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HISTORY OF GUARANTY OF BANK DEPOSITS

IN THE STATES OF OKLAHOMA, TEXAS, KANSAS NEBRASKA, AND SOUTH DAKOTA 1908-1914

BY

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PRESENTED BY MR. HITCHCOCK
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HISTORY OF GUARANTY OF BANK DEPOSITS IN THE STATES OF OKLAHOMA, TEXAS, KANSAS, NEBRASKA, AND SOUTH DAKOTA, 1908–1914.

To the Senate Subcommittee on Guaranty of Bank Deposits, Gilbert M. Hitchcock, chairman; James A. Reed and Joseph L. Bristow, associates:

At your request I herewith present a brief history of the Guaranty of Bank Deposits in the States of Oklahoma, Texas, Kansas, Nebraska, and South Dakota for the years 1908 to 1914. Most of the statements are by the bank commissioners of those States, to whom our grateful public acknowledgment for their efficient assistance is hereby made.

This record shows that not only are the people of these States greatly pleased with the new departure—a total absence of the possibility of personal loss from closed banks—but also that the banks themselves that have been guaranteeing depositors *have profited by the system*, owing to the advantages secured from the increase in the volume of their deposits and other benefits. This is of vast importance, demonstrating that the system as a whole is a complete success.

Respectfully submitted.

GEORGE H. SHIBLEY,
Director American Bureau of Political Research.

WASHINGTON, D. C., *May 12, 1914.*

I. OKLAHOMA.

Oklahoma Territory and Indian Territory became the State of Oklahoma in 1907. The first legislature that met provided for the guaranty of bank deposits, being the first State to thus protect its people from losses through State banks.

This system has now been in operation for six years, and the results are summarized in later paragraphs by the bank commissioners, one of the statements being as follows:

> In my opinion the increased business of State banks, as mentioned, compensated them for the losses they have sustained under the guaranty system.

II. SPREAD OF THE OKLAHOMA SYSTEM.

The Oklahoma system for the protection of depositors in general in the State banks was established early in 1908 by the legislature and governor. Later in the year in the following States the legislatures and governors then elected afterwards passed laws establishing either a compulsory or a voluntary system of guaranty of bank de-

posits: Texas, Kansas, Nebraska, and South Dakota. The system is compulsory upon all State banks in Nebraska, voluntary in Kansas and South Dakota, while in Texas the State banks are given their choice of entering the State system of guaranty or of supplying their depositors with some other suitable form of guaranty.

III. COURT DECISIONS.

The United States Supreme Court has upheld the constitutionality of the compulsory guaranty of bank deposits under systems in which the banks themselves have had to mutually stand the losses. (Noble State Bank *v.* Haskell, 219 U. S., 104, affirming 22 Oklahoma, 48; Shallenberger, Governor of Nebraska *v.* First State Bank of Holstein, 219 U. S., 114, reversing 172 Federal Reporter, 999; Abilene National Bank *v.* Dolley, Bank Commissioner of the State of Kansas, 228 U. S., 1, affirming 179 Federal Reporter, 461.)

The laws of the three States were upheld on the principle that such taxation was not the taking of private property for a private purpose, but was the taking of private property for a public purpose, and a valid exercise of the police power of the State. (Thornton Cooke in Quarterly Journal of Economics, Nov., 1913, p. 70.)

Other decisions by the State courts are given in an appendix.

IV. TEXAS.

The Texas law went into effect August 9, 1909. Provision is made that the guaranty of the safety of deposits by the State banks shall be either by joining the system under the State law or by filing each year with the commissioner of insurance and banking "a bond, policy of insurance, or other guaranty of indemnity" equal to the capital stock of the bank, or if a private bank, "in an amount to be fixed by the commissioner."

Nearly all of the State banks entered under the system provided for by State law.

In 1909 only 42 banks had elected to furnish bonds. In 1912 the number was only 53. (Mr. Thornton Cooke, in Quarterly Journal of Economics, November, 1913, p. 109.)

The State bank system in Texas had been established the latter part of 1905, and the history of the growth of the system and the net result under the guaranty law of 1909 is as follows:

Year.	Losses to guaranty fund.	Capital.	Surplus.	Per cent of loss from capital and surplus to guaranty fund.	Approximate average deposits.	Per cent of loss from deposits to guaranty fund.
1906	None.	$4,875,500.00	$180,433.06	None.	$8,433,187.92	None.
1907	None.	10,006,700.00	420,306.91	None.	19,766,746.94	None.
1908	None.	10,690,500.00	664,100.30	None.	22,323,385.12	None.
1909	None.	16,128,500.00	1,616,486.61	None.	39,987,887.64	None.
1910	None.	20,197,500.00	2,624,150.21	None.	48,722,348.96	None.
1911	$39,065.46	23,520,500.00	3,602,390.46	0.144	58,216,105.12	0.0671
1912	16,328.11	27,302,000.00	4,700,862.92	.051	71,247,733.65	.0229
1913	None.	32,596,500.00	6,415,320.35	None.	90,593,797.70	None.

The above data were supplied by Hon. W. W. Collier, bank commissioner, who also wrote:

The average per cent of loss upon the approximate average daily deposits above given during *the entire life* of the Texas State banking law is 0.012 per cent.

There was nothing unusual that caused the losses in the years 1911 and 1912. There were three bank failures, and in each one the loss was occasioned by a straight steal out. The largest loss was occasioned through the failure of the Harris County Bank & Trust Co., of Houston. Frank W. Vaughn, its president, embezzled very large amounts therefrom and is now a fugitive from justice.

The two losses in 1912 were occasioned by the failure of the First State Bank of Kopperl, from which was embezzled a large amount by S. J. Spotts, who is now serving a term in our State penitentiary for this offense, and the failure of the First State Bank of Paige was also occasioned by a misapplication of the funds of that bank by its president, E. F. Brown. This party has been convicted at the first trial, and his case is now pending before our court of criminal appeals on appeal. I mention these matters to explain to you the reason for these failures and to show you that it is not a defect in our law, neither is it occasioned by unusual conditions or a failure of proper supervision, but has been simply one of these cases where you could not prevent a thief from stealing.

Answering your second question, I beg to say that the depositors' guaranty fund of this State has gradually increased each year, regardless of the small losses sustained, beginning with the first collections on January 1, 1910, until at this time this fund amounts to more than $958,000 in cash.

Answering your third question, you are advised that there is a double liability on stockholders under the laws of this State.

Mr. Thornton Cooke, of Kansas City, who has made an extensive examination into the workings of the guaranty of bank deposits, writes as follows in the Quarterly Journal of Economics of Harvard University, for November, 1913:

Since the enactment of the guaranty law, the State banks in Texas have increased 50 per cent in number and their deposits have doubled. There were five more national banks in 1909 than in 1913, but individual deposits in national banks have increased 25 per cent.

Possibly some of these national banks insured their depositors against loss. But even if they did not, still the showing is that bankers have preferred on the whole to do business under the guaranty system, *thereby demonstrating conclusively that in Texas the cost of the system is less than the benefits conferred upon the banks.*

The law in full and the amendments are quoted in an appendix.

V. NEBRASKA.

The Nebraska system of guaranty of bank deposits is compulsory upon all State banks.

In the annual report of the Nebraska department of banking, dated January 18, 1913, the following statements occur:

The new banking act embodying the guaranty feature, which was enacted in 1909, was held in suspension by injunction until March 30, 1911, since which time the banks have been operating under the law as it now exists. No failures have occurred since the passage of the act, and the guaranty fund has now reached the sum of $774,414.58. * * *

The guaranty feature of the law has, without question, increased the confidence of the people in the banks. So far few or none of the bad effects anticipated by those opposed to its enactment have occurred. Of course the crucial test of the law has not yet been made, and will not be until a period of depression, panic, or general distrust appears, which we sincerely hope may never occur (p. 3).

On February 11, 1914, the secretary of the Nebraska State banking board, E. Royse, wrote that no loss to the guaranty fund had taken place—

no State bank having failed since this law went into effect, and none for several years prior to that time.

Mr. Thornton Cooke writes concerning the operations of the guaranty system in Nebraska:

It would seem that some of the State bankers now see a little benefit arising from the guaranty scheme. (Quarterly Journal of Economics, November, 1913, p. 103.)

In other words, the guaranty of bank deposits in Nebraska has been, and is, benefiting the State banks, as compared with doing business under the national-bank system, owing to the increase in the volume of bank deposits.

VI. KANSAS.

The Kansas system of guaranty of bank deposits was established in 1909, and is voluntary. In opposition there was started a private corporation known as the Deposit Guaranty & Surety Co. of Topeka. About 100 banks in Kansas employed this company to insure their depositors. But this general plan of guaranty has not spread, and an economist who approved the idea some years ago now states that "this is not the solution that is to be used." (Mr. Thornton Cooke, of Kansas City, in Quarterly Journal of Economics, of Harvard University, November, 1913, pp. 96, 110.)

The number of State banks in the guaranty system in Kansas under the State law was 472 in June, 1913, as compared with 466 outside of it, 100 of these outside banks being insured by the private corporation above described. The volume of deposits under the State system was $71,000,000, as compared with $41,000,000 under the two methods of private corporation insurance and without insurance. (Same citation, pp. 95, 97.)

Some changes have been found necessary in the Kansas law. The provision excluding from the guaranty the deposits bearing interest and excluding from participation in the plan banks paying more than 3 per cent interest on any class of deposits *have been found too stringent*. The law now provides that *all deposits not otherwise secured shall be guaranteed*. It provides, further, that the bank commissioner shall fix for each county a maximum rate which the banks in that county may pay on deposits. The commission has fixed rates varying from 3 to 5 per cent. (Same citation, p. 96.)

The amendments are published in full in an appendix.

The development of the system of guaranteed deposits under the Kansas State system is as follows:

Year.	Losses to guaranty fund.	Capital.	Surplus (estimated).	Per cent of loss from capital and surplus to guaranty fund.	Approximate average guaranteed deposits.	Per cent o loss from deposits to guaranty fund.
1909	None.	$8,294,800.00	$3,039,174.00	None.	$32,462,944.88	None.
1910	None.	8,294,800.00	3,376,860.00	None.	34,989,004.52	None.
1911	None.	9,001,300.00	3,564,760.00	None.	39,356,977.92	None.
1912	None.	9,574,300.00	3,615,200.00	None.	46,233,843.08	None.
1913	$28,701.76	10,213,800.00	4,000,000.00	0.2	53,570,175.80	0.05

The above data were furnished through the courtesy of Hon. Charles M. Sawyer, bank commissioner, under date of February 27, 1914.

This is a remarkably fine showing. The cost to the banks of the guaranty system is almost negligible, while the increase of business from the fact of the safety to the depositors is doubtless quite large. In the words of Mr. Thornton Cooke, an opponent of the system:

> The increase in the number of State banks [in Kansas] is most striking. (Quarterly Journal of Economics, November, 1913, 97.)

Mr. Cooke endeavors to explain away the bankers' preference for the guaranty system by saying:

> The guaranty system may have been an influence in the organization of some of the new banks, but rarely the moving cause.

Quite true. But the fact that the bankers preferred to organize under the State law with its guaranty system and did not organize under the national system *shows that that State system as a whole was thought to be preferable.* The national system and the use of the private corporation to guarantee bank deposits, mentioned above, resulted in an increase of only seven national banks during nearly four years (November, 1909, to August, 1913), while the State banks increased from 819 to 928 during practically the same time (September, 1909, to September, 1913).

The conclusion as just stated is fully admitted by Mr. Thornton in the following words:

> It is significant that the number of banks participating in the depositors' guaranty fund [in Kansas] is increasing. The fact that they [the new banks] can not participate for a year after they are organized means that the banks now coming into the scheme have decided, after opportunity to consider the matter, that *the guaranty of their deposits by the State fund will increase their deposits somewhat, or make their deposits rather more stable, or both* (p. 98).

VII. SOUTH DAKOTA.

The same year that saw the passage of the guaranty laws in Texas, Nebraska, and Kansas witnessed the enactment of a similar law in South Dakota, except that in the latter State the law was so framed that *it has not been used*, being so arranged that the bankers were not compelled to operate under it, *and they by agreement or otherwise have refrained from doing so.* Subsequent legislatures have not amended the system to make it operative.

VIII. DETAILS OF THE OKLAHOMA SYSTEM.

Under date of January 29, 1914, the following letter was received from Hon. R. C. Stuart, assistant bank commissioner of Oklahoma:

Mr. George H. Shibley,
Director American Bureau Political Research,
Bliss Building, Washington, D. C.

Dear Sir: In reply to your letter of the 26th instant relative to the operation of the depositors' guaranty law in this State, I desire to advise you that at the time our guaranty law became effective banking conditions in this State were very chaotic, as the State banks located in the Indian Territory section of our State had not been subject to examination.

Another thing, this was a new country and property fluctuated considerably, and we had almost a crop failure in this State for three successive years. On account of adverse conditions, the first few years of the operation of our depositors' guaranty law proved very expensive to our banks, which no doubt caused a number of them to nationalize. However, at this time we feel that our guaranty fund is now established on a solid and substantial basis, and we feel that the future success of our guaranty law is assured. Our last legislature passed several amendments to our guaranty law which have proven very beneficial.

I am herewith inclosing you a list of the aggregate individual deposits of our State banks on the date of each call since statehood. If there is any other information that you desire relative to our laws, please advise me.

The data referred to is summarized in a later communication from the same banking department.

A second letter from Mr. Stuart, under date of February 12, 1914, says:

I desire to advise you that the average cost of the maintenance of the depositors' guaranty fund since its inception has been approximately four-fifths of 1 per cent of the average deposits of each individual bank per annum. The highest cost in any one year was 1⅕ per cent of the average deposits.

This department has certainly put forth every effort possible to prevent "wild-cat banking" in this State. Of course at the time of statehood banking conditions in this State were very chaotic, and in the hurry to put the depositors' guaranty law into effect a number of insolvent banks were permitted to come in under the law, and they have caused the most of our grief and loss to the guaranty fund.

I am inclosing you under separate cover two copies of our present banking laws, which contain, in addition to the laws, extracts from decisions of the supreme court of Oklahoma construing the depositors' guaranty law. You will also notice from said law that the total assessments that can now be levied in any one year is two-fifths of 1 per cent of the average deposits of our banks.

A third letter, this time from the chairman of the Oklahoma State banking department, J. D. Lankford, under date of February 25, 1914, says:

In reply to your letter of the 18th instant, I desire to answer the questions contained in your letter as follows:

First. The approximate average deposits and capital and surplus in our State banks, by years, have been as follows:

	Approximate average deposits.	Approximate average capital and surplus.
1908	$19,808,579.52	$6,496,110.68
1909	42,685,654.26	12,655,804.72
1910	48,959,901.20	12,285,277.10
1911	44,366,674.73	11,809,125.59
1912	38,145,699.73	10,759,032.65
1913	41,718,094.76	10,091,233.31

I am unable to advise you the amount of losses charged against the guaranty fund during each year; however, the guaranty fund has never been fully reimbursed for the loss sustained during these years.

Second. *In my opinion the increased business of State banks, as mentioned, compensated them for the losses they have sustained under the guaranty system.* Of course you must take into consideration the fact that business conditions have been very adverse in this State during the past three or four years, otherwise the business as transacted by our State banks would have been greatly in excess of what it has been. [Original not emphasized.]

Third. Our banking law provides that each stockholder of a State bank of this State is additionally liable for the amount of stock which he owns in our State banks.

The amendments to the Oklahoma law are published in full in an appendix. Also additional court decisions are summarized in the appendix.

IX. THE GUARANTY SYSTEM DISCUSSED.

The operation of the guaranty system in Oklahoma has been much discussed. Mr. Thornton Cooke, who has been quoted in the preceding pages, visited Oklahoma and evidently investigated the system with great care. He, in his lengthy article in the Harvard University publication, describes the crop failures and the other unfavorable factors set forth in the preceding letters, and says:

Now, a record of nearly 30 bank failures in five years, with almost all of them coming in three years, has not been equaled in the United States for a long time. * * *

The reasons of the heavy losses, as they have been narrated in the foregoing discussion, may be here summarily restated: (1) The banking department was for a long time in politics; (2) unsound banks were admitted and guaranteed at the outset; (3) the record of bankers has not been properly traced; (4) there has been procrastination in closing insolvent banks and timidity in the face of losses; (5) economic conditions have been somewhat adverse; (6) the guaranty of deposits has relieved depositors of all necessity for care in selecting banks. * * *

It is now evident that the cause of the Oklahoma bank failures was not deposit guaranty alone, but guaranty plus ineffective examinations, insufficient scrutiny of the previous records of bankers, and unfavorable economic conditions following the period of settlement and rapid growth. *This is shown by the fact that in other States where deposits are guaranteed failures have been few.*

The guaranty system has given opportunities to some reckless and criminal bankers in Oklahoma, but it has not turned honest bankers into rogues there or in the other States we have studied. Deposit guaranty is not stockholders' insurance. *Stockholders must lose their whole investment before the guaranty fund suffers any loss,* and there is therefore not even a financial incentive for a good banker to become a rascal. He may be tempted by guaranteed competition into an unwonted, perhaps unwise, liberality, but not to a dangerous extent, if we can judge by the present experience of Kansas, Nebraska, and Texas.

It remains to consider what are the best methods of guaranteeing deposits and whether in fact such guaranty is desirable at all. It is unnecessary here to repeat the arguments stated at some length in the previous article, but one suggestion then advanced should be withdrawn. Deposit insurance by private corporations was mentioned as a possible solution of the problem. *But this is now evidently not the solution that is to be used* if the problem is found to be worth solving. While such corporations could select risks and limit their size and distribution, and while there is an example in Kansas of the successful operation of such a company, it is obvious, nevertheless, that if deposits are to be guaranteed or insured on any considerable scale, *it will be through the banking departments of the States or, conceivably, of the United States.* The efforts to organize other deposit insurance companies and put them in operation have not met with success. The Kansas example remains solitary.

The stimulus to reckless banking is not the chief danger to the success of deposit guaranty. Kansas, Nebraska, and Texas *have so far repressed such tendencies.* A greater danger has just been mentioned, the impossibility of limiting the size of single risks or avoiding the concentration of the risks in single localities. * * *

Another danger, social rather than financial, is the real or supposed necessity of accompanying the establishment of the guaranty system with grants of almost despotic power to the State banking departments. The guaranty of deposits is so powerful an inducement to depositors, legislators believe, that for fear of its misuse by the incompetent or unscrupulous the banking departments are empowered not only to regulate and supervise banks, but to say what rates of interest they shall pay and whether the citizens shall establish more banks. In some States both these powers are exercised. This may be "medieval" but, as

in the question whether deposit insurance should be provided by the State or by private corporations, *it is sufficient to recognize the irresistible tendency in many forms of industry toward State control.* If the State can fix the railroad rates, no doubt it can fix rates of interest on deposits. If it can regulate banks, no doubt the power to fix their number and forbid new organizations regarded as superfluous will be upheld. Doubtless the part of wisdom lies in trying to guide this tendency instead of fighting it.

The vital question is whether the public needs greater assurance of the safety of its deposits than can be afforded by the resources of a single bank in a single town. * * * Even in States where banking is soundest the bare possibility of failure and the knowledge of the blight it would bring to business plans and to household life keeps many people from the banks. They can not be absolutely sure. They can not detect the few cases of unsoundness, some or all of which escape bank examiners, business men among the customers, and the directors themselves. There is therefore even in the most prosperous days a good deal of hoarding and, what is worse, a failure to use the modern labor-saving machinery of exchange. Some additional business comes to guaranteed banks even in States of settled economic and social conditions, like Kansas and Nebraska. * * *

Whether the plan will gradually be adopted in other States *depends on the force of the present social tendency to distribute more widely by legislation the good and evil of life.* Workingmen's compensation is analogous. The tendency underlying this legislation and the guaranty legislation seems to the writer exceedingly strong. If this is so, a State here and there will from time to time supplement its service of bank regulation and supervision by enabling, if not requiring, the banks to effect insurance in a State-administered fund for the benefit of depositors. (Quarterly Journal of Economics, November, 1913, pp. 75–113. Original not emphasized.)

In the above the quotations are limited to statements of facts and principles, omitting the prophecies and advice.

Mr. Thornton's conclusion is that of the six weak spots developed in the Oklahoma system four of them do not exist in the other States, and therefore *are no real objection to the guaranty of bank deposits.* In other words—

politics can be measurably eliminated from the administration of State bank departments. The records of men who wish to organize banks can be found out. Reasonably efficient bank examinations can be had, and weak banks can be closed without the wasteful temporizing seen that we have seen in Oklahoma.

And Mr. Thornton adds:

IS BANK GUARANTY PRACTICABLE?

Can any guaranty plan, however, withstand seasons of bad crops, and can any plan otherwise adequate maintain the interest of depositors in the soundness of the bank? It is by these tests that the guaranty principle must stand or fall.

THE ANSWER.

The answer, in the writer's judgment, is:

First. That it is the function of the people's representatives in the banking department of the Government to look after the banks' soundness, and the situation in each bank is such that at times even the ones who go into the bank's books and question the bank's officers can not ascertain the facts. Such being the case it looks impracticable to suggest that the individual depositors are to be expected to look after the "soundness of the bank."

Second. Most assuredly there is a guaranty system that can "withstand seasons of bad crops." The best one that we as a Nation can provide is a nation-wide system, so that bad crops throughout an

entire State or several of them will affect only part of the area embraced in the system. At no time during our history as a Nation has bad crops affected more than a quarter or one-half of our area. That is the very worst that we should plan to meet.

The answer, then, is that depositors in general can be successfully guaranteed against loss of funds in the banks. It follows that the issue is as follows:

THE ISSUE STATED.

Do the people of this Nation, the sovereign power, desire the establishment of a system whereby they will be protected from loss of funds in the national banks?

Manifestly the self-interest of the people is such that there can be but one answer. Of course, the ruling power does not wish to lose any part of its funds in failed banks; especially is this so when, according to the plan in use in the four States under review, *this safety does not cost the people a penny.* This has come about in those four States as the direct result of the people's increase of power in the Government. The people in those States have taken to themselves the power to make their will the ruling power in place of machine rule. Self-interest has caused the installation of the guaranty of bank deposits just as surely as gravitation brings down the apple from the tree.

In Oklahoma during the time that the guaranty system was costing the bankers huge sums of money they doubtless would have succeeded in bringing about a repeal of the law *had it not been for the presence in the voters of a veto power, the optional referendum.* But with that final power in the voters the only thing that was practicable was to reconstruct the system on improved lines. The people once having tasted the benefits of protection from losses from closed banks and being the real sovereign power would not return to the old order in which the State and the municipal governments secured themselves against loss by taking security and then left the people to get along as best they could. Naturally, under that former system the State banking department did not exert itself so strenuously to examine the banks and guard against bank failures as they do now under the guaranty system. In each of the four States the banking department has secured from the State an increase of power, described by Mr. Thornton, whereas under the old order of things the people suffered and no amendment of the law was even asked for. The difference is caused by the transfer of the seat of legislative power from the few to the people, this change being the result of the reform of machine-rule party government.

ADVANTAGES OF THE GUARANTY SYSTEM.

In brief the following are the principal advantages of the guaranty of bank deposits, as seen by the writer:

Take for example the guaranty system in connection with the banks in the Federal reserve system.

The Federal Reserve Board, consisting of seven members appointed by the head of the Government and confirmed by the Senate, is to inspect the more than 7,000 banks. Upon the certificates of inspec-

tion by representatives of the Government board the people will patronize the banks, placing with them their ready money. The addition of the guaranty system simply would mean that the Federal Reserve Board will give an *effectual* certificate of inspection, namely, that the capital and surplus of each bank, plus the stockholder's personal liability for the debts of the bank to an amount equal to the face value of his stock, *will actually be sufficient to repay in full the depositors.*

Surely the certificate of inspection should amount to that. And in order that such shall be the case the law should require the Federal Reserve Board to make good any shortcoming and not leave the individuals to suffer the loss. They are perfectly innocent of wrong or even negligence, the negligence, if there is any, being in the Government's representatives. And if no one has been negligent then why not distribute the losses? That is the principle in fire and life insurance.

Quite true, everyone must admit. The real question in the case, then, is, Who should contribute the funds to pay the losses?

WHO SHOULD PAY THE LOSSES FROM THE GUARANTY FUND?

Why should the banks pay the losses from the guaranty fund? Take, for example, the losses from bad crops. The losses to the guaranty fund come only after the failed banks have lost all of their capital and surplus and the stockholders have contributed an amount equal to the face value of their capital stock. Is not that enough for the banks and the stockholders to risk? Why not provide that the beneficiaries under the system shall supply the guaranty fund? That is, that both the banks and the people shall jointly supply the fund to meet the losses. That would conform to the insurance principle.

But it may be said that inasmuch as the establishment of a national guaranty system would be likely to benefit the national banks as much or more than the cost of the necessary funds that, therefore, the banks should contribute the funds to meet all of the losses.

In reply it can truthfully be said that that is an indefinite statement, namely, "would be *likely* to benefit the national banks as much or more than the cost of the necessary funds." Suppose that widespread crop failure should come, or devastating war, should the stockholders suffer *all* of the losses through the national banks, or should the unusually severe losses fall partly upon those who would be the beneficiaries of the guaranty fund, the people?

At any rate, the issue shifts round from, Should bank deposits be guaranteed? to, Who should contribute the guaranty fund?

The fact is that the amount of the losses would doubtless be comparatively small. In Nebraska it has been 15 years since a national bank has failed; and with the more stringent system of inspection that would come under a guaranty system, the losses in addition to the entire capital and surplus and the personal liability of the stockholders would likely be almost negligible. It follows that there should be no considerable delay on the ground of reaching an agreement as to who should contribute the guaranty fund. The writer suggests that a small contribution be levied upon the banks in the Federal reserve system, with a further provision that if at any time

the sum so provided be insufficient the balance shall be contributed from the net earnings of the Federal reserve system. The banks in the Federal reserve system are to supply something like $400,000,000 annually in deposits for which they are not to receive a cent of interest; and my suggestion is that some of the earnings from that vast sum shall be used to pay the people's losses should the contribution provided for from the banks for the guaranty of deposits be at any time insufficient.

Under this plan, whichever course is taken, the banks in the Federal reserve system would be in a much better position than at present, *as there would be an increase of deposits*, some of it at the expense of the State banks where there is no guaranty system; and the postal savings banks would practically go out of business because the Government could not successfully compete with private institutions in the rate of interest; also, the money now hoarded because of fear of bank failures would be deposited.

Another source of profit to the banks would be the elimination of some of the losses from unfortunate investments, as more time would be secured in which to realize thereon.

Furthermore, the law could provide for a reduction in the volume of bank reserves, as all danger of "runs" by depositors would be terminated.

And the present risk to all banks from "runs" would be ended. Then the bank officials and stockholders would no longer live over a veritable powder magazine, not knowing what moment a "run" might be started. Most of the bank "runs" are wholly senseless and are liable to be started against the soundest institution. The remedy is simple and everyone concerned would profit by its application. Society as a whole would be benefited because of the lessened losses.

GUARANTY OF BANK DEPOSITS A DEMONSTRATED SUCCESS.

But up to the time of the issuance of the data in this Senate pamphlet the legislators have been without knowledge of the extra cost of the guaranty system in the four States where it is on trial. That necessary data is herewith presented, together with the deduction that even the banks themselves have been benefited by the guaranty system. It follows that *the guaranty of bank deposits has now become a demonstrated success, taken as a whole.* Some of the details are yet to be worked out, calling for careful calculations, but the main proposition, that of the desirability of the system, is completely demonstrated. For the first time there is presented the exact cost of the guaranty of bank deposits, also there is a searching investigation as to the benefits received by the banks themselves, and a description of the economic and other conditions in each of the four States by the officer in charge of the system. To this there is added an outline of the increased stringency of the regulations for the protection of the depositors. Under this improved system the inspection carries with it a guaranty as to thoroughness. It follows that from this time forward the general subject of the history of the guaranty of bank deposits is on a vastly improved footing.

THE OPPOSITION.

Up until to-day the opposition have been arguing as to the *probable* operation of the guaranty system, or have been claiming that *it is a demonstrated failure.*

One of the fairest and the most complete presentations of the subject by the opposition is by Mr. Thornton Cooke, of Kansas City, from whose statements I have freely quoted. Other articles on the subject are as follows:

"Bank deposit guaranty in Oklahoma: How it is working out." Bankers' Magazine, January, 1914, pages 27–28.

Weeks, John W. Speech in opposition to guaranteeing bank deposits, in the Senate of the United States, December 16, 1913. Twenty-eight page pamphlet.

"Status of Oklahoma guaranty law." American Banker, November 29, 1913, 69–114.

Oakes, Edwin S. "Bank deposit guaranty legislation." Case and Comment, November, 1912, 391–400.

"Oklahoma bank deposit insurance." American Review of Reviews, May, 1910, 625–626.

Forgan, James B.: "Should national-bank deposits be guaranteed by the Government or by a deposit with the Government, in either case the necessary fund to be raised by taxing all the banks on their deposits?" An address before the annual meeting of bankers at Peoria, Ill., 1908. Pamphlet, 30 pages.

Kinley, Prof. David: "Objections to bank-deposit insurance." American Review of Reviews, March, 1908, pages 345–347.

The following, we presume, favor the guaranty system:

Crawford, Coe I., United States Senator: "Voluntary bank-deposit insurance." Independent, March 18, 1909.

Nettleton, A. B.: "Shall bank deposits be guaranteed?" American Review of Reviews, March, 1908.

For an extensive bibliography on the guaranty of bank deposits, consult Select List of References on the Money Question, 1913, by the Bibliography Division of the Congressional Library. Compiled by Hermann H. B. Meyer, Chief Bibliographer, and William Adams Slade, Chief of Periodical Division. See the index title "Guaranty of bank deposits."

The bibliography of the "New York safety-fund system" is indexed in the above catalogue under that title.

Grateful acknowledgment is herewith made to the legislative reference section of the New York State Library for a recently compiled list of references. Knowledge of this list was secured from the newly established bulletin system conducted from the Indiana Legislative Reference Bureau, a paying member of which is the Bibliography Division of the Congressional Library.

X. PROGRESSIVE DEMOCRACY'S PLEDGE.

"Banks exist for the accommodation of the public and not for the control of business. All legislation on banking and currency should have for its purpose the securing of these accommodations on terms of *absolute security to the public* and of complete protection from the misuse of the power that that wealth gives to those who possess it." (Democratic national platform, 1912.)

APPENDIXES.

STATUTES OF NEBRASKA, KANSAS, TEXAS, OKLAHOMA, AND SOUTH DAKOTA; AND CONTINUATION OF COURT DECISIONS.

NEBRASKA STATUTES.

Session Laws 1909, chapter 10, amending chapter 8 of Compiled Laws of Nebraska of 1907, and amended by Session Laws 1911, chapter 8.

[Reprinted from compilation supplied by Nebraska bank commissioner, February, 1914.]

SEC. 44. [*Guaranty fund—Assessment.*] For the purpose of providing a guaranty fund for the protection of depositors in banks, every corporation engaged in the business of banking under the laws of this State shall be subject to assessment, to be levied, kept, collected and applied as hereinafter provided.

SEC. 45 [*Same.*] On the first day of June, 1911, and on the first day of December, 1911, and on the first day of June and December of each year thereafter, every corporation engaged in banking under the provisions of this act shall make and file with the State banking board a statement in writing, verified by the oath of its president, vice-president, or cashier, showing the average daily deposits in its bank for the preceding six months exclusive of public money otherwise secured. And on the first day of the month next preceding the date fixed for the making and filing of such statement the State banking board shall levy assessments against the capital stock of each of said banking corporations as follows: On the first day of July, 1911, one-four of one per cent of the average daily deposits as shown by the first statement of such average daily deposits required to be made and filed by the provisions of this section; on the first day of January, 1912, one-fourth of one per cent of the average daily deposits as shown by the statement required to be made and filed on the first day of December, 1911; on the first day of July, 1912, one-fourth of one per cent of the average daily deposits as shown by the statement required to be filed on the first day of June, 1912; and on the first day of January, 1913, one-fourth of one per cent of the average daily deposits as shown by the statement required to be filed on the first day of December, 1912; and on the first day of July and January of each year thereafter, one-twentieth of one per cent of the average daily deposits as shown by the statement thereof required to be made and filed next preceding such assessment: *Provided, however*, That any bank commencing business and receiving deposits less than six months prior to the date when the statement referred to in this section is required to

be made and filed shall show the average daily deposits for that portion of the said semiannual period during which it has been engaged in business and receiving deposits. Any person making oath to any of the statements herein required, knowing the same to be false, shall be deemed guilty of a felony and be punished by a fine of not less than one hundred nor more than one thousand dollars, or be imprisoned in the penitentiary for a term of not less than one nor more than five years, or both, in the discretion of the court: *Provided, however,* That if any bank now operating under a charter issued by the State desires to go into voluntary liquidation or change to a national bank before the assessments provided for in this section become due and payable, the provisions of this section shall not release said bank from the payment of any assessments now due from it to the depositors' guarantee fund as provided for in chapter 8 of the Compiled Statutes for 1909. In the event that any bank now operating under a charter issued by this State voluntarily liquidates or changes to a national bank before the assessments provided for in this section become due and payable, the provisions of chapter 8 of the Compiled Statutes for 1909, shall, in so far as said banks are concerned, be in full force and effect and shall govern and control, and in the event said bank goes into voluntary liquidation or changes to a national bank before the assessments provided for in this section become due and payable, the provisions of chapter 8 of the Compiled Statutes for 1909 shall be and remain in full force and effect, and the amount due from said bank on the assessment provided for in chapter 8 of the Compiled Statutes for 1909 shall be paid by said bank to the secretary of the banking board; said amount shall be by the secretary of the banking board placed on deposit to the credit of the depositors' guarantee fund in any bank to be designated by the secretary of the banking board, said funds to be subject to the order of the banking board. [Amended 1911, ch. 8, pp. 82–83.]

SEC. 45*a*. [*New banks.*] Any bank organized subsequent to the date when this act takes effect shall pay into the depositor's guaranty fund four per cent (4%) of the amount of the capital stock when such bank opens for business, which amount shall constitute a credit fund, subject to adjustment on the basis of said bank's average daily deposits, as shown by the first two semiannual statements required by section 45 of this act. The banking board is authorized and empowered to make such an adjustment of the rates of assessments to be paid by any bank which engages in the banking business subsequent to the time when this act takes effect as shall require such bank to contribute to the depositor's guaranty fund a just and equitable sum, and the State banking board shall adjust assessments of such bank so that the first two assessments, together with the credit fund of four per cent (4%) of the capital stock paid in by said bank when it begins business, shall at least equal one per cent (1%) of the average daily deposits of said bank as shown by the two first semiannual statements required by section 45 of this act: *Provided, however,* That said four per cent (4%) will not be required of new banks formed by the reorganization or consolidation of banks that have previously complied with the terms of this act with reference to the payment of assessments.

SEC. 46. [*Assessment—Levy—Notification.*] As soon as said assessments are respectively levied, the banking corporations against

which the same are levied shall be notified of the amount of such assessment levied against them, respectively, by the secretary of the State banking board, and said banking corporations shall thereupon set apart, keep, and maintain in their said banks the amount thus levied against them, and the amounts thus levied, kept, and maintained shall be and constitute what shall be designated as a depositor's guarantee fund, payable to the State banking board on demand for the uses and purposes hereinafter provided: *Provided*, That when the depositors' guarantee fund reaches the total sum of one and one-half per cent of the average daily deposits said assessment against the deposits of said banks shall cease until such time as the guarantee fund is depleted below one per cent of the average daily deposits, when the necessary assessments may again be levied: *Provided further*, That no bank which has complied in full with all of the provisions of this act shall be required to give any further security or bond for the purpose of becoming a depository for any public funds, but depository funds shall be secured in the same manner that private funds are secured. [Amended 1911, ch. 8, p. 84.]

SEC. 47. [*Special assessment.*] If the depositors' guarantee fund shall, from any cause, prior to July 1, 1912, be depleted or reduced to an amount less than one-half of one per cent of the average daily deposits, or subsequent to July 1, 1912, be depleted or reduced to an amount less than one per cent of the average daily deposits as shown by the last semiannual assessment statements thereof filed, the State banking board shall levy a special assessment against the capital stock of the corporations governed by the provisions of this act to cover such deficiency, which special assessment shall be based on the said average daily deposits and, when required for the purpose of immediate payment to depositors, said special assessment may be for any amount not exceeding one per cent of said average daily deposits in any one year. [1911, ch. 8, p. 84.]

SEC. 48. [*Receiver.*] Whenever it shall appear to the State banking board, from any examination or report provided for by this act, that the capital of any corporation transacting a banking business under this act is impaired, or that such corporation is conducting its business in an unsafe or unauthorized manner, or is endangering the interests of its depositors, or upon the failure of such corporation to make any of the reports or statements required by the provisions of this act or to comply with the provisions of said act in all respects, the State banking board shall communicate the facts to the attorney general, who shall thereupon cause an application to be made to the district court of the county where such corporation maintains its bank and is thus conducting its business, or to any judge of such court, for the appointment of a suitable person as receiver to take charge of the business assets and property of every kind of said corporation and to wind up its affairs: *Provided, however*, That if the judge or judges of the district court of the county where such application should be made be absent therefrom at the time such application is to be made, any judge of the supreme court may appoint such receiver, but all proceedings in relation to such receivership thereafter shall be had before the district court, or a judge thereof, which might have appointed such receiver in the first in-

stance, and the petition and the order appointing such receiver shall be forthwith transmitted to the clerk of such district court. It shall be sufficient to authorize the appointment of a receiver if any of the facts herein enumerated as a ground for the application for a receiver be made to appear.

SEC. 49. [*Same, oath, bond.*] The court or judge, appointing a receiver under the provisions of this act, shall, in the order of appointment, fix the amount of his bond in an amount sufficient to protect all persons interested in the assets and affairs to be administered by such receiver, and the receiver, before entering upon his duties as such receiver, shall give a bond in the amount thus fixed, with sureties to be approved by the clerk of said court, conditioned that he will faithfully and impartially discharge such duties, and well and truly account for all money and property coming into his hands as such receiver, and disburse the same in conforming to the order of such court or judge and to the provisions of this act. Upon the approval of such bond and the taking of the oath required by law, the person thus appointed shall have full power and authority as receiver under the provisions of this act.

SEC. 50. [*Reparation by stockholders.*] After the State banking board, a bank examiner, or receiver shall have taken possession of any bank under the provisions of this act, the stockholders thereof may repair its credit, restore or substitute its reserves, and otherwise place it in condition so that it is qualified to do a general banking business as before it was taken possession of as aforesaid, but such bank shall not be permitted to reopen its business until the State banking board, after careful investigation of its affairs, is of opinion that its stockholders have complied with the law, that the bank's credit and funds are in all respects repaired and all advances, if any, made from the depositor's guaranty fund, with interest, fully paid, its reserve restored or sufficiently substituted, and that it should be permitted again to reopen for business; whereupon said State banking board is authorized to issue written permission for reopening of said bank in the same manner as permission to do business is granted after the incorporation thereof, and thereupon said bank may be reopened to do business under its charter originally granted under this act. The directors of every banking corporation transacting business under the provisions of this act shall have power and authority to levy and collect assessments on the stock of the banking corporation for the purpose of repairing and restoring the credit of said banking corporation, or to repair and restore any deficiency that may occur by reason of the impairment of the capital stock of said bank.

SEC. 51. [*Claims—Notice.*] As soon as a receiver appointed under this act has qualified, which shall be within ten days after his appointment, the court in which such proceedings are pending, or a judge thereof, shall make an order fixing the time for filing claims against the corporation whose property is under such receivership, which shall not be more than sixty days from the date of such order, and notice thereof shall be given forthwith, by posting a copy of such order on the front door of the bank and by publication thereof in some newspaper published in the county, to be designated by the court or judge making such order, for at least three successive weeks prior to the date thus fixed.

SEC. 52. [*Claims, priority, payment.*] The claims of depositors, for deposits, and claims of holders of exchange, shall have priority over all other claims, except Federal, State, county, and municipal taxes, and subject to such taxes shall at the time of the closing of a bank be a first lien on all the assets of the banking corporation from which they are due and thus under receivership, including the liability of stockholders, and, upon proof thereof, they shall be paid immediately out of the available cash in the hands of the receiver. If the cash in the hands of the receiver available for such purpose be insufficient to pay the claims of depositors, the court in which the receivership is pending, or a judge thereof, shall determine the amount required to supply the deficiency and cause the same to be certified to the State banking board, which shall thereupon draw against the depositors' guaranty fund in the amount required to supply such deficiency, and shall forthwith transmit the same to the receiver to be applied on the said claims of depositors: *Provided, however*, That no part of the depositors' guaranty fund shall be used to supply the deficiency that may accrue by the failure of any bank now transacting business, which bank has not filed the report provided for in section 15, receive the certificate provided for in section 14 and paid the first assessment provided for in section 45. Such drafts against the depositor's guaranty fund shall be pro rated, as nearly as may be, among the several solvent banks wherein the same is so as aforesaid kept and maintained, in accordance with the amounts thereof held by such banks, respectively.

SEC. 53. [*Subrogation.*] To the extent of the amount paid from said guaranty fund to satisfy the claims of creditors the State banking board, for the use and benefit of said fund, shall be subrogated to all the right of the creditors thus paid, to participate in the assets of such bank, and the same shall be enforced and collected by the receiver accordingly, and when collected shall be placed in said fund and deposited by the State banking board in the solvent banks, subject to the provisions of the depositors' guaranty fund, proportionate as to the several deposits to the assessments levied against each of said banks.

SEC. 54. [*Orders of court.*] The court in which such proceedings are pending, or a judge thereof, shall make such other and further orders and enter such judgments as may be necessary or proper to insure a proper administration of such receivership, and a just and equitable distribution of the assets of such banking corporation among its creditors and all others entitled to participate therein, subject to the provisions of this act.

SEC. 55. [*Possession by examiner.*] Any bank examiner, when ordered by the State banking board, or any receiver appointed under the provisions hereof, for the purpose of winding up the affairs of the bank, shall have authority to take possession of any bank to which the order of appointment shall relate, and retain the possession of such bank, its moneys, rights, credits, and property of every description, as against any mesne or final process issued by any court against such bank the property of which has been thus taken by such examiner or receiver, and until such time as all of the liabilities of such bank have been fully paid and discharged, and any attachment lien against such property, acquired within thirty days next preceding

the taking of such possession by such examiner or receiver as aforesaid, shall be thereby released and dissolved. For each and every day the State bank examiner shall so hold possession, such bank shall pay to the State treasurer, for account of the general fund, a fee of ten ($10) dollars, and for each and every day a receiver shall so hold possession such bank shall pay such receiver as full compensation for his services a fee of not less than three dollars nor more than ten dollars, as may be fixed by the State banking board, and in each case, in addition to said amount, the necessary clerk hire and attorney fees.

SEC. 56. [*Failure to give possession.*] Whenever any bank refuses or neglects to deliver possession of its affairs, assets or property of whatever nature, to the State banking board, or to the person ordered or appointed to take charge of such bank according to the provisions of this act, the State banking board shall communicate the facts to the attorney general or to the county attorney of the county wherein such bank is located, who shall thereupon cause an application to be made to the district court or to any judge thereof, having jurisdiction of the same, for an order placing such board, or the person ordered or appointed by it to take charge of such bank, in charge of such bank and its affairs and property: *Provided*, That if the judge of the district court having jurisdiction of the same shall be absent therefrom at the time such application is to be made, then, and in that case, any judge of the supreme court may grant such order, but the petition and order of possession shall be forthwith transmitted to the clerk of the district court of the county in which such bank is located.

SEC. 57. [*Receiver, duties.*] Every receiver of a bank appointed under the provisions of this act shall, immediately upon taking possession of such bank, proceed to collect all debts, assets, and claims belonging to such bank, and, upon order of the district court or judge thereof, may sell or compound all bad or doubtful debts, and on like order may sell all the real and personal property of such bank upon such terms as the court or judge thereof may direct; and may, if necessary, enforce the liabilities of stockholders, officers, or directors to such bank: *Provided*, That bad or doubtful debts, as used in this section, shall not include the liability of stockholders, officers, or directors; and whenever any such receiver shall have paid in full all of the liabilities of such bank, including any liability to the depositor's guaranty fund as herein provided, the funds and assets remaining in his hands, if any, shall be paid and delivered to the party or parties entitled thereto.

SEC. 58. [*Same, reports.*] Every receiver appointed under the provisions of this act shall make to the State banking board not less than one report quarterly, according to such form as may be prescribed and which report shall be verified by his oath. [Amended 1911, ch. 8, p. 85.]

SEC. 59. [*Forms—Rules.*] The State banking board shall prescribe all such forms as may be useful or necessary in carrying out the provisions of this act, and shall have power to make such rules and regulations, not inconsistent with the provisions of this act, as may be necessary or proper to carry it into effect according to its true intent.

SEC. 60. [*Rewards.*] For the purpose of carrying out the provisions of this act, the State banking board is hereby authorized and empowered to offer and pay out of the depositors' guaranty fund rewards for the apprehension and conviction of any person or persons violating the provisions of this act. Such rewards not to exceed in any place five hundred ($500) dollars.

SEC. 61. [*Punishments.*] Where no other punishment is provided herein, any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five nor more than three hundred ($300) dollars, or by imprisonment in the county jail for not less than thirty nor more than ninety days, or both, in the discretion of the court.

SEC. 62. [*Repeals.*] Chapter eight (8) of the Compiled Statutes of Nebraska, of 1907, and all acts and parts of acts inconsistent herewith are hereby repealed.

SEC. 63. [*Saving clause.*] Nothing in this act contained repealing any act for the regulation or conduct of banking shall be construed to release any person from punishment for any acts heretofore committed violating said act or acts, nor effect in any manner any existing indictment or prosecution by reason of such repeal; and for that purpose such act or acts shall continue in full force and effect notwithstanding such repeal.

SEC. 63*a*. [*Repeals—Effect of act.*] That said original sections 3, 8, 9, 14, 16, 22, 24, 26, 27, 45, 46, 47, and 58 of chapter 8 of the Compiled Statutes for 1909 (sections 3702, 3707, 3708, 3713, 3715, 3721, 3723, 3725, 3726, 3744, 3746, 3747, and 3758 of Cobbey's Annotated Statutes for 1909) as the same now exist, are hereby repealed: *Provided, however*, That nothing in this act contained, repealing any part of chapter 8 of the Compiled Statutes for 1909, shall be construed to release any chartered bank in this State that goes into voluntary liquidation or changes from a State to a national bank before the assessments provided for in this act become due and payable, and in the event any bank operating under a charter voluntarily liquidates or changes from a State to a national bank before the assessments provided for in this section become due and payable, then the provisions of chapter 8 of the Compiled Statutes for 1909, in so far as they affect said bank, shall be in full force and effect and are not repealed by this repealing clause. [Amended 1911, ch. 8, p. 85.]

SEC. 64. [*National bank.*] Any national banking association located and doing business within the State of Nebraska, authorized to dissolve, and which shall have taken the necessary steps to effect dissolution, may reorganize as a State bank under and according to the laws of this State: *Provided, however*, That the State banking board may accept good assets of such national banking association worth not less than par, in lieu of the payment otherwise provided by law for the stock of such reorganized bank. [1909, ch. 11, p. 96.]

SECS. 64, 65. "An act to provide for the reorganization of dissolved national banking associations as State banks, to provide for the participation by national banking associations in the assets and benefits of the depositors' guaranty fund, and declaring an emergency." (Laws, 1909, ch. 11, p. 96. In effect March 29, 1909.)

SEC. 65. [*Same—Federal guaranty law.*] Whenever by act of Congress, or by decision of a Federal court or departmental construction of the national banking act, national banking associations located and doing business within this State are permitted to avail their depositors of the protection of the depositors' guaranty fund, established by the law of this State for the payment of deposits in closed banks, any such association, after examination at its expense by the State banking board or its agent, and upon its approval as to its financial condition, may participate in the assets and benefits of the depositors' guaranty fund upon terms and conditions in harmony with the banking law of this State to be fixed by said board: *Provided*, That in the event national banking associations shall be required by Federal enactment to pay assessment to any depositors' guaranty fund of the Federal Government, and thereby the depositors in such associations in this State shall be guaranteed by virtue of Federal laws, that the associations having availed themselves of the benefits of this act, may withdraw therefrom and have returned to them seventy-five per cent of the unused portion of all assessments levied upon and paid by such associations. [Id., sec. 2.]

SECTIONS 24, 27, AND 28.

SEC. 24. [*Rediscounts—Bills payable—Loans.*] The aggregate amount of the rediscounts and bills payable of any corporation transacting a banking business in this State shall at no time exceed two-thirds (⅔) of its paid-up capital, except for payment of its depositors, nor shall any bank other than savings banks at any time permit its loans and investments, exclusive of its reserve and banking house and fixtures, to exceed in the aggregate ten times the amount of its capital and surplus. [1909, ch. 10, p. 78.]

The repealing clause, but not the title or body of chapter 10, Laws 1911, purports to repeal this section. (Note by bank commissioner.)

SEC. 27. [*Interest on deposits.*] No banking corporation transacting a banking business under this act shall pay interest on deposits directly or indirectly at a greater rate than five per cent (5%) per annum. Any officer, director or employee of a bank violating the provisions of this section, directly or indirectly, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) or more than five hundred dollars ($500), or by imprisonment in the State penitentiary not exceeding three years, or both, in the discretion of the court. [Amended 1911, ch. 8, p. 81.]

SEC. 28. [*Dividends—Surplus.*] Any corporation transacting a banking business under this act may semiannually declare a dividend of so much of the net profits as it may deem expedient, but such corporation shall, before the declaration of a dividend, carry one-fifth part of its net profits to its surplus fund, until the same shall amount to twenty (20) per centum of its paid-up capital stock. [1909, ch. 10, p. 79.]

KANSAS STATUTES.

Session Laws of 1909, chapter 61; General Statutes of 1909, page 130; as amended by chapters 61, 62, 63, Session Laws of 1911.

[Reprinted from compilation supplied by Kansas bank commissioner, February, 1914.]

AN ACT Providing for the security of depositors in the incorporated banks of Kansas, creating the bank depositors' guaranty fund of the State of Kansas, and providing regulations therefor, and penalties for the violation thereof.

SECTION 1. Any incorporated State bank doing business in this State under the general banking laws of Kansas, having a paid-up and unimparied surplus fund equal to ten per cent of its capital, and any bank which may after the passage of this act be authorized to do business in this State, and which shall have been actively engaged in the business of banking for at least one year, and having such surplus fund, is hereby authorized and empowered to participate in the assessments and benefits and to be governed by the regulations of the bank depositors' guaranty fund of the State of Kansas hereinafter provided for: *Provided*, That the limitation of one year shall not prevent such participation by a new bank at any time in any city or town in which all banks shall have neglected or failed to become guaranteed banks under the provisions of this act for a period of six months after the taking effect of this act. Before any bank shall become a guaranteed bank within the meaning of this act a resolution of its board of directors, authorized by its stockholders, duly certified by its president and secretary, asking therefor, in form to be provided by the bank commissioner, shall be filed with said bank commissioner, who shall, upon the filing of such resolution, make a rigid examination of the affairs of such bank, and if it is found to be solvent, to be properly managed, and conducting its business in strict accordance with the banking law, he shall, after the bank shall have deposited with the State treasurer bonds or money hereinafter provided, issue to such bank a certificate stating in substance that said bank has complied with the provisions of this act and that its depositors are guaranteed by the bank depositors' guaranty fund of the State of Kansas, as herein provided.

SEC. 2. Before receiving such certificate from the bank commissioner each bank entitled to the same according to section 1 of this act shall, as an evidence of good faith, deposit, and shall at all times maintain, with the State treasurer (subject to the order of the bank commissioner when countersigned by the auditor of state) United States bonds, Kansas State bonds, or the bonds of any county, township, school district, board of education, or city within the State of Kansas, to the amount of five hundred dollars for every one hundred thousand dollars or fraction thereof of its average deposits eligible to guaranty (less its capital and surplus) as shown by its last four published statements: *Provided*, That each bank shall so deposit not less than five hundred dollars, and the State treasurer shall issue his receipt therefor in triplicate, one to the bank, one to the auditor of state, and one to the bank commissioner. Such bonds only shall be accepted as the school-fund commissioners of the State of Kansas are permitted to buy, and shall bear the certificate of the attorney-general of the State of Kansas stating that in his opinion said bonds

have been legally issued. Said bonds, or cash in lieu thereof, shall not be charged out of the assets of the bank, except as hereinafter provided, but shall be carried in its assets under a heading "Guaranty fund with State treasurer" until such time as said bank shall default in payment of assessments hereinafter provided for. In lieu of bonds the bank, at its option, may deposit money, which deposit shall be exchangeable for acceptable bonds when the bank elects to make the substitution. In addition to above each bank shall pay in cash an amount equal to one-twentieth of one per cent of its average deposits eligible to guaranty, less its capital and surplus, and the same shall be credited to the bank depositors' guaranty fund with the State treasurer subject to the order of the bank commissioner, and the State treasurer shall issue his receipt therefor in triplicate, one to the bank, one to the auditor of state, and one to the bank commissioner: *Provided*, That the minimum assessment to be required from any bank shall be twenty dollars: *Provided further*, That any bank seeking to participate in the assessments and benefits of this act after the first annual assessment for the year 1910 shall have been made, shall be assessed an amount approximately equal to its proportionate share of the money then in the bank depositors' guaranty fund after all losses shall have been deducted, the amount of such assessment to be determined by the bank commissioner. The last above mentioned assessment, however, shall not be required of new banks formed by the reorganization or consolidation of banks which have previously complied with the terms of this act. Upon the deposit and acceptance of such bonds (or money) and the payment of said assessment, then the payment of such deposits of said bank as are specified in this act shall be guaranteed as herein provided, and the bank entitled to its certificate.

SEC. 3. The bank commissioner shall, during the month of January of each year, make assessments of one-twentieth of one per cent of the average guaranteed deposits, less capital and surplus, of each bank (the minimum assessment in any case to be twenty dollars) until the cash fund accumulated and placed to the credit of the bank depositors' guaranty fund shall be approximately five hundred thousand dollars over and above the cash deposited in lieu of bonds, when he shall discontinue such assessments. Should such fund become depleted the bank commissioner shall make such additional assessments from time to time as may become necessary to maintain the same; provided, that not more than five such assessments of one-twentieth of one per cent each shall be made in any one calanedar year. The treasurer of the State of Kansas shall hold this fund in the State depository banks as provided by law governing other State funds, subject to the order of the bank commissioner, to be countersigned by the auditor of State, for the payment of depositors of failed guaranteed banks, as hereinafter provided. The State treasurer shall credit this fund quarterly with its proportionate share of interest received from State funds, computed at the minimum rate of interest provided by law, upon the average daily balance of said fund.

SEC. 4. When any bank shall be found to be insolvent by the bank commissioner, he shall take charge of such bank, as provided by law, and proceed to wind up its affairs; and he shall at the earliest moment issue to each depositor a certificate upon proof of claim, bear-

ing six per cent interest per annum, upon which dividends shall be entered when paid, except where a contract rate exists on the deposit, in which case the certificate shall bear interest at the contract rate. Notice of the amount of each dividend to be paid creditors and the date when such payment is to be made shall be published in two consecutive issues of a paper of general circulation in the county or city in which said failed bank is located, and a corresponding notice posted on the door of the receiver's office, and interest shall cease on each dividend on the day named in such notice. The bank commissioner shall likewise publish a notice of the date upon which he will make payments of any balance due on such proof of claim, and interest shall cease on the day so advertised, and said proof of claim shall so state. After the officer in charge of the bank shall have realized upon the assets of such bank, and exhausted the double liability of its stockholders, and shall have paid all funds so collected in dividends to the creditors, he shall certify all balances due on guaranteed deposits (if any exist) to the bank commissioner, who shall then, upon his approval of such certification, draw checks upon the State treasurer, to be countersigned by the auditor of State, payable out of the bank depositors' guaranty fund, in favor of each depositor for the balance due on such proof of claim as hereinafter provided. If at any time the available funds in the bank depositors' guaranty fund shall not be sufficient to pay all guaranteed deposits of any failed bank, the five assessments herein provided for having been made, the bank commissioner shall pay depositors pro rata, and the remainder shall be paid when the next assessment is available; provided, however, that whenever the bank commissioner shall have paid any dividend to the depositors of any failed bank out of the bank depositors' guaranty fund, then all claims and rights of action of such depositors so paid shall revert to the bank commissioner for the benefit of said bank depositors' guaranty fund, until said fund shall have been fully reimbursed for payments made on account of such failed bank, with interest thereon at three per cent per annum. [Amended 1911, ch. 62, p. 103.]

SEC. 5. A penalty of fifty per cent of the amount of said assessment shall be added to the assessment of any bank not remitting as aforesaid within thirty days after receipt of notice of such assessment from the bank commissioner, and if any bank which shall have been assessed and notified as aforesaid shall fail to remit the amount of said assessment as herein provided, a sufficient amount of its bonds (together with the unexpired coupons) shall be immediately sold by the bank commissioner at public sale and the proceeds used to pay said assessment. Any balance remaining from the proceeds of such sale after the payment of such assessment shall remain to the credit of the bank in the depositors' guaranty fund. The said balance, together with the remainder of the bonds (or cash in lieu thereof) shall be forfeited to the bank depositors' guaranty fund if the bank does not, within sixty days from default in payment of such assessment, remit the full amount of such assessments and penalty to date and restore the amount of its bonds, or money pledged, as evidence of good faith. Upon the bank's failure to remit its assessments according to the terms of this act the bank commissioner shall immediately examine such bank, and if it is found in his judgment to be insolvent he shall

take charge of and liquidate said bank according to law. If said bank be found solvent, the bank commissioner shall cancel its certificate as a guaranteed bank and cause to be displayed in its banking rooms in a conspicuous place continuously for six months, a card not smaller than twenty inches by thirty inches and in large, plain type, reading as follows: "This bank has withdrawn from the bank depositors' guaranty fund and the guaranty of its deposits will cease on and after ———." The date on this card shall be a date six months after the first posting of such card. Any bank electing to withdraw from the bank depositors' guaranty fund may do so by giving notice to the bank commissioner and displaying a card as aforesaid, and at the expiration of the six months as aforesaid may receive its bonds (provided always that said bank shall have paid assessments in full to date) when the affairs of all failed banks in liquidation at the expiration of said six months shall have been closed up and the said bank shall have paid its assessments on account of same.

SEC. 6. All deposits not otherwise secured shall be guaranteed by this act. The guaranty as provided for in this act shall not apply to a bank's obligation as indorser upon bills rediscounted nor to bills payable nor to money borrowed from its correspondents or others. Each guaranteed bank shall certify under oath to the bank commissioner at the date of each called statement the amount of money it has on deposit not eligible to guaranty under the provisions of this act, and in assessing such bank this amount shall be deducted from the total deposits. [Amended 1911, ch. 61, p. 101.]

SEC. 7. Each guaranteed bank, and each State or private bank not guaranteed by this act, shall keep a correct record of the interest rate and terms of each deposit on which it has paid or agreed to pay interest, and shall make a statement thereof under oath to the bank commissioner quarterly. After the passage of this act any officer of any bank who shall pay interest on different terms or in excess of a rate (which rate shall be uniform within each county) that shall be approved by the bank commissioner from time to time, on any form of deposits, or pays any interest on any savings deposit withdrawn before July 1 or January 1 next following the date of the deposit, or on any time certificate cashed before maturity, shall be deemed to be reckless and may be removed from office as provided by law, and such bank shall not be permitted to participate in the benefits of this act; provided, however, that any existing contract for higher rates of interest entered into before the passage of this act may be carried out unimpaired, and such existing contract shall not disqualify a bank from participating in the benefits of this act. Any managing officer of any bank guaranteed under this act, or any person acting in its behalf or for its benefits, who shall hereafter pay or promise to pay any depositor, either directly or indirectly, any rate of interest on different terms or in excess of or in addition to the maximum rate of interest permitted by this act, or who shall, with intent to evade any of the provisions of this act, pledge the time certificate or other obligation of such bank as security for the personal obligation of himself or any other person, or who shall display any card or other advertising tending to convey the impression that the deposits of the bank are guaranteed by the State of Kansas, either directly or indirectly, shall disqualify the bank from further participation in the

bank depositors' guaranty fund, and forfeit its bonds or money deposited in lieu thereof with the State treasurer for the benefit of such fund. Any managing officer of any bank, or any person acting in its behalf or for its benefit, who shall display any card or advertisement or make any statement to the effect that its deposits are guaranteed by the bank depositors' guaranty fund of the State of Kansas, when the bank is not authorized so to do under the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than five hundred dollars nor more than one thousand dollars. [Amended 1911, ch. 61, p. 101.]

SEC. 8. Any trust company heretofore organized under the laws of this State, and now in operation, may reorganize as a State bank under the laws of this State by filing with the secretary of state an amended charter signifying such purpose, to be approved by the charter board; and any private bank or national bank having the required capital, and being otherwise qualified, may reorganize as a State bank; or any newly organized bank taking over the business of another bank, otherwise qualified, may immediately become a guaranteed bank by depositing bonds or money and paying its assessments and otherwise complying with the provisions of this act.

SEC. 9. A solvent guaranteed bank, upon retiring from business and liquidating its affairs, shall be entitled to receive back from the State treasurer its bonds or money pledged, after all depositors in such bank and all assessments on account of the guaranteed banks in liquidation have been paid in full, but not any part of any unused assessments that may be in the bank depositors' guaranty fund. [Amended 1911, ch. 61, p. 102.]

SEC. 10. Banks may be permitted, in the discretion of the bank commissioner, to exchange their bonds for others acceptable under this act, or be allowed to deposit in lieu thereof an equal amount in cash, which may in turn be withdrawn upon the substitution of bonds acceptable under this act.

SEC. 11. If at any regular or special examination of a guaranteed bank it shall be found to be violating any of the provisions of this act, the bank commissioner shall notify the bank, and the bank may be given thirty days in which to comply with the provisions of this act; and if at the expiration of this time such provisions have not been complied with the bank commissioner shall cancel its certificate of membership in the bank depositors' guaranty fund as herein provided and forfeit its bonds deposited with the State treasurer for the benefit of the bank depositors' guaranty fund.

SEC. 12. All bonds, and moneys deposited in lieu of bonds, placed in the State treasury under this act shall be kept in said treasury separate from all other bonds and moneys and to the credit of the bond account of the bank depositors' guaranty fund, and shall be used for no other purpose. The State treasurer shall cause the coupons upon the said bonds to be cut thirty days before maturity and sent or delivered to the bank which deposited them: *Provided always*, That said bank shall have paid all assessments in full to date.

SEC. 13. After the pssage of this act any national bank doing business in the State of Kansas, under the laws of the United States, after an examination at its expense by the State bank commissioner, and upon his approval as to its financial condition, may at its option participate in the assessments and benefits of the bank depositors'

guaranty fund of the State of Kansas upon the same terms and conditions as apply to State banks; provided, that such national banks shall forward to the bank commissioner of the State of Kansas detailed reports, in form to be provided by him, of its condition on the dates of the usual called statements of State banks (such report not to be published except at the option of the bank), and shall submit to one examination each year by his department (or oftener in his discretion) as provided by the banking laws of the State of Kansas, and pay the usual fees therefor. Should a national bank disregard or refuse to comply with any recommendation made by the bank commissioner, in conformity with the provisions of this act, it shall immediately be subject to the provisions and penalties of this act and its certificate of membership in the bank depositors' guaranty fund shall be cancelled.

SEC. 14. It shall be unlawful for any bank guaranteed under the provisions of this act to receive deposits continuously for six months in excess of ten times its paid-up capital and surplus, and the violation of this section by any bank shall cancel its rights to participate in the benefits of the bank depositors' guaranty fund, and work a forfeiture of its bonds deposited with the State treasurer for the benefit of such fund.

SEC. 15. For the purpose of carrying into effect the provisions of this act the bank commissioner shall provide forms and make requisition on the State printer for the necessary blanks, and all reports received by the bank commissioner shall be preserved by him in his office. The State treasurer is authorized to provide forms and make requisition on the State printer for the necessary blanks and record books for his office.

SEC. 16. All acts and parts of acts in conflict with this act are hereby repealed in so far as they so conflict, but no provisions of any banking law or other statute of this State shall be construed to be amended, modified, or repealed except in so far as necessary to permit the unrestricted operation of this act as applied to banks participating in the privileges of this act.

SEC. 17. This act shall take effect and be in force from and after June 30, 1909, and its publication in the official State paper. [Session Laws 1909, ch. 61.]

AN ACT Relating to the security of county, township, city, and school funds in certain cases.

Chapter 63, Session Laws of 1911.

SECTION 1. That all officers in this State having the custody of county, township, city, and school funds, or who may be charged by law with the duty of requiring specific bonds for the security of such funds when deposited in banks of this State, shall not require such bonds from banks participating in the bank depositors' guaranty fund of the State of Kansas, or from banks whose entire deposits are guaranteed by a bond of indemnity issued by any surety company authorized by the insurance commissioner of the State, whenever such funds are protected by such guaranty fund or surety company's bond of indemnity.

SEC. 2. This act shall take effect on and after its publication in the official State paper.

TEXAS STATUTES.

Session Laws 1909, chapter 15, as amended by chapter 110, Session Laws 1913.

S. B. No. 4.] CHAPTER 15.

An Act to provide for the regulation and supervision of banking corporations; providing for the securing of depositors of such corporations; providing for a depositors guaranty fund, and fixing the terms by which banks and trust companies may avail their depositors of the benefits of said fund; providing for a bond for securing depositors, and providing that all banking corporations created under Chapter 10, Acts of First Called Session of the 29th Legislature, shall avail their depositors of protection provided for by this Act, either by the depositors guaranty fund or by bond at their option; providing that all National banks transacting business in this State may, at their option, voluntarily avail their depositors of the protection afforded by this Act; providing that banks incorporated by special Act of the Legislature of the State of Texas may voluntarily, on certain conditions, protect their depositors under this Act; providing that private banks may voluntarily avail their depositors of the protection by bond provided by this Act; amending Sections 39, 50, 56 and 44. Chapter 10, of the Acts of the First Called Session of the 29th Legislature of the State of Texas; prescribing additional regulations and safeguards for the protection of depositors and for savings departments; prescribing the powers and duties of the Commissioner of Insurance and Banking; creating a State Banking Board and prescribing its powers and duties; providing for penalties for the violation of this Act, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Each and every corporation which may hereafter be incorporated under the laws of this State with banking and discounting privileges, and each banking and trust company in this State heretofore incorporated, or that may hereafter be incorporated under the provisions of Chapter 10 of the Acts of the First Called Session of the Twenty-ninth Legislature of the State of Texas, and known as the State Banking Law, shall, at its option, protect its depositors in the manner hereinafter prescribed, either by availing itself of the depositors guaranty fund hereinafter provided for, or by the depositors bond security system hereinafter set forth.

SEC. 2. A State Banking Board is hereby created, which board shall be composed of the Attorney General, Commissioner of Insurance and Banking and the Treasurer of this State. Said board shall have the control and management of the depositors guaranty fund hereinafter provided for, and shall have the power to adopt all necessary rules and regulations in harmony with this Act for the management of said fund. Said board shall have the general supervision and control of the depositors bond security system herein provided for, and shall have the power of the regulation, control and supervision of all State banking corporations and trust companies as hereinafter provided in this Act.

SEC. 3. Each and every bank and trust company mentioned in Section 1 of this Act shall have the right and privilege, at its option, to secure its depositors by the manner, method and under the terms, provisions and regulations as set forth in this Act for the depositors guaranty fund or the bond security system; provided, that all such banks and trust companies shall secure their deposits by one of said plans on January 1st, 1910; provided further, that such option shall be exercised on or before October 1st, 1909, and provided that such option shall be exercised by the holders of the majority of the stock,

and the president or cashier of such bank shall notify the Commissioner of Insurance and Banking by registered mail of such action.

SEC. 4. Any such bank or trust company which shall elect to secure its deposits under the depositors guaranty fund provided for by this Act, shall pay to said banking board, providing its application is approved by said board as hereinafter prescribed in Section 7 of this Act, on January 1, 1910, one per cent of its daily average deposits, for the preceding year ending November 1, 1909, not including United States, State or other public funds, if otherwise secured, for the purpose of creating a depositors guaranty fund. Annually after the first payment to said fund, each bank and trust company subject to the provisions of the guaranty fund plan of this Act, shall pay to said board one-fourth of one per cent of its daily average deposits for the year ending November 1 of the preceding year, as above defined, which amount shall be added to said guaranty fund; provided that when the amount available in said guaranty fund shall reach the sum of two million dollars the Bank Commissioner shall notify all banks and trust companies subject to this Act, at least thirty days before the next annual payment, and thereafter the banks and trust companies participating shall not pay any further amount into said fund until said fund be depleted. In the event of the depletion of said fund from any cause so that it falls below two million dollars, or below the amount of the guaranty fund on January 1, preceding, or in the event of necessity to meet an emergency at any time, said board shall have authority to require the payment for the current year of two per cent of such average deposits, or such part thereof as may be necessary to restore said fund to the maximum above named, or to its amount as of January 1, preceding, or to meet the emergency, but no bank or trust company coming under the provisions of this Act shall ever be required to pay more than two per cent of said average daily deposits for any one year; providing further that first payment herein provided for shall be made to said board without reference to said maximum sum.

SEC. 5. The fund provided for herein shall be paid to the State Banking Board as follows:

Twenty-five per cent of each payment required of each such bank or banking and trust company shall be paid to said board in cash and shall be by it deposited for safe keeping only with the State Treasurer as bailee for the State Banking Board, and shall be paid out by the State Treasurer on warrants drawn by the order of said board and said fund shall never be diverted from the purpose specified in this Act nor shall it ever be considered State funds. The remaining seventy-five per cent of each payment required shall be paid by each such bank or banking and trust company crediting the State Banking Board with such amount as a demand deposit subject to check upon the order of said board. It shall be the duty of said board to keep at all times twenty-five per cent of the amount of said fund deposited with the State Treasurer in cash as provided herein.

SEC. 6. State bank and trust companies organized less than one year prior to the taking effect of this law or hereafter organized, on approval of their applications as provided for in Section 7 of this Act, shall pay into said guaranty fund three per cent of the amount of their capital stock and surplus, which amount shall constitute a credit fund, subject to adjustment on the basis of their deposits as

provided for other banks now existing, at the end of one year; provided, however, that said payment shall not be required of banks and trust companies formed by the reorganization or consolidation of banks that have previously complied with the terms of this Act.

SEC. 7. The State Banking Board shall admit to the benefits and protection of this Act only such banks and trust companies as in their opinion are solvent and properly officered and conducted, and shall prescribe the form of application and statement which shall be made by each and every bank and trust company and which shall be sworn to by two of the chief officers of the bank, blank copies of which application and statement shall be mailed to each State bank and trust company in this State at least ten days before this Act requires the initial payment, and which shall be filled out, signed and sworn to and returned promptly to said board, and such copies shall be mailed to any other bank within this State on request. Should said board decline the application of any bank and trust company, it shall state the ground of such declination to such institution and whether the objection can be removed, and the condition thereof.

SEC. 8. Any National bank in this State may voluntarily avail its depositors of the protection of the depositors guaranty fund, upon the same terms, payments, conditions and in the same manner as herein provided for State banks; provided, that in the event National banks should be required by Federal enactment to pay assessments to any bank guaranty fund of the Federal government and thereby the deposits in National banks in this State should be guaranteed by virtue of Federal laws, that the National banks having availed themselves of the benefits of this Act may withdraw therefrom and have returned to them the unused portion of all assessments levied upon and paid by said banks.

SEC. 9. Whenever any State bank or trust company shall become involvent and shall voluntarily, or by law, or in any manner as provided in Chapter 10, Acts of the First Called Session of the Twenty-ninth Legislature, come into the hands of the Commissioner of Insurance and Banking, he may proceed to wind up its affairs, either through a receiver or through some competent person, who shall give bond as may be required by the board, payable to the board for the faithful performance of all duties imposed upon him. Said bond may be recovered upon for the benefit of said guaranty fund, or any party at interest. On taking possession of the property and business of any such State bank, the commissioner shall forthwith give notice of such fact to any and all banks, trust companies, associations and individuals holding or in possession of any assets of any such State bank.

No bank, trust company, association or individual knowing of such taking possession by the commissioner, or notified as aforesaid, shall have a lien or charge for any payment, advance of clearance thereafter made, or liability thereafter incurred against any of the assets of the State bank of whose property and business the commissioner shall have taken possession as aforesaid. Such State bank may, with the consent of the State Banking Board, resume business upon such condition as may be approved by it, which permission shall be evidenced by a written statement to that effect from the commissioner. Upon taking possession of the property and business of such State

bank, the commissioner is authorized to collect moneys due to such corporation, and do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof as herein provided. The commissioner shall collect all debts due and claims belonging to such State bank, and upon the order of the district court, if in session, or the judge thereof if in vacation, of the county in which it was located and transacting business, may sell or compound all bad or doubtful debts, and on like order may sell the real or personal property of such State bank on such terms as the court shall direct; and may, if necessary to pay the debts of such State bank, enforce the individual liability of the stockholders. The commissioner may, under his hand and official seal, appoint one or more special agents to assist him in the duty of liquidation and distribution, the certificate of appointment to be filed in the office of the commissioner and a certified copy in the office of the clerk of the county court in which such State bank was located and transacted business. The commissioner may, from time to time, authorize a special agent to perform such duties connected with such liquidation and distribution as the said commissioner may deem proper. The commissioner may employ such counsel and procure such expert assistance as may be necessary in the liquidation and distribution of the assets of such State bank and may retain such of the officers or employes of such State bank as he may deem necessary. The commissioner shall require from a special agent and from such assistants such security for the faithful discharge of their duties as he may deem proper. The commissioner shall cause notice to be given by advertisement in such newspapers as he may direct, weekly, for three consecutive months, calling on all persons who may have claims against such State bank to present the same to the commissioner and make legal proof thereof at a place and within a time not earlier than the last day of publication to be therein specified, which notice shall contain a statement, in larger type than that in which the body of such notice is printed, specifically stating that all such claims of guaranteed depositors must be presented and legal proof thereof made at the place designated within forty-five days after the date which the property and business of such State bank was taken possession of by the commissioner, and that all claims of guaranteed depositors presented after expiration of forty-five days shall not be entitled to payment of any portion thereof out of the depositors guaranty fund. The commissioner shall mail a similar notice to all persons whose names appear as creditors upon the books of the State bank. If the commissioner doubts the justice and validity of any claim he may reject the same and serve notice of such rejection upon the claimants, either by mail or by written notice personally served. An affidavit of the service of such notice, which shall be prima facie evidence thereof, shall be filed with the commissioner. The action upon the claim so rejected must be brought within six months after such service. Claims presented after the expiration of the time fixed in the notice to the creditors shall be entitled to share in the distribution only to the extent of the assets in the hands of the commissioner equitably applicable thereto. Upon taking possession of the property and assets of such State bank, the commissioner shall make an inventory of the assets of such bank in duplicate, one to be filed in the office of the commissioner and one in the office of the clerk of the

county court in which such State bank was located and transacting business; upon the expiration of the time fixed for the presentation of claims the commissioner shall make a full and complete list of the claims presented, including and specifying such claims as have been rejected by him, and showing fully all claims and amounts paid to guaranteed depositors out of the depositors guaranty fund, and the amount to which said fund is entitled by reason of its subrogation to the rights of such guaranteed depositors so paid, and all amounts held by him on account of claims of guaranteed depositors, which have been rejected or are in dispute, one to be filed in the office of the clerk of the county court of the county in which such State bank was located and transacted business. Such inventory and list of claims shall be open at all reasonable times to inspection. All compensation of special agents, counsel and other employes and assistants, and all expenses of supervision and liquidation shall be fixed by the commissioner, subject to the approval of the district court, if in session, or the judge thereof, if in vacation, of the district in which such State bank was located and transacting business, on notice to such State bank; provided that the compensation of such special agents shall always be the same as is provided by law for State bank examiners, and shall, upon the certificate of the commissioner, be paid out of the fund of such State banks in the hands of the commissioner. The moneys collected by the commissioner shall be from time to time deposited in one or more State banks, and, in case of the suspension or insolvency of the depository, such deposits shall be preferred before all other deposits. At any time after the expiration of the date fixed for the presentation of claims, the commissioner may, out of the funds remaining in his hands after the payment of expenses, declare one or more dividends, and, after the expiration of one year from the first publication of a notice to creditors, he may declare a final dividend, such dividends to be paid to such person and in such manner and upon such notice as may be directed by the district court, if in session, or the judge thereof, if in vacation, of the district in which such State bank was located and transacted business. In the declaration and payment of all such dividends the depositors guaranty fund shall be entitled to receive as its dividend such portions of the amounts due and payable to guaranteed depositors as shall have been paid to them out of the depositors guaranty fund together with 6 per cent interest thereon from the date or dates upon which checks were drawn upon all State banks, as hereinafter provided for the payment of the guaranteed deposits of such State banks, and the commissioner shall forthwith distribute such dividends to State banks upon which checks were drawn for such payment of guaranteed deposits in proportion to the amounts of such checks, respectively. Objections to any claim not rejected by the commissioner may be made by any party interested by filing a copy of such objections with the commissioner, who shall present the same to the district court, if in session, or the judge thereof, if in vacation, at the time of the next application to declare a dividend. The court may make proper provision for unproved or unclaimed deposits. Whenever any such State bank, of whose property and business the commissioner has taken possession as aforesaid, deems itself aggrieved thereby, it may at any time apply to the district court, if in session, or to the judge thereof, if in vacation, of the district in which such bank is located

and transacting business to enjoin further proceedings, and said court, if in session, or the judge thereof, if in vacation, after citing the commissioner to show cause why further proceedings should not be enjoined and hearing the allegations and proofs of the parties and determining the facts, may upon the merits dismiss such application or enjoin the commissioner from further proceedings and direct him to surrender such business and property to such State bank. Whenever the commissioner shall have paid to each and every depositor and creditor of such State bank (not including stockholders), except for the amount of their deposits over and above their liability under the law as stockholders, whose claim or claims as such creditor or depositor shall have been duly proven and allowed, the full amount of such claims, and shall have repaid to the depositors guaranty fund all amounts paid out of it to guaranteed depositors of such State bank, together with 6 per cent interest thereon from the date when the checks to provide for such payment were drawn, and shall have made proper provision for unclaimed and unpaid deposits or dividends, and shall have paid all the expenses of the liquidation, the commissioner shall call a meeting of the stockholders of such State bank by giving notice thereof for thirty days in one or more newspapers in the county where such State bank was located and transacted business. At such meeting the stockholders shall determine whether the commissioner shall be continued as liquidator, and shall wind up the affairs of such State bank, or whether an agent or agents shall be elected for that purpose, and in so determining the said stockholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and a majority of the stock shall be necessary to a determination. In case it is determined to continue the liquidation under the commissioner, he shall complete the liquidation of such corporation, and after paying the expenses thereof shall distribute the proceeds among the stockholders in proportion to the several holdings of stock in such manner and upon such notice as may be directed by the district court. In case it is determined to appoint an agent or agents to liquidate, the stockholders shall thereupon select such agent or agents by ballot, a majority of the stock present and voting, in person or by proxy, being necessary for a choice. Such agent or agents shall execute and file with the commissioner a bond, in such amount, with such sureties and in such form as shall be approved by the commissioner, conditioned for the faithful performance of all the duties of his or their trust, and thereupon the commissioner shall transfer and deliver to such agent or agents all the undivided and unclaimed or other assets of such State bank then remaining in his hands; and upon such transfer and delivery the said commissioner shall be discharged from any further liability to such State bank and its creditors and stockholders. Such agent or agents shall convert the assets coming into his or their possession into cash, and shall account for and make distribution of the property of said State bank, as herein provided in the case of distribution by the Commissioner, except that the expenses thereof shall be subject to the direction and control of the district court, if in session, or the judge thereof, if in vacation, of the district in which such State bank was located and transacted business. In case of the death, removal or refusal to act of such agent or agents, the stockholders, on the same notice to be given by the commissioner, upon proof of such

death, removal or refusal to act being filed with him, and by the same vote hereinbefore provided, may select a successor and shall have the same power and be subject to the same liabilities and duties as the agent originally elected. Dividends and unclaimed deposits remaining unpaid in the hands of the commissioner for six months after the order for final distribution shall be by him deposited in some State bank to be designated by the State Banking Board to the credit of the commissioner in his name of office, in trust for the several depositors with and creditors of the liquidated State bank from which they were received, who are entitled thereto. The commissioner shall show in his official report the names of the State banks so taken possession of and liquidated and the amounts of unclaimed and unpaid deposits or dividends, with respect to each of them, respectively. The commissioner shall pay over the moneys so held by him to the persons respectively entitled thereto, upon the order of the State Banking Board, who shall direct such payment to such persons upon being furnished satisfactory evidence of their right to the same. In case of doubt or conflicting claims, the State Banking Board may require an order of the district court, if in session, or the judge thereof, if in vacation, authorizing and directing the payment thereof. The State Banking Board may apply the interest earned by the moneys held by the commissioner, or may authorize him to apply the same toward defraying the expenses incurred in payment and distribution of such unclaimed deposits or dividends to the depositors and creditors entitled to receive the same, and the commissioner shall include in his official report a statement of the amount of interest earned by such unclaimed dividends. Any State bank may, at any time, place its affairs and assets under the control of the commissioner by posting a notice on its front door, as follows: "This institution is in the hands of the Commissioner of Insurance and Banking of the State of Texas." The posting of this notice or of the same notice by the commissioner or any State bank examiner at any time when he shall have taken possession of the property and business of a State bank, shall be sufficient to place all its assets and property of whatever nature in the possession of the commissioner and shall operate as a bar to any attachment proceedings whatever.

Sec. 10. In the event the Commissioner of Insurance and Banking shall take possession of any bank or trust company, subject to the depositors guaranty fund plan of this Act, as herein provided, the depositors of said bank or trust company, as specified in Section 4 of this Act, shall be paid in full out of the cash in said bank or trust company that can be made immediately available from such bank, and the remainder shall be paid out of the depositors guaranty fund through the said board in the event the cash available in said institution shall be insufficient; provided, that deposits upon which interest is being paid or contracted to be paid directly or indirectly by said bank, its officers or stockholders, to the depositor and deposits otherwise secured shall not be insured under this Act, but shall only receive the pro rata amount which may be realized from the assets, resources and collections of and from such banks and trust companies, its stockholders or directors.

Sec. 11. The State shall have, for the benefit of the depositors guaranty fund, a first lien upon all assets of such bank or trust com-

pany and all liabilities owing or accruing to such bank or trust company in the event of the closing, as provided by law, of any such State bank or trust company operating under the depositors guaranty fund plan, which lien shall attach and be in force from the time such bank or trust company is legally closed, upon all the property and assets then in possession of such bank or trust company; provided, however, that any deposits on which said bank was paying interest and any other deposits or debts not insured under this Act and which are entitled to share in the assets, shall share in the dividends and proceeds of such assets and collections pro rata or as may be provided by law.

SEC. 12. In the event the depositors guaranty fund, or any part thereof, shall be used by said banking board to pay off the depositors of a National bank which has accepted the provisions of this law, then said banking board shall receive from the receiver or other officer in charge of said bank the pro rata share of the proceeds of the assets and collections which would be due to said depositors to the amount so paid by the banking board.

SEC. 13. [Provides for a savings department in "any State bank or banking and trust company incorporated under the laws of this State." "All such savings departments shall be governed by the terms and provisions of this Act so far as the same are applicable and not in conflict with the special provisions of this Section."]

SEC. 14. In the event of the voluntary liquidation of any bank or trust company operating under the provisions of the depositors guaranty fund, when it shall be made to appear to the State Banking Board that all depositors have been paid in full, said board shall return to such bank or trust company the pro rata part paid by it into such fund when unused.

SEC. 15. Each and every State bank or trust company now or hereafter incorporated under the laws of this State, which shall elect to come under the provisions of the bond security system of this Act, shall, on January 1, 1910, and annually thereafter, file with the Commissioner of Insurance and Banking and his successors in office for and on behalf of the lawful depositors of such bank a bond, policy of insurance, or other guaranty of indemnity in an amount equal to the amount of its capital stock, which said bond, policy of insurance or other guaranty of indemnity shall be for and inure to the benefit of all depositors. Such instrument and the security thereby provided shall be approved by the county judge of the county in which such business is domiciled, and shall take effect and be in force from and after it is approved and filed in the office of the Commissioner of Insurance and Banking. Every such corporation shall comply with the provisions of this Act as herein provided and every such corporation that may hereafter be incorporated shall comply with the provisions of this Act as to the depositors guaranty fund plan or the bond security system on filing its charter before it shall be permitted to receive deposits. Every such bond or policy of insurance or other guaranty of indemnity filed as provided for in this Act, shall secure depositors at the time said bond is filed and approved and all deposits made during the period of twelve months thereafter. In case the bond hereinabove provided for shall be executed by personal obligation or security, then in no event shall such bond be deemed adequate and sufficient unless and until it shall have been executed by at least

three different persons or individuals of financial responsibility and solvency satisfactory to the authorities herein authorized by this Act to approve such bond. The bond or other form of guaranty provided for in this Act may be made by any person, firm or corporation authorized to execute the same and any and all corporations incorporated under the provisions of Sections 8 and 9 of Chapter 10 of the First Called Session of the Twenty-ninth Legislature, or any Act amendatory thereof, shall be and they are hereby authorized and empowered to execute such bonds or guaranties, either singly or collectively, subject to approval as herein provided for; provided that any such corporation which is at the time operating under the guaranty fund system provided for by this Act shall not be accepted as a surety on any such bond.

SEC. 16. Any person, firm or corporation other than as described in Section 1 hereof transacting lawfully a banking business in this State, or lawfully receiving funds on deposit, shall be authorized to take advantage of the provisions of the bond security system of this Act and to file with the Commissioner of Insurance and Banking a bond or policy or other guaranty of indemnity. Any such corporation shall, in such event, file a bond or policy of insurance or other guaranty of indemnity in like manner as it would be required to file if incorporated under the laws of Texas.

Any such person or firm transacting the business of a private bank shall in such event file a bond or policy of insurance or other guaranty of indemnity in any amount to be fixed by the Commissioner of Insurance, which amount shall in no case be less than one-half the amount of the average of the daily deposits with such person or firm for the preceding period of twelve months; provided, that no person or firm shall be permitted to take the benefit of this Section unless such person or firm shall have been engaged in such business in the State of Texas for the period of at least twelve months; provided, that any such person, firm or corporation shall submit to the Commissioner of Insurance and Banking such reports and statements concerning its deposits and concerning the solvency of such bond or policy of insurance or other guaranty of indemnity as he may require in order to enable him to determine the sufficiency of such bond, or policy of insurance or other guaranty of indemnity, and shall pay all such reasonable expenses as may be incurred by him in the making of an examination thereof; provided, further, that such bond, policy of insurance or other guaranty shall be approved by the county judge and filed with the Commissioner of Insurance and Banking as provided for in Section 15 hereof. Upon the filing of such bond or other form of guaranty it shall be the duty of the commissioner to furnish a certificate of such fact.

SEC. 17. In the event of default by any person, firm or corporation transacting such business or receiving deposits, which shall make, execute or file the bond or policy of insurance or other guaranty of indemnity provided for herein, in the payment of a deposit lawfully demanded, it shall be the duty of the Commissioner of Insurance and Banking, when such default shall be made known to him, to at once make an examination of such bank, and if in his judgment the bank is insolvent, he shall take charge of such bank as provided by law for the liquidation of State banks. Upon taking charge of a bank as above provided, the Commissioner of Insurance and Banking shall

at once give notice thereof to each and all persons who may be obligated by reason of such default and of the conditions of such bond or policy of insurance or other guaranty of indemnity, and upon such notice the full amount of the same shall thereby become due and payable within sixty days.

When any bond or policy of insurance or other guaranty of indemnity provided for herein shall become due and payable in accordance with the provisions of this Act, it shall be the duty of the makers and signer thereof to pay over the full amount of the same to the Commissioner of Insurance and Banking, or such part thereof as he may demand, to be held by him in trust for the depositors with the person, firm or corporation furnishing such bond or policy of insurance or other guaranty of indemnity. All proceeds thus arising either from voluntary payment or otherwise, shall be payable to the Commissioner of Insurance and Banking, and shall be by him promptly paid over pro rata to unpaid depositors upon presentation to him of satisfactory proofs of their claims, which proofs shall be received and filed before payment thereof shall be approved by him.

In the event any maker or signer as surety of such bond or policy of indemnity shall be a corporation incorporated under the laws of Texas and it shall refuse or fail to pay over within sixty days, as herein provided, the full amount due by it upon such bond or policy of insurance or other guaranty of indemnity, its charter shall thereby become subject to forfeiture, and it shall be the duty of the Attorney General upon receiving notice thereof from the Commissioner of Insurance and Banking to bring suit in the district court of Travis county, Texas, within thirty days, to forfeit such charter, and upon hearing thereof decree and judgment may be rendered, annulling and forfeiting the charter of such corporation.

In the event any maker or signer as surety of such bond, or policy of insurance, or other guaranty of indemnity shall be a corporation incorporated elsewhere than in the State of Texas and transacting business in this State under a permit from the State, and it shall refuse or fail to pay over within sixty days after demand shall have been made therefor by the Commissioner of Insurance and Banking, as herein provided, the full amount of its liabilities upon such bond, or policy of insurance or other guaranty of indemnity, it shall thereupon be the duty of the Commissioner of Insurance and Banking to notify the Secretary of State of said facts, and it shall be the duty of the Secretary of State and the Commissioner of Insurance and Banking thereafter to refuse any permit to said corporation to transact business in the State until it shall show to the satisfaction of such officers that it has fully discharged its liabilities upon such bond or policy of insurance or other guaranty of indemnity upon which default was thus made.

In the event such person, firm or corporation shall default in the payment of a lawful demand and shall so continue for the period of ninety days from the beginning thereof and the obligation of such bond of insurance or other guaranty of indemnity is not discharged, it shall be the duty of the Attorney General or any district or county attorney, acting at his instance, to bring suit upon such bond or policy of insurance or other guaranty of indemnity in the name of the Governor and for the benefit of all persons who may be beneficiaries thereof by reason of its terms and conditions.

Such suit shall be instituted in the district court of the county where the person, firm or corporation furnishing such bond, policy of insurance or other guaranty of indemnity transacted such business at the time of the filing thereof, or in any county immediately adjacent thereto, at the option of the Attorney General. Any action upon such bond, or policy of insurance or other guaranty of indemnity shall be brought within twelve months of the date therein fixed for the termination thereof.

SEC. 18. Whenever any maker or signer of any bond or policy of insurance or other guaranty of indemnity other than the principal therein, shall be required under the provisions of this Act to pay over for the benefit of the depositors with any person or corporation any sum or sums of money such maker or signer making or participating in such payment, shall thereby become subrogated to the rights of a depositor to the extent of the payments so made, and entitled to assert such right in accordance with the laws of the State, secondary and subject to the rights of all depositors secured by such bond, or policy of insurance or other guaranty of indemnity.

SEC. 19. The Commissioner of Insurance and Banking, when in his judgment it is necessary to make an examination of a bank in order to determine whether or not it is authorized to make bond under this Act, or to determine the amount of such bond, shall charge a fee of not to exceed $20.00 against each corporation incorporated under the laws of the State to do a banking business or to receive funds on deposit for the examination of the bond, or policy of insurance, or other guaranty of indemnity provided for in Section 15, and the examination of the solvency thereof and for the filing of the same and shall be authorized to charge an examination fee sufficient to cover the actual expenses thereof against any other person, firm or corporation permitted to file such bond or policy of insurance or other guaranty of indemnity under the provisions of this Act.

SEC. 20. The bond, or policy of insurance or other guaranty of indemnity herein provided for shall contain substantially the following provisions:

"State of Texas,
County of_____

Know all men by these presents: That we,_____ as principal, and_____and_____ as sureties, are held and firmly bound unto the Governor of the State of Texas and his successors in office, in trust for the benefit of depositors having funds deposited with_____in the sum of_____dollars, payable as provided by the law of Texas, at the time of the execution hereof, conditioned that the above bound _____will pay upon demand, or in accordance with the certificate of deposit, to the persons entitled thereto all deposits in said bank at the date of said bond and all other deposits made therein during the period of one year from the date hereof. Upon payment of any sum or sums made obligatory by reason of the terms hereof, any surety herein making or participating in such payment shall thereby be subrogated to the rights of a depositor and entitled to assert such rights in accordance with the laws of the State, secondary and subject to the rights of all depositors secured by the terms hereof."

SEC. 21. The security for the benefit of depositors provided for by this Act may be divided into two or more bonds, policies of insurance or other guaranties of indemnity, or any part thereof, may be given in either of such forms of guaranty of indemnity; provided, that the aggregate thereof shall be equal to the total amount of the security required in accordance with the provisions of this Act.

SEC. 22. Whenever the deposits of any corporation incorporated under the laws of Texas which shall have filed a bond, or policy of insurance or other guaranty of indemnity with the Commissioner of Insurance and Banking in accordance with the provisions of this Act, shall exceed six times the amount of its capital and surplus, it shall be its duty to furnish in addition to the security theretofore so given, additional security for the protection of its depositors, which additional security shall consist of one or more bonds, or policies of insurance or other guaranties of indemnity, as herein provided, in a sum or sums, which shall, in the aggregate, be equal to the total amount of such excess of deposits above six times the amount of the capital and surplus of such corporation. In the event any such corporation shall refuse or fail to comply with the provisions of this Section, after demand by the Commissioner of Insurance and Banking, it shall be his duty to report the facts to the Attorney General, who shall thereupon institute suit in the district court of Travis county, to forfeit the charter of such corporation, and such court shall, upon hearing and proof thereof, enter a decree and judgment therein, forfeiting and annulling the charter of such corporation.

SEC. 23. If any corporation organized under the general laws of this State to do a banking business or to receive funds on deposit, shall fail or refuse to file the bond, or policy of insurance or other guaranty of indemnity provided for in Section 15 hereof, in accordance herewith, or avail itself of the depositors guaranty fund plan as provided in this Act, it shall be the duty of the Commissioner of Insurance and Banking to promptly report such failure to the Attorney General, who shall thereupon institute suit in the district court of Travis county to forfeit the charter of such corporation, and such court shall, upon hearing and proof thereof, enter decree and judgment therein forfeiting and annulling the charter of such corporation.

SEC. 24. If at any time it shall appear to the State Banking Board that any bond, or policy of insurance or other guaranty of indemnity filed as provided for herein by any corporation organized under the laws of Texas is insufficient, they shall have the authority, and it shall be their duty, to require such corporation to file new or additional security in an amount sufficient to protect its depositors in accordance with this Act. In the event such corporation shall refuse or fail to comply with such requirements, they shall communicate the facts to the Attorney General, who shall thereupon institute such proceedings and take such steps as the nature of the case may require. The Commissioner of Insurance and Banking and the Attorney General shall, in such event, have and exercise, for the protection of depositors, all the authority conferred upon them by Section 40 of Chapter 10 of the general laws enacted at the First Called Session of the Twenty-ninth Legislature, and all authority conferred by the provisions of this Act.

SEC. 25. All State banks transacting business in this State shall be required on or after the first day of January, 1910, to hold a certifi-

cate of authority to transact a banking business issued by the commissioner in compliance with the provisions of this Act, and to keep the same conspicuously posted at all times in the banking house where such business is transacted. It shall be the duty of the Commissioner of Insurance and Banking to issue to each State bank which the State Banking Board shall have approved and certified to him as provided in this Act as being entitled to transact a banking business, a certificate of authority in such form as the State Banking Board shall approve to be signed by him under his official seal, certifying that such State bank is authorized under the laws of this State to engage in the banking business. Such certificate of authority when issued to guaranty fund banks shall contain the following statement on the face thereof in bold type: "The noninterest bearing and unsecured deposits of this bank are protected by the State Bank Guaranty Fund." And when issued to bond security banks shall contain the following statement on the face thereof in bold type: "All deposits of this bank are protected by security bond under the laws of the State of Texas." And when issued to the State banks other than guaranty fund banks and bond security banks, it shall contain neither of these, nor any similar statement. The Commissioner of Insurance and Banking shall close all State banks which the State Banking Board shall disapprove and determine not entitled under the laws of this State to transact a banking business, and shall proceed in such cases in the manner provided by law with respect to insolvent banks, unless such banks shall go into voluntary liquidation; provided, that hereafter the Secretary of State shall on issuance of any charter to any bank or banking and trust company, deliver the same to the Commissioner of Insurance and Banking who shall deliver such charter to such corporation together with the certificate herein provided for upon such corporation showing to the satisfaction of the State Banking Board that it has complied with the State banking laws. Any person or persons who shall in any capacity transact or hold themselves out as transacting the business of banking for or on behalf of any State bank or State banking and trust company after the first day of January, 1910, without such bank or banking and trust company shall hold a certificate of authority, as herein provided for, except in cases where such certificates shall not yet have been issued to newly incorporated banks as herein provided for, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished for each offense, each day being considered as a separate offense, by a fine of not less than $100 and not exceeding $1000, or by imprisonment in the county jail for not less than one nor more than twelve months, or by both such fine and imprisonment.

Sec. 26. Section 39 of Chapter 10 of the Acts of the First Called Session of the Twenty-ninth Legislature of the State of Texas is hereby amended so as to hereafter read as follows:

Section 39. It shall be the duty of the Commissioner of Insurance and Banking, at least once in each quarter of each calendar year, to cause each banking corporation, heretofore or hereafter incorporated under the general laws of the State of Texas, subject by law to examination, to be thoroughly and fully examined, and any such corporations may be examined whenever such commissioner may deem it necessary or expedient. Such commissioner and all State bank examiners shall have the power to administer oaths to any person whose

testimony may be desired for the purpose of any such examinations. The expense of every general and special examination shall be paid by the corporation examined in such amount as the Commissioner of Insurance and Banking shall certify to be just and reasonable. Provided such expenses shall be paid in proportion to the amount of capital stock of the various corporations as follows: Those with a capital stock of $10,000 shall not pay more than $12.50; those with a capital stock of more than $10,000 and not exceeding $25,000 shall not pay more than $15.00; those with a capital stock of more than $25,000 and not exceeding $50,000 shall not pay more than $20.00; those with a capital stock of not more than $50,000 and not exceeding $100,000 shall not pay more than $30.00; those with a capital stock of more than $100,000 and not exceeding $250,000 shall not pay more than $37.50; those with a capital stock of more than $250,000 and not exceeding $500,000 shall not pay more than $75.00; those with a capital stock of more than $500,000 and not exceeding $1,000,000 shall not pay more than $125.00; those with a capital stock of more than $1,000,000 and not exceeding $2,000,000 shall not pay more than $150.00; those with a capital stock of more than $2,000,000 and not exceeding $4,000,000 shall not pay more than $200.00; and those with a capital stock exceeding $4,000,000 shall not pay more than $300.00.

The permanent surplus of any such corporation shall be reckoned in ascertaining the fees for examination as a part of its capital stock. All sums collected as examination fees shall be paid by the Commissioner of Insurance and Banking directly into the State Treasury to the credit of the general revenue fund. Payments for salaries and expenses of examinations and for expenses of the Commissioner of Insurance and Banking in enforcing this Act shall be made upon the certificate of the Commissioner of Insurance and Banking by warrant of the Comptroller upon the State Treasurer.

Sec. 27. If from the sworn statement of the average daily deposits of any bank for the year ending on the first day of November, 1909, or of any subsequent year, filed with the commissioner as provided in this Act, it shall appear that such average daily deposits for such year amounted to more than five times the capital stock and surplus of such bank on November 1 of each year, if the capital stock of such bank is not more than $10,000, or more than six times such capital stock and surplus, if the capital stock is more than $10,000 and less than $20,000, or seven times such capital and surplus, if the capital stock is $20,000 or more and less than $40,000, or eight times such capital stock and surplus, if the capital stock is $40,000 or more and less than $75,000, or nine times such capital stock and surplus, if the capital stock is $75,000 or more and less than $100,000, or ten times such capital stock and surplus, if such capital stock is $100,000 or more, then in any such case it shall be the duty of the State Banking Board to require that such State bank shall within sixty days thereafter increase its capital by 25 per cent thereof, and it shall be the duty of the commissioner to immediately furnish such State bank with a certified copy of the order making such requirement, and upon receipt of such requisition the directors of such State bank shall, within the time required, cause such increase to be made in its capital stock, and if the same is not done within such time, it shall be unlawful for such bank to thereafter receive any deposits at any time when its total demand and time deposits shall in the aggregate amount to

more than the limitation herein placed upon deposits; provided, that any State bank which purchases the assets of any other bank shall, before the purchase of the assets of such other bank, increase its capital to such an amount that the same will have the ratio to the total deposits of the bank the assets of which it has purchased, as defined and required in this Section.

SEC. 28. After this Act shall take effect it shall be unlawful for any State bank or trust company to own more than ten per cent of the capital stock of any other banking corporation, or to make a loan secured by the stock of any other banking corporation if by the making of such loan the total stock of such other banking corporation held by it as collateral will exceed in the aggregate 10 per cent of the capital stock of such other banking corporation, unless the ownership or the taking of a greater percentage of such capital stock as collateral shall be necessary to prevent loss upon a debt previously contracted in good faith, and any such excess so taken as collateral or owned by such State bank shall not be held as collateral nor owned by it for a longer period than six months.

SEC. 29. All State banks and trust companies shall be permitted to loan upon or discount commercial or business paper secured by lien upon cotton and cotton seed products to the same extent and upon the same conditions as it now or may be provided for National banks under the laws of the United States.

SEC. 30. Any bank or trust company created by virtue of a special Act of the Legislature of the State of Texas, now or hereafter engaged in the general banking business in Texas and which at the time has only one place of business and which has heretofore accepted or may hereafter accept one or more of the provisions of the Acts of the Twenty-ninth Legislature known as the State banking law, thereby submitting itself to the jurisdiction of the State banking department, may with the approval of the State Banking Board avail itself of the provisions of this Act, either as a bond security bank, or as a guaranty fund bank by vote as prescribed for State banks.

SEC. 31. All guaranty fund banks provided for in this Act are hereby authorized and empowered, if they desire so to do, to publish by any form of advertising which they may adopt, or upon their stationery, the following words: "The non-interest bearing and unsecured deposits of this bank are protected by the depositors guaranty fund of the State of Texas." All bond guaranty banks provided for in this Act are hereby authorized and empowered, if they desire so to do, to publish by any form of advertising which they may adopt, or upon their stationery, the following words: "The deposits of this bank are protected by guaranty bond under the laws of this State." Said banks are authorized to use the terms "Guaranty Fund Bank," or "Guaranty Bond Bank," as the case may be, but they are hereby prohibited from describing said forms of guaranty by any other terms or words than herein named. Any guaranty fund bank or bond security bank or any officer, director, stockholder, or other person, for any such bank who shall write, print, publish, or advertise in any manner or by any means or permit any one for them, or for said bank, to write, print, publish or advertise any statement that the deposits of any such bank are secured otherwise than as permitted in this Section, or who shall make or publish any advertisement or statement to the effect that the State of Texas guarantees or secures

the deposits in any such bank or banking and trust company shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars, nor more than five hundred dollars, or confined in the county jail for not less than three months nor more than twelve months, or by both such fine and imprisonment. Any person who shall write, print, publish or advertise the above statement authorized to be used by bond security banks or guaranty fund banks other than as herein authorized shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than $100.00 nor more than $500.00 or confined in the county jail for not less than three months nor more than twelve months, or by both such fine and imprisonment.

SEC. 32. Any National bank in this State may voluntarily avail its depositors of the protection of the bond security system herein provided for State banks.

SEC. 33. Section 44, Chapter 10, of the Acts of the First Called Session of the Twenty-ninth Legislature of the State of Texas is hereby amended so as to hereafter read as follows:

Section 44. The Commissioner of Insurance and Banking from time to time shall appoint such number of State bank examiners as may be necessary to make the examinations of banking corporations required by law, which number shall at no time exceed one for each forty banking corporations then subject to examination under the laws of this State. As full compensation for the performance of the duties of examiners each person so appointed shall be entitled to receive a salary of $2000 per annum besides necessary traveling expenses. An itemized account of such expenses shall be rendered monthly under oath by each examiner and shall be approved by the commissioner.

SEC. 34. Section 56 of Chapter 10 of the General Laws of the First Called Session of the Twenty-ninth Legislature of the State of Texas is hereby amended so as hereafter to read as follows:

Section 56. The directors of any bank or trust company organized under this Act may appoint and remove any officer or other employee at pleasure. The officer or employee shall have no power to endorse, sell, pledge, or hypothecate any note, bond or other obligation received by such corporation for money loaned until such power and authority shall have been given such officer or employee by the board of directors in a regular meeting of the board, a written record of which proceedings shall have first been made upon the minutes of the corporation; and all acts of endorsing, selling, pledging or hypothecating done by said cashier or other officer or employee of any such bank or trust company without the authority of the board of directors given as herein provided, shall be null and void.

SEC. 35. Every officer of every State bank, upon whom the powers of a cashier or treasurer may be imposed by the board of directors, shall, before entering or being permitted to enter upon the exercise of such powers, or the duties of his office, give a good and sufficient bond in such sum and with such surety or sureties as the board of directors may approve, and in such form as may be prescribed by the Commissioner of Insurance and Banking, conditioned to pay the bank such pecuniary loss as the bank may sustain of money or other valuable securities embezzled, wrongly abstracted or wilfully misapplied by said officer in the course of his employment as such and in the course

of his employment in any other position in the bank to which he may be appointed, reappointed, elected, re-elected, or temporarily assigned. Such bond shall be approved by the board of directors in writing on the minutes of the corporation and no member of the board of directors or officers of such State bank shall become surety thereon and the same shall be deposited in some safe place, inaccessible to the maker thereof or the sureties thereupon, to be prescribed by the board of directors and shown upon the minutes of the corporation.

SEC. 36. No State bank shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent a loss upon a debt previously contracted in good faith; and stock so purchased or acquired, shall, within six months from the time of its purchase, be sold or disposed of at public or private sale, or, in default thereof, such state bank shall be considered to have its capital stock impaired to the extent of the par value of such shares.

SEC. 37. It shall be unlawful for any such bank to hypothecate or pledge as collateral security for money borrowed upon bills payable or certificates of deposit, or otherwise, its securities to an amount more than fifty per cent greater than the amount borrowed thereon, or for any State bank to issue or execute any bills or other evidences of indebtedness secured or to be secured, by the pledge or hypothecation of any of its securities which shall not contain a provision that in the event such State bank shall, for any cause, have its property and business taken possession of by the commissioner, at any time before such pledge or hypothecation shall have been actually foreclosed, a grace of thirty days after the date of such taking possession shall be allowed in which such bank or commissioner shall be permitted to redeem such securities so hypothecated or pledged, by the payment of the amount due as principal and interest on such indebtedness.

SEC. 38. Section 50 of Chapter 10 of the General Laws of the First Called Session of the Twenty-ninth Legislature is hereby amended so as hereafter to read as follows:

Section 50. No bank and no bank or trust company or any member of either, shall, during the time it shall continue in banking or banking and trust operations, withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by a bank or bank and trust company while it continues its banking and trust operations to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any State bank on which interest is past due and unpaid for a period of six months unless the same are well secured or in process of collection, shall be considered bad debts within the meaning of this Section. The board of directors of any bank or trust company organized under this Act may declare a semi-annual or quarterly dividend, if such dividend has been earned, provided the corporation be fully solvent, without such earnings proposed to be divided. But they shall not declare a dividend at any time when the capital of such corporation shall have become impaired to such an extent that it is not worth in good

resources the full amount paid in after the payment of all liabilities, and any officer or director of such corporation who shall assent to declaring and paying dividends where the capital stock is so impaired, shall be personally liable to the creditors of the corporation to the amount of his proportion of the proposed dividend, if any loss occur by reason of the payment of such dividend.

SEC. 39. The State Banking Board shall have the power from time to time to make such changes in the form of the statements required of each banking corporation as it may deem advisable, and to require any additional statements which it may deem necessary as to average daily deposits, capital stock, surplus, character of deposits and such other matters as it may deem necessary to the enforcement of this Act.

SEC. 40. Should the courts declare any section of this Act unconstitutional or unauthorized by law or in conflict with any other Section or provision of this Act, then such decision shall affect only the Section or provision so declared to be unconstitutional and shall not affect any other Section or part of this Act.

SEC. 41. Every president, cashier, director, teller, clerk or agent of any State bank, or banking and trust company incorporated under the laws of Texas who embezzles, abstracts or wilfully misapplies any of the moneys, funds or credits of such State bank, or who, without authority from the directors, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any exceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment or decree, or who makes any false entry in any book, report or statement of such State bank, with intent in either case to defraud such State bank, or any other corporation, body politic, or any individual, person, firm or association or to deceive any officer of such State bank, the Commissioner of Insurance and Banking, or any examiner or special agent, authorized by law to examine the affairs of any such State bank, and every person who, with like intent, aids or abets any officer, clerk or agent in any violation of this Section shall be deemed guilty of a felony and shall, upon conviction, be imprisoned in the State penitentiary for a term of not less than five years nor more than ten years.

SEC. 42. Any director of a State bank or banking and trust company incorporated under the laws of this State, who shall, either directly or indirectly, borrow any of the funds of such bank in excess of ten per cent of its capital and surplus, without the consent of a majority of the directors of the bank first having been obtained and made a matter of record at a regular meeting of the board, or without the written consent of such majority of the directors other than the borrowers being jointly executed by them and filed in the archives of such bank before the loan is made, and any officer of a State bank who shall knowingly become indebted to such bank, directly or indirectly, in any sum whatever, without the consent of a majority of the board other than the borrower, obtained or recorded or filed in like manner, and any officer or director of such bank who shall knowingly loan or assent to the loaning of any of its funds to any officer, or any of its funds to any director, in excess of ten per cent of its capital and surplus without such consent being first obtained and recorded or filed, or who shall knowingly permit any such officer or director to become indebted to the bank or liable to it without such

consent, shall be deemed guilty of a felony and shall be punished by imprisonment in the State penitentiary for a term of not less than two years upon conviction thereof.

SEC. 43. Any officer, director or employee of any State bank or trust company who knowingly or wilfully fails or refuses to perform any duty imposed upon him by law, or who shall do or perform or assist in doing or performing any act or transaction prohibited by the provisions of this Act, for the punishment of which provision is not otherwise herein made, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred nor more than one thousand dollars or by imprisonment in the county jail for a term of not less than thirty days nor more than ninety days, or by both such fine and imprisonment.

SEC. 44. Neither the Commissioner of Insurance and Banking, nor any regularly appointed clerks or employes of the Department of Insurance and Banking, nor any State bank examiner, shall, at any time during his incumbency, be financially interested, directly or indirectly, in any State bank or banking and trust company subject to the supervision of the Department of Insurance and Banking, or knowingly be or become indebted, either directly or indirectly, to any such State bank or banking and trust company.

Any officer or employe named in this Section violating its provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding $500.00, and the venue in such case shall be in the county wherein such State bank or banking and trust company is located. The violation of the provisions of this Section shall work a forfeiture of the office or position held by the person guilty of such violation.

SEC. 45. Any officer, clerk or agent of any State bank or banking and trust company incorporated under the laws of Texas, who shall wilfully certify to any check, or checks, before the amount thereof shall have been regularly entered to the credit of the drawer, upon the books of such State bank or banking and trust company, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by fine of not less than five hundred nor more than five thousand dollars, or by imprisonment in the State penitentiary for not more than one year, or by both such fine and imprisonment.

SEC. 46. Any State bank examiner, or special agent, who shall knowingly and intentionally fail or refuse to notify the Commissioner of Insurance and Banking in writing of any violation of the criminal provisions of this Act within ten days after the same shall come to his notice or attention unless such notice shall, within his knowledge, have been previously given by some other bank examiner or special agent, or any Commissioner of Insurance and Banking, who shall knowingly and intentionally fail or refuse to notify in writing the county or district attorney charged by law with the duty of the prosecution thereof of any such violation within ten days after the same shall have come to his knowledge or attention, shall be deemed guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than three nor more than twelve months, or by both such fine and imprisonment, and upon conviction shall be removed from office.

SEC. 47. The provisions of this Act shall be held to be cumulative of all laws now in force applicable to State banks, or banking and trust companies incorporated under the laws of Texas, not in conflict herewith.

SEC. 48. It shall be unlawful for any State bank or banking and trust company in this State to directly or indirectly loan to the Commissioner of Insurance and Banking or any other person interested in or employed by the Department of Insurance and Banking, and it is hereby expressly provided that a violation of this provision shall render such ccrporation liable to a penalty of not less than $100.00 nor more than $1000.00, to be recovered for the benefit of the State.

SEC. 49. The fact that there is no law in the State providing for a fund for the protection of depositors in banks and trust companies, creates an emergency which requires that the Constitutional rule that requires bills to be read on three several days be suspended, and this Act take effect from and after its passage, and it is so enacted.

Approved May 12, 1909. (Session Laws 1909, ch. 15, pp. 406–429.)

SESSION LAWS OF TEXAS, 1913, CHAPTER 110.

S. B. No. 218.]

An Act Prescribing the method of procuring charters for banks, trust companies, and bank and trust companies, to require incorporations thereof to submit their articles of incorporation to the State Banking Board, and to give to said Board authority to make certain investigations; and to refuse or grant a charter to such incorporations, and if granted, the articles of incorporations to be filed with the Commissioner of Insurance and Banