

hundred and fifty acres, with the improvements thereon, located on [the left bank] either or both banks of Oil Creek, in Oil Creek Township or Cherry Tree Township, or both, Venango County, upon which is the site where Colonel Edwin L. Drake drilled the first successful oil well in the world in the year one thousand eight hundred and fifty-nine, to be hereafter used as a public park and as a memorial to Colonel Drake and the petroleum industry. The said park and memorial shall be known as the Drake Well Memorial Park.

The acceptance of said grant shall be completed upon delivery to the Commonwealth of a deed in fee simple (subject to reservation, if any, of oil, gas and minerals), approved by the Attorney General.

Said property after its acceptance shall be under full control and supervision of the [Pennsylvania Historical Commission] *Department of Forests and Waters*, subject, however, to the aforesaid reservations. The Department of Forests and Waters shall [at all times, cooperate with the Pennsylvania Historical Commission in developing] *develop* the forest resources of said lands.

Section 3 of said act, amended.

Section 2. Section three of said act is hereby amended to read as follows:

Section 3. The [Pennsylvania Historical Commission] *Department of Forests and Waters* is hereby authorized, subject to its approval, to permit the donor of such property to erect structures upon, and to make improvements to, such property after the same has been accepted by the Commonwealth, and to accept such structures and improvements on behalf of the Commonwealth and to use the same in connection with and for the protection of such park and memorial.

APPROVED—The 24th day of April, A. D. 1935.

GEORGE H. EARLE

No. 31

AN ACT

To amend the act, approved the fifteenth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, six hundred twenty-four), entitled "An act relating to the business of banking, and to the exercise of fiduciary powers by corporations; providing for the organization of corporations with fiduciary powers, and of banking corporations, with or without fiduciary powers, including the conversion of National banks into State banks, and for the licensing of private bankers; defining the rights, powers, duties, liabilities, and immunities of such corporations, of existent corporations authorized to engage in a banking business, with or without fiduciary powers, of private bankers, and of the officers, directors, trustees, shareholders, attorneys, and other employes of all such corporations or private bankers, or of affiliated corporations, associations, or persons; restricting the exercise of banking powers by any

other corporation, association, or person, and of fiduciary powers by any other corporation; conferring powers and imposing duties upon the courts, prothonotaries, recorders of deeds, and certain State departments, commissions, and officers; imposing penalties; and repealing certain acts and parts of acts," by further providing for the powers and limitations upon the acts of corporations and persons authorized to engage in a banking or a fiduciary business, or both, and of affiliates of such corporations or persons, and of officers, directors, trustees, and employes of such corporations and persons.

Section 1. Be it enacted, &c., That section 2, section 306, section 401, section 402, section 407, section 408, section 411, section 412, section 413, section 414, section 415, section 614, section 701 of the act, approved the fifteenth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, six hundred twenty-four), entitled "An act relating to the business of banking, and to the exercise of fiduciary powers by corporations; providing for the organization of corporations with fiduciary powers, and of banking corporations, with or without fiduciary powers, including the conversion of National banks into State banks, and for the licensing of private bankers; defining the rights, powers, duties, liabilities, and immunities of such corporations, of existent corporations authorized to engage in a banking business, with or without fiduciary powers, of private bankers, and of the officers, directors, trustees, shareholders, attorneys, and other employes of all such corporations or private bankers, or of affiliated corporations, associations, or persons; restricting the exercise of banking powers by any other corporation, association, or person, and of fiduciary powers by any other corporation; conferring powers and imposing duties upon the courts, prothonotaries, recorders of deeds, and certain State departments, commissions, and officers; imposing penalties and repealing certain acts and parts of acts," are hereby amended to read as follows:

Sections 2, 306,
401, 402, 407,
408, 411, 412,
413, 414, 415,
614, 701, act
of May 15, 1933
(P. L. 624),
amended.

Banking Code.

Section 2. Definitions.—A. The following terms shall be construed in this act to have the following meanings, except in those instances where the context clearly indicates otherwise.

Definitions.

