

different classes. Such interest shall be paid to the respective depositors, or credited to their accounts, at least annually, and in the case of certificates of deposit, interest shall be paid or accrued at least annually.

B. The trustees shall not declare or allow interest on any deposit for a longer period than it has been deposited with the savings bank, except that deposits made not later than the fifth business day of the month, or deposits withdrawn upon one of the last three business days of the month ending any annual, semi-annual, or quarterly interest period, may have interest declared upon them for the whole of the period or month in which they were so deposited or withdrawn. It shall also be lawful for deposit accounts closed between interest periods to be credited with interest, computed from the last interest period to the date when closed.

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

APPROVED—The 2d day of July, A. D. 1935.

GEORGE H. EARLE

No. 206

AN ACT

To amend paragraphs one, two, and three of clause (a) of section forty-one of the act, approved the seventh day of June, one thousand nine hundred and seventeen (Pamphlet Laws, four hundred forty-seven), entitled "An act relating to the administration and distribution of the estates of decedents and of minors, and of trust estates; including the appointment of executors, administrators, guardians, and trustees, herein designated as fiduciaries; the administration and distribution of the estates of presumed decedents; widow's and children's exemptions; debts of decedents, rents of real estate as assets for payment thereof, the lien thereof, sales and mortgages of real estate for the payment thereof, judgments and executions therefor, and the discharge of real estate from the lien thereof; contracts of decedents for the sale or purchase of real estate; legacies, including legacies charged on land; the discharge of residuary estates and of real estate from the lien of legacies and other charges; the appraisalment of real estate devised at a valuation; the ascertainment of the curtilage of dwelling houses or other buildings devised; the abatement and survival of actions, and the substitution of executors and administrators therein, and suits against fiduciaries; investments by fiduciaries; the organization of corporations to carry on the business of decedents; the audit and review of accounts of fiduciaries; refunding bonds; transcripts to the court of common pleas of balances due by fiduciaries; the rights, powers, and liabilities of nonresident and foreign fiduciaries; the appointment, bonds, rights, powers, duties, and liabilities of trustees *durante absentia*; the recording and registration of decrees, reports and other proceedings, and the fees therefor; appeals in certain cases; and also, generally dealing with the jurisdiction, powers, and procedure of the

orphans' court in all matters relating to fiduciaries concerned with the estates of decedents," as amended, by further providing with respect to investments of trust funds by fiduciaries.

Paragraph 1,
clause a, of
section 41, act
of June 7, 1917
(P. L. 447),
as last amended
by act of
April 26, 1929
(P. L. 817),
further amended.

Section 1. Be it enacted, &c., That paragraph one of clause (a) of section forty-one of the act, approved the seventh day of June, one thousand nine hundred and seventeen (Pamphlet Laws, four hundred forty-seven), entitled "An act relating to the administration and distribution of the estates of decedents and of minors and of trust estates, including the appointment, bonds, rights, powers, duties, liabilities, accounts, discharge and removal of executors, administrators, guardians and trustees, herein designated as fiduciaries; the administration and distribution of the estates of presumed decedents; widow's and children's exemptions; debts of decedents, rents of real estate as assets for payment thereof, the lien thereof, sales and mortgages of real estate for the payment thereof, judgments and executions therefor, and the discharge of real estate from the lien thereof; contracts of decedents for the sale or purchase of real estate; legacies, including legacies charged on land; the discharge of residuary estates and of real estate from the lien of legacies and other charges; the appraisal of real estate devised at a valuation; the ascertainment of the curtilage of dwelling houses or other buildings devised; the abatement and survival of actions, and the substitution of executors and administrators therein and suits against fiduciaries; investments by fiduciaries; the organization of corporations to carry on the business of decedents; the audit and review of accounts of fiduciaries; refunding bonds; transcripts to the court of common pleas of balances due by fiduciaries; the rights, powers, and liabilities of nonresident and foreign fiduciaries; the appointment, bonds, rights, powers, duties, and liabilities of trustees *durante absentia*; the recording and registration of decrees, reports, and other proceedings, and the fees therefor; appeals in certain cases; and also, generally dealing with the jurisdiction, powers, and procedure of the orphans' court in all matters relating to fiduciaries concerned with the estates of decedents," as last amended by the act, approved the twenty-sixth day of April, one thousand nine hundred and twenty-nine (Pamphlet Laws, eight hundred seventeen), is hereby further amended to read as follows:

