provisions in this connection read as follows:

"The department of trade and commerce shall have general supervision and control of banks and banking under the laws of this state and no person or persons shall be permitted to engage in or transact a banking business save corporations having complied with the provisions of this article." (Comp. Stat. of Nebraska, 1922, sec. 7982; Banking Laws, 1929, sec. 7982, p. 3).

"It shall be unlawful for any corporation, partnership, firm or individual to engage in or transact a banking business within this state, except by means of a corporation duly organized for such purpose under the laws of this state." (Comp. Stat. of Nebraska, 1922, sec. 7984; Banking Laws, 1929, sec. 7984, p. 3).

NEVADA.

Private banking business must be licensed; provisions of bank act applicable.

In order to engage in the business of banking in this State a private banker must obtain a license to do so and is subject "as far as may be" to the provisions of law covering incorporated banks.

Necessity for license.

"No individual, *** banking firm, *** company, *** shall engage in the banking business in this state without first obtaining from the bank examiner a license in the form presented by him, authorizing such individual, firm, *** company, *** to use the name and transact the business of a bank; ***" (Act of March 22, 1911, sec. 47; Banking Laws, 1930, sec. 47, p. 16).

Subject to supervision and control of State banking board and bank examiner; bank act made applicable.

"The state board of finance, sitting as the Nevada state banking board, shall have, in connection with the state bank examiner, supervision and control of banks and banking in this state, and no persons, firms, associations, or corporations shall be permitted to engage in the banking business in this state, save in compliance with this (bank) act." (Act of March 22, 1911, sec. 49, as amended by Laws of 1919, p. 285; Banking Laws, 1930, sec. 49, p. 16). The laws also

provide that "All of the provisions of this (bank) act shall be applicable as far as may be to individuals, firms, or associations, as well as to corporations." (Act of March 22, 1911, sec. 8; Banking Laws, 1930, sec. 8, p. 6).

Definition of words used in bank act.

"The words 'corporation,' 'banking corporation,' 'bank', 'trust company,' or 'banker', as used in this (bank) act, shall refer to and include banks, savings banks, and trust companies, individuals, firms, associations, and corporations of any character conducting the business of receiving money on deposit or otherwise carrying on a banking or trust company business, except as herein specially provided." (Act of March 22, 1911, sec. 75; Banking Laws, 1927, sec. 75, p. 23).

NEW HAMPSHIRE.

Private banks subject generally to banking and taxation laws.

The laws of this State provide that "Every association or partnership formed for the purpose of loaning money or dealing in money, receiving deposits, buying or selling exchange or transacting such other business as is usually transacted by banks, shall be a bank for the general purposes of this title and for taxation. The clerk or cashier of every such bank shall make the same returns to towns where its stockholders reside as the cashiers of other banks are by law required to make." (Public Stats., ch. 164, sec. 5; Public Laws, 1926, ch. 260, sec. 24; Banking Law Pamphlet, 1929, ch. 261, sec. 24, p. 9).

"This title" (XXVI) is that portion of the laws of New Hampshire relating to and covering the operation of banks, savings banks, and trust companies; and, apparently, the provision above quoted recognizes a private banking business, but requires such business to be conducted in accordance with the provisions of the laws relating to incorporated banking institutions and the taxation thereof, in so far as it is possible generally so to do. In addition, the laws contain certain provisions which are specifically applicable to private banks. These provisions are set out below.

Owners deemed stockholders; capital for taxation purposes.

"Every person owning any portion of the funds employed in any private bank shall be deemed a stockholder therein. The average amount of the capital of such private bank during the preceding year shall be the capital of such bank subject to taxation as stock." (Public Stats., ch. 164, sec. 6; Public Laws, 1926, ch. 260, sec. 25; Banking Law Pamphlet, 1929, ch. 260, sec. 25, p. 9).

Liability of stockholders.

"The stockholders of any private bank shall be liable as partners for all the debts and obligations of the bank." (Public Stats., ch. 164, sec. 7; Public Laws, 1926, ch. 260, sec. 26; Banking Law Pamphlet, 1929, ch. 260, sec. 26, p. 9).

Prohibition against advertising or transacting business as savings bank.

No person, partnership or association, "except savings institutions incorporated in this state", can make use of any sign or other form of advertising indicating that the place of business or business carried on is that of a savings bank, or "receive deposits and transact business in the way or manner of a savings bank, or in such a way or manner as to lead the public to believe, or, in the opinion of the commissioner, might lead the public to believe", that the business is that of a savings bank. (Laws of 1907, ch. 112, sec. 2; Public Laws, 1926, ch. 261, secs. 53-55; Banking Law Pamphlet, 1929, ch. 261, secs. 53-55, p. 18).

Examination to ascertain whether above provision is being violated.

"The commissioner shall have the authority to examine the accounts, books and papers of any ***, person, partnership or association which makes a business of receiving money on deposit in order to ascertain whether they have violated" the provisions last above referred to, and a penalty is prescribed for any such violation. (Laws of 1907, ch. 112, sec. 3; Public Laws, 1926, ch. 261, secs. 56 and 57; Banking Law Pamphlet, 1929, ch. 261, secs. 56 and 57, p. 19).

Recovery of penalty and injunction to restrain further prosecution of business.

"Any violation of *** (such) provisions *** shall forthwith be reported by the commissioner to the Attorney General; and the forfeiture may be recovered by an information or other appropriate proceeding brought in the superior court in his name. Upon such information or other proceeding the court may issue an injunction restraining such person, partnership, *** from further prosecution of its business within this state during the pendency of such proceeding or for all time, and may make such other order as justice may require." (Laws of 1907, ch. 112, sec. 3; Public Laws, 1926, ch. 261, secs. 58 and 59; Banking Law Pamphlet, 1929, ch. 261, secs. 58 and 59, p. 19).

Treasurer of savings bank shall not carry on private banking business.

"No treasurer or person acting as treasurer of a savings bank shall carry on or be engaged in the business of private banking, or shall suffer such business to be carried on in the office of the bank", and if any person violates these provisions "he shall be fined not more than one thousand dollars, or imprisoned not more

than one year or both". (Public Laws 1926, ch. 261, secs. 4 and 5.).

NEW JERSEY

Penalty for carrying on banking business without authority.

"No individual, association of individuals, partnership or joint stock association, shall engage in the business of banking, except under and in accordance with the provisions of this act, unless possessed of unencumbered assets of at least fifty thousand dollars, and that any such individual, association of individuals, partnership or joint stock association and the individual members thereof, who shall violate the provisions of this act and carry on the business of banking without authority, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment at hard labor for a term not exceeding seven years, or both." (Laws of 1925, ch. 189, p. 454; Comp. Stat. of N. J., Supplement, 1925-1930, Sec. 17-44.).

Private banker must be a citizen of the United States and at least one member of the firm must reside in State.

"No individual or individuals shall engage in the business of banking who are not citizens of the United States, and no individual, association of individuals, partnership or joint stock association, shall engage in the business of banking within this State unless one or more of the persons so engaged shall be residents in and inhabitants of this State, and for every violation of the provisions of this section, the person or persons so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not more than one thousand dollars, and in all reports that shall be made by such individual, association of individuals, partnership or joint stock association, the full names and places of residence of each of the persons so interested shall be fully set out." (Laws of 1925, ch. 189, p. 454; Comp. Stat. of N. J., Supplement, 1925-1930, Sec. 17-47.).

Insolvency, etc.; commissioner may apply for injunction or receiver.

In case it appears from any report made by or any examination of any private bank that such bank is insolvent or is unable to pay its obligations as they severally mature, or is unable to pay its depositors the money held by it on deposit whenever called upon so to do, or shall suspend its ordinary business for want of funds to carry on the same, or shall not be possessed of unencumbered assets of at least fifty thousand dollars in excess of its liabilities, the commissioner, or any creditor of the bank, may apply "to the chancellor" for an injunction or the appointment of a receiver. If after a hearing, it appears to the chancellor that the private bank is insolvent, or is not able to resume business

with safety to the public and advantage to the creditors, or is not possessed of unencumbered assets of at least fifty thousand dollars in excess of its liabilities, the chancellor may issue an injunction to restrain such private bank from further carrying on business, and if insolvent, from collecting or receiving any debts, or from paying out, selling, assigning or transferring any of the assets, moneys, funds, lands, tenements or effects belonging to it, until the court otherwise orders. (Laws of 1925, ch. 189, p. 455; Comp. Stat. of N. J., Supplement, 1925-1930, Sec. 17-48.).

Certificate of authority necessary to engage in business; examination by commissioner.

"No individual, association of individuals, partnership or joint stock association shall engage in the business of banking in this State unless authorized thereunto by the commissioner of banking and insurance by his certificate to that effect, and such certificate shall not be made or issued by the said commissioner until after the said individual, association of individuals, partnership or joint stock association, shall have made to him the report or reports required by this act; and not until after the said commissioner of banking and insurance, or some person appointed by him, shall have made an examination of the affairs and financial condition of such individual, association of individuals, partnership or joint stock association, from which it shall appear to said commissioner that he or they are then solvent and able to pay his or their debts at maturity, and are possessed of unencumbered assets of at least fifty thousand dollars in excess of his or their liabilities; provided, the commissioner of banking and insurance may refuse to issue such certificates of authorization if in his judgment the interests of the public would be best subserved by such refusal;" (Banking Laws of 1925, ch. 189, p. 456; Comp. Stat. of N. J., Supplement, 1925-1930, Sec. 17-51.).

Advertisements indicating banking business.

"that no individual, association of individuals, partnership or joint stock association, not authorized under this act to do a banking business, shall make use of any office sign at the place where his or their business is transacted, having thereon any artificial or corporate name or other word or words indicating that such place or office is the place or office of a bank, nor in any manner advertise that he or they are engaged in a banking business, nor make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates, circulars or any written or printed or partly written and partly printed paper whatever, having thereon any artificial or corporate name or any other word or words indicating that his or their business is that of a bank." (Laws of 1925, ch. 189, p. 456, Comp. Stat. of N. J., Supplement 1925-1930, Sec. 17-51.).

NEW MEXICO.Provisions of "bank act" made applicable to "individuals and copartnerships."

The laws of this State provide that "This act shall be known as the 'Bank Act' and shall be applicable to all corporations, individuals and copartnerships specified in the next section, except as hereinafter specifically excepted." (Laws of 1915, ch. 67, sec. 1; New Mexico Stats. Ann., 1929, sec. 13-101; New Mexico Bank Code, 1929, sec. 1, p. 5.). The "next section" referred to sets out that "The word 'Bank' as used in this (bank) act includes every person, firm, company, copartnership or corporation, except National Banks, engaged in the business of banking in the State of New Mexico." (Laws of 1915, ch. 67, sec. 2; New Mexico Stats. Ann., 1929, sec. 13-102; New Mexico Bank Code, 1929, sec. 2, p. 5). The bank act provides further that "When by the provisions hereof anything is required to be done by any incorporated bank, or other corporation, carrying on a banking business under any of the provisions of this act, or by the Board of Directors of any such incorporated bank or corporation, or any officer, director or employee thereof, or their right or power to do a specific act is denied, the same act shall be done, or not, as the case may be, by individuals or copartners engaged in the banking business." (Laws of 1915, ch. 67, sec. 7; New Mexico Stats. Ann., 1929, sec. 13-107; New Mexico Bank Code, 1929, sec. 7, pp. 5 and 6.).

It would appear, therefore, that these provisions have the effect of subjecting persons, firms, copartnerships and unincorporated banks to the same provisions as are made applicable to incorporated banks. In addition the bank act makes the following requirements specifically applicable to private banks:

Private bankers engaged in other business in addition to that of banking; capital required; separation of capital; payment of creditors; manner of keeping books; bank act requirements covering reserves, deposits, investments, etc., made applicable.

"All persons, (and) co-partnerships * * * engaged in business, a portion only of which is banking, shall set apart and keep separate so much capital for banking as may be necessary for conducting a bank * * *. The capital so set apart and the assets of said bank or banking department shall be first applicable to the payment of the creditors thereof, as distinguished from the general creditors of the persons, (or) co-partnerships * * * conducting the same. Every person, (or) co-partnership * * * so carrying on a banking business in connection with any other business shall keep separate books of account for each banking business, and shall be governed as to all deposits, reserves, investments and transactions relating to such banking business, by the provisions of this act provided for

the control of such banking business, and with respect to said banking business or banking department shall be subject to all the provisions of this act." (Laws of 1915, ch. 67, sec. 9; New Mexico Stats. Ann., 1929, sec. 13-109; New Mexico Bank Code, 1929, sec. 9, p. 6.).

Certified statement as to capital stock, names and residences of co-partners, amount of capital owned by each.

The bank act provides that "any individual or co-partnership desiring to conduct a banking business shall file in the office of the State Bank Examiner and of the State Corporation Commission a similar statement" as that filed by a corporation. The laws with reference to the statement filed by a corporation provide that "As soon as ten per cent of the capital stock and surplus of the corporation shall be fully paid in cash, a copy of the by-laws of said bank and the oaths of its directors shall be filed in the office of the State Bank Examiner and of the State Corporation Commission, together with a statement executed on behalf of the corporation and sworn to by its president, and cashier or secretary, certifying: the full amount of the entire capital stock of said corporation subscribed; the names and residences of the officers, directors and stockholders of said corporation; the amount of stock owned by each, and the fact that such corporation will be fully prepared to transact the business for which it was organized, upon the payment in cash of the remaining ninety per cent of the capital stock and surplus." (Laws of 1929, ch. 131, sec. 5; New Mexico Stats. Ann., 1929, sec. 13-113; New Mexico Bank Code, 1929, sec. 13, p. 7).

Word "State" may not be used as part of title.

"Individuals and co-partners engaged in banking shall not use the word 'State' as part of the name of the banking business." (Laws of 1919, ch. 120, sec. 4; New Mexico Stats. Ann., 1929, sec. 13-114; New Mexico Bank Code, 1929, sec. 14, p. 8).

Ownership of stock by co-partners.

"Co-partners conducting a bank shall each own at least ten per cent" of the stock of the firm. (Laws of 1929, ch. 131, sec. 6; New Mexico Stats. Ann., 1929, sec. 13-117; New Mexico Bank Code, 1929, sec. 17, p. 9).

Oath required of owners.

Every owner of an unincorporated bank, actually engaged in its management, shall annually make an oath that he will diligently and honestly administer the affairs of the bank; that he will not knowingly violate, nor willingly permit to be violated, any provision of the law; and that he is the owner in good faith of the required amount of capital and that this capital is not pledged or incumbered.

The State Bank Examiner furnishes blanks for such oath and within twenty days after execution it must be filed with the State Bank Examiner. (Laws of 1919, ch. 120, sec. 8; New Mexico Stats. Ann., 1929, sec. 13-119; New Mexico Bank Code, 1929, sec. 19, p. 9.).

Penalty for failure to comply with provisions re oaths.

"Every bank failing to comply with the provisions of this section (regarding oaths) shall pay to the State Bank Examiner a penalty of Five Dollars for each day's delay." (Laws of 1919, ch. 120, sec. 8; New Mexico Stats. Ann., 1929, sec. 13-119; New Mexico Bank Code, 1929, sec. 19, p. 9).

Statement as to names and residences of owners and amount of stock held.

"Every bank shall, within twenty days after the first Tuesday in January of each year, upon a form to be furnished by the State Bank Examiner, file with the State Bank Examiner a statement sworn to by * * * at least two owners of an unincorporated bank, disclosing the names and residences of all *** owners thereof, together with the amount of stock or interest held by each. In the event of any change in the * * * owners of any unincorporated bank, such changes shall within twenty days be likewise certified to the State Bank Examiner." (Laws of 1919, ch. 120, sec. 9; New Mexico Stats. Ann., 1929, sec. 13-122; New Mexico Bank Code, 1929, sec. 22, p. 10).