"Affiliated corporation or person" means such an affiliate corporation or person, as is defined, by any Federal law or any regulation issued by any Federal authority pursuant to law, to be a corporation or person affiliated with a national banking association or a member of a Federal Reserve Bank or as a holding company affiliate.

"Articles" includes the original articles of incorporation, any or all amendments thereto, articles of merger, consolidation, or conversion, and also what have heretofore been designated by law as certificates of incorporation or charters.

“Assets” includes all the property and rights of every kind of an institution as herein defined.

“Attorney” includes any attorney at law who receives a general retainer as solicitor or as counsel for an institution.

“Authorized capital” means the sum of the par value of the shares authorized to be issued in the articles of incorporation, or in any amendment thereto.

“Bank” includes any bank which does not have the power to act as trustee, guardian, executor, administrator, or in other fiduciary capacities, incorporated under this act; or under the act, approved the thirteenth day of May, one thousand eight hundred and seventy-six (Pamphlet Laws, one hundred sixty-one), entitled “An act for the incorporation and regulation of banks of discount and deposit,” its amendments and supplements; or under any special act of the General Assembly of this Commonwealth.

“Bank and Trust Company” includes any bank and trust company incorporated under this act; or any bank incorporated under the act, approved the thirteenth day of May, one thousand eight hundred and seventy-six (Pamphlet Laws, one hundred sixty-one), entitled “An act for the incorporation and regulation of banks of discount and deposit,” its amendments and supplements, which has acquired the power to act as fiduciary under the act, approved the seventeenth day of July, one thousand nine hundred and nineteen (Pamphlet Laws, one thousand thirty-two), entitled “An act authorizing banking companies, incorporated and organized under the laws of the Commonwealth and having capital stock at least equal to the capital stock which trust companies are required by law to have, to act in any fiduciary capacity in which trust companies organized under the laws of the Commonwealth are empowered to act, and prescribing the method of acquiring such rights”; or any corporation organized “for insurance of owners of real estate, from loss by reason of defective titles, liens and encumbrances,” under the act approved the twenty-ninth day of April, one thousand eight hundred and seventy-four (Pamphlet Laws, seventy-three) its amendments and supplements, and which has acquired the power to engage in the business of banking and to act as fiduciary under the supplement to that act approved the ninth day of May, one thousand eight hundred and eighty-nine (Pamphlet Laws, one hundred fifty-nine); or a corporation, organized under any special act of the General Assembly of this Commonwealth, which has the power to engage in a banking business and to act as fiduciary.

“Banking,” means discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; receiving money and commercial paper on deposit or for transmission; lending money on real or personal security; buying and selling gold and silver bullion, foreign exchange, coin, or bills of exchange.

“Capital” means the sum of the par value of the *preferred and common* shares, issued and outstanding.

“Corporation” means a corporation or a joint stock association organized under the laws of this Commonwealth, of the United States, or of any other state, territory, foreign country, or dependency.

“Department” means the Department of Banking of this Commonwealth.

“Director” includes any individual who is a member of a board of directors, board of managers, or board of trustees of a bank, bank and trust company, or trust company.

“Incorporator” means a signer of the original articles of incorporation.

“Incorporated Institution” includes any bank, bank and trust company, savings bank, or trust company.

“Institution” includes any bank, bank and trust company, savings bank, trust company, or private bank.

“Net worth” means the total of all the assets of every kind employed in the business of a private bank, less the total of all the liabilities of every kind of such business.

“Person” means an individual, or an unincorporated association, including a partnership, a limited partnership, or any other form of unincorporated enterprise owned by two or more individuals.

“Private Bank” means a banking business, other than those specifically exempted by this act, owned and operated in this Commonwealth by an individual, a partnership, or any other unincorporated association; but this shall not include clubs and hotels which receive money from members and guests for temporary safekeeping, express, steamship, or telegraph companies which receive money for transmission, attorneys at law, real estate agents, fiscal agents, and attorneys in fact, who are not engaged in the business of receiving moneys in this Commonwealth for deposit or for transmission but receive and transmit moneys only as an incident to their general business or profession, and brokers licensed under the laws of this Commonwealth, holding membership in a lawfully constituted brokerage exchange, who do and have authority to do only such banking as is incidental to their brokerage business.