Section 41. (a) 1. *Legal Investments for Fiduciaries*.—[When a fiduciary shall have in his hands any moneys, the principal or capital whereof is to remain for a time in his possession or under his control, and the interest, profits, or income whereof are to be paid away, or to accumulate, or when the income of real estate shall be more than sufficient for the purpose of the trust, such fiduciary may invest such moneys in the stock or public debt of the United States, or in the

public debt of this Commonwealth, or in bonds or certificates of debt constituting the direct and general obligation of any of the counties, cities, boroughs, townships, school districts or poor districts of this Commonwealth; or in first mortgages on real estate in this Commonwealth, securing bonds or other obligations not exceeding in amount two-thirds of the fair value of such real estate; or in ground rents in this Commonwealth; or in bonds, payable not more than twenty years after date, of one or more individuals, secured by a deed or deeds of unencumbered real estate in this Commonwealth conveyed to a corporation organized under the laws of this Commonwealth and authorized to act as trustee, in trust for the benefit of all such bondholders, but the total amount of any such bond issue shall not exceed two-thirds of the fair value of the real estate securing it, and the trustee shall not be exempted, by contract or otherwise, from responsibility for performing the ordinary duties of trustees; or in trust certificates, issued by a trust company organized under the laws of this Commonwealth, certifying that the holders thereof are respectively the owners of undivided interests in deposits, with such trust company, of securities in which trust funds may be invested under the preceding provisions of this clause: Provided, That nothing herein contained shall authorize any fiduciary to make any investment contrary to the directions contained in the will of the decedent in regard to the investment of such moneys.

It shall be the duty of any trustee of any property, securing any investment which may be made hereunder, at any time upon demand, to disclose to any bondholder, or certificate holder, and to the representative of any public agency authorized by law to examine the affairs of the trustee, any information which may be requested regarding any of the trust property in its possession.

Within the meaning of this clause, the "fair value" of real estate shall be the value placed thereon, in writing, by a reputable person, who shall be especially familiar with real estate values, shall have actually inspected the real estate before making his valuation, and shall certify that his valuation was made after inspection of the premises.]

Subject to the conditions herein contained a fiduciary holding moneys to be invested may invest such moneys in:

Subsection (1). United States Obligations.—Bonds or obligations, either bearing interest or sold on a discount basis, of the United States, or the United States Treasury, or those for the payment of the principal and interest on which the faith and credit of the United States is pledged, including such bonds or obligations of the District of Columbia.

Subsection (2). Pennsylvania Obligations.—Bonds, or other interest-bearing obligations of the Commonwealth of Pennsylvania, or those for the payment of the principal and interest on which the faith and credit of the Commonwealth is pledged.

Subsection (3). Local Government Obligations.—Bonds or other interest-bearing obligations of any county, city, borough, township, school district, or poor district of the Commonwealth of Pennsylvania, or those for the payment of the principal and interest on which the faith and credit of such political subdivision is pledged: Provided, That, at the date of the investment in such bonds or other interest-bearing obligations, such political subdivision is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness.

Subsection (4). Mortgages.—Mortgages of one or more individuals or corporations, securing bonds or other obligations, subject to the following provisions:

(a) At the date of the recording of any such mortgage in the office of the recorder of deeds of the proper county, or at the date of any extension or renewal thereof, such mortgage shall meet the following requirements:

(1) Such mortgage shall be or become a first lien upon improved real estate, including improved farm lands, situated within this Commonwealth, prior to all other liens, except taxes previously levied or assessed but not then payable, and except taxes then due and payable, or delinquent, for the payment of which taxes provision has been made in the mortgage settlement;

(2) The face amount of the bonds, or other obligations secured by such mortgage, shall not exceed two-thirds of the fair value of such real estate;

(3) Such mortgage shall be payable not more than five years after the date thereof, or the date of any renewal or extension thereof; or it shall be amortized, in installments totalling in each year not less than three per centum per annum, of the face amount of the bonds or other obligations secured thereby, over a period not exceeding twenty years from the date thereof, or the date of any renewal or extension thereof.

(b) At the date of the investment therein by any fiduciary, any such mortgage shall also meet the following requirements:

(1) All interest previously due thereon, if any, shall have been paid in full to the next preceding interest payment date, as therein provided;

(2) No taxes levied or assessed upon the property covered thereby, upon which any penalty has accrued shall then remain unpaid, unless provision for the payment thereof is made at the mortgage settlement;

(3) *The face amount of the bonds or other obligations secured by such mortgage shall not exceed two-thirds of the fair value of the mortgaged property.*

Subsection (5). Ground Rents.—Ground rents secured upon unencumbered improved real estate, situated within this Commonwealth: Provided, That the annual rent, reserved in any such ground rent, capitalized at the rate of five per centum shall not exceed two-thirds of the fair value of the real estate out of which it issues.