Penalty for failure to comply with provisions re statement.

"Every bank failing to comply with the provisions of * * * (the) section (last above quoted) shall pay to the State Bank Examiner a penalty of Five Dollars for each day's delay." (Laws of 1919, ch. 120, sec. 9; New Mexico Stats. Ann., 1929, sec. 13-122; New Mexico Bank Code, 1929, sec. 22, p. 10).

Meetings of owners; examination of books, records, etc., required.

"The board of directors or owners of every bank shall hold regular meetings once each month. Failure on the part of any director without good cause to attend three consecutive meetings shall be ground for his removal by the State Bank Examiner. At not less than two of said meetings during each year, which meetings shall be at least five months apart, the board of directors or an auditing committee consisting of at least two members of the board of directors shall make a thorough examination of the books, records, funds, securities and other property held or owned by the bank, and shall enter upon their minutes the result of such examinations and a certified copy of such entry shall within twenty days from the date thereof be filed with the State Bank Examiner." (Laws of 1929, ch. 131, sec. 7; New Mexico Stats. Ann., 1929, sec. 13-123; New Mexico Bank Code, 1929, sec. 23, p. 10).

Penalty for failure to make such examination.

If the owners of any bank fail to make or cause to be made an examination of the books, records, funds, securities and other property held or owned by the bank, each of such owners is personally liable to a penalty of fifty dollars for every such failure. If this penalty is not paid within thirty days after demand therefor, the State Bank Examiner must institute civil proceedings to recover the same. No owner can be reimbursed out of the funds of the bank on account of any penalty paid, nor can any penalty be paid out of the funds of the bank. (Laws of 1929, ch. 131, sec. 7; New Mexico Stats. Ann., 1929, sec. 13-123; New Mexico Bank Code, 1929, sec. 23, p. 10).

Endorsement of paper of borrower by owner.

No owner in an unincorporated bank can become endorser for any person, firm or corporation borrowing money therefrom, nor can any note or obligation of such owner be considered as an asset of the bank. (Laws of 1919, ch. 120, sec. 20; New Mexico Stats. Ann., 1929, sec. 13-136; New Mexico Bank Code, 1929, sec. 35, p. 15.).

Declaration of dividend; surplus fund required.

The owners may semi-annually declare a dividend of so much of the net profits of the bank as has been actually earned and collected; but every bank must before the declaration of a dividend, carry one-fifth of its net profits for the preceding half year to its surplus fund until it amounts to fifty per centum of its capital stock, and such surplus must thereafter be maintained unless impaired by unavoidable losses. (Laws of 1929, ch. 131, sec. 11; New Mexico Stats. Ann., 1929, sec. 13-146; New Mexico Bank Code, 1929, sec. 45, p. 17).

NEW YORK

The laws of this State provide that if a private banker executes and has accepted by the superintendent of banks a certain affidavit, the required contents of which are hereinafter set forth, such banker is exempted from certain other provisions of law. The provisions covering such banker are digested immediately below.

A private banker who has not executed and had accepted by the superintendent the so-called exemption affidavit is subject, in addition to the provisions set out immediately below, to certain other provisions. These additional provisions are digested separately and follow after the provisions covering private bankers of the class first above referred to.

Definition of private banker.

"The term, 'private banker', when used in this chapter,

"means an individual, who, by himself, or as a member of a partnership or unincorporated association other than an unincorporated express company having a contract with a railroad company or railroad companies for the operation of an express service upon the lines thereof, is engaged in the business of receiving deposits subject to check or for repayment upon the presentation of a pass book, certificate of deposit or other evidence of debt, or upon the request of the depositor, or in the discretion of such individual, partnership or unincorporated association; of receiving money for transmission; of discounting or negotiating promissory notes, drafts, bills of exchange or other evidences of debt; of buying or selling exchange, coin or bullion; or is engaged in the business of transacting any part of such business. The term, 'private banker', when so used, shall include the executor or

administrator of a deceased private banker and a partnership or unincorporated association of private bankers." (Banking Law, sec. 2).

Classes of private bankers covered by provisions.

The laws of this State provide that the provisions applicable to private bankers, "except as hereinafter further limited, shall apply to every private banker engaged in the business of private banking in the State:

"1. Who makes use of the word 'bank,' 'banker,' 'banking' or any derivative or compound of any such word or any words in a foreign language having the same or similar meanings, in or on any sign or any passbook, check, receipt, note, stationery, billhead, certificate, blank, form, pamphlet, circular or newspaper or other advertising matter, or who solicits deposits by means of signs or other advertising; or

"2. Who pays or credits interest, or pays, credits or gives any bonus or gratuity or any thing of value, except on certificates of deposit actually outstanding at the time this act takes effect, to any depositor on any deposit balance of less than seven thousand five hundred dollars, if such deposit balance is that of any depositor resident in the United States who does not have with such banker during the period in respect of which interest is so paid or credited, an average daily credit balance or securities of an average daily market value, together exceeding seven thousand five hundred dollars; provided the aggregate amount of such deposit balances on which interest is so paid or credited exceeds two per centum of the total deposits of such private banker; or

"3. Who receives money on deposit for safekeeping or for any other purpose (other than for transmission to others) in such sums that the average of all the separate deposits so received by such private banker from all depositors during any twelve months' period (or for such period, if less than twelve months, that such private banker has been engaged in such business) is less than one thousand dollars. * * * ; or

"4. Who receives from any person at any one time money for transmission to others in any manner whatsoever in amounts of less than five hundred dollars, provided, however, that any private banker may, without thereby becoming subject to the provisions of this article, sell letters of credit, bankers' checks, travellers' checks, bills of exchange, drafts or other similar documents or may make cable transfers in amounts of less than five hundred dollars, if he has deposited and shall keep on deposit with the superintendent of banks interest bearing stocks or bonds of the United States or of this state or of any city, county, town, village or free school district in this state authorized by the legislature to issue the same, in a principal amount equal to one hundred thousand dollars. * * * ". (Banking Law, sec. 150).

Business not to be begun without authorization certificate of superintendent of banks.

None of the business comprised in the above definition of a private banker shall be carried on by any "individual, partnership or unincorporated association" unless an authorization certificate is granted by the superintendent of banks. (Banking Law, sec. 150-a).

Procedure to obtain authorization certificate.

Every private banker or other individual, partnership or unincorporated association seeking to engage in business as a private banker must submit to the superintendent of banks a verified certificate in duplicate which shall state:

"1. The full name, residence and post office address of such individual or of each member of such partnership or unincorporated association.

"2. The state, or country, of which each individual named in such affidavit is a citizen.

"3. The amount of permanent capital such individual, partnership or unincorporated association has kept invested in his business as a private banker or has deposited in cash to be invested in such business which shall be not less than the amounts hereinafter specified:

"(a) Fifteen thousand dollars if the place where the business is to be transacted is an incorporated or unincorporated village having a population which does not exceed two thousand;

"(b) Twenty-five thousand dollars if the place where the business is to be transacted is an incorporated or unincorporated village having a population of two thousand or more and less than ten thousand;

"(c) Fifty thousand dollars if the place where the business is to be transacted is an incorporated or unincorporated village or a city having a population of ten thousand or more and less than thirty thousand;

"(d) One hundred thousand dollars if the place where the business is to be transacted is a city having a population of thirty thousand or more.

"4. The place at which such business is to be transacted.

"5. If such private banker is engaged in business as a private banker in a city the population of which exceeds one hundred and seventy-five thousand, the amount of deposit balance upon which such

private banker pays or credits interest or pays, credits or gives any bonus or gratuity or anything of value to a depositor and the average of the separate deposits of such private banker since January first, nineteen hundred thirty, or for a period of twelve months immediately preceding the date of such verified certificate, exclusive of dividend checks, coupons or other small collection items collected by such private banker for customers in the ordinary course of business in; or, if the applicant has not already engaged in such business, said certificate shall state the minimum deposit balance upon which such applicant proposes to pay or credit interest or to pay, credit or give such bonus or gratuity, or thing of value.

"Such certificate shall be verified by such individual or by one or more members of a partnership or unincorporated association, in the discretion of the superintendent, upon a form prepared by the superintendent of banks, which shall state that the affiant or affiants have read such certificate and that the facts therein stated are true." (Banking Law , sec. 151).

When the superintendent receives the verified certificate, he must ascertain whether the character, responsibility and general fitness of the person or persons named in such certificate are such that the business of the proposed private banker will be honestly and efficiently conducted and whether the public convenience and advantage will be promoted by allowing such proposed banker to engage or continue in business. The superintendent is also required to ascertain whether the facts stated in the certificate are true in case the private banker has not submitted with it the so-called exemption affidavit or such affidavit has been refused by the superintendent. After the superintendent has satisfied himself that it is expedient and desirable to permit such private banker to engage or continue in business, he may approve the certificate and must immediately give notice of the approval to the private banker. (Banking Law , sec. 23).

Revocation of authorization certificate or license by superintendent; effect of.

"If at any time the superintendent shall be satisfied that any private banker * * * is violating any of the provisions of this chapter, or is conducting its business in an unauthorized or unsafe manner, or is in an unsound or unsafe condition to transact its business, or can not with safety and expediency continue business, the superintendent may, * * * notify the holder of such authorization certificate or license that the same is revoked." (Banking Law, sec. 29) It is also provided that "Whenever the superintendent shall have revoked his authorization of any such private banker, and shall have taken the action to make such revocation effective specified in section twenty-six of this chapter (section twenty-six provides for the revocation of the superintendent's acceptance

of the affidavit entitling private bankers to certain exemptions, and this section and the section covering the exemption affidavit are set out hereinafter), all the rights and privileges of such banker, resulting from such preceding authorization, shall forthwith cease and determine." (Banking Law , sec. 158).

Conditions precedent to transacting business.

No private banker can engage or continue in business until (a) the amount of permanent capital required by law is invested in the business, or is deposited in cash to be so invested, and (b) the superintendent of banks has issued an authorization certificate and has filed such certificate in his office. (Banking Law , sec. 152.) When the authorization certificate has been issued and filed by the superintendent of banks, a private banker is subject to all of the provisions relating to private bankers. (Banking Law , sec. 152).

Permanent unimpaired capital must be maintained; if impaired, superintendent may issue order to make deficiency good.

Every private banker must keep unimpaired in his banking business the amount of permanent capital specified in the verified certificate. (Banking Laws, sec. 154). Whenever it appears to the superintendent that the capital has been reduced below the requirements of law, he may issue an order directing that such deficiency be made good immediately or within a time specified in such order. (Banking Law , sec. 56).

Capital may be increased or decreased.

"From time to time, with the written approval of the superintendent and upon good cause shown, such permanent capital may be increased or decreased." (Banking Law , sec. 154).

Segregation of investment of capital and deposits.

"All securities, property and the evidences of title thereto, in which the permanent capital of and the deposits with any such private banker have been invested shall be segregated and kept separate and apart from all other property and assets of such private banker." (Banking Law , sec. 155).

Reserves required against deposits.

Every private banker is required to maintain total reserves against deposits in the following amounts (Banking Law , sec. 157):

18 per cent of demand deposits if located in a borough having a population of 1,500,000 or over; and at least 12 per cent of such deposits shall be maintained as reserve on hand.

15 per cent of demand deposits if located in a borough of 1,000,000 and less than 1,500,000 population and with no office in a borough of 1,500,000 or over; and at least 10 per cent of such deposits shall be maintained as reserves on hand.

12 per cent of demand deposits if located elsewhere in the state; and at least 4 per cent of such deposits shall be maintained as reserves on hand. (Banking Law , sec. 112).

Failure to maintain required reserves; penalties; superintendent may issue order to make deficiency good.

If any private banker fails to maintain the required reserves, "the superintendent shall levy an assessment upon it during such period as any encroachment upon its total reserves amounting to one per centum or more of its aggregate demand deposits shall continue", at certain prescribed rates. (Banking Law , secs. 30 and 157). The superintendent is given power, where a private banker refuses or fails to pay any such assessment or any penalty or forfeiture incurred under any provision of law, or where he violates any prohibition of law, to "report the facts to the Attorney General, who shall thereupon, in the name of the superintendent, institute such action or proceeding as the facts may warrant" against such private banker. (Banking Law , sec. 31). The superintendent is also given power, whenever it appears to him "that either the total reserves or reserves on hand of any such * * * private banker * * * are below the amount * * * required by law to be maintained, or that such * * * banker is not keeping its reserves on hand" to issue an order "directing that such * * * banker make good such reserves forthwith or within a time specified in such order, or that it keep its reserves on hand" as required by law. (Banking Law , sec. 56).

Reports of condition required.

"It shall be the duty of the superintendent to require all * * * private bankers * * * to make to him * * * regular periodical reports of their condition * * * and he shall prescribe the form and contents of all such reports. In addition to such regular reports he may require any such * * * banker * * * to make special reports to him at such times and in such form as he may prescribe, and may direct that such special reports be verified and prescribe the form of the verification.

"He shall at least once in every three months, designate some day therein in respect to which * * * every such private banker * * * (except such as have obtained certain exemptions through the filing of the affidavit hereinafter set forth) shall report to him, and he shall serve a notice designating such day." (Banking Law , sec. 42).

Examinations may be made by superintendent.

All private bankers engaged in business in cities or elsewhere in the State; from and after July 31, 1930, "shall be subject at all times to full and complete examinations by the superintendent or by his deputies, examiners or employees when duly authorized." (Banking Law , sec. 150-a).

Number of examinations required.

"The superintendent shall, either personally or by his deputies or examiners, at least twice in each year visit and examine * * * every private banker" subject to the provisions of law relating to private bankers, except such as have obtained certain exemptions through the acceptance by the superintendent of the affidavit hereinafter set forth. Private bankers who have had this affidavit accepted are only subject to examination once during each year. The superintendent is given power to examine private bankers "whenever, in his judgment, such examination is necessary or expedient.

"On every such examination inquiry shall be made as to the condition and resources of such * * * , banker * * * the mode of conducting and managing its affairs, * * * , the investment of its funds, the safety and prudence of its management, the security afforded to those by whom its engagements are held, and whether the requirements of its charter and of law have been complied with in the administration of its affairs; and as to such other matters as the superintendent may prescribe.

"The superintendent may also either personally or by his deputies or examiners, make such special investigations as he shall deem necessary to determine whether any individual, copartnership, unincorporated association * * * is violating, or has violated any of the provisions of this chapter; and to the extent necessary to make such determination the superintendent shall have the right to examine the relevant books, records, accounts, and documents." (Banking Law , sec. 39).

Penalty for refusal to permit examination.

A penalty is imposed for the refusal of a private banker to permit an examination or investigation of its affairs. (Banking Law , secs. 38 and 150-a).

Unlawful or unsafe practices; superintendent may issue order to discontinue.

"Whenever it shall appear to the superintendent that * * * any private banker * * * has violated its charter or any law, or is conducting its business in an unauthorized or unsafe manner, he may issue an order directing the discontinuance of such unauthorized or unsafe practices and requiring the delinquent to appear before him,

"at a time and place fixed in said order, to present any explanation in defense of the practices directed in said order to be discontinued." (Banking Law , sec. 56).

Business of delinquent banker may be taken over by superintendent; and examinations may be made.

"The superintendent may forthwith take possession of the business and property of * * * any private banker * * * whenever it shall appear that such * * * banker:

1. Has violated its charter or any law;
2. Is conducting its business in an unauthorized or unsafe manner;
3. Is in an unsound or unsafe condition to transact its business;
4. Cannot with safety and expediency continue business;
5. Has an impairment of its capital;
6. Has suspended payment of its obligations;
7. Has neglected or refused to comply with the terms of a duly issued order of the superintendent;
8. Has refused, upon proper demand, to submit its records and affairs for inspection to an examiner of the banking department;
9. Has refused to be examined upon oath regarding its affairs." (Banking Law , sec. 57).