“Private Banker” means an individual, who, by himself, or as a member of a partnership or other unincorporated association, owns or operates a private bank.

“Recognized Stock Exchange” means the stock exchange of any city having a population of more than five hundred thousand, according to the latest official census.

“Savings Bank” includes any savings bank incorporated under this act; or under the act, approved the twentieth day of May, one thousand eight hundred and eighty-nine (Pamphlet Laws, two hundred forty-six), entitled “An act to provide for the incorporation and regulation of savings banks and institutions without capital stock, established for the encouragement of saving money”; or under any special act of the General Assembly of this Commonwealth.

“Shares” means the units into which the shareholders’ right to participate in the control of an incorporated institution, in its undivided profits, or in the distribution of its assets, are divided.

“Shareholder” means a registered owner of shares in an incorporated institution.

“Share Certificate” means a written instrument signed by the proper corporate officers as required by this act, and evidencing the fact that the corporation or person therein named is the registered owner of the shares therein described; it also includes the term “certificate of stock” as used in existing laws.

“Trust Company” includes any trust company incorporated under this act; or any corporation organized for insurance of owners of real estate, mortgages, and others interested in real estate, from loss by reason of defective titles, liens and encumbrances, under the act approved the twenty-ninth day of April, one thousand eight hundred and seventy-four (Pamphlet Laws, seventy-three), its amendments and supplements, and which has acquired the power to engage in the business of banking and acting as fiduciary under the supplement to the act approved the ninth day of May, one thousand eight hundred and eighty-nine (Pamphlet Laws, one hundred fifty-nine); or any other bank and trust company which renounces, or has renounced, its power to transact a banking business; or a corporation, organized under any special act of the General Assembly of this Commonwealth, which has the power to engage in the banking business and act as a fiduciary, but which renounces, or has renounced, its power to transact a banking business.

“Trustee” includes any individual who is a member of the board of managers or board of trustees of a savings bank.

“Written” includes printed, typewritten, engraved, lithographed, photographed, photostated, or telephotographed.

B. The singular shall be construed to include the plural. The masculine shall be construed to include the

feminine and the neuter, and conversely, the neuter shall be construed to include the masculine and the feminine.

Section 306. Approval of Articles by Department of Banking.—A. The Department of Banking shall, immediately upon the receipt of the articles from the Department of State, conduct such investigation as it may deem necessary to ascertain from the best sources of information at its command:

(1) Whether the name of the proposed incorporated institution is likely to mislead the public as to its character or purpose.

(2) Whether the convenience and advantage of the public will be served by the proposed incorporation and whether the density of the population in the neighborhood designated for the place of business of such proposed incorporated institution and in the surrounding country affords reasonable promise of adequate support for the enterprise.

(3) Whether the responsibility, character, and general fitness for the business of the incorporators, directors, and officers named in the articles are such as to command the confidence of the community and to warrant the belief that the business of the proposed incorporated institution will be honestly and efficiently conducted in accordance with the intent and purpose of this act.

(4) Whether any fee, commission, or compensation has been paid to any corporation or person for the promotion or organization of such incorporated institution, or whether any part of the money collected or to be collected from subscribers or shareholders has been, or is to be, applied to the payment of promoters' fees for obtaining subscriptions or selling shares, or for services in starting such incorporated institution, whether such fee, commission, or compensation is provided for by contract with the proposed incorporated institution or by contract with the subscribers to the shares.

(5) *Whether the amount of the authorized common capital, in relation to the amount of the authorized preferred capital, is adequate to the needs of the bank, bank and trust company, or trust company and to the convenience and safety of the public.*

B. Within thirty days after the receipt of the articles from the Department of State, the Department of Banking shall, upon the basis of the facts disclosed by the investigation provided for by this section, either approve or disapprove the articles. It shall immediately notify the Department of State in writing of its action. If it shall approve the articles, it shall endorse its approval thereon and shall return them to the Department of State.