Subsection (6). Real Estate Bonds.—Bonds of one or more individuals or corporations, secured by improved real estate, situated within this Commonwealth, not including real estate used as a theatre or for manufacturing purposes, conveyed by mortgage or deed of trust to a corporation organized under the laws of the United States or of this Commonwealth and authorized to act as trustee for all such bondholders, which mortgage or deed of trust shall be a first lien upon the real estate so conveyed. Such bonds shall be payable not more than twenty years after the date thereof, and the mortgage or deed of trust securing them, shall contain a provision for the annual reduction of the principal amount of the bonds secured thereby, in an amount equal to at least two per centum of the maximum amount of the bonds outstanding at any time prior to the date of the investment by the fiduciary, plus an amount equal to the interest on all bonds previously retired by such annual reductions.

The total amount of any such bond issue shall not exceed two-thirds of the fair value of the real estate securing such bonds, and, at the date of such investment, there shall not be any default in the payment of any matured principal or interest on such bonds, or in any annual reduction of the principal amount of such bonds, as provided in the mortgage or deed of trust securing such bonds.

If the date of the investment is subsequent to the original date of the mortgage securing the bonds or to the date of any renewal or extension thereof, such investment being made by purchase, assignment, or otherwise, no new appraisement shall be necessary to fix the fair value of the mortgaged property at the date of the investment in such mortgage bonds by such fiduciary: Provided, That such an appraisal, as is provided herein, has been made within three years from the date of such investment, and a reputable person familiar with real estate values in the vicinity of the mortgaged property and also familiar with such previous appraisement shall certify in writing that, at the date of such investment, the face amount of the bonds secured by such mortgage does not exceed two-thirds of the fair value of the mortgaged property. Any such certificate shall be filed and preserved among the records of the fiduciary.

Subsection (7). Fractional Interests.—Fractional undivided interests in any investment in which a fiduciary is authorized by this section to invest trust funds or in a pool or fund of such investments established and being maintained by any trust company or bank and trust company in its trust department as may be provided by law, such fractional interests being apportioned among estates of which the person or corporation creating such fractional undivided interests is the fiduciary.

In the case of an investment in a fractional interest in a mortgage or in a pool or fund containing mortgages, if the date of such investment is subsequent to the original date of such mortgage, or of any mortgage contained in any such pool or fund, or to the date of any renewal or extension of such mortgage, or of any mortgage contained in any such pool or fund, such investment being made by purchase, assignment, or otherwise, no new appraisal shall be necessary to fix the fair value, at the date of such investment, of the real estate subject to such mortgage or to any mortgage contained in any such pool or fund: Provided, That such an appraisal, as is provided herein, has been made within three years from the date of such investment, and a reputable person, familiar with real estate values in the vicinity of such property and also familiar with such previous appraisal, shall certify in writing that, at the date of such investment, the face amount of the bonds or other obligations secured by such mortgage does not exceed two-thirds of the fair value of such property. Any such certificate shall be filed and preserved among the records of the fiduciary.

Subsection (8). Railroad Obligations.—Railroad obligations, subject to the following provisions:

(a) As used in this subsection, the words "qualified railroad corporation" shall mean a railroad corporation other than a street railroad corporation which, at the date of the investment by the fiduciary, meets the following requirements:

(1) It shall be a railroad corporation, incorporated under the laws of the United States, or of any state, or Commonwealth thereof, or of the District of Columbia;

(2) It shall own or operate, within the United States, not less than five hundred miles of standard-gauge railroad line, exclusive of sidings;

(3) Its railroad operating revenues, derived from the operation of all railroad lines operated by it, including leased lines and lines owned or leased by a subsidiary corporation, all of the voting stock of which, except directors' qualifying shares, is owned by it, for its fiscal year next preceding the date of the investment, shall have been not less than fifteen million dollars;

(4) *The sum of the total amount of its outstanding fully paid capital stock, plus the total amount of its outstanding obligations not containing an unconditional promise to pay interest thereon, shall, at the close of its fiscal year preceding the date of the investment by the fiduciary, or, if there has been a public offering of securities since the close of its last fiscal year, then after the necessary adjustments have been made therefor, be not less than one-half of the total amount of its obligations containing an unconditional promise to pay interest thereon;*

(5) *At no time during its fiscal year in which the investment is made, and its five fiscal years immediately prior thereto, shall it have been in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness;*