The superintendent, after he has taken possession of the property and business of a private banker, may make examinations and institute or continue inquiries until such banker resumes business or is finally liquidated in accordance with law. (Banking Law , sec. 39).

Circumstances under which possession of superintendent may terminate.

"When the superintendent shall have duly taken possession of such * * * private banker * * *, he may hold such possession until its affairs are finally liquidated by him, unless: (1) he shall have permitted such * * * banker to resume business * * *; (2) the superintendent shall have been directed by order of the supreme court to surrender such possession * * *; * * *; (4) the depositors and other creditors of such banker * * * and the expenses of such liquidation shall have been paid in full." (Banking Law , sec. 58).

Superintendent may permit resumption of business.

"The superintendent may, upon such conditions as may be approved by him, surrender possession for the purpose of permitting such * * * banker * * * to resume business; but the superintendent shall not authorize any reduction of capital stock or capital as one of the terms of such resumption." (Banking Law , sec. 61).

Liquidation; various provisions in relation thereto.

There are a number of detailed provisions with reference to the liquidation of the affairs of private bankers by the superintendent of banks. These provisions provide for the appointment of special deputies, assistants, etc., by the superintendent to assist him, the payment of expenses, the procedure to obtain possession of pleadings, etc., in actions in which attorneys' liens are asserted, the notification to those holding assets of the private bank of the fact that the superintendent has taken possession of such bank and the effect of such notification, the inventory of assets, the disposition by the superintendent of property held by the liquidating banker as bailee or as depository, the liquidation and conservation of assets, the deposit of moneys collected by the superintendent, the appearance in suits, and the execution of instruments, etc., by the superintendent on behalf of the liquidating banker, the proof of claims by creditors, the listing of claims by the superintendent, the filing of objections to claims, the acceptance or refusal of claims by the superintendent, the effect of a lien on a judgment recovered by the superintendent after taking over a private banker, and the disposition of dividends to creditors. (Banking Law , secs. 62-75).

Change of location.

A private banker may change the location of his business with the permission of the superintendent of banks. (Banking Law , secs. 50 and 159).

Affidavit entitling private banker to certain exemptions; contents of; extent of exemptions.

"Any such private banker authorized by the superintendent to engage in such business, or who has applied for such authorization, may submit to the superintendent an affidavit executed in duplicate and verified in the same manner as the (verified) certificate * * * upon a form to be furnished by the superintendent containing a statement as follows:

"1. If such private banker is engaged in business elsewhere than in a city having a population of one hundred and seventy-five thousand or more, that such private banker has permanently invested

"in this state in his banking business immediately preceding the date of such affidavit, a capital over and above all his liabilities as such private banker at least equal to the minimum required by" the verified certificate; or

"2. If such private banker is engaged in business as a private banker in a city having a population of one hundred and seventy-five thousand or more;

"(a) That such private banker has permanently invested in this state in his banking business immediately preceding the date of such affidavit a capital of at least one hundred thousand dollars over and above all his liabilities as such private banker.

"(b) That such private banker will not pay or credit or advertise to pay or credit any interest or pay, credit or give any bonus or gratuity whatever or anything of value to any depositor on a deposit balance with such private banker of less than five hundred dollars.

"(c) That the average of the separate deposits * * * received by such private banker during the twelve months immediately preceding the date of such affidavit, for safekeeping or for any other purpose, exclusive of dividend checks, coupons, or other small collection items collected by such private banker for customers in the ordinary course of business, and also the average of the separate deposits received during such period for transmission to others, is three hundred dollars or more."

After the date upon which the superintendent has accepted and filed in his office such affidavit, and until such acceptance is revoked by the superintendent, the provisions hereinafter set out do not apply to such private banker, but such banker is subject to all of the provisions above set out. "The superintendent may at any time in his discretion require any such private banker to file an affidavit containing a statement as above specified and as of a date fixed in said request."

"In the event of the failure of such private banker so to do, or of the refusal of the superintendent to accept and file said affidavit all of the subsequent sections of this article (i.e., sections 161-175, inclusive) shall be applicable to such private banker". (Banking Law, sec. 160).

Investigation by superintendent of statements made in affidavit;
refusal or acceptance of affidavit.

If, upon receipt by the superintendent of the affidavit above referred to, it fails to comply in form and substance with the requirements set out above, "he shall refuse to file it for examination until the defect or defects therein shall have been remedied". If such affidavit complies, or has been so amended as to comply, in all respects

with the requirements the superintendent shall, by such investigation as he may deem necessary, satisfy himself whether the facts stated in such affidavit are true. If the facts are found to be untrue, the superintendent shall refuse to accept the affidavit. If the superintendent shall be satisfied that the facts stated are true, he shall accept the affidavit and shall forthwith give notice of the acceptance to such private banker. (Banking Law , sec. 25).

Revocation of acceptance of affidavit; effect of revocation.

If at any time the superintendent has reason to believe that any private banker whose affidavit he has accepted "is not keeping permanently invested in this state in his banking business the amount of capital specified in such affidavit, or, that such banker is paying or crediting or advertising to pay or credit any interest, or is paying, crediting or giving any bonus or gratuity whatever or anything of value, on deposits of less than the amount stated in such affidavit, or that any material statement in such affidavit was in fact untrue, the superintendent shall forthwith institute such investigation as he shall deem necessary to ascertain the truth of such facts and may examine or cause an examination to be made into the books, papers and affairs of such private banker so far as may be necessary for such purposes. If from such investigation or otherwise the superintendent shall be satisfied that such banker is not keeping such capital so invested, or, that such banker is paying or crediting or advertising to pay or credit any interest, or is paying, crediting or giving any bonus or gratuity whatever or anything of value, on deposits of less than the amount stated in such affidavit, or that any material statement in such affidavit was in fact untrue, the superintendent may, over his official signature, notify such private banker that the acceptance of such affidavit is revoked. Such notice shall be executed in triplicate and the superintendent shall transmit one copy to such private banker, attach another to the duplicate of such affidavit on file in his own office and file the third copy thereof in the county clerk's office in which the other duplicate of such affidavit has been filed." (Banking Laws, sec. 26). It is also provided that "Whenever the superintendent shall have revoked his authorization of any such private banker, and shall have taken the action to make such revocation effective specified in section twenty-six of this chapter (this is the section last above quoted) all the rights and privileges of such banker, resulting from such preceding authorization, shall forthwith cease and determine." (Banking Law , sec. 158).

Additional Provisions Applicable To A Private Banker Who Has Not Executed The So-called Exemption Affidavit.

Investment of permanent capital and deposits.

"Every such private banker may, subject to the limitations and restrictions contained in this article, invest his permanent capital

"and the deposits received by him in such real or personal securities, or real and personal property, consistent with safety and prudence of management as he may deem proper, provided the security afforded depositors is not imperiled by such investments." (Banking Law , sec. 162).

Prohibitions against investments or loans of capital and deposits.

"No such private banker, however, shall appropriate to his own use or lend to any person or persons with whom he is associated as a partner, or invest in any business conducted by a partnership of which such private banker is a member, or lend directly or indirectly to any corporation of which he is the legal or equitable owner to the amount of twenty-five per centum or upwards of the issued capital stock of such corporation, any part of his permanent capital or of the deposits received by him." (Banking Law , sec. 162).

Real Estate and certain securities; when to be sold.

"All real estate which shall hereafter be purchased or otherwise acquired by any such private banker with his permanent capital or with money received by him on deposit or to which such private banker shall have taken title in connection with his business as such private banker, except that upon which his office is located, shall be sold within five years after taking title thereto; and all real estate so purchased or acquired, and held by such private banker at the time when this act takes effect, except that upon which his office is located, shall be sold within five years after this act takes effect; unless upon his application the superintendent of banks shall, in either case, have extended the time within which such sale shall be made.

"All such real estate and all registered securities and mortgages purchased by any such private banker with any part of his permanent capital or with money received by him on deposit, or held by any such private banker on the date when this act takes effect, shall be sold within one year after such date unless prior to the expiration of such year, such real estate or registered securities or mortgages shall have been recorded in the name of such private banker * * * ". (Banking Law , sec. 163).

Restrictions on purchase of, and loans on real estate.

"No such private banker shall hereafter purchase with any part of his permanent capital or deposits received by him any real estate which is subject to a mortgage, lien or encumbrance; nor make a loan, directly or indirectly, upon the security of real estate if such real estate is subject to a prior lien or encumbrance and the amount unpaid upon such prior mortgage, lien or encumbrance or the aggregate amount unpaid upon all prior mortgages, liens and encumbrances exceeds ten per centum of the permanent capital of such

"private banker, and, if the amount so secured, including all prior mortgages, liens and encumbrances, exceeds two-thirds of the value of such real estate." (Banking Law , sec. 164).

Books and records; superintendent may issue order to keep properly.

"Every such private banker shall keep separate and complete books of account in which shall be promptly entered the details of all business transacted by him as such banker including statements in detail of the liabilities incurred by him as such banker and of the securities or property in which the permanent capital and the deposits received by him have been invested." (Banking Law , sec. 165).

Every private banker is required to keep his books and records in such manner as the superintendent may direct (Banking Laws, sec. 165), the superintendent being authorized to "issue an order requiring such * * * banker * * * or the officers thereof or any of them, to open and keep such books or accounts as he may in his discretion, determine and prescribe for the purpose of keeping accurate and convenient records of the transactions and accounts of such * * * banker" whenever it appears to him that any private banker, except those who have had accepted the so-called exemption affidavit, "does not keep its books and accounts in such manner as to enable him readily to ascertain its true condition." (Banking Law , sec. 56).

Penalty for failure to obey order regarding books and accounts.

"Any such banker that refuses or neglects to obey any such order shall be subject to a penalty of one hundred dollars for each day that such refusal or neglect continues." (Banking Law , sec. 165).

Report regarding unclaimed deposits.

There are detailed provisions with reference to reporting to the superintendent of banks regarding unclaimed deposits. This report must be made annually and must state whether or not any unclaimed deposits are being held. Publication of a copy of such report is required to be made in the newspapers and a penalty of \$100 per day is imposed for each day such report or the filing of an affidavit of proof of its publication with the superintendent is delayed or withheld. (Banking Law , sec. 166).

Transmission of money.

The laws contain provisions regulating the transmission of money by private bankers. Money received for transmission must be forwarded within five days after being received and a receipt must be given to the person delivering such money for transmission. A penalty is prescribed for a violation of these provisions. (Banking Law , secs. 167 and 168).

Monthly statement required of purchases and sales of property and discounts, loans or other advances.

A written verified statement is required to be filed monthly by private bankers with the superintendent of banks in which must be listed all purchase and sales of property made in connection with their business and all discounts, loans or other advances made by them, including overdrafts and renewals, since the last preceding statement. A description of the collateral if any, to such indebtedness must also be made. Discounts, loans, etc., however, of less than \$100 may be omitted from such statement unless they increase by \$100 the liability of some individual, partnership, unincorporated association or corporation since the last statement. (Banking Law , sec. 169).

Members of private bankers required to meet monthly.

"The members of any such partnership or unincorporated association of private bankers shall on or before the tenth day of each month meet for the purpose of considering the conditions and affairs of the banking business conducted by them" and of making the statement above referred to and such statement shall be verified by each member * * * except in case of disability or unavoidable absence." (Banking Law , sec. 169).

Reports of condition required.

A private banker who has not executed the so-called exemption affidavit is required to make reports of his condition to the superintendent every three months upon service of notice by him of the day on which such reports must be filed. (Banking Law , sec. 42). Within ten days after service of this notice on him "every such private banker shall make a written report to the superintendent of banks, which report shall be in the form and shall contain the matters prescribed by the superintendent and shall specifically state the items of permanent capital, deposits, specie and cash items, public securities and private securities, real estate and real estate securities and such other items as may be necessary to inform the public as to his financial condition and solvency or which the superintendent may deem proper to include therein, and shall also state the amount of deposits with him, the payment of which in case of insolvency is preferred by law or otherwise over other depositors. It shall state in detail the particular assets in which the permanent capital of such private banker is invested. Every such report shall be verified by the oath of such private banker and of each member of a partnership or an unincorporated association of private bankers to the effect that the report is true and correct in all respects to the best of the knowledge and belief of such banker or bankers and that the usual business of such banker has been transacted at the location stated in the (verified) certificate (hereinbefore referred to) * * *

"and not elsewhere. In case of the disability or unavoidable absence of a member of a partnership or unincorporated association, such report may be verified by the other members; but the verification shall contain a statement of the reason for the failure of any member to sign and verify such report. Every such report, exclusive of the verification shall within thirty days after it shall have been filed with the superintendent be published by such private banker in one newspaper of the place where such private banker is engaged in business or if no newspaper is published there, in the newspaper published nearest to such place." (Banking Law , sec. 170).

Special reports of condition.

Every such private banker shall also make such other special reports to the superintendent as he may from time to time require in such form and on such dates as may be prescribed by the superintendent, which reports shall if required by the superintendent, be verified in such form as he may prescribe. (Banking Law , sec. 170).

Penalty for failure to make report of condition or include therein required information.

If any private banker fails to make any required report on or before the date designated for the making thereof or fails to include therein any matter required by the superintendent, such private banker shall forfeit the sum of one hundred dollars for every day that such report is delayed or withheld and for every day that it fails to report any such omitted matter, unless the time therefor has been extended by the superintendent. (Banking Laws, sec. 170). An extension of time not exceeding ten days may be granted by the superintendent "for satisfactory cause to him shown" within which such reports may be filed. (Banking Law , sec. 49).

Restrictions as to place of business.

A private banker shall not do business, or be located in the same room with, or in a room connecting with any bank, trust company, savings bank, or national banking association. (Banking Law , sec. 171).

Communications from superintendent must be submitted to members and noted on records.

Each official communication from the superintendent or one of his deputies to any private bank relating to an examination or investigation or containing suggestions or recommendations as to the conduct of the business, shall be submitted by the member receiving it to all the members of such private bank at their next meeting and duly noted on their records. (Banking Law , sec. 172).

NORTH CAROLINA.

Private banks permitted but subject to same laws and supervision as incorporated banks.

The following provisions recognize a private banking business, but indicate that such business is subject to the same provisions of law and supervision as are imposed upon incorporated banks.

Definition of term "bank".

The law provides that "The term 'Bank' when used in this chapter shall be construed to mean any corporation, partnership, firm, or individual receiving, soliciting, or accepting money or its equivalent on deposit as a business: Provided, however, this definition shall not be construed to include building and loan associations, Morris Plan Companies, industrial banks or trust companies not receiving money on deposit." (Consolidated Statutes of North Carolina, sec. 216(a); Banking Laws, 1927, sec. 216(a), p. 3).

Private banks made subject to bank act and supervision of Corporation Commission.

"Every bank, corporation, partnership, firm, company, or individual, now or hereafter transacting the business of banking, or doing a banking business in connection with any other business, under the laws of and within this State, shall be subject to the provisions of this chapter, and shall be under the supervision of the Corporation Commission. The Corporation Commission shall exercise control of and supervision over the banks doing business under this act, and it shall be its duty to execute and enforce through the Chief State Bank Examiner, the State Bank Examiners, and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to banks as defined in this chapter." (Consolidated Statutes of North Carolina, sec. 222(a); Banking Laws, 1927, sec. 222(a), p. 32).

Promulgation of regulations covering transaction of business.