C. If the Department of Banking disapproves the articles, it shall return them to the Department of State,

stating in detail its reasons for doing so. The Department of State shall immediately give notice to the proposed incorporators of the action of the Department of Banking, and of the reasons therefor as stated to it by that department. The decision of the Department of Banking shall be conclusive and not subject to any review.

Section 401. Minimum Capital of Banks, Bank and Trust Companies, and Trust Companies Incorporated Under This Act.—A. A bank shall not be incorporated under this act, unless it has a minimum capital, as follows:

(1) Fifty thousand dollars if its place of business is to be in a borough or a township, the population of which does not exceed [seven thousand] *six thousand*.

(2) One hundred thousand dollars if its place of business is to be in a city, borough, or township, the population of which exceeds [seven thousand] *six thousand* but does not exceed fifty thousand.

(3) Two hundred thousand dollars if its place of business is to be in a city, borough, or township, the population of which exceeds fifty thousand.

B. Neither a bank and trust company nor a trust company shall be incorporated under this act, and a bank shall not become a bank and trust company under this act, unless it has a minimum capital as follows:

(1) One hundred fifty thousand dollars if its place of business is, or is to be, in a borough or township, the population of which does not exceed [seven thousand] *six thousand*.

(2) Two hundred thousand dollars if its place of business is, or is to be, in a city, borough, or township, the population of which exceeds [seven thousand] *six thousand* but does not exceed fifty thousand.

(3) Three hundred thousand dollars if its place of business is, or is to be, in a city, borough, or township, the population of which exceeds fifty thousand.

C. For the purposes of this section the population of a city, borough, or township shall be taken to be that stated in the United States census last preceding the date of the filing of the articles of incorporation, or in the case of a bank which is about to become a bank and trust company, that stated in the United States Census last preceding the date when its articles of amendment are filed.

Section 402. Minimum Capital for Existing Banks, Bank and Trust Companies, or Trust Companies. [Required Method of Increase.—A. The capital of a bank, a bank and trust company, or a trust company, incorporated prior to the effective date of this act, shall not be less than the minimum capital required in the case of any bank, bank and trust company, or trust company, as the case may be, incorporated under this act, except

that no bank, bank and trust company, or trust company, incorporated prior to the effective date of this act, shall be required to maintain a capital of, or to increase its capital to, more than one hundred per centum above the minimum which was required by law for such bank, bank and trust company, or trust company prior to the effective date of this act.]

A bank, a bank and trust company, or a trust company, which, upon the effective date of this act, has a capital below that required [by this section] *by this act*, but not below that required by law prior to the effective date of this act, may continue to do business with such capital as it has. [but it shall forthwith proceed to increase such capital by one of the following methods.]

[(1) It may increase its capital out of surplus or otherwise, provided that, after such increase out of surplus, the bank, bank and trust company, or trust company has a capital equal at least to the minimum required by this act and a surplus equal to at least fifty per centum of such capital.]

[(2) It may increase its capital by the sale of additional common shares at a price equal at least to the par value of such shares plus fifty per centum thereof, provided that the assent of the directors and of the shareholders to such increase is procured in the manner prescribed by this act for any increase in capital.]

[(3) If such increase is not made by either of these methods within six months after the effective date of this act, the bank, bank and trust company, or trust company shall increase its capital to the minimum required by this act, in the following manner. It shall, at the close of each dividend period, or at least annually if no dividend is paid, credit to its surplus an amount equal to not less than one-half of its net earnings for such period, until the capital and the surplus together equal an amount not less than fifty per centum above the minimum capital required by this act, at which time a sufficient portion of the surplus shall be credited to capital to make the capital at least equal to the minimum required by this act and to leave a surplus of at least fifty per centum thereof. However, any bank, bank and trust company, or trust company, may increase its capital after six months from the effective date of this act by the other methods provided in this section.]

[B. Unless such increase is made by an actual sale of shares, a bank, a bank and trust company, or a trust company may increase its capital to the minimum required by this act without action of its shareholders. The cashier or treasurer, as the case may be, or any other officer to whom such duties are delegated by the by-laws, shall at the time such increase has actually been made pursuant to the provisions of this section, file articles of amendment with the Department of State,

and procure a certificate of amendment, in the manner provided by this act, except that such articles need not, unless the increase is made by an actual sale of shares, state that advertisement has been made, or notice given, or action taken by the shareholders.]

