PRINCIPAL DIFFERENCES BETWEEN H.R. 11362 and H.R. 10241.

On March 7, 1932, Mr. Steagall introduced H.R. 10241, a bill "to amend the National Banking Act and the Federal Reserve Act, and to provide a guaranty fund for depositors in national banks." On April 14, 1932, he introduced H.R. 11362, a bill having generally the same purposes. In the following paragraphs, there are set forth the more important differences between the two bills, (H.R. 10241 being referred to as the old bill and H.R. 11362 as the new bill.)

The old bill contained a provision eliminating the existing authority for the organization of a national bank with a minimum capital of $25,000 in a city of less than 3,000 inhabitants. The provision eliminating this authority is retained in the new bill which provides, however, that a national bank may be organized with a capital of not less than $25,000 for the purpose of succeeding to the business of an existing bank.

Whereas the old bill would have eliminated the double liability of shareholders of national banks hereafter organized except those banks which have branches, the new bill omits the exception as to national banks having branches, thus making the exemption from double liability apply in the case of all national banks hereafter organized.

The old bill contained a provision eliminating from the Federal Reserve Act the prohibition upon making collection or exchange charges against Federal reserve banks, but the new bill would not change the law on this subject.

The new bill contains certain additional provisions regarding national and member banks: (a) a limit upon the rate of interest which may be paid upon deposits, (b) provisions making the rate of dividend

which may be paid by a member bank dependent upon the amount of its surplus, and (c) provisions for the removal of an officer or director of a national bank where his service is detrimental to its operation.

The provisions of the old bill with reference to the Federal Banking Liquidating Board and the Guaranty Fund are also amended in certain particulars. The old bill provided for a total initial payment by member banks of $200,000,000 (in addition to the payments by the United States and the Federal Reserve Banks) based partly upon demand deposits and partly upon time deposits, whereas the new bill provides for an initial payment by member banks of only $100,000,000, based on all deposits. The new bill also permits nonmember banks to become contributors to the guaranty fund and to share in its benefits under certain conditions, one of which is that the contribution of a nonmember bank shall be twice the amount required of a member bank having the same amount of deposits. Authority is also given by the new bill for borrowing by the Liquidating Board from the Reconstruction Finance Corporation until January 22, 1934, up to the maximum of $500,000,000.

SUMMARY OF THE PROVISIONS OF H.R. 11362.

The provisions of this bill divide themselves conveniently into four portions: (a) amendments to the National Banking Laws; (b) amendments to the Federal Reserve Act; (c) provisions affecting member banks but not amending any specific provisions of law; and (d) provisions establishing a Federal Guaranty Fund for depositors in member banks of the Federal Reserve System.

AMENDMENTS TO NATIONAL BANKING LAWS.

The amendments to the National Banking Laws, which are contained in Sections 1, 2, 3 and 4 of the bill, refer in all cases only to national banks which may be organized hereafter. These amendments contain three important changes in the law: (1) The existing authority for the organization of a national bank with a minimum capital of $25,000 in places of not exceeding 3,000 inhabitants would be replaced by a provision authorizing the formation of a national bank with a minimum capital of $25,000 for the purpose of succeeding to the business of an existing bank, (2) no national bank may be organized unless it has a surplus of not less than 10% of its capital stock, and (3) provisions for the double liability of shareholders of national banks are eliminated.

Section 1 of the bill eliminates from Section 5138 of the Revised Statutes the provision that national banks may be organized in places of not exceeding 3,000 inhabitants with a minimum capital of $25,000, and inserts a provision in lieu thereof which would permit the

formation of a national bank for the purpose of succeeding to the business of an existing bank, in the discretion of the Comptroller of the Currency, with a minimum capital of $25,000.