"For the more complete and thorough enforcement of the provisions of this act, the Corporation Commission is hereby empowered to promulgate such rules, regulations, and instructions, not inconsistent with the provisions of this chapter, as may in its opinion be necessary to carry out the provisions of the laws relating to banks and banking as herein defined, and as may be further necessary to insure such safe and conservative management of the banks under its supervision as will provide adequate protection for the interests of the depositors, creditors, stockholders, and public in the relations with such banks. All banks doing business under the provisions of this chapter

"shall conduct their business in a manner consistent with all laws relating to banks and banking, and all rules, regulations, and instructions that may be promulgated or issued by the Corporation Commission." (Consolidated Statutes of North Carolina, sec. 222(a); Banking Laws, 1927, sec. 222(a), p. 33).

Reports of condition required.

In addition to subjecting private banks to the provisions of law covering incorporated banks, the bank act expressly provides that "Every person, firm, * * *, or partnership doing a banking business, or a banking business in connection with any other business, shall make to the Corporation Commission not less than three reports (of condition) during each year, on forms prescribed by the Corporation Commission. If any person, firm, * * *, or co-partnership shall show by said reports, or by the examination of any State bank examiner, that * * * (the) liabilities are equal to the amount of the capital stock * * *, the Corporation Commission shall have authority, and is hereby empowered, to make such rules and regulations for the reduction of said liabilities as it may deem necessary for the protection of the creditors and depositors of such banking institution." (Consolidated Statutes of North Carolina, sec. 222(c); Banking Laws, 1927, sec. 222(c), p. 33).

Advertising banking business and use of banking terms; when private banks may use.

"No person, association, firm, * * *, domiciled within the State of North Carolina, except * * *, persons, associations, or firms reporting to and under the supervision of the Corporation Commission, or under the Supervision of the Insurance Commissioner, shall therein advertise or put forth any sign as bank, banking, banker, or trust company, or use the word bank, banking, banker, or trust as a part of its name and title; * * * . Any violation of the provisions of this section shall be a misdemeanor, and upon conviction thereof the offender shall be fined in a sum not exceeding five hundred dollars for each offense." (Consolidated Statutes of North Carolina, sec. 224(c); Banking Laws, 1927, sec. 224(c), p. 33).

NORTH DAKOTA.

Private banking business apparently prohibited.

"No person excepting national banking corporations shall transact a banking business nor use the words bank, banking company or banker in any sign, advertisement, letterhead or envelope or in any corporate or firm name, without complying with and organizing under the provisions of this Chapter" relating to the business of banking. (Compiled Laws of 1913, sec. 5177; Banking Laws, 1929, sec. 5177, p.

23). "This chapter" does not contain any provisions authorizing or covering the organization of a private bank, and it would seem that the effect of the above quoted provision is to prohibit a private banking business.

Penalty for violation of above provisions.

"Any person violating the provisions of this section, either individually or as an interested party in any association or corporation, is guilty of a misdemeanor, and on conviction thereof shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned in the county jail not less than ninety days, or both, in the discretion of the court." (Compiled Laws of 1913, sec. 5177; Banking Laws, 1929, sec. 5177, p. 23).

OHIO

Unincorporated banks may not now be established.

"No authority to transact a banking business in this State shall be granted, except to a corporation duly organized and qualified for that purpose. Unincorporated banks now authorized to transact and actually transacting a banking business may continue such banking business in the city, village, or township in which they are now located so long as they comply with the provisions of this act." (General Code, sec. 710-76; Banking Laws, 1928, sec. 710-76, p. 29).

"Unincorporated bank" defined; scope of term "Board of directors."

"The following definitions shall be applied to the terms used in this act: * * * The term 'unincorporated bank' shall include every unincorporated person, firm or association transacting banking business in this state; and the term 'board of directors' shall include the owner or owners of such banks." (General Code, sec. 710-1; Banking Laws, 1928, sec. 710-1, p. 5).

"Banking business" defined; word "bank", unless otherwise stated, includes unincorporated banks.

"The term 'bank' shall include any person, firm, association, or corporation soliciting, receiving or accepting money, or its equivalent, on deposit as a business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a pass-book, a note, a receipt, or other writing, and unless the context otherwise requires as used in this act includes * * * unincorporated banks; * * *". (General Code, sec. 710-2; Banking Laws, 1928, sec. 710-2, p. 5).

From the above provisions, it appears that unincorporated banks transacting a banking business at the time the act containing these provisions became law, are made subject to the provisions covering incorporated banks wherever this may appropriately be done. In addition, such unincorporated banks are specifically made subject to the following provisions.

Capital required; segregation necessary, purpose of.

Every unincorporated bank in cities or villages of two thousand or less population is required to have a paid-in capital of not less than \$10,000; in cities or villages of more than two thousand to ten thousand population, the paid-in capital must be \$25,000; and in cities of over ten thousand population, the paid-in capital must not be less than \$50,000. This capital must remain in the possession of the bank as its property, and is to "be used for its sole purposes and for the security of its creditors". The capital shall at all times be segregated from any other property of the owners of the bank and shall be kept and maintained unimpaired for the security of the creditors of such bank". All unincorporated banks are required to comply with these provisions within one year. (General Code, sec. 710-78; Banking Laws, 1928, sec. 710-78, p. 30).

Advertising capital; restriction upon.

No unincorporated bank "shall advertise by newspaper, letter-head, or in any other way, a larger capital than has been actually paid in". (General Code, sec. 710-81; Banking Laws, sec. 710-81, p. 31).

Statement completely describing bank must be filed annually with superintendent of banks.

Every unincorporated bank, on or before January 31st of each year shall, under oath, file with the superintendent of banks, a full and complete detailed statement containing the following:

1. The name of the bank.
2. A copy of the articles of co-partnership or agreement under which the business of such bank is being conducted. One of the owners of such bank is required at all times to be a resident of the State of Ohio.
3. The location of the bank.
4. The amount of the permanent actually paid in capital of the bank which is in its possession as its property and for its sole purposes.

5. A statement of the responsibility and net worth of the individual members of the bank.
6. The names of the officers, agents or employees in active charge of the bank if such names are not given in the articles of co-partnership or agreement. (Act approved April 18, 1929, sec. 1, p. 4; General Code, sec. 710-77).

Names under which property must be held.

All real or personal property owned by an unincorporated bank must be held in the designated name of the bank or in the name of an individual as trustee therefor, and not in the name of the owners of the bank. (General Code, sec. 710-79; Banking Laws, 1928, sec. 710-79, p. 30).

Assets, when exempt from attachment or execution.

All of the assets of an unincorporated bank are exempt from attachment or execution by any creditor of the owners until all of the liabilities of the bank have been paid in full. (General Code, sec. 710-79; Banking Laws, 1928, sec. 710-79, p. 30).

Restriction against owners using funds for private use.

"No person, firm or association owning or conducting an unincorporated bank shall use any of the funds of such bank for his or their private business; except as a borrower in due course of business." (General Code, sec. 710-79; Banking Laws, 1928, sec. 710-79, p. 30).

Depositors have first lien on assets.

"The depositors in any unincorporated bank shall have first lien on the assets of such bank, in case it is wound up, to the amount of their several deposits, and for any balance remaining unpaid, such depositors shall share in the general assets of the owner or owners alike with general creditors." (General Code, sec. 710-80; Banking Laws, 1928, sec. 710-80, p. 30).

List of owners must be posted and changes must be reported to the superintendent of banks.

A list of the owners of any unincorporated bank, and a statement to the effect that the bank is unincorporated must be posted in the room in which the bank transacts its business. Any subsequent changes must be shown in the list and a report of all such changes must be made to the superintendent of banks. (General Code, sec. 710-81; Banking Laws, 1928, sec. 710-81, pp. 30 and 31).

Advertising matter must contain word "unincorporated".

Every unincorporated bank must have printed on all its advertising matter and business stationery, the word "unincorporated" immediately following the name of the firm or business title. (General Code, sec. 710-82; Banking Laws, 1928, sec. 710-82, p. 31).

Reports of unincorporated banks, publication required.

All reports of unincorporated banks are required to be kept on file in the office of the superintendent of banks, and are open to the inspection of all persons, at the discretion of the superintendent. These reports must be published in the newspaper by the banks, and proof of such publication must be furnished to the superintendent. (General Code, sec. 710-83; Banking Laws, 1928, sec. 710-83, p. 31).

Unincorporated banks may be designated as depositories of State funds.

Unincorporated banks are permitted to bid upon and be designated depositories for State funds upon furnishing such surety or sureties as is prescribed by law. (General Code, sec. 710-84; Banking Laws, 1928, sec. 710-84, p. 31).

Loans to any one person, corporation, etc.

The laws contain provisions prescribing the amount which an unincorporated bank may loan to any one person, company, corporation or firm. (Act approved April 18, 1929, sec. 1, (710-122); General Code, secs. 710-122 and 710-123; Banking Laws, 1928, secs. 710-122 and 710-123, p. 49).

Voluntary liquidation.

The laws also permit an unincorporated bank to go into voluntary liquidation and contain detailed provisions with reference to the procedure to be followed by the bank and the powers and duties of the superintendent of banks before and during the actual liquidation of the bank. (General Code, sec. 710-85; Banking Laws, 1928, sec. 710-85; pp. 31 and 32).

OKLAHOMA.

Banking business may only be transacted by corporations "authorized by the laws of the State of Oklahoma or of the United States".

The laws of this State provide for the incorporation of a "banking corporation" and authorize such corporation to engage in the business of banking. (Comp. Oklahoma Stats., 1921, sec. 4114; Banking Laws, 1926, sec. 1, p. 10). The incorporation of a trust company is also provided for (Laws of 1925, ch. 56, amending sec. 4190, Comp. Oklahoma Stats., 1921; Banking Laws, 1926, sec. 1, p. 61); and such company is authorized to

engage in the banking business. (Laws of 1925, ch. 56, amending sec. 4216, Comp. Oklahoma Stats., 1921; Banking Laws, 1926, sec. 5, p. 74). Unless authority to engage in the banking business is obtained under these provisions, the transaction of such business by any individual or corporation is prohibited, the laws in this connection providing that "It shall be unlawful for any individual, firm, or association, or corporation to receive money upon deposit or transact a banking business except as authorized by the laws of the State of Oklahoma, or of the United States, or to use or advertise, in connection with any business other than the banking business, conducted under the banking laws of this State, the words: Banker, bankers, investment banker, or any other word or term calculated to deceive the public into belief that such person, firm, association or corporation, is engaged in the banking business." (Comp. Oklahoma Stats., 1921, sec. 4129; Banking Laws, 1926, sec. 44, p. 31). (See also Levy v. Reed, 1918, 690 Okla. 180, 170 Pac. 497).

Penalty for violation of above provision.

"Any person, firm, association or corporation violating any of the provisions of this section, either individually or as an interested party, in any firm, association or corporation shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than three hundred dollars (\$300.00) nor more than one thousand (\$1,000.00) dollars, or by imprisonment in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment, ***". (Comp. Oklahoma Stats., 1921, sec. 4129; Banking Laws, 1926, sec. 44, p. 31).

Enforcement of provisions and prevention of further violations.

" *** it is hereby made the duty of the Attorney General to enforce the provisions of this section; and in order to further prevent the violation of the section, any court of competent jurisdiction in this State is hereby authorized and empowered to grant an injunction and to appoint a receiver to take charge of the business and assets of any person, firm, association or corporation found guilty of violating the provisions of this section, and to make all necessary and proper orders to wind up such business and prevent a violation of this section." (Comp. Oklahoma Stats., 1921, sec. 4129; Banking Laws, 1926, sec. 44, p. 31).

OREGON.

Banking business may only be transacted by corporations.

"It shall be unlawful for any corporation, partnership, firm or individual to engage in or transact a banking or trust business within this state, except by means of a corporation duly organized

"for such purpose." (Laws of 1925, ch. 207, sec. 2; Banking Laws 1925, including amendments of 1929, sec. 2, p. 4). "No person, firm, company, association, copartnership or corporation, either domestic or foreign, except national banks, not subject to the supervision of the superintendent of banks and not required by the provisions of this (bank) act to report to him, and which has not received a certificate to do a banking or trust business from the superintendent of banks, shall *** solicit or receive deposits or transact business in the way or manner of a bank, savings bank or trust company, or in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank or trust company." There are also prohibitions against the use of the word bank, banker, etc., or any other form of advertising indicating that the business carried on is that of a bank. "Every person, firm, company, association, copartnership or corporation doing any of the things or transacting any of the business *** (referred to) must transact such business according to the provisions of the bank act.***" (Laws of 1925, ch. 207, sec. 54; Banking Laws, 1925, including amendments of 1929, sec. 54, pp. 19 and 20).

Violation of provisions; power of superintendent of banks; penalty.

The superintendent of banks has authority to examine the accounts, books and papers of every person, firm, association or copartnership in order to ascertain whether such person, firm, association or copartnership has violated or is violating any provision of the section last above referred to. Any person, firm, association or copartnership violating any provision of this section must pay a penalty of \$100 a day for every day during which such violation continues. Upon an action brought by the superintendent of banks an injunction may be issued restraining any such person, firm, copartnership or association from further using such words or from further transacting business in such a manner as to lead the public to believe that the business is that of a bank, savings bank or trust company, and the court issuing the injunction may make such other order as may be proper. (Laws of 1925, ch. 207, sec. 54; Banking Laws, 1925, including amendments of 1929, sec. 54, pp. 19 and 20).

PENNSYLVANIA.

License to engage in business of private banking required.

Except as hereinafter provided, "no individual, partnership, or unincorporated association shall hereafter engage, directly or indirectly, in the business of receiving deposits of money for safe-keeping or for the purpose of transmission to another, or for any other purpose, without having first obtained from a board, consisting of the State Treasurer, Secretary of the Commonwealth, the Secretary of Banking, - hereinafter referred to as the 'Board', - a license to engage in such business." (Act of June 19, 1911, P. L. 1060, sec. 1,

as amended by Act of April 5, 1927, P. L. 106, No. 73, sec. 1, and Act of April 26, 1929, P. L. 813, sec. 1; Purdon's Penna. Stats., Title 7, sec. 711, p. 175).

The Board to License Private Bankers has been reorganized and continued by the provisions of the Pennsylvania Administrative Code of April 9th, 1929, P. L. 177. Section 202 of Article II of that Code provides that "The following boards, commissions, and offices are hereby placed and made departmental administrative boards, commissions, or offices, as the case may be, in the respective administrative departments mentioned in the preceding section, as follows: In the Department of Banking, Board to License Private Bankers."

Section 428 of Article IV of the Administrative Code provides that "The Board to License Private Bankers shall consist of the Secretary of Banking, who shall be chairman thereof, the Secretary of the Commonwealth, and the State Treasurer."

Section 1604 of Article XVI of the Administrative Code provides with respect to the powers and duties of the Board to License Private Bankers that "Subject to any inconsistent provisions in this act contained, the Board to License Private Bankers shall continue to exercise the powers and perform the duties vested in and imposed upon the said board by the act, approved the nineteenth day of June, one thousand nine hundred and eleven (Pamphlet Laws, one thousand and sixty), entitled 'An Act to provide for licensing and regulating private banking in the Commonwealth of Pennsylvania, and providing penalties for the violation thereof,' its amendments and supplements"

Statement required of applicant.

The applicant for a private banking license must file a written verified statement with the Secretary of Banking showing the amount of the assets and liabilities of the applicant and designating the place where the applicant proposes to engage in business, with the names and addresses of all partners or members of the private bank. It must also be shown that the applicant is a citizen of Pennsylvania; or, if the applicant is a partnership or unincorporated association, that a majority of the members having a controlling interest in the business are citizens of Pennsylvania. (Act of June 19, 1911, P. L. 1060, sec. 1, as amended by Act of April 5, 1927, P. L. 106, No. 73, sec. 1, and Act of April 26, 1929, P. L. 813, sec. 1; Purdon's Penna. Stats., Title 7, sec. 711, p. 175).

Bond must be filed; purpose and amount of.

A bond executed by the applicant and a surety or sureties approved by the board, must also be filed with the Secretary of

Banking to cover the faithful holding and repayment of all moneys received on deposit and the faithful transmission of any money which is received for transmission to another. The bond must also, in the case of insolvency or bankruptcy, cover the payment of the amounts recoverable to the assignee, receiver or trustee of the applicant for the benefit of the person making a deposit or delivering money for transmission to another. The amount of the bond is to be fixed by the board but is not to be less than \$10,000 nor more than \$50,000. (Act of June 19, 1911, P. L. 1060, sec. 1, as amended by Act of April 5, 1927, P. L. 106, No. 73, sec. 1, and Act of April 26, 1929, P. L. 813, sec. 1; Purdon's Penna. Stats., Title 7, sec. 712, pp. 177 and 178).

Money and securities may be deposited in lieu of bond.

Money and securities equal to the amount of the penalty fixed in the bond may be deposited by the applicant with the Secretary of Banking in lieu of such bond. The securities may consist of bonds of the United States, or bonds of the State of Pennsylvania or any municipality thereof, or other securities approved by the board. (Act of June 19, 1911, P. L. 1060, sec. 1, as amended by Act of April 5, 1927, P. L. 106, No. 73, sec. 1, and Act of April 26, 1929, P. L. 813, sec. 1; Purdon's Penna. Stats., Title 7, sec. 712, p. 178.).

Examination of applicant's standing; publication of application.

Upon receiving an application for a private banking license, "the Secretary of Banking shall cause to be made an examination of the financial standing and moral character of the applicant, as to whether the statements contained in the application are true" and this application must be advertised in the newspaper by the Secretary of Banking at the expense of the applicant. (Act of June 19, 1911, P. L. 1060, sec. 1, as amended by Act of April 5, 1927, P. L. 106, No. 73, sec. 1, and Act of April 26, 1929, P. L. 813, sec. 1; Purdon's Penna. Stats., Title 7, sec. 713, p. 179).

License issued in discretion of board; fee; when location may be changed.

After advertisement of the application, "the board may, in its discretion, approve or disapprove the application". If approval is granted, the bond, or any money or securities deposited in lieu thereof, shall be accepted and held by the Secretary of Banking for the purpose for which required, and he shall issue a license authorizing the applicant to engage in a private banking business at the place specified in the license certificate. A fee of fifty dollars is required for such a license, which may not be transferred or assigned.

The written approval of the board is required for the transaction of business at any place other than that specified in the license certificate. (Act of June 19, 1911, P. L. 1060, sec. 1, as amended by Act of April 5, 1927, P. L. 106, No. 73, sec. 1, and Act of April 26, 1929, P. L. 813, sec. 1; Purdon's Penna. Stats., Title 7, sec. 713, p. 179).

License must be posted; duplicate license may be issued.

The license must be posted in the place of business of the licensee and it is made unlawful to post such license in a place other than that designated as the licensee's place of business. Provision is also made for the issuance of a duplicate license in case the original is lost or destroyed. (Act of June 19, 1911, P. L. 1060, sec. 1, as amended by Act of April 5, 1927, P. L. 106, No. 73, sec. 1, and Act of April 26, 1929, P. L. 813, sec. 1; Purdon's Penna. Stats., Title 7, sec. 714, p. 180).

Bonds and money or securities constitute trust funds for depositors.

The money and securities deposited with the Secretary of Banking and money which may be paid on any bond in case of default, constitutes a trust fund for the benefit of depositors in the private bank and of such persons who have delivered money to such bank for transmission to another. Such beneficiaries are entitled to an absolute preference as to such moneys or securities over all general creditors of the bank. In the event of the insolvency or bankruptcy of the bank, such moneys and securities, on the order or judgment of a court of competent jurisdiction, must be delivered by the Secretary of Banking to the assignee, receiver or trustee of the bank designated in such order or judgment. (Act of June 19, 1911, P. L. 1060, sec. 1, as amended by Act of April 5, 1927, P. L. 106, No. 73, sec. 1, and Act of April 26, 1929, P. L. 813, sec. 1; Purdon's Penna. Stats., Title 7, sec. 715, p. 180).

Distribution of assets in case of insolvency.

In case of the insolvency of any private banker, the distribution of the assets, other than the proceeds from the bond or securities deposited, shall be made and preferred in the following order:

1. To the payment of all depositors of the private banker. Bona fide holders of certified checks, or of certificates of deposit, or of checks or drafts of the private banker given in exchange for or in payment of checks or drafts of depositors drawn on the private banker, not exceeding the balance to the credit of the depositor, are also treated as depositors within the meaning of this section.

2. To the payment and discharge of all the remaining liabilities of the private banker.

3. If there is anything remaining, it is distributed to the individual or the partners or members of the private banker according to their legal rights. (Act of June 19, 1911, P. L. 1060, sec. 1, as amended by Act of April 5, 1927, P. L. 106, No. 73, sec. 1, and Act of April 26, 1929, P. L. 813, sec. 1; Purdon's Penna. Stats., Title 7, sec. 716, p. 181).

List of licenses granted must be published annually; interest on deposits in lieu of bonds; custody of such deposits.

On the first day of January, the Secretary of Banking must print annually a list of all licenses granted and unrevoked. He must also pay over to each licensee all of the interest received by him upon any money or securities deposited in lieu of the bond. All money or securities must be turned into the State Treasury and receipted by the State Treasurer to the Secretary of Banking and the depositor, and is subject to withdrawal only upon the warrant of the Secretary of Banking. All interest coupons on any securities deposited shall be surrendered when due to the owners upon their request. (Act of June 19, 1911, P. L. 1060, sec. 1, as amended by Act of April 5, 1927, P. L. 106, No. 73, sec. 1, and Act of April 26, 1929, P. L. 813, sec. 1; Purdon's Penna. Stats., Title 7, sec. 717, p. 182).

Satisfaction or release of mortgage deposited as security in lieu of bond.

The laws contain provisions for the satisfaction or release of any mortgage, judgment or lien which may be accepted in lieu of a bond. (Act of May 23, 1913, P. L. 334, sec. 1; Purdon's Penna. Stats., Title 7, sec. 718, p. 182).

Character of books which must be kept.

Each private bank must keep such books of account as are approved by the Secretary of Banking. Such books must show full and

complete records of all business transacted and a full statement of all assets and liabilities. (Act of June 19, 1911, P. L. 1060, sec. 2; Purdon's Penna. Stats., Title 7, sec. 719, p. 183).

Statement of assets and liabilities, and publication of, required.

Each private bank is required at least two times each year to file with the secretary of banking a written statement, under oath and in such form as the secretary may prescribe, of the amount of its assets and liabilities. This statement must be made as of such days as the secretary may designate by a written notice mailed to the private bank and within ten days after the date of such notice. A copy of the statement must also be published in the newspapers. (Act of June 19, 1911, P. L. 1060, sec. 2; Purdon's Penna. Stats., Title 7, sec. 719, p. 183).

Revocation of license; notice of discontinuance of business.

The license may be revoked by the board for cause shown, and if it is revoked or surrendered, no refund of the license fee will be made. In case the license is revoked, it must be surrendered within twenty-four hours after written notice of such revocation has been given to the holder, and the bond or money and securities received from the private bank "shall continue to be held by the Commissioner (Secretary) of Banking until otherwise directed by the order or judgment of a court of competent jurisdiction". In case of a discontinuance of business, "notice thereof must previously have been published once a week during the thirty days in one newspaper of general circulation, and the legal periodical, if any, published in the city or county where such business has been conducted, or nearest adjacent county". (Act of June 19, 1911, P. L. 1060, sec. 2; Purdon's Penna. Stats., Title 7, sec. 719, p. 183).

Violations; penalties.

Any person, partnership, or unincorporated association transacting a banking business without a license, or who carries on such business after the license has been revoked, or who, without such license, uses the word "banking" or any equivalent term in advertising the business, or who fails to display the license certificate, or who fails to keep books and make reports as required, or who advertises or publishes in any manner, "either orally or in writing, any statement intended to convey or actually conveying the idea or impression that such licensee is in any way under the supervision of this State, or of any officer thereof, or that this State, or any officer thereof, has passed in any way whatsoever upon the responsibility, solvency, or qualifications of such licensee to engage in such business; or that this State, or any officer thereof, has examined any accounts of said licensee or has in any way certified that such licensee is in any way a fit person to carry on such business, shall be guilty of a misdemeanor, and punished as hereinafter provided." (Act of June 19, 1911, P. L. 1060, sec. 3; Purdon's

Penna. Stats., Title 7, sec. 720, p. 183).

False swearing as to certain facts.

Any person who, in any application for a private banking license or in any report, shall swear falsely as to the amount of the assets and liabilities of a licensee, or in any other particular or in any affidavit shall swear falsely as to any fact therein stated, shall be guilty of perjury. (Act of June 19, 1911, P. L. 1060, sec. 4; Purdon's Penna. Stats., Title 7, sec. 721, p. 184).

Failure to make or publish reports; penalty.

Any private bank which fails to make any required report or to publish any reports as required within the specified time, must forfeit the sum of twenty dollars for every day that such report or its publication is delayed or withheld. (Act of June 19, 1911, P. L. 1060, sec. 5; Purdon's Penna. Stats., Title 7, sec. 722, p. 184).

Recovery of money deposited for transmission; burden of proof in suit.

There are also provisions fixing the burden of proof in an action against a licensee to recover money deposited with such licensee for transmission. (Act of June 19, 1911, P. L. 1060, sec. 6; Purdon's Penna. Stats., Title 7, sec. 723, p. 185).

Forwarding of money for foreign transmission.

Money received for transmission to a foreign country by any licensee must be forwarded within five days after its receipt and every person who fails to so forward within the specified time is guilty of a misdemeanor and punishable as hereinafter provided. (Act of June 19, 1911, P. L. 1060, sec. 7; Purdon's Penna. Stats., Title 7, sec. 724, p. 185).

Applicability of foregoing provisions.

The above provisions became effective on December 1, 1911, and they applied "to all persons now or hereafter engaging in said (private banking) business" except as provided under the following caption entitled "Exceptions from foregoing provisions". (Act of June 19, 1911, P. L. 1060, sec. 13; Purdon's Penna. Stats., Title 7, footnote to sec. 711, p. 176).

Exceptions from foregoing provisions.

The foregoing provisions shall not apply:

(1) To any corporation authorized to do business under the Pennsylvania banking laws, to any corporation authorized to receive deposits under the laws of Pennsylvania, nor to any national bank.

(2) To any hotel keeper who receives money for safekeeping from a guest.

(3) To any express, steamship or telegraph company receiving money for transmission.

(4) To any individual, partnership, or unincorporated association who would otherwise be required to comply with the foregoing provisions, "who shall file with the Commissioner (Secretary) of Banking a bond, in the sum of one hundred thousand dollars, approved by the board as to form and sufficiency for the purpose, and conditioned as *** (provided above), where the business is conducted in a city of the first or second class; and if conducted in a city of the first class, and if conducted elsewhere in the State, such bond shall be in the sum of fifty thousand dollars; or in lieu thereof, money or securities approved by the Commissioner (Secretary) of Banking, of the same amounts: Provided, however, That the Secretary of Banking shall examine the books, papers, and affairs of such individual, partnership, or unincorporated association, and if satisfied from the examination that the business of such individual, partnership, or unincorporated association is conducted in an unauthorized or unsafe manner or is in an unsafe or unsound condition to continue business, he may, after hearing had upon due notice given with the approval and consent of the Attorney General, take possession of the business and property of such individual, partnership, or unincorporated association, and shall then proceed in the same manner as provided by law he shall proceed after having taken possession of the business and property of any *** person subject to the supervision of the Banking Department. If in the opinion of the Secretary of Banking the business of any such individual, partnership, or unincorporated association is in such an unsafe and unsound condition that immediate action is necessary, the Secretary may forthwith, without such hearing and consent of the Attorney General, take possession of the business and property of such individual, partnership, or unincorporated association; ***"

(5) To any individual, partnership, or unincorporated association, licensed under the laws of Pennsylvania to do a brokerage business, holding a membership in a lawfully incorporated brokerage exchange, and doing only such banking as is incidental to such brokerage business. The books or records showing the deposit or account of any depositor with any individual, partnership, or unincorporated association filing the bond, money, or securities referred to above, are not subject to any visitorial power, inspection, or examination by the Commissioner (Secretary) of Banking, except as hereinbefore provided; nor to examination or inspection by, or production in, any department or agency of the Government, State or municipal; nor to inspection, examination, or production in any court in any judicial proceeding except in cases of insolvency or bankruptcy, or a judicial proceeding or investigation involving the rights and liabilities of a creditor or depositor.

(6) To any person, firm, partnership, or unincorporated association engaged in business as private bankers "continuously and in the same locality" for a period of seven years prior to June 19, 1911.

(Act of June 19, 1911, P. L. 1060, sec. 8, as amended by Acts of May 2, 1925, P. L. 502, sec. 1, and March 17, 1927, P. L. 39, sec. 1; Purdon's Penna. Stats., Title 7, sec. 725, pp. 185-187).

Other violations.

Any private banker who violates any of the foregoing provisions, "the violation of which has not hereinbefore been made a misdemeanor or a felony, shall be guilty of a misdemeanor, and punished as herein-after provided". (Act of June 19, 1911, P. L. 1060, sec. 9; Purdon's Penna. Stats., Title 7, sec. 726, p. 187.).

Penalty for violations.

"Every person found guilty of a misdemeanor under any of the *** (foregoing provisions) shall be sentenced to an imprisonment not exceeding two years, or be fined in an amount not exceeding one thousand dollars, or both or either, at the discretion of the court." (Act of June 19, 1911, P. L. 1060, sec. 10; Purdon's Penna. Stats., Title 7, sec. 727, p. 187).

Definition of "person".

The word "person" as used below "means an individual, a partnership, or an unincorporated association". (Act of June 15, 1923, P. L. 809, sec. 2, as amended by Act of May 5, 1927, P. L. 762, sec. 1; Purdon's Penna. Stats., Title 7, sec. 2, p. 13).

Department of Banking; scope of supervision; powers; duties.

"There shall continue to be a separate and distinct department, known as the Department of Banking, charged with the supervision of all the *** persons hereinafter described, and with the duty of taking care that the laws of this Commonwealth in relation thereto shall be faithfully executed, and that the greatest safety to the depositors therein or therewith and to other interested persons shall be afforded. *** The said supervision, duties, and powers shall *** extend and apply to all private or unincorporated banks, except such as are or shall be exempted by law, and to all such individuals, partnerships, and unincorporated associations, as are or shall be by law made subject to the supervision of said department, ***." (Act of June 15, 1923, P. L. 809, sec. 4; Purdon's Penna. Stats., Title 7, sec. 4, pp. 14 and 15).

Assessment against persons to pay expenses of banking department; failure or refusal to pay.

All the expenses of the department of banking including the cost of regular examinations "shall be charged to and paid by the *** persons subject to the supervision of the department, in equitable proportions, at such times and in such manner, as the secretary shall by general rule or regulation annually prescribe: * * * " For a failure or refusal, after thirty days written notice, to pay any sum lawfully assessed or charged by the secretary, the

secretary "shall call upon the Department of Justice to bring an action at law to recover the same". (Act of June 15, 1923, P. L. 809, sec. 9, as amended by Acts of April 13, 1927, P. L. 182, sec. 1, and April 25, 1929, P. L. 716, sec. 1; Purdon's Penna. Stats., Title 7, sec. 9(b), pp. 17 and 18).

Examination of.

"Every *** person included within the supervision of the department ***, together with all the property, assets, and resources of such *** person, shall be subject to inspection and examination" by the secretary, his deputies, or any qualified examiners of the department of banking. (Act of June 15, 1923, P. L. 809, sec. 13; Purdon's Penna. Stats., Title 7, sec. 13, p. 21).