Section 407. Issuance of Shares; Shares of *Each Class* to Be Identical; Shares as Personal Property.—

A. Except in the case of its original capital, which, as provided in this act, shall be created, issued, and paid in full before a bank, a bank and trust company, or a trust company shall commence business, and except as otherwise provided in its articles or by-laws, the board of directors of a bank, a bank and trust company, or a trust company shall have the power, by resolution duly adopted, to issue from time to time, in whole or in part, the shares authorized in the articles, provided that no share shall be issued until paid for in full.

B. Every bank, bank and trust company, or trust company shall have power to issue one or more classes of shares, but each class so issued shall consist of shares having a par value, as required by this act. *Except as otherwise specifically provided in this act* [Every] every share shall have equal voting rights but in all other respects preferred shares may be issued with such designations, preferences, qualifications, privileges, limitations, options, conversion rights, [and] other special rights, *including such control over management, and shall be subject to retirement in such manner and upon such conditions* as shall be stated or authorized in the articles.

C. Shares of a bank, a bank and trust company, or a trust company shall be deemed personal property.

Section 408. Par Value of Shares; Change of Par Value.—A. The authorized capital of a bank, a bank and trust company, or a trust company shall be divided into shares of a par value of not less than [ten] *five* dollars each, nor more than one hundred dollars each. [but every] *Every* share shall have the same par value as every other share of the same class; *provided, however, that shares of different classes may have a par value of a different amount.* Any bank, bank and trust company, or trust company may, by amending its articles in the manner prescribed by this act, change the par value of its shares, but such change shall not be to an amount less than [ten] *five* dollars, nor more than one hundred dollars each. Such change of the par value of the shares shall not increase or diminish the total par value of the outstanding shares of such bank, bank and trust company, or trust company.

B. Whenever such change in par value is made, such bank, bank and trust company, or trust company shall, upon the surrender and cancellation of its outstanding shares, issue to each shareholder the proper number of

shares at the new par value. The bank, the bank and trust company, or the trust company may withhold any cash or share dividends due on a share certificate which has not been exchanged within six months after the date upon which the change in par value was effected, but upon the shareholder's thereafter exchanging such certificate, the bank, the bank and trust company, or the trust company shall pay to him any dividends which were thus withheld.

Section 411. Increase of Authorized Capital.—A. A bank, a bank and trust company, or a trust company may amend its articles to increase its authorized capital, in the same manner and with the same approval as is required by this act for any amendment to the articles of a bank, a bank and trust company, or a trust company, except that written notice of a proposed amendment for increasing the authorized capital of the institution shall be given to each shareholder entitled to vote thereon at least sixty days prior to such meeting, *and except that a proposed amendment, for increasing the authorized capital of the institution, shall be adopted by the holders of at least a majority in amount of the aggregate par value of the outstanding shares entitled to vote at such meeting, and by the holders of at least a majority in number of the outstanding shares entitled to vote at such meeting.*

Such increase of authorized capital shall, however, become invalid and inoperative unless the actual increase of capital, [or of preferred shares] which is authorized, shall be made within one year from the date of the issuance of the certificate of amendment. If any portion of such authorized capital shall be created and issued within such one-year period, only such portion as remains unissued within such period shall become invalid and inoperative. In the case of a bank, a bank and trust company, or a trust company, which, upon the effective date of this act, has an authorized capital which exceeds the par value of its outstanding shares, such one-year period shall date from the effective date of this act. Such actual increase may be made from time to time within such period of one year, but no such increase shall be made until the shares shall be paid for in full, pursuant to the provisions of this act as to the creation or issuance of any share. Such increase may, however, be made by the declaration of a share divided, in accordance with the provisions of this act concerning *such* share dividends.

B. Except as otherwise specifically provided in this act, a common share shall not be issued, pursuant to such increase, for a consideration of less than the par value of such share, plus fifty per centum thereof, unless a share can be issued for a consideration less than such amount without reducing the surplus of the bank, the

bank and trust company, or the trust company below one hundred per centum of the capital as increased, but in no case shall such share be created or issued for a consideration which is less than the par value thereof.

C. The bank, the bank and trust company, or the trust company may withhold any cash or share dividend due on a share certificate which has not been exchanged within six months after the date upon which the shares were issued pursuant to such increase, but upon the shareholder's thereafter exchanging such certificate the bank, the bank and trust company, or the trust company shall pay to him any dividends which were thus withheld.

Section 412. Decrease of Authorized Capital.—A. A bank, a bank and trust company, or a trust company may amend its articles to decrease its authorized capital, either by reducing the number of its shares of *any class or classes*, or by reducing the par value of [each share] *the shares of any class or classes; provided, however, every share shall have the same par value as every other share of the same class*, or by both such methods, in the same manner and with the same approval as is required by this act for any amendment to the articles of a bank, a bank and trust company, or a trust company, but the capital of a bank, a bank and trust company, or a trust company shall not be decreased to an amount below the minimum prescribed by this act for such bank, bank and trust company, or trust company.

B. The responsibility for the contracts, debts, or engagements of the bank, bank and trust company, or trust company to which its *common* shareholders are subject, upon the date when the certificate of amendment is issued, shall continue for one year thereafter.

C. Any capital gains, resulting from such decrease of the authorized capital of a bank, a bank and trust company, or a trust company, shall forthwith be transferred to the surplus of such bank, bank and trust company, or trust company, or it may, with the approval of the department, be returned to the shareholders in the form of a cash dividend, provided that the surplus of the institution, after the payment of such cash dividend, equals at least one hundred per centum of the resulting capital. *Nothing in this paragraph shall be construed to prohibit a bank, a bank and trust company, or a trust company from effecting a decrease in its authorized capital by the retirement of shares of any class, other than common shares, with the approval of the department; even though the surplus of the institution, after the retirement of such shares, does not equal at least one hundred per centum of the resulting capital.*

D. Upon effecting a decrease in its authorized capital, a bank, a bank and trust company, or a trust company shall issue to its shareholders new share certificates,

setting forth any changes in the par value of each share issued in exchange for the outstanding shares of such shareholders, which shall then be cancelled. The bank, the bank and trust company, or the trust company may withhold any cash or share dividend due on a share certificate, which has not been exchanged within six months after the date upon which the certificate of amendment, authorizing the decrease in authorized capital, was issued, but upon the shareholder's thereafter exchanging such certificate, the bank, the bank and trust company, or the trust company shall pay to him any dividends which were thus withheld.

E. Upon effecting a decrease in its authorized capital by the retirement of shares of any class, other than common shares, without a vote of its shareholders, pursuant to the provisions of its articles of incorporation, a bank, a bank and trust company, or a trust company shall, at the time of such decrease, file articles of amendment in the manner provided by this act, except that such articles need not state that advertisement has been made, or notice given, or action taken by the shareholders.

Section 413. Surplus for Banks, Bank and Trust Companies, or Trust Companies Incorporated Under This Act; Impairments Thereof.—A bank, a bank and trust company, or a trust company, incorporated under this act, shall maintain a surplus of at least one hundred per centum of its capital. Before it shall be granted a certificate of authorization to commence business such bank, bank and trust company, or trust company shall have a surplus equal to at least fifty per centum of its common capital, such surplus to be created out of payments for shares in excess of the par value thereof. If the surplus of such bank, bank and trust company, or trust company is not equal to at least one hundred per centum of its capital upon the date upon which it commences business, or if, at any subsequent time, its surplus becomes impaired below such one hundred per centum minimum, it shall, at the close of each dividend period, or at least annually if no dividend is paid, credit to its surplus an amount which shall be not less than [one-half] *one-tenth* of its net earnings for such period, until its surplus shall equal at least one hundred per centum of its capital.

Section 414. Surplus for Existing Banks, Bank and Trust Companies, or Trust Companies.—A bank, a bank and trust company, or a trust company, incorporated prior to the effective date of this act, shall maintain a surplus of at least one hundred per centum of its capital. If, upon the effective date of this act, [the capital of such bank, bank and trust company, or trust company is equal to the minimum requirement established by this act for such bank, bank and trust company, or trust company, or if its capital upon such date does not meet

such minimum requirement, then, when it has accumulated such capital in the manner provided by this act, such bank, bank and trust company, or trust company shall, if] its surplus is not equal to at least one hundred per centum of its capital, [increase its surplus as follows] it shall, at the close of each dividend period, or at least annually if no dividend is paid, credit to its surplus an amount which shall be not less than [one-half] *one-tenth* of its net earnings for such period, until its surplus shall equal at least one hundred per centum of its capital. If at any subsequent time the surplus of such bank, bank and trust company, or trust company shall become impaired to less than one hundred per centum of its capital, it shall forthwith proceed to accumulate surplus in the same manner.

Section 415. Expense Fund.—A bank, bank and trust company, or a trust company, incorporated under this act, shall not be granted a certificate of authorization to commence business until it shall have, as a reserve for expenses, a fund of at least five per centum of its common capital, *or such greater fund as the Secretary of Banking may decide to be necessary for the requirements of the institution, and the convenience and safety of the public.* Such expense fund shall be created out of payments for common shares in excess of their par value, plus at least fifty per centum thereof.

Such expense fund may be charged for the expenses incurred by a bank, a bank and trust company, or a trust company in its organization and operation. Any balance remaining in such expense fund may, at the expiration of not less than one year from the date of the issuance of such certificate of authorization, be credited to undivided profits.

Section 614. Liability of Shareholders.—*A. The holders of preferred shares of banks, bank and trust companies, or trust companies shall not be held individually responsible as such holders for any debts, contracts, or engagements of such banks, bank and trust companies, or trust companies, and shall not be liable for assessments to restore impairments in the capital of such banks, bank and trust companies.*

B. As to deposits in, and claims outstanding against, banks, bank and trust companies, or trust companies, upon the effective date of this act, the liability of common shareholders shall be as heretofore provided by law until terminated in accordance with the provisions of this section. As to any deposit made, or claim arising, after the effective date of this act, common shareholders now subject to statutory liability shall be liable to the extent of the percentage of the par value of their stock by which the unimpaired surplus of the bank, the bank and trust company, or the trust company falls short of one hundred per centum of its common capital. If, at

the effective date of this act, the *unimpaired* surplus of any such bank, bank and trust company, or trust company is, or at any time thereafter becomes, equal to the aggregate par value of its *common* capital, the liability of *common* shareholders for deposits and other claims against such bank, bank and trust company, or trust company shall cease and determine. Shareholders of banks, bank and trust companies, or trust companies, incorporated under this act, shall not be subject to any liability to the depositors or other creditors thereof.

Section 701. Declaration and Payment of Cash and Share Dividends.—A. Except as otherwise provided in this act, and subject to any restrictions contained in the articles of incorporation, any bank, any bank and trust company, or any trust company, by its board of directors, may declare and pay dividends upon its outstanding shares, out of its undivided profits, as hereinafter provided, from time to time and to such extent as the board of directors may deem advisable. A dividend shall not be declared or paid, unless, at the opening of business upon the day such dividend is declared, the capital, the surplus, and the reserve fund, required by this act, would despite such dividend be unimpaired. Dividends.

B. Such dividends may be paid to the shareholders in cash, or, if such increase of capital has been authorized in the manner provided by this act, it may be paid in shares of the bank, the bank and trust company, or the trust company. If the dividend is in the form of shares of the bank, the bank and trust company, or the trust company, it may, if properly authorized, be paid out of unimpaired surplus, provided that such surplus is not thereby reduced to an amount less than one hundred per centum of its capital, as increased by virtue of such share dividend. [but this provision shall not be construed to affect the power conferred by this act upon a bank, a bank and trust company or a trust company incorporated prior to the effective date of this act to credit to capital a sufficient portion of surplus to make the capital equal to the minimum required by this act and to leave a surplus of at least fifty per centum thereof.]

Section 2. This act shall become effective immediately upon final enactment. When effective.

APPROVED—The 24th day of April, A. D. 1935.

GEORGE H. EARLE