Section 2 of the bill amends Section 5138 of the Revised Statutes so as to provide that no national bank shall be organized except with an initial surplus equal to 10% of its capital stock, and provides a number of corresponding amendments to other provisions of the national banking laws in order to make them conform to this requirement. Thus, for this purpose:

> Section 5168 of the Revised Statutes, which requires the Comptroller of the Currency to examine into the condition of a national bank, and especially whether 50% of its capital stock has been paid in, in order to determine whether the bank is lawfully entitled to commence business, is amended to require the Comptroller to ascertain also whether 50% of the required initial surplus has been paid in.
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> The Act of November 7, 1918, as amended, providing for the consolidation of national banks, and for the consolidation of a State bank with a national bank, is amended to require that the consolidated institution in each such case shall have an initial surplus, as well as a capital stock, in the amount required for the organization of a national bank in the place in which it is located.
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> Section 5154 of the Revised Statutes, providing for the conversion of a State bank into a national bank, is amended to require that the converted institution have an initial surplus

not less than that required for the organization of a national bank in the place in which it is located.

Section 5140 of the Revised Statutes, requiring at least 50% of the capital stock of a national bank to be paid in before it is authorized to commence business and the remainder to be paid in in 10% monthly installments is amended to make similar requirements with regard to the required initial surplus.

Section 5141 of the Revised Statutes, which authorizes the sale of the stock of any shareholder who fails to pay any installment on his stock as required by law, is amended so as to give the same authority in the case of a failure to pay any installment of the initial surplus.

Section 5205 of the Revised Statutes, which provides for assessments upon stockholders of a national bank in case its capital stock is not paid up or in case of an impairment therein and for the appointment of a receiver when the deficiency is not made up within three months after notice, is amended to provide for such assessments where the initial surplus is not paid up and for the appointment of a receiver where the deficiency in initial surplus is not met within the three months' period. Apparently an impairment in initial surplus would not be grounds for such an assessment. The provision of Section 5205 authorizing the sale of the stock of a share-

holder who fails to pay such assessment against him would be omitted by this amendment, apparently by mistake. Section 5143 of the Revised Statutes, which authorizes reductions in capital stock of national banks, is amended so as to include surplus in its provisions. The amendment is ambiguous, but apparently all the present requirements for a reduction of capital, including two-thirds' vote of shareholders and approval of the Federal Reserve Board and of the Comptroller of the Currency, would be applicable as to every reduction in surplus.

Section 3 of the bill amends Section 5151 of the Revised Statutes and Section 23 of the Federal Reserve Act so as to eliminate the provision for the double liability of shareholders as to national banks hereafter organized.

Section 4 of the bill provides that the provisions of Sections 1, 2 and 3 shall apply only to national banks organized after the date of the enactment of this Act, stipulating, however, that the provisions of law amended by such sections shall apply, in their now existing form, to all national banks organized prior to the enactment of this act.

AMENDMENTS TO THE FEDERAL RESERVE ACT.

Sections 5 and 6 of the bill contain amendments to the Federal Reserve Act with regard to the distribution of earnings of Federal reserve banks, and the giving of immediate credit by Federal reserve banks for items received for collection.

Section 5 would amend the first paragraph of Section 7 of the Federal Reserve Act so as to provide that the net earnings of each Federal reserve bank shall be distributed as follows: After the payment to member banks of the 6% dividend now provided for and the payment of 10% of the net earnings to surplus, one-half of the remainder of the net earnings shall be paid to the Federal Guaranty Fund for depositors of member banks, (provided for in later sections of this bill) and the remaining one-half shall be paid to the member banks in proportion to the amount of their capital stock. The payment of the franchise tax by Federal reserve banks to the United States would thus be eliminated. The second paragraph of Section 7, with regard to the manner in which funds paid to the United States either as a franchise tax or upon dissolution of the Federal reserve bank are to be used, is amended to make the necessary corresponding changes.

Section 6 would amend Section 13 of the Federal Reserve Act by adding at the end of the first paragraph a new paragraph requiring a Federal reserve bank upon application of "a sending bank" to give immediate credit for checks and drafts received from such bank for collection and authorizing the Federal reserve bank to charge interest on the amount of the

credit at the current rediscount rate pending the collection of the item or, with the approval of the Federal Reserve Board, to establish a time schedule for this purpose.

MISCELLANEOUS PROVISIONS NOT AMENDING ANY SPECIFIC PROVISION OF LAW.

Sections 7, 8 and 9 of the bill contain certain provisions which affect national banks and member banks of the Federal Reserve System but which do not in terms amend any specific provision of the National Banking Act, the Federal Reserve Act or any other statute.

Section 7 would prohibit the payment of interest at a rate in excess of 4% per annum by any member bank of the Federal Reserve System upon any deposit made after the enactment of the act.

Section 8 would prohibit a member bank (a) to pay any dividend unless its surplus is more than 25% of its paid-in capital stock, (b) to pay any dividend at a rate in excess of 6% per annum unless its surplus is more than 50% of its paid-in capital stock, or (c) to pay any dividend in excess of 8%, unless its surplus is more than 100% of its paid-in capital stock. Where its surplus is more than 100% of its paid-in capital stock, the rate of dividend would not be limited.

Section 9 would require the Comptroller of the Currency, whenever he finds that the continued service of any officer or director of a national bank is detrimental to its safe operation, to certify this fact to the Federal Bank Liquidating Board (provided for in a later section of the bill). Within thirty days thereafter the board would be required to hold a hearing at which such officer or director would have the right to be heard and be represented by counsel. If the board affirms the finding

of the Comptroller, it would be required to order the removal of the officer or director and to notify the bank involved, which must thereupon take such action as may be necessary to remove the officer or director.

PROVISIONS FOR GUARANTY FUND FOR DEPOSITORS OF MEMBER BANKS.

The remaining sections of the bill, designated Sections 201 to 211, and comprising what is known as Title II of the bill, provide for the establishment of a Federal Bank Liquidating Board and for the guaranty of the deposits of member banks.

Section 201 of the bill establishes a Federal Bank Liquidating Board consisting of the Secretary of the Treasury, the Comptroller of the Currency, and three citizens of the United States appointed by the President by and with the advice and consent of the Senate. The appointive members, not more than one of whom shall be of the same political party as the President, are to hold office for four years and each is to receive a salary of $10,000 per annum. The appointive members are ineligible during the time they are in office, and for one year thereafter, to hold office or employment in any member bank or in or on the Federal Reserve Board. The Liquidating Board shall elect its own chairman and other officers and may employ and fix the compensation of its officers, attorneys, agents, examiners and employees, but the compensation shall not be at a rate in excess of $10,000 per annum in any case. Expenses are to be paid out of the guaranty fund herein provided for.

Section 202 establishes a Federal guaranty fund for depositors in member banks of the Federal reserve system. This fund is to be created by payments from three sources; (a) The entire amount heretofore paid to the United States as a franchise tax by the Federal reserve

banks shall be paid by the United States to the guaranty fund; (b) The Federal reserve banks are to pay to the fund $150,000,000, the amount required of each to be determined pro rata according to the amount of its surplus on December 31, 1931; and (c) The board shall require the member banks to pay to the fund such an amount as it may fix, not exceeding $100,000,000, the amount required of each member bank to be determined pro rata according to its average deposits during the preceding calendar year. At any time after one year subsequent to the payment of the above amounts, the board may, if in its judgment the amount of the fund is inadequate, require the member banks to pay annually to the fund not more than $100,000,000 pro rated among them according to their average deposits for the preceding calendar year. All sums payable either by a Federal reserve bank or by a member bank are subject to the call of the Liquidating Board, except that amounts assessed against member banks shall be payable in installments of not more than 25% of the assessment. If at any time the amount of the fund exceeds $500,000,000, and in the judgment of the Board is in excess of the amount required for the purposes of the law, the Board shall make a refund of the excess amount to the contributing banks, the amount of the refund to any bank being pro rated according to its contribution to the last annual contribution of all banks. Sums in the guaranty fund may be invested by the board in interest bearing obligations of the United States or deposited in member banks without interest.

Section 203 provides that whenever a national bank which has contributed to the fund has been closed by its directors or by the Comptroller of the Currency, or has become insolvent in the judgment of the Comptroller, he shall so certify to the liquidating board, which shall proceed to take over and wind up the bank in accordance with the law. The Board is to have the same powers and duties and is to be subject to the same limitations as the Comptroller in winding up such a national bank. Within thirty days after the receipt of the certificate of insolvency by the board, a committee consisting of one person appointed by the board, one appointed by the owners of a majority of the stock of the bank and one appointed by the depositors of more than 50 per cent of the outstanding deposits of the bank shall estimate the value of the assets and the amount of the liabilities of the bank and make a statement of the amount of the outstanding deposit of each depositor.

Section 204 provides that, on the basis of this estimate, as modified by the board, and not less than ninety days after the certification of insolvency, the board shall pay to each depositor whose outstanding deposit is not more than $1,000 not less than fifty per cent thereof, and to each other depositor not less than twenty-five per cent of his outstanding deposit, or $500, whichever is greater. Within six months after such payment the board is to pay each depositor of the former class the remaining amount due him (and it would seem to be the intention to provide that other depositors shall, within this six months' period, be paid an additional twenty-five per cent of their deposits, but no such provision is contained

in the bill.) Within the next six months period an additional twenty-five per cent shall be paid to all depositors not yet paid and within six months thereafter full payment shall be made to all depositors.

Section 205 provides that the board, or a liquidating agent duly authorized by the board, may borrow money on the security of the assets of any insolvent national bank for the purpose of paying its depositors and creditors.

Section 206 provides that in case of insolvency of a State member bank, the board shall request its receiver or liquidating agent to submit a report and estimate such as that required of the Committee in the case of a national bank; and the board upon approval of such report and estimate shall pay the receiver or liquidating agent in trust for the depositors the same amounts, and at the same times, as in the case of national banks. For this purpose, the board is given the power of examination of such an insolvent State member bank.

Section 207 makes it mandatory upon the Federal Reserve Board, after hearing, to forfeit the membership of any member bank failing to comply with the requirements of the bill with respect to the Guaranty Fund or any regulation of the Liquidating Board; and a national bank failing to comply with such provisions of the bill shall, in addition, forfeit all rights and franchises granted to it by the law (apparently without any court proceeding, but upon the basis of the hearing conducted by the Federal Reserve Board.)

Section 208 provides that any bank, which is not a member of the Federal Reserve System, with a capital and surplus of not less than $25,000, may with the approval of the Liquidating Board, contribute to the guaranty fund and upon insolvency the depositors of such bank shall be entitled to the same benefits as those of an insolvent State member bank under section 206 above. No nonmember bank may contribute to the guaranty fund, however, until after examination of the bank and determination by the Liquidating Board that the bank is in sound financial condition and, as a condition to the privilege of contributing to the fund, the bank must submit to examination by the Board at any time; with a proviso, however, that for a period of not exceeding three years after the passage of the Act, a nonmember bank may share in the benefits of the guaranty fund upon certificate of the State examining authorities that such bank is in sound financial condition. The amount of the initial contributions and annual contributions of nonmember banks shall be twice the amount of those required of member banks. Sums payable by nonmember banks shall be subject to call of the Liquidating Board but the amount of any assessment shall be payable in installments of not more than 25% each. The Liquidating Board may require a nonmember bank to withdraw from participation in the benefits of the guaranty fund or require it "to go into liquidation and receive the benefits of such participation". Upon withdrawal from participation, the bank shall be paid a part of its last annual contribution, the amount to be repaid decreasing proportionately according to the

number of months which have elapsed since such last contribution.

Section 209 authorizes the Liquidating Board, until January 22, 1934, to borrow from the Reconstruction Finance Corporation such sums as may be deemed necessary to carry out the purposes of the law, but not in excess of $500,000,000 at any one time. The Reconstruction Finance Corporation "shall make such loans" as are applied for by the Liquidating Board and applications by the board shall be preferred above other applications and expedited in every way possible. No security shall be required for such loans and they shall bear interest at a rate agreed upon by the board and the corporation. Such a loan shall be repaid in installment payments out of the guaranty fund and all such loans shall be payable in full not later than January 22, 1942. The Reconstruction Finance Corporation is required to issue, in accordance with the provisions of the Reconstruction Finance Corporation Act, such notes, debentures, bonds and other obligations as may be necessary to carry out the purposes of this law.

Section 210 authorizes the Liquidating Board to make regulations necessary to carry out the provisions with respect to the Guaranty Fund.

Section 211 authorizes appropriations of such sums as may be necessary to carry out the provisions of this act.