Number and character of examinations; powers of examiner, reports of.

It is the duty of the secretary at least once each year, to examine the books, papers, and affairs of every person subject to the supervision of the department of banking. The examiner is empowered to make a thorough examination into all the business and affairs of the person and of all property, assets and resources wherever situated. The examiner also has power to examine under oath or otherwise, any of the officers, agents, employees or members of such person in possession of any assets or having knowledge of any assets of the person. The examiner is required to make a full and detailed report of the condition of the person who was examined, or such special report as may be directed by the secretary. (Act of June 15, 1923, P. L. 809, sec. 14, as amended by Act of May 5, 1927, P. L. 762, sec. 5; Purdon's Penna. Stats., Title 7, sec. 14 (a), p. 21).

Special examinations; cost of.

"The secretary may also at any time, make such special investigations or examinations as, in his opinion, the exigencies of any case may require"; and his power and duties and the powers and duties of any examiner assigned by him to conduct such special examination are the same as in the case of regular examinations. (Act of June 15, 1923, P. L. 809, sec. 14, as amended by Act of May 5, 1927, P. L. 762, sec. 5; Purdon's Penna Stats., Title 7, sec. 14 (a), p. 21). "The expenses incurred in connection with any special examination or investigation of any * * * person * * * shall be charged to and paid by such * * * person." (Act of June 15, 1923, P. L. 809, sec. 9, as amended by Acts of April 13, 1927, P. L. 182, sec. 1, and April 25, 1929, P. L. 716, sec. 1; Purdon's Penna. Stats., Title 7, sec. 9 (b), p. 18).

False testimony of officer, employee, etc. to examiner; penalty.

The wilful false swearing in any inquiry instituted by an examiner during an examination by any officer, agent, employee or member of any person "shall be perjury, and subject, upon conviction thereof, to the same punishment as is or may be provided by law for the punishment of perjury. Upon failure of any of the individuals, aforesaid, to make answer to any such inquiry, the Attorney General, upon request of the secretary, shall make information thereof to the court, whereupon said court, after hearing, shall make such order as the occasion requires." (Act of June 15, 1923, P. L. 809, sec. 14, as amended by Act of May 5, 1927, P. L. 762, sec. 5; Purdon's Penna. Stats., Title 7, sec. 14 (b), p. 22).

Reports of condition; number and character of; publication required.

Every person subject to the supervision of the department of banking must make to the secretary not less than two nor more than five verified reports of condition during each year, the number, form and manner of such reports to be prescribed by the secretary. Each report must exhibit in detail and under appropriate heads the resources and liabilities of the person at the close of business on any past day specified by the secretary, and must be sent to him within five days or within such further time as he may allow, after the receipt of the secretary's request to make such report. Abstract summaries of two of the reports, designated by the secretary, in each year must be published in a newspaper and proof of such publication must be furnished to the secretary. (Act of June 15, 1923, P. L. 809, sec. 15; Purdon's Penna. Stats., Title 7, sec. 15, pp. 22 and 23).

Special reports of condition.

"The secretary shall have power to call for a special report from any * * * person under the supervision of the department, * * * whenever, in his judgment, the same may be necessary to a full and complete knowledge of * * * his condition." (Act of June 15, 1923, P. L. 809, sec. 15; Purdon's Penna. Stats., Title 7, sec. 15, p. 23).

Reports and publications required above to be in lieu of all similar reports and publications heretofore required.

The laws of this State provide that "The reports and publications provided for in * * * (the above provisions relating to regular and special reports of condition) shall be in lieu of all reports and of all publications for similar purposes heretofore required by law to be made." (Act of June 15, 1923, P. L. 809, sec. 15; Purdon's Penna. Stats., Title 7, sec. 15, p. 23). This provision apparently has the effect of repealing that portion of the Act of June 11, 1911 (P. L. 1060, sec. 2; Purdon's Penna. Stats., Title 7, sec. 719, p.

183), hereinbefore referred to under the caption titled "Statement of assets and liabilities, and publication of, required", which requires private banks to file in the office of the Secretary of Banking a sworn statement of its assets and liabilities and to publish a copy of such statement in the newspapers.

Failure to make or publish reports; penalty.

A penalty is prescribed in case a person fails to make and transmit and to publish any report of condition referred to above. (Act of June 15, 1923, P. L. 809, sec. 15; Purdon's Penna. Stats., Title 7, sec. 15 (b), p. 23).

Report of gross receipts to Department of Revenue and payment of tax thereon.

The laws of this State also require a private banker on or before the first Monday of December of each year, to make a written sworn statement to the Department of Revenue in which must be set forth the full amount of "his gross receipts from commissions, discounts, abatements, allowances, and all other receipts" arising from his business during the year ending with the 30th day of November preceding the date of such return, "and shall forthwith pay into the State Treasury, through the Department of Revenue, one per centum upon the aggregate amount of such gross receipts * * *". (Act of May 16, 1861, P. L. 708, sec. 1, as amended by Acts of June 27, 1895, P. L. 396, sec. 1, June 13, 1901, P. L. 559, No. 266, and April 25, 1929, P. L. 679, sec. 1; Act of April 9, 1929, P. L. 345, Art VII, sec. 719 a). "All * * private bankers shall be required to pay license as heretofore, in addition to the amounts which they shall be required to pay under the provisions of this Act." (Act of May 16, 1861, P. L. 708, sec. 4).

Additional report to Department of Revenue upon commencing business.

"Every private banker, hereafter commencing business in this Commonwealth, whether the business be conducted by an individual, or more than one person in partnership, shall, within sixty days after commencing such business, make a report to the Department of Revenue, setting forth the name or names of the persons engaging in such business, the name under which the business is being conducted, its location, and the amount of capital invested therein." (Act of April 9, 1929, P. L. 343, Art. VII, sec. 719 b).

Penalty for failure to make above reports to Department of Revenue.

Any private banker who neglects or refuses to make the return of gross receipts or the report referred to above to the Department of Revenue, "shall, for every such neglect or refusal, be subject to a penalty of one thousand dollars", which shall be collected by

the Department of Revenue. (Act of April 9, 1929, P. L. 343, Art. XVII, sec. 1707).

Branches; general establishment of prohibited;

The laws of this State provide that "no individual, partnership, or unincorporated association carrying on a banking business shall establish, maintain, or operate, either directly or indirectly, any branch bank, branch office, agency, sub-office, sub-agency, or branch place of business, within the Commonwealth of Pennsylvania, for the transaction of any part of * * *, his, or their business, but all of the business of such * * *, individuals, partnerships, and unincorporated associations shall be carried on solely and exclusively at * * * his, or their principal place of business." (Act of April 27, 1927, P. L. 400, sec. 1; Purdon's Penna. Stats., Title 7, sec. 302, p. 100).

Exceptions; establishment permitted within corporate limits of places where national banks were operating branches on March 1, 1927.

"This act shall not apply to * * * any individual, partnership, or unincorporated association carrying on a banking business which has * * *, his, or their principal place of business in a city, borough, or township within the Commonwealth of Pennsylvania, in which one or more national banking associations, * * * was, on March 1, 1927, operating one or more branch banks, branch offices, agencies, sub-offices, subagencies, or branch places of business, for the transaction of any part of its business; and any such * * *, individuals, partnerships, and unincorporated associations may hereafter establish, subject to the approval of the Secretary of Banking, and thereafter maintain and operate branch banks, branch offices, agencies, sub-offices, subagencies, and branch places of business for the transaction of any part of * * *, his, or their business, but only within the corporate limits of the city, borough, or township in which its principal office is located and in which such national banking association was, on March 1, 1927, operating one or more branch banks, branch offices, agencies, suboffices, subagencies, or branch places of business. The right to establish and maintain branch banks, branch offices, agencies, suboffices, subagencies, or branch places of business, under the provisions of this section, shall be limited to the territory included within the corporate limits on March 1, 1927, of the respective cities, boroughs, or townships in which such national banking associations were on that date operating one or more branch banks, branch offices, agencies, suboffices, subagencies, or branch places of business as aforesaid; and such right shall not extend to additional territory which may, after March 1, 1927, be added to such cities, boroughs, or townships, by annexation, consolidation with one or more municipal corporations or otherwise, nor shall it extend to other portions or divisions of municipal corporations to which such cities, boroughs, or townships may be annexed, or with which they may be consolidated after that date; the intention being to limit to the respective corporate limits of such cities, boroughs, or townships as

"they existed on March 1, 1927, the right to establish and maintain the branch banks, branch offices, agencies, suboffices, subagencies, and branch places of business authorized in this section." (Act of April 27, 1927, P. L. 400, sec. 3; Purdon's Penna. Stats., Title 7, sec. 304, p. 102).

Other exceptions are that the act does not apply to branches established or for which locations had been secured prior to March 1, 1927, or to branches resulting from consolidations effective prior to April 1, 1927; "and such * * * individuals, partnerships, and unincorporated associations shall have the right to relocate the same within the corporate limits of the city, borough, or township in which the principal place of business is located at the time of such relocation, subject to the approval of the Secretary of Banking." (Act of April 27, 1927, P. L. 400, sec. 2; Purdon's Penna. Stats., Title 7, sec. 303, p. 101).

Surety on bonds.

An "unincorporated bank" is prohibited from acting generally as "surety on any bonds". (Act of May 16, 1923, P. L. 248, secs. 1-3; Purdon's Penna. Stats., Title 7, secs. 281-283, pp. 98 and 99).

Preservation of records.

Every "private banker" must "preserve, in such form and manner that they may be readily produced on proper demand, all * * * his * * * records of original or final entry, including cards used under the card system, and deposit slips or tickets, for a period of seven years from the date of making the last entry on the same." (Act of April 4, 1929, P. L. 141, sec. 1; Purdon's Penna. Stats., Title 7, sec. 321, p. 104).

Advertising as trust company or using word "trust" as part of title.

The laws of this state prohibit any "person, copartnership, (or) limited copartnership" from advertising or putting forth any sign as a trust company or using the word "trust" as a part of his or its name or title. A penalty is prescribed for a violation of this prohibition. (Act of April 22, 1909, P. L. 121, sec. 2, as amended by Act of May 19, 1923, P. L. 274, sec. 1; Purdon's Penna. Stats., Title 7, sec. 687, p. 169).

Unauthorized or unsafe practices or other violations of law; secretary may issue order to discontinue.

Whenever it appears to the secretary that any person has violated any provision of law, or is conducting business in an unauthorized or unsafe manner, the secretary may issue an order directing such person to discontinue such violation of law or unauthorized or unsafe

practices. (Act of June 15, 1923, P. L. 809, sec. 20; Purdon's Penna. Stats., Title 7, sec. 20, p. 25).

Secretary may take possession of business; when.

"The secretary may, after hearing had upon notice given with the approval and consent of the Attorney General, take possession of the business and property of any * * * person subject to the supervision of the department, whenever it shall appear to him that such * * * person:

"I. Has violated any law regulating * * * his business, and has persisted in such violation in disregard of an order duly made by the secretary;

"II. Is conducting business in an unauthorized or unsafe manner and has persisted in disregard of an order duly made by the secretary;

"III. Is in an unsafe or unsound condition to continue business: Provided, in such case, That the secretary may forthwith, without such hearing and consent of the Attorney General, take possession of the business and property of any such * * * person receiving moneys on deposit, when and if, in his opinion the protection of depositors and the public requires such peremptory action;

"IV. Has an impairment of capital, which has not been restored or made good within the time fixed by order of the secretary;

"V. Has suspended payment of obligations;

"VI. Has neglected or refused to comply with the terms of any lawfully issued order of the secretary;

"VII. Has refused, upon proper demand, to submit the records and affairs of the business to the secretary, a deputy, or any duly authorized examiner or agent of the department;

"VIII. Has refused to be examined upon oath or affirmation, regarding such affairs;

"IX. Is in the hands of a receiver appointed by any court, or in any bankruptcy proceeding, or of an assignee or trustee for creditors appointed by such * * * person.

"The secretary may, in like manner, take possession of the business and property of any private or unincorporated bank, or the estate of any private banker, otherwise exempt from the supervision of the department, whenever such private or unincorporated bank shall have made an assignment for the benefit of creditors, or for any of the causes mentioned hereinbefore in this section." (Act of June 15, 1923, P. L. 809, sec. 21, as amended by Act of May 5, 1927, P. L. 762, sec. 7;

Purdon's Penna. Stats., Title 7, sec. 21, pp. 25 and 26.)

Certificate of taking possession; secretary to supersede receiver previously appointed.

When the secretary has taken possession of the business and property of any person, he must make a certificate setting forth that he has so taken possession, and must file such certificate in his office "and cause a certified copy thereof to be filed in the office of the prothonotary, * * *." After the filing of such certified copy, the secretary "shall supersede any receiver previously appointed by any court for, or any assignee or trustee for creditors appointed by, such * * * person." (Act of June 15, 1923, P. L. 809, sec. 22; Purdon's Penna. Stats., Title 7, sec. 22, pp. 27 and 28).

Secretary may be enjoined from continuing possession.

At any time within ten days after the secretary takes possession of any person, such person may apply to the court for an injunction to restrain the secretary from continuing such possession. If it appears from satisfactory evidence that there is just cause for the taking and continuing of possession, the secretary shall not be enjoined; but if this evidence can be overcome by proper proof produced by the person, "the court shall direct the secretary to refrain from further proceedings and to surrender such possession." (Act of June 15, 1923, P. L. 809, sec. 23, as amended by Act of May 5, 1927, P. L. 762, sec. 8; Purdon's Penna. Stats., Title 7, sec. 23, p. 28).

Notice of taking possession to parties holding assets; effect on liens, etc.

The secretary must give notice in writing to all parties holding assets of the fact that he has taken possession of the property and business of a person. "No one having such notice or actual knowledge that the secretary has so taken possession shall have a lien or charge against any of the assets of such * * * person for any charge, payment, advance, or clearance thereafter made or liability thereafter incurred." The status of all parties becomes fixed on the date the secretary files the certificate of possession in his office. (Act of June 15, 1923, P. L. 809, sec. 25, as amended by Act of May 5, 1927, P. L. 762, sec. 9; Purdon's Penna. Stats., Title 7, sec. 25, p. 29).

Inventory of assets.

The Secretary must make a complete inventory of the assets of any person, whose property and business he has taken over. (Act of June 15, 1923, P. L. 809, sec. 26; Purdon's Penna. Stats., Title 7, sec. 26, p.30).

Secretary may suspend or continue business.

The secretary is authorized, upon taking possession of the property and business of any person, "to continue or suspend the business for such

"period as he may deem necessary to enable him to determine whether to liquidate the affairs of such * * * person, and, during such period, to take such action as in his judgment is necessary to conserve the assets and business." (Act of June 15, 1923, P. L. 809, sec. 27; Purdon's Penna. Stats., Title 7, sec. 27, p. 30).

Surrender of possession by secretary.

The secretary may, upon conditions approved by him, surrender possession of the business of any person for the purpose of permitting such person to resume business, to sell or convey his property and franchise, or to merge or consolidate his business with that of another person, or because he is without funds to continue or liquidate the business and property of such person. When possession is so surrendered, the secretary must issue an order to that effect, which order must be filed in his office. A certified copy of the order must also be filed in the office of the prothonotary. (Act of June 15, 1923, P.L. 809, sec. 28, as amended by Act of May 5, 1927, P.L. 762, sec. 10; Purdon's Penna. Stats., Title 7, sec. 28, p.30).

Powers of secretary as receiver.

When the secretary takes possession of the business and property of any person, he has the same rights, powers and duties as a receiver appointed by any court of equity in the State of Pennsylvania. (Act of June 15, 1923, P.L. 809, sec. 29, as amended by Act of May 5, 1927, P.L. 762, sec. 11; Purdon's Penna. Stats., Title 7, sec. 29, p. 20).

Secretary to continue possession until affairs are liquidated; exceptions.

When the secretary has taken possession of the business and property of any person, he shall hold such possession until the affairs of such person have been liquidated by him, unless (1) he is directed by the court to surrender such possession, (2) he has permitted a resumption of business, or a sale or conveyance of property and franchises, or a merger or consolidation, or (3) the depositors and other creditors of such person and the expenses of such liquidation have been paid in full. (Act of June 15, 1923, P.L. 809, sec. 31; Purdon's Penna. Stats., Title 7, sec. 31, p. 32).

Liquidation.

The laws of this State also contain detailed provisions with reference to the liquidation of persons and the duties and powers of the Secretary of Banking in connection therewith. These provisions deal with the duty of the secretary to make an inventory and appraisal of assets of the person, the disposition of all funds, property and investments held by the person in a fiduciary capacity, the notice the secretary must give to depositors and creditors, the proof of claims by depositors and creditors, the allowance of such claims, the filing by the secretary of a partial or final statement of receipts and expenditures and a list of claims allowed or rejected, the distribution of dividends to approved claimants, the hearing and decision of controverted claims, and the payment of liquidation expenses. (Act of June 15, 1923, P. L. 809, secs. 40, 41, 43, 45 and 49, and secs. 38, 42, 44, 46, 47, and 49, as amended by Act of May 5, 1927, P.L. 762, secs. 17-22; Purdon's Penna. Stats., Title 7, secs. 38, 40-49, pp. 37-46).

RHODE ISLAND.

Private banking business apparently prohibited.

The following provisions would seem to prohibit a "person, partnership or association" from transacting a general banking business.

"No corporation, either domestic or foreign, and no person, partnership, or association, except banks, savings bank, or trust companies incorporated under the laws of this state" shall hereafter make use of any sign or other advertising indicating that the place of business or the business carried on is that of a "bank, savings bank, or trust company; nor shall any such corporation, person, association, or partnership receive deposits and transact business in the way or manner of a bank, savings bank, or trust company, or in such a way or manner as to lead the public to believe, or as, in the opinion of the bank commissioner, might lead the public to believe, that its business is that of a bank, savings bank, or trust company; * * *". (P.L. 1909, ch. 404, sec. 24; Banking Laws, 1929, sec. 24, p. 71.)

Examination by bank commissioner to ascertain whether law is being violated.

The bank commissioner and his assistants have authority "to examine the accounts, books, and papers of any corporation, person, partnership, or association which makes a business of receiving money on deposit, in order to ascertain whether such corporation, person, partnership, or association has violated or is violating any provision of this title; * * *". (P.L. 1909, ch. 404, sec. 25; Banking Laws, 1929, sec. 25, pp. 71 and 72.)

Penalty for violation; banking commissioner must report violation to Attorney General; procedure to restrain further violation.

Any person, partnership, or association violating any provision of the section first above quoted must pay a penalty of one hundred dollars a day for every day during which such violation continues, and all such violations must be immediately reported by the bank commissioner to the Attorney General. The penalty may be recovered by an information or other appropriate proceeding brought in the Superior Court for the County in which said violation has occurred, in the name of the Attorney General. Upon such information or other proceeding the court may issue an injunction restraining such person, partnership, or association from further prosecution of its business and may make such other order or decree as may be proper. (P.L. 1909, ch. 404, sec. 25; Banking Laws, 1929, sec. 25, p. 72.)

SOUTH CAROLINA.

Private banks not prohibited; apparently subject to examination; operations also subject to other provisions of law.

It does not appear that the laws of this State prohibit private

banks from transacting a banking business; but it does appear from certain provisions of these laws that private banks are subject to examination by the State Bank Examiner, are expressly required to publish reports of condition, are made subject to the general provisions covering the taxation of banks, and are expressly inhibited from using the words "bank", "banking", "trust", or "trust company" in connection with their business, or from making use of any advertising or transacting business in any manner so as to create the belief that the business engaged in is that of a trust company. These provisions are referred to below.

Banking institutions conducted by "persons" subject to examination by State Examiner.

The Governor of the State of South Carolina is required to "appoint a competent person to examine, from time to time, as hereinafter provided, into the affairs and the condition of all banks and banking institutions conducted by corporations or persons in this State." (Code of 1922, sec. 3977; Banking Law Pamphlet, 1928, sec. 82, p. 43.) Apparently, this provision makes private banks subject to examination by the State examiner "as hereinafter provided"; but because some of these "hereinafter provided" examination provisions can not be made to apply to private bankers, it would seem that it was intended that such provisions should apply to private banks wherever it is possible to make them applicable and these applicable provisions are set out below.

Duty and power of examiner; report of examination.

"It shall be the duty of such Bank Examiner, and he shall have power to make a thorough examination into all the books, papers and affairs of the aforesaid banks and banking institutions, and in making such examinations the Examiner shall have authority to administer oaths and to summon and examine any and all persons connected with the said banks and banking institutions, and if any person in such examination before the Bank Examiner shall testify falsely, he shall be indictable as for perjury. The Bank Examiner shall make a full and detailed report of his findings and file the same in the office of the State Treasurer, and in this report shall be set forth all violations, if any, of the banking laws of the State, and also such a full summary of the affairs of the bank as shall be necessary for the protection of the rights of the stockholders, depositors and creditors of such bank. It shall also be the duty of said Bank Examiner to forthwith bring to the attention of the said banks all such violations of the banking laws of this State and that the same be remedied or discontinued. He shall furnish all banks so examined by him or his assistants with a copy of said report. (Code of 1922, sec. 3978; Banking Law Pamphlet, 1928, sec. 83, p. 4.)

Number of examinations required; fees.

"The Bank Examiner shall make at least two examinations every year of all the banks and banking institutions in this State * * *."
Fees for these examinations are to be charged according to the capital

of the banks. No bank can be required to pay for more than two examinations each year, unless additional examinations are necessary because of the mismanagement or negligence of a bank's officers in which cases the actual expenses of such additional examinations must be paid by the bank examined. The State Treasurer must hold these fees for paying the expenses of the State Examiner and they are payable upon the order of the State Bank Examiner. The State Treasurer must include in his annual report to the Legislature an abstract of the reports made to him by the State Bank Examiner, showing the financial condition of the banks examined by him, and also a schedule of the receipts and disbursements connected with the State Bank Examiner's office. (Code of 1922, sec. 3983, as amended by Acts of 1923, p. 191; Banking Law Pamphlet, 1928, sec. 85, p. 44).

Examiner may take charge of unsound bank and apply for appointment of receiver.

"If the State Bank Examiner shall find that any of the said banks or banking institutions are insolvent, or that their business is being so dishonestly and fraudulently conducted as to jeopardize the interests of the depositors, creditors or stockholders, he shall have full power, upon consultation with the State Treasurer, to take and retain possession of all the assets and property of every description belonging to such bank or banking institution: Provided, He shall have first applied for and obtained an order to this effect from a Circuit Judge, either residing or presiding at the time, in the Circuit in which such bank or banking institution is located, two days' notice of such application being first given to the Board of Directors of said bank of the application for said order. And it shall be his duty, and he is hereby authorized and empowered, to make proper application to the court for the appointment of himself or some other person as receiver to wind up and settle the affairs of such bank or banking institution." (Code of 1922, sec. 3985; Banking Law Pamphlet, 1928, sec. 87, p. 46).

Reports of condition and business must be published; penalty for failure to publish.

"All institutions doing business in this State in lending money and receiving deposits, under Acts of incorporation granted by the State, are hereby required, under penalty of a forfeiture of their charters, to publish in a newspaper in the city, town or village where they, or any branch thereof, may do business, when and as called for by the State Bank Examiner, without previous notice, a correct report of the condition and business of such institution, which report shall contain a statement, under oath, by the President or Cashier of such institution, of the amount of the capital stock paid in, deposits, discounts, property and liabilities of said institution, verified by three of the directors thereof.

"Upon failure of any such institution to publish the report required herein, the Attorney General, on notice thereof, shall at once take the necessary steps to vacate the charter of said institution. This section shall apply to all private banking institutions, whether chartered or not." (Code of 1922, sec. 3988; Banking Law Pamphlet, 1928, sec. 60, p. 28.)

Taxation.

The laws expressly make private banks subject to the provisions covering the taxation of the shares of stock and real estate of banks, and contain detailed requirements with reference to the manner of imposing such taxation. (Code of 1922, sec. 342, as amended by Laws of 1924, p. 1220, sec. 365, sec. 400-403; sec. 404, as amended by Laws of 1927, p. 265, sec. 405-412, and Acts approved March 21, 1924, p. 116, Acts of 1924, and April 14, 1925, p. 294, Laws of 1925; Banking Law Pamphlet, 1928, secs. 92-108, pp. 49-55.) Taxation of private banking institutions is also provided for by Chapter 194, Acts of 1925, p. 294.

Use of words "Bank" or "Banking".

"It shall be unlawful for any person or persons in this State to use the words 'Bank' or 'Banking' in connection with any business, calling or pursuit, other than a legalized incorporated banking institution. Any person or persons violating the provisions of this Act shall be subject to a fine of not less than one thousand (\$1,000.00) dollars and not more than ten thousand (\$10,000.00) dollars and by imprisonment not exceeding ten years, nor less than one year, in the discretion of the court." (Criminal Code of 1922, sec. 235; Banking Law Pamphlet, 1928, sec. 145, p. 109).

Use of words "trust" or "trust company", or transaction of business as trust company.

No person, association or firm "other than trust companies chartered under the laws of the State of South Carolina prior to the passage and approval of this Act, or other than a corporation authorized to do business of a trust company and subject to the supervision of the State Bank Examiner, shall make use of the words 'trust' or 'trust company' as part of any artificial or corporate name or title; nor make use of any advertising indicating that the business conducted is that of a trust company," nor transact business in such way or manner as to lead the public to believe or as in the opinion of the bank examiner might lead the public to believe, that his or its business is that of a trust company." A penalty is prescribed for a violation of these provisions. (Acts of 1928, ch. 693, sec. 24, p. 1283; Banking Law Pamphlet, 1928, sec. 24, p. 126).

Bank examiner may examine books, etc., in case of violation of above provisions.

"The bank examiner shall have authority to examine the accounts, books and papers of any person, association, firm or corporation whom he has reason to suspect is violating the provisions of this (above) section and to summon and examine under oath, which he is empowered to administer, any person whom he may have reason to believe has violated or is a participant in any violation of the provisions of this section." (Acts of 1928, ch. 693, sec. 24, p. 1283; Banking Law Pamphlet, 1928, sec. 24, p. 126).

SOUTH DAKOTA.

Private banking business permitted, but provisions of bank act made applicable.

It appears from the following provisions that a private banking business is not prohibited, but that where such business is engaged in it is subject to the same general provisions as are made applicable to incorporated banks and trust companies by the bank act.

"For the purpose of this chapter every corporation, association, firm or individual in this state whose business, in whole or in part, consists in the taking of deposits or buying and selling exchange shall be held to be a bank, and as thus defined each individual stockholder or member of such corporation, association or firm, except as to national banks, shall be subject to the provisions of this chapter". "This chapter" covers the organization and operation of banking institutions. "Where reference in this chapter is made to banks, trust companies or the business of banks or trust companies in any manner, the same shall be construed as applying to any such corporation, association, firm or individual so engaged in business as defined in this section, * * *". (South Dakota Revised Code of 1919, sec. 8948; Banking Laws, 1927, sec. 8948, p. 15). " * * * no charter or authority to engage in the banking business in this state shall be issued and no individual, co-partnership or corporation shall be permitted to engage in the banking business except on Certificate issued by the Superintendent of banks upon approval of the depositors' guaranty fund commission." (South Dakota Revised Code of 1919, sec. 8949; Banking Laws 1927, sec. 8949, p. 15). "It shall be unlawful for any person to advertise, publish or otherwise represent that he is engaged in the banking business, without first having obtained authority from the superintendent of banks as provided in this chapter", and a penalty is prescribed for unauthorized banking. (South Dakota Revised Code of 1919, sec. 9000; Banking Laws, 1927, sec. 9000, p. 33).

TENNESSEE.

Banking business may now only be transacted by corporations.

The following provisions of the laws of this State would seem to restrict the right to obtain the requisite certificate to do a banking business, after the passage of the so-called banking act of 1913, to a "corporation, firm or individual" which or who has complied with "the provisions of the law regulating the incorporation of banking corporations".

"Before any corporation, firm or individual shall open or commence the transaction of business as a bank in this State, after the passage of this (1913) Act, it shall first submit its affairs to an examination by the Superintendent of Banks, who shall ascertain whether the provisions of the law regulating the incorporation of banking corpor-

ations have been complied with, and whether the full amount of the capital stock with which it proposes to commence doing business has been paid in. If he shall find these things to have been properly done, he shall then issue a certificate to the said corporation, firm or individual banker, authorizing them to operate and carry on a business of banking." (Public Acts of 1913, ch. 20, sec. 24; Banking Law Pamphlet, with amendments to and including 1923, sec. 24, p. 22.)

"The provisions of this Act shall apply to all persons and corporations carrying on a banking business in this State, except that the provisions of this Act shall not apply to national banks". (Public Acts of 1913, ch. 20, sec. 42; Banking Law Pamphlet, with amendments to and including 1923, sec. 42, p. 27.)

"The term or word 'bank', or 'banks', or 'banker', as used in this Act, wherever it may occur in any part thereof, shall signify, mean, cover and include every trust company, loan company, mortgage security company, safe deposit company, receiving money on deposit, and every individual, firm, corporation, association or company doing a banking, loan or discount business and receiving money on deposit and performing functions of a bank". (Public Acts of 1913, ch. 20, sec. 44; Banking Law Pamphlet, with amendments to and including 1923, sec. 44, p. 28).

The bank act also contains numerous references to the words "persons", "firms" and "individuals", and, in some few instances, the term "private banker" is used; furthermore, the act, in certain sections thereof (sec. 10, paragraphs 5 and 15, and sec. 15, paragraph 1), specifically distinguishes between "corporations" and "persons" or "firms" engaged in the banking business in outlining the procedure to be followed in complying with the requirements of the respective sections, indicating that a private banking business is actually recognized in this State. In view of the provisions above quoted, however, it would seem that it was intended that this recognition should apply only to private bankers who were transacting a banking business prior to the passage of the 1913 bank act, although no such exception is expressly made in the act itself.

TEXAS.

Private banking business permitted, but subject to certain provisions of law.

"It is hereby declared to be the public policy of this State that no additional private banking institution or business shall be organized or established, after the taking effect of this Act, and it is hereby declared that it shall be unlawful for any person, association or persons, partnerships, or trustee or trustees acting under any common law declaration of trust, to hereafter organize or establish, begin or resume the operation of any banking institution or business within this State", except as provided hereinafter. (Laws of 1923, ch. 185, sec. 1,

p. 422; Rev. Stats., 1925, art. 541.) "It shall be the duty of private individuals or firms engaging in the banking business to use after the name under which the business is conducted, the word in parenthesis 'Unincorporated', and failure to do so shall subject the offender to a penalty of one hundred dollars * * *". (Acts of 1905, S.S., p. 11; Rev. Stats., 1925, art. 541.)

Advertising.

It is unlawful for any private banker "to use, advertise or put forth any sign as a bank, trust company, bank and trust company or savings bank, or to in any way solicit or receive business as such, or to use as their name or part of their name on any sign, advertising or letter head or envelope the word bank, banker, banking, banking company, trust, trust company, bank and trust company, savings bank, savings, or any other term which may or might be confused with the name of a corporation organized under the general provisions of the banking laws of this State." (Acts of 1925, ch. 148, p. 356; Rev. Stats., 1925, art. 541-A.)

Names of persons only can be used in name.

It is unlawful for a private bank to adopt or use any artificial name or business title or to use any other than the name of the person or persons of the private bank, in the management, conduct or operation of such private bank. (Acts of 1925, ch. 148, p. 356; Rev. Stats., 1925, art. 541-B.)

Funds not to be employed in speculative ventures.

No private bank "engaged in the business of banking or operating a bank of deposit in this State shall employ any part of the funds of the depositors of such institution in any speculative venture or enterprise owned or promoted by said bank or any of the partners, officers or managers thereof." (Acts of 1923, ch. 185, sec. 3, p. 423; Penal Code, 1925, art. 560.)

Affidavit of solvency required.

Not later than January 15th of each year, each private bank is required to file with the county clerk of the county in which the principal place of business of the bank is conducted, an affidavit stating that the bank is solvent and has and owns property and assets in the State of Texas the value of which is in excess of any and all of the liabilities of such private bank. (Acts of 1923, ch. 185, sec. 4, p. 423; Penal Code, 1925, art. 561.)

Statement of ownership required; publication of.

Not later than January 20th of each year, each private bank is required to file with the county clerk of the county in which its principal place of business is located, a written sworn statement giving the names of each person holding or owning any financial interest in the bank, and a copy of such statement must be published "in some newspaper of general circulation in said county, if such newspaper be published within said county." (Acts of 1923, ch. 185, sec. 5, p. 423; Penal Code, 1925, art. 562.)

Restriction on advertisement of responsibility.

No private bank can advertise in any manner that it owns, possesses or has a financial responsibility in excess of the real and true financial responsibility of such bank. The laws define the term "financial responsibility" to mean money or real or personal property within the State. (Acts of 1923, ch. 185, sec. 8, p. 424; Penal Code, 1925, art. 563.)

Violation of preceding provisions; penalty.

A violation of any of the preceding provisions by any private bank or any member thereof constitutes a misdemeanor "punishable by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in jail for not less than thirty days nor more than twelve months, or by both such fine and imprisonment. Each day said business is carried on or attempted to be carried on shall be a separate offense." (Acts of 1923, ch. 185, sec. 8, p. 424; Penal Code, 1925, art. 564.)

Receiving deposits while insolvent; penalty.

Any private banker, or any manager, cashier or other person, owning or operating a private bank, who receives or assents to the reception of any deposit of money or other valuable thing into the bank, or if such private bank, manager, cashier or other person, creates or assents to the creation of any debt, debts or indebtedness, in consideration or by reason of which indebtedness, any money or valuable property is received into the bank, after knowledge that such banker "is insolvent, or in failing circumstances, he shall be confined in the penitentiary not less than two nor more than ten years." The failure of the private banker is prima facie evidence of knowledge that such banker was insolvent or in failing circumstances when the money or property was received. (Acts of 1923, ch. 185, sec. 7, p. 424; Penal Code, 1925, art. 565.)

Exceptions from above provisions.

The above provisions do not apply to private banks which were "actively engaged in the operation of any bank, trust company, bank and trust company or savings bank" at the time this (1925) Act became effective; nor do such provisions apply to "any bank which may have been in successful operation in this State for twenty years and shall have suspended operations prior to the passage of this Act, but which shall resume operation within twelve months after the passage of this Act." The right to continue or resume business "is hereby expressly recognized, confirmed and fixed." These provisions also do not apply to a private banker "who has for a period of one year next preceding the date that this Act becomes effective, and who, as such, in the course of the liquidation of any bank or trust company or bank and trust company within this State, has acquired the assets, or any part thereof, including the real estate used as its banking house or place of business and has assumed the liabilities, or a part thereof of such liquidated bank or trust company or bank and trust company." (Acts of 1925, ch. 148, p. 356; Rev. Stats., 1925, art. 541-C; Penal Code, 1925, art. 566.)

"Blue Sky Law" not applicable to private banks.

The laws of this State also provide that the so-called "Blue Sky Law" shall not apply to private banks. (Rev. Stats., 1925, art. 599.)

UTAH.Private banking expressly prohibited.

The laws of Utah provide that "The establishing or maintenance of private or partnership banks is hereby expressly prohibited; provided, that all such banks now in operation shall retire from business or incorporate under the provisions of this chapter within a period of five years from and after the approval of this chapter." (Act approved March 30, 1911; Compiled Laws of Utah, 1917, Title 19, ch. 6, as amended, sec. 994; Banking Laws, 1927, sec. 994, p. 9.)

VERMONT.Private banking business prohibited.

"A person, firm, association or corporation, except corporations reporting to and under the supervision of the bank commissioner, shall not advertise or put forth any sign as a bank, banking association or trust company, or in any way solicit or receive deposits or transact business as a bank, banking association or trust company, or use the words 'bank', 'banking association' or 'trust company'; but this section shall not prevent an individual, as such, from acting in a trust capacity. A person, firm, association or corporation subject to the provisions of this section, who violates a provision thereof, shall be fined not more than five hundred dollars for each offense." (General Laws Relating to Banks, ch. 226, Part II, sec. 5419; Banking Laws, 1918, sec. 5419, p. 31.)

VIRGINIA.Banking business may only be transacted by corporations; exceptions.

"No person, co-partnership or corporation, except corporations duly chartered and already conducting the business of banking or trust, under authority of the law of this State or the United States, or which shall hereafter be incorporated under the laws of this State, or authorized to do business under the banking laws of the United States, shall engage in the business of banking or trust in this State; and no foreign Corporation shall do a banking or trust business in this State, except that nothing in this chapter shall prevent any person or co-partnership or corporation from lending money on real estate and personal security or collateral, or from guaranteeing the payment of bonds, notes, bills and other obligations, or from purchasing or selling all stocks and bonds. But this section shall not apply to or affect any private banker or firm of private bankers who shall have been engaged in business on the first day of January, Nineteen Hundred and Ten." (Virginia Bank Act, sec. 3, as amended; ch. 507, Acts of 1928, p. 1308, as amended by ch. 278, Acts of 1930, p. 702.). The laws also contain provisions prohibiting persons or corporations not lawfully

engaged in the business of banking from using advertising indicating that the place of business or the business carried on is that of a bank or from using the word "bank", "banking", etc. in connection with the business. (Virginia Bank Act, sec. 4; ch. 507, Acts of 1928, p. 1308; Banking Law Pamphlet, 1929, sec. 4149 (4), p. 25.)

Penalty for violation of provisions.

The laws provide that any person or persons violating the provisions referred to above "either individually or as an interested party, in any co-partnership or corporation, shall be guilty of a misdemeanor." (Virginia Bank Act, sec. 4; ch. 507, Acts of 1928, p. 1308; Banking Law Pamphlet, 1929, sec. 4149 (4), p. 25.)

State Corporation Commission may examine books, records, etc. when violation suspected.

The State Corporation Commission has authority to examine the accounts, books and papers of any person or co-partnership whom it has reason to suspect is doing a banking business, in order to ascertain whether such person or co-partnership has violated or is violating, any provision of the banking act. The refusal to submit such accounts, books and papers is prima facie evidence of a violation. (Virginia Bank Act, Sec. 4; ch. 507, Acts of 1928, p. 1308; Banking Law Pamphlet, 1929, sec. 4149 (4), p. 25.)

WASHINGTON.

Private banking business apparently prohibited.

The laws of this state provide for the incorporation of banks and trust companies and mutual savings banks to engage in the business of banking as defined below. (Laws of 1923, sec. 3, p. 302, Laws of 1929, sec. 2, p. 93, sec. 3, p. 95, sec. 1, p. 437; Rem. Comp. Stats., 1927 Supp., secs. 3226 and 3229, as amended by Laws of 1929, secs. 2 and 3, pp. 93 and 95, and secs. 3227 and 3228; Banking Laws, 1929, secs. 29-32, pp. 13-16; Laws of 1915, secs. 1-5, pp. 549-552; Rem. Comp. Stats., sec. 3313 - 3317; Banking Laws, 1929, secs. 145-149, pp. 62-65) The laws, however, are silent with reference to the organization or establishment of private banks.

The laws further provide that "no person shall engage in banking except in compliance with and subject to the provisions of this (bank) act, except it be a national bank or except in so far as it may be authorized so to do by the laws of this state relating to mutual savings banks, * * *". (Laws of 1919, sec. 7, p. 730; Rem. Comp. Stats., sec. 3222; Banking Laws, 1929, sec. 25, p. 12.) It would seem, therefore, that this provision and the provisions digested immediately below, coupled with the silence of the laws as far as the organization of private banks is concerned, restrict the transaction of a banking business to incorporated banks, trust companies, mutual savings banks and national banks.

Definition of terms.

"The term 'banking' shall include the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business."

"The term 'bank', where used in this act, unless a different meaning appears from the context, means any corporation organized under the laws of this state engaged in banking, other than a trust company, or a mutual savings bank."

"The term 'person' where used in this act, unless a different meaning appears from the context, includes a person, firm, association, partnership and corporation, and the plural thereof, whether resident, non-resident, citizen or not." (Laws of 1917, sec. 14, p. 275; Rem. Comp. Stats., sec. 3221; Banking Laws, 1929, sec. 24, p. 11.)

Use of word "bank", etc., and certain other advertising; penalty for unauthorized use.

The laws also contain the requirement that the name of every bank shall contain the word "bank", but provide that only a national bank, a bank or trust company authorized by the laws of Washington, or a foreign corporation, authorized by the bank act, shall use this word or the words "banking", "banker" or "trust", or other advertising indicating that a banking business is being carried on. "Every person who, * * * violate any provision of this section shall be guilty of a gross misdemeanor". (Laws of 1925, Ex. Sess., sec. 1, p. 177; Rem. Comp. Stats., 1927 Supp., sec. 3225; Banking Laws, 1929, sec. 28, p. 13.)

WEST VIRGINIA.

Private banking business prohibited.

"No person, persons, corporation or corporations doing business in this State, except a banking institution chartered and organized under the provisions of this article and article one of this chapter, and except a banking association chartered under acts of the congress of the United States, shall use in connection with such business, or as a designation or title, the term "bank;" "banker", "banking", "banking company", "banking association" "savings bank", or "trust company"; or engage in the banking business as defined in sections six and seven of this article, or hold himself, themselves or itself out as engaged in any such business.

"Any person or corporation and/or officer or director of any corporation violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars; and at the discretion of the court any individual so offending shall be imprisoned in the county jail for a period not exceeding six months, or both fined and imprisoned, within such limits." (Section 2, Article 4, Chapter 31, Code of 1931; 1905, c. 45; 1907, c. 79; 1913, c. 21; 1919, c. 60; Code 1923, c. 54, section 78; 1925, c. 34; 1929, c. 23, Section 1)".

"No corporation chartered under the laws of this State, or of any other state, territory or sovereignty, except banking associations chartered under the laws of the United States of America, and banking institutions chartered under the laws of this State, as defined in this article, and no person, partnership or association of persons as a trust, or other

organization, shall engage in the business of banking in the State of West Virginia, or shall receive or accept deposits of money, or borrow money by receiving and giving credits for deposits, or by issuing certificates of deposit or certificates of indebtedness, or by making and negotiating any writing purporting to be a bond, contract, or other obligation, the performance of which requires the holder or other party to make deposits of money with the issuer, or by means of any other plan, pretext, scheme, shift or device.

"Nothing contained in this section shall affect the rights, privileges, objects or purposes delegated to other corporations by the general corporation law or other laws of this State.

"Any corporation or individual who violates any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction shall be fined not more than five thousand dollars, and, in addition to such penalty, every corporation so offending shall forfeit its corporate franchise, and every individual so offending shall be subject to a further penalty by confinement in jail for not more than one year." (Section 18, Article 4, Chapter 31, Code of 1931; 1903, c. 8; 1919, c. 80; 1921, c. 126; Code 1923, c. 54C, Sections 12, 14; 1925, c. 33; 1929, c. 23, Section 10)."

WISCONSIN.

Banking business may only be transacted by corporation.

"It shall be unlawful for any person, copartnership, association, or corporation to do a banking business without having been regularly organized and chartered as a national bank, a state bank, a mutual savings bank, or a trust company bank." (Wisconsin Statutes, ch. 224, sec. 224.03; Banking Laws, including amendments of 1927, sec. 224.03, p. 63.)

Definition of term "bank".

"The term 'bank', as used in this chapter, shall be construed to mean any incorporated banking institution which shall have been incorporated under the laws of this state as they existed prior to the passage of this chapter, and to such banking institutions as shall hereafter become incorporated under the provisions of this chapter." (Wisconsin Statutes, sec. 224.01; Banking Laws, including amendments of 1927, sec. 224.01, p. 63.)

Penalty for unlawful banking.

"Any person or persons violating any of the provisions of * * * (the) section (first above quoted), either individually or as an interested party in any copartnership, association, or corporation shall be guilty of a misdemeanor and on conviction thereof shall be fined in a sum not less than three hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail not less than sixty days nor more than one year, or by both such fine and imprisonment." (Wisconsin Statutes, sec. 224.03; Banking Laws, including amendments of 1927, sec. 224.03, p. 63).

WYOMING.

Banking business may only be transacted by corporations.

In order to transact a banking business as defined below, the laws of this State provide for the incorporation of banks, savings banks, loan and trust companies and trust company banks. (Laws of 1925, ch. 157, secs. 3, 55, 69 and 75; Banking Laws, with 1927 amendments, sec. 3, p. 11, sec. 55, p. 22, sec. 69, p. 26 and sec. 75, p. 28.) The law also provides that "No person, firm or corporation (except national banks) shall carry on a banking business except in compliance with the provisions of this (bank) act." (Laws of 1925, ch. 157, sec. 11; Banking Laws, with 1927 amendments, sec. 11, p. 13). It is further provided that "it shall be unlawful for any person or persons, co-partnership or association to transact the business of a savings bank, * * * unless such person, company or association has been duly incorporated under this act; * * * ." (Laws of 1925, ch. 157, sec. 68; Banking Laws, with 1927 amendments, sec. 68, p. 26.)

Scope of Bank Act.

"Every bank, banker or corporation in this State doing a banking

business under the provisions of this (bank) Act, shall be known as a State bank; and any and all reference herein made to this Act to state banks shall apply to every individual, firm or corporation doing a banking business under the provisions of this Act. " (Act of February 15, 1929, sec. 1; Laws of 1929, ch. 54, sec. 1.)

Definition of bank and banking business.

"Any person, firm or corporation (except national banks) having a place of business within this State where credits are opened by the deposit or collection of money or currency or negotiable paper subject to be paid or remitted upon draft, receipt, check, or order, shall be regarded as a bank or banker, and as doing a banking business under the provisions of this Act. " (Laws of 1925, ch. 157, sec. 10; Banking Laws, with 1927 amendments, sec. 10, p. 13.)

Restriction against use of certain advertising.

"No person, persons, firm or corporation shall advertise, issue or circulate any card or other papers, or exhibit any sign using either or any of the terms 'bank', 'banker', 'banking house', or 'trust company', until they have fully complied with the provisions of this Act; provided, that the term 'trust company' may be used by a person, firm or corporation when the business transacted is in no sense a banking business." (Laws of 1925, ch. 157, sec. 11; Banking Laws, with 1927 amendments, sec. 11, p. 13.) "It shall be unlawful for any person or persons, copartnership or association * * * to assume the name of a savings bank or association, unless such person, company or association has been duly incorporated under this Act; * * *". (Laws of 1925, ch. 157, sec. 68; Banking Laws, with 1927 amendments, sec. 68, p. 26)

Penalty for unlawful banking or advertising.

Any person, firm or corporation violating any of the above provisions shall be deemed guilty of a misdemeanor, and upon conviction shall be subject to certain prescribed penalties. (Laws of 1925, ch. 157, secs. 12 and 68; Banking Laws, with 1927 amendments, secs. 12 and 68, pp. 13 and 26).