(6) *In its fiscal year immediately preceding the date of the investment, and in three of its four fiscal years immediately preceding such date, its income available for its fixed charges, as hereinafter defined, shall have been at least equal to its fixed charges for any of such fiscal years ending during the period from December thirty-first, one thousand nine hundred and thirty, to December thirty-first, one thousand nine hundred and thirty-five, inclusive, and shall have been not less than one and one-half times its fixed charges for any such fiscal year ending after December thirty-first, one thousand nine hundred and thirty-five.*

(b) *As used in this subsection, the words "railroad obligations" shall include and mean obligations which meet the following requirements:*

(1) *The obligations shall be—*

(A) *Obligations issued, or assumed, by a qualified railroad corporation, or guaranteed as to principal and interest by endorsement by a qualified railroad corporation, or guaranteed as to principal and interest by endorsement by any railroad corporation, which guarantee has been assumed by a qualified railroad corporation; or*

(B) *Obligations for the payment of the interest on which a qualified railroad corporation is obligated under the terms of a lease made, or assumed by it, and which lease extends for a period of not less than twenty years beyond the maturity of all of such obligations; or*

(C) *Equipment trust obligations in respect of which liability has been incurred by a qualified railroad corporation.*

(2) *Such obligations shall also be—*

(A) *Bonds containing an unconditional promise to pay interest thereon, secured by a mortgage, which shall be a first lien, on not less than two-thirds of the total length of the railroad lines covered by its lien, a part of which two-thirds shall constitute a part of a through route between two or more municipal corporations, each*

of at least forty thousand inhabitants as determined by the preceding United States Census. The railroad lines covered by the mortgage shall be either subject to a mortgage inferior in lien to such mortgage, or, in the case of leased railroad lines, if there is no such inferior lien, then the lease shall provide for a rental in an amount sufficient to enable the lessor to pay dividends upon at least one class of its capital stock; or

(B) Bonds secured by a first mortgage upon terminal, depot or tunnel property, including land, buildings and appurtenances used in the service of transportation by one or more qualified railroad corporations; or

(C) Equipment trust obligations comprising bonds, notes, or certificates issued in connection with the purchase for use on railroads of new standard-gauge rolling stock through the medium of an equipment trust agreement, and which obligations, so long as any thereof shall be outstanding and unpaid or unprovided for shall be secured either by an instrument—(1) vesting title to such equipment, free of encumbrance in a trustee; or (2) creating a first lien on such equipment; or (3) pending such vesting of title, or the attachment of such lien, providing for the deposit of cash in trust to an amount equal to the face amount of such obligations issued in respect of such equipment, title to which is not yet so vested or subject to such lien. The maximum amount of such obligations so issuable shall not exceed seventy-five per centum of the cost of such equipment, and the owner, purchaser or lessee, or the owners, purchasers, or lessees, of such equipment shall be obligated by the terms of such obligations or of such instrument—(1) to maintain such equipment in proper repair; (2) to replace any thereof that may be destroyed or released with other equipment of equal value, or, if released in connection with a sale thereof, to deposit the proceeds of such sale in trust for the benefit of the holders of such obligations pending replacement of such equipment; (3) to pay any and all taxes or other governmental charges that may be required by law to be paid upon such equipment; (4) to pay, in accordance with the provisions of such obligations, or of such instrument, to holders, or to such trustee for the benefit of holders of such obligations the amount of interest due thereon, or of the dividends payable in respect thereof; (5) to pay the amount of the entire issue of such obligations, within a period of not exceeding fifteen years from the first date of issue of any thereof, in approximately equal annual or semi-annual installments beginning not later than three years after such date of issue; or

(D) Bonds of a qualified railroad corporation secured by an irrevocable pledge as collateral under a trust agreement of other railroad obligations meeting the requirements hereinbefore set forth in this subsec-

tion. The total face amount of such pledged railroad obligations shall be not less than the total face amount of the bonds which they secure and the annual interest, derived from such pledged railroad obligations and available for the payment of the interest upon the bonds which they secure, shall be not less than the interest due upon the bonds which they secure.

(c) For the purposes of this subsection—

(1) The amount of income available for fixed charges shall be the amount obtained by deducting from gross income all items deductible in ascertaining net income other than contingent income interest and those constituting fixed charges. Fixed charges shall be—rent for leased roads, miscellaneous rents, funded debt interest which the corporation has unconditionally promised to pay, interest on unfunded debt and amortization of discount on funded debt.

(2) Other accounting terms shall be deemed to refer to those used in the accounting reports of common carriers as prescribed by the accounting regulations of the Interstate Commerce Commission.

(3) The revenues, earnings, income and fixed charges of any railroad corporation all or substantially all of the railroad lines of which shall have been acquired, through merger, consolidation, conveyance or lease, by another railroad corporation and shall remain in its possession shall be deemed to be revenues, earnings, income and fixed charges of the latter corporation.

Subsection (9). *Obligations of Gas, Water, and Electrical Companies.*—The following obligations of public utility corporations, incorporated under the laws of the United States, or any state or commonwealth thereof, or of the District of Columbia, which transact the business of supplying water, electrical energy, artificial gas, or natural gas purchased from any individual, partnership, unincorporated association, or other corporation and supplied in substitution for, or in mixture with, artificial gas, for light, heat, power, and other purposes, or which transacts any two or all of such businesses, provided at least seventy-five per centum of the gross operating revenues of such corporation shall be derived from such business or businesses, and not more than fifteen per centum of its gross operating revenues shall be derived from any other one kind of business, and which corporation shall be subject to regulation by a public service commission, a public utility commission, or any other similar regulatory body duly established by the laws of the United States, or of any state or commonwealth, or of the District of Columbia, in which such corporation operates:

(a) Bonds of any such corporation, subject to the following conditions:

(1) Such corporation shall have all the franchises necessary to operate in the territory in which at least seventy-five per centum of its gross revenues are obtained, which franchises shall either be indeterminate permits of, or agreements with, or subject to the jurisdiction of, a public service commission or other duly constituted regulatory body, or shall extend at least five years beyond the maturity of such bonds; provided such corporation shall file with the public service commissions or other similar regulatory bodies having jurisdiction over it, and make public, in each year, a statement and a report giving the income account covering the previous fiscal year, and a balance sheet showing in reasonable detail the assets and liabilities at the end of the year.

(2) The sum of the total amount of the outstanding full-paid capital stock of such corporation, plus the total amount of its outstanding obligations not containing an unconditional promise to pay interest thereon, shall, at the close of its fiscal year preceding the investment by the fiduciary, or, if there has been a public offering of securities since the close of its last fiscal year, then, after the necessary adjustments have been made therefor, be not less than two-thirds of the total amount of its obligations containing an unconditional promise to pay interest thereon.

(3) Such corporation shall have been in existence for a period of not less than eight fiscal years, and at no time, within the period of eight fiscal years immediately preceding the date of such investment, shall such corporation have failed to pay punctually and regularly the matured principal and interest of all its indebtedness, direct, assumed or guaranteed, but the period of life of the corporation, together with the period of life of any predecessor corporation, or corporations from which a major portion of its property was acquired by consolidation, merger, or purchase, shall be considered together in determining such required period.

(4) For a period of five fiscal years immediately preceding such investment, the net earnings of such corporation shall have averaged per year not less than twice the average annual interest charges on its outstanding obligations containing an unconditional promise to pay the interest thereon, applicable to that period, and for the last fiscal year preceding such investment, such net earnings shall have been not less than twice such interest charges for that year: Provided, That if there has been a public offering of securities since the close of the last fiscal year, then the net earnings for such last fiscal year shall have been twice such interest charges for a full year on its debt outstanding immediately after the issue of said securities adjusted for any securities to be retired with the proceeds of the new

financing, and for such five year period, the gross operating revenues of any such corporation shall have averaged per year not less than one million dollars. In calculating average interest charges, there shall be deducted interest charges on all debt which, at the time of such investment, shall have been paid off otherwise than by the creation of additional debt.

(5) In determining the qualifications of any bond under this subsection, where a corporation shall have acquired its property, or any substantial part thereof, within the five years immediately preceding the date of such investment by consolidation or by merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, the gross operating revenues, net earnings, and interest charges of the several predecessor or constituent corporations shall be consolidated and adjusted, so as to ascertain whether the requirements of the preceding paragraph have been complied with.

(6). The gross operating revenues and expenses of a corporation, for the purpose of this subsection shall be, respectively, the total amount earned from the operation of, and the total expense of maintaining and operating, all property owned and operated by, or leased and operated by, such corporation, as determined by the system of accounts prescribed by the public service commission or public utility commission, or other similar regulatory body having jurisdiction in the matter. The gross operating revenues and expenses, as defined above, of subsidiary companies may be included: Provided, That all the mortgage bonds, and a controlling interest in shares of such subsidiary companies, are pledged as part of the security for the mortgage debt of the principal company.

The net earnings of any corporation, for the purpose of this subsection, shall be the balance obtained by deducting, from its gross operating revenues, its operating and maintenance expenses, taxes, (other than Federal and State income taxes), rentals, and provisions for depreciation, renewals and retirements of the physical assets of the corporation, and by adding to such balance its income from securities and miscellaneous sources, but not, however, exceeding fifteen per centum of such balance: Provided, That if the annual allowance of such corporation for depreciation, maintenance, renewals and retirements is less than the sum of one per centum of gross book value of its properties used in supplying water, and two per centum of such value of all other property, such annual allowance shall be increased to the sum of said percentages, in determining net earnings.

(7). Such bonds must be part of an issue of not less than one million dollars, or of an issue of which a total of not less than one million dollars shall at some time

have been outstanding in one or more series, and must be mortgage bonds secured by a first or refunding mortgage upon property owned and operated by the corporation issuing or assuming them, or must be underlying mortgage bonds secured by property owned and operated by the corporations issuing or assuming them: Provided, That a mortgage junior to such underlying mortgage bonds provides for their refunding or retirement. The bonds under such junior mortgage shall comply with the requirements of this section, and such underlying mortgage shall be either a closed mortgage or shall remain open solely for the issuance of additional bonds which are to be pledged under such junior mortgage. As of the close of the fiscal year of such corporation preceding the date of the investment by the fiduciary, or, if there has been a public offering of securities since the close of its last fiscal year, then after the necessary adjustments have been made therefor, the aggregate principal amount of bonds secured by such first or refunding mortgage, plus the principal amount of all the underlying outstanding bonds, shall not exceed sixty per centum of the value of the physical property owned, which shall be book value less such reserves for depreciation or retirement, as the company may have established, and subject to the lien of such mortgage or mortgages securing the total mortgage debt. However, if such mortgage is a refunding mortgage, it must provide for the retirement on or before the date of their maturity of all bonds secured by prior liens on the property.

(b) Bonds of any such corporation, secured by an irrevocable pledge as collateral under a trust agreement, of other bonds which meet the requirements of this subsection, provided the total face amount of the bonds so pledged shall not be less than the total face amount of the bonds secured thereby, and the annual net income derived from the bonds so pledged shall not be less than the annual interest requirements of the bonds secured thereby.

Subsection (10). *Obligations of Telephone Companies.*—The following obligations of any corporation incorporated under the laws of the United States, or of any state or commonwealth thereof, or of the District of Columbia, which transacts the business of supplying telephone service in the United States, provided such corporation is subject to regulation by the Federal Communications Commission, a public service commission, a public utility commission, or any similar regulatory body, duly established by the laws of the United States or of any state or commonwealth thereof, or of the District of Columbia, in which such corporation operates.

(a) Bonds of any such corporation subject to the following conditions:

(1) Such corporation shall have been in existence for a period of not less than eight fiscal years, and at no time, within the period of eight fiscal years immediately preceding the date of such investment, shall such corporation have failed to pay punctually and regularly the matured principal and interest of all its indebtedness, direct, assumed, or guaranteed, but the period of life of the corporation together with the period of life of any predecessor corporation or corporations from which a major portion of its property was acquired by consolidation, merger, or purchase, shall be considered together in determining the required period: Provided, Such corporation shall file with the Federal Communications Commission, or a public service commission, or similar regulatory body having jurisdiction over it, and make public in each year, a statement and a report giving the income account covering the previous fiscal year, and a balance sheet showing in reasonable detail the assets and liabilities at the end of the year.

(2) The sum of the total amount of the outstanding full-paid capital stock of such corporation, plus the amount of its outstanding obligations not containing an unconditional promise to pay the interest thereon, shall, at the close of the fiscal year preceding the investment by the fiduciary, or, if there has been a public offering of securities since the close of its last fiscal year, then after the necessary adjustments have been made therefor, be not less than two-thirds of the total amount of its obligations containing an unconditional promise to pay the interest thereon.

(3) For a period of five fiscal years immediately preceding such investment, the net earnings of such corporation shall have averaged per year not less than twice the average annual interest charges on its outstanding obligations containing an unconditional promise to pay the interest thereon, applicable to that period, and for the last fiscal year preceding such investment, such net earnings shall have been not less than twice such interest charges for that year: Provided, That if there has been a public offering of securities since the close of the last fiscal year, then the net earnings for such last fiscal year shall have been twice such interest charges for a full year on its debt outstanding immediately after the issue of said securities, adjusted for any securities to be retired with the proceeds of the new financing, and for such five year period, the gross operating revenues of any such corporation derived from telephone service shall have averaged per year not less than five million dollars. In calculating average interest charges, there shall be deducted interest charges on all debt which, at the time of such investment, shall have been paid off otherwise than by the creation of additional debt.

(4) Such bonds must be part of an issue of not less than five million dollars or of an issue of which a total of not less than five million dollars shall at some time have been outstanding in one or more series, and must be mortgage bonds secured by a first or refunding mortgage upon property owned and operated by the corporation issuing or assuming them, or must be underlying mortgage bonds secured by property owned and operated by the corporations issuing or assuming them: Provided, That a mortgage junior to such underlying mortgage bonds provides for their refunding or retirement. The bonds under such junior mortgage shall comply with the requirements of this section, and such underlying mortgage shall be either a closed mortgage or shall remain open solely for the issuance of additional bonds which are to be pledged under such junior mortgage. As of the close of the fiscal year of such corporation preceding the date of the investment by the fiduciary, or, if there has been a public offering of securities since the close of its last fiscal year, then after the necessary adjustments have been made therefor, the aggregate principal amount of bonds secured by such first or refunding mortgage, plus the principal amount of all the underlying outstanding bonds, shall not exceed sixty per centum of the value of the real estate and tangible personal property owned absolutely, which value shall be book value less such reserves for depreciation or retirement as the company may have established, and subject to the lien of such mortgage, or mortgages securing the total mortgage debt. However, if such mortgage is a refunding mortgage, it must provide for the retirement, on or before the date of their maturity, of all bonds secured by prior liens on the property.

(5) In determining the qualifications of any bond under this subsection, where a corporation shall have acquired its property, or any substantial part thereof, within five years immediately preceding the date of such investment by consolidation, merger, or the purchase of all or a substantial portion of the property of any other corporation or corporations, the gross operating revenues, net earnings, and interest charges of the several predecessors or constituent corporations shall be consolidated and adjusted, so as to ascertain whether the requirements of this subsection have been complied with.

(6) The gross operating revenues and expenses of a corporation, for the purpose of this subsection, shall be, respectively, the total amount earned from the operation of and the total expense of maintaining and operating all property owned and operated by, or leased and operated by, such corporation, as determined by the system of accounts prescribed by the Federal Communications Commission, or the public service commission or

the public utility commission, or any other similar Federal or State regulatory body having jurisdiction in the matter.

(7) *The net earnings of any corporation for the purpose of this subsection, shall be the balance obtained by deducting from its gross operating revenues its operating and maintenance expenses, provision for depreciation of the physical assets of the corporation, taxes (other than Federal and State income taxes), rentals and miscellaneous charges, and by adding to such balance its income from securities and miscellaneous sources, but not, however, to exceed fifteen per centum of such balance: Provided, That if the annual allowance of such corporation for depreciation and maintenance is less than six per centum of the gross book value of its tangible properties used in the business of supplying telephone service, such annual allowance shall be increased to said percentage, in determining net earnings.*

(b) *Bonds of any such corporation, secured by an irrevocable pledge as collateral under a trust agreement of other bonds which meet the requirements of this subsection, provided, the total face amount of the bonds so pledged shall not be less than the total face amount of the bonds secured thereby, and the annual net income derived from the bonds so pledged shall not be less than the annual interest requirements of the bonds secured thereby.*

Subsection (11). Mortgages Insured by Federal Housing Administrator.—Mortgages of one or more individuals or corporations securing bonds or other obligations insured by the Federal Housing Administrator prior to the first day of July, one thousand nine hundred and thirty-seven, pursuant to the provisions of Title two of the National Housing Act, approved the twenty-seventh day of June, one thousand nine hundred and thirty-four.

Subsection (12). Debentures Issued by the Federal Housing Administrator and Guaranteed by the United States.—Debentures issued by the Federal Housing Administrator and fully guaranteed as to principal and interest by the United States, pursuant to the provisions of Title two of the National Housing Act, approved the twenty-seventh day of June, one thousand nine hundred and thirty-four, and either purchased by the fiduciary as an investment or accepted by the fiduciary in payment of any mortgage insured by the Federal Housing Administrator in which the fiduciary may theretofore have invested monies in its hands to be invested.

Subsection (13). General Provisions.—

(a) *Nothing contained in this section shall be construed to relieve any fiduciary from the duty of exercising due care and prudence in the performance of the duties of his office.*

(b) *Nothing contained in this section shall be construed to authorize any fiduciary to make any investment contrary to the directions in regard to investments contained in the will, deed, or other instrument creating the trust in his care, nor to limit or restrict the authority conferred upon any such fiduciary with respect to investments by any such instrument.*

(c) *No fiduciary shall be liable for any loss incurred with respect to any investment not legal for the investment of trust funds, as provided in this section, when such nonlegal investment was received by such fiduciary pursuant to the terms of the will, deed, decree of court, or other instrument, or, if such nonlegal investment was legal when received, or when the investment was made by the fiduciary; provided such fiduciary exercises due care and prudence in the disposition or retention of any such nonlegal investment.*

(d) *Within the meaning of this section, the term "fair value" of real estate shall be the value placed thereon in a written appraisal by two reputable persons, familiar with real estate value in the vicinity of such real estate, who shall actually have inspected the property before making the appraisal and shall so certify therein. Any such appraisal shall be filed and preserved among the records of the fiduciary.*

Paragraphs
2 and 3 of
clause a. section
41, amended.

Section 2. That paragraphs two and three of clause (a) of section forty-one of said act are hereby amended to read as follows:

2. [When a fiduciary shall have in his hands any monies, as aforesaid, he] *Investments Under Authority of Court.—A fiduciary holding monies to be invested as aforesaid may present a petition to the orphans' court having jurisdiction of his accounts, stating the circumstances of the case and the amount or sum of money which he is desirous of investing; whereupon it shall be lawful for the court, upon due proof, aided if necessary by the report of a master, to make an order directing the investment of such moneys in real estate in this Commonwealth other than ground rents, or in the bonds or certificates of debt now created or hereafter to be created and issued according to law by any other state of the United States, or by any of the counties or cities of such other state, at such prices, or on such rates of interest and terms of payment, respectively, as the court shall think fit: Provided, That no such investment shall be directed unless it shall be the opinion of the court that it will be for the advantage of the estate, and no change be made in the course of succession by such investment as regards the heirs or next of kin of the cestui que trust: And provided further, That nothing herein contained shall authorize the court to make an order contrary to the directions contained in any will in regard to the investment of such moneys.*

3. *Fiduciaries Exempted from Liability for Loss.*—In case the said moneys shall be invested as set forth in paragraph one of *clause (a)* of this [clause] *section*, or conformably to the directions of the court, under paragraph two of *clause (a)* of this [clause] *section*, the said fiduciary shall be exempted from all liability for loss on the same, in like manner as if such investments had been made in pursuance of directions in the will creating the trust, it being hereby declared that the investments mentioned in this section are legal investments of moneys by fiduciaries: *Provided, however, That if any such investment shall cease to be a legal investment, it shall be the duty of such fiduciary to exercise due care and prudence in the ascertainment of such fact, and in the disposition or retention of any such investment thereafter.*

Section 3. This act shall become effective immediately upon final enactment.

APPROVED—The 2d day of July, A. D. 1935.

GEORGE H. EARLE

No. 207

AN ACT

To amend sections 1 and 2 as amended, sections 70 and 71, to repeal section 69 of, and to add sections 1.1, 1.2, 1.3, 1.4, 1.5, 2.1, 2.2, 2.3, 2.4, 2.5, 70.1, 70.2, 70.3, and 73 to, the act, approved the seventh day of June, one thousand nine hundred and eleven (Pamphlet Laws, six hundred eighty), entitled "An act providing for the examination, licensure, and registration of persons, firms, or corporations engaged or engaging in the business or work of plumbing or house drainage, and prescribing certain rules, regulations, and requirements for the construction of plumbing, house drainage, and cesspools in cities of the first class, and imposing fines, penalties, and forfeitures for violation thereof," further regulating the business and work of plumbing and house drainage in such cities, and the examination, licensure, and registration of those engaged in such business or work, creating the "Board of Plumbing Supervision of the Department of Health" therein, and giving them certain powers and duties relative thereto.

Section 1. Be it enacted, &c., That section 1 of the act, approved the seventh day of June, one thousand nine hundred and eleven (Pamphlet Laws, six hundred eighty), entitled "An act providing for the examination, licensure, and registration of persons, firms, or corporations engaged or engaging in the business or work of plumbing or house drainage, and prescribing certain rules, regulations, and requirements for the construction of plumbing, house drainage, and cesspools in cities of the first class, and imposing fines, penalties, and forfeitures for violation thereof," as amended by section

Section 1, act of June 7, 1911 (P. L. 680), as amended by section 1, act of May 7, 1931 (P. L. 101), further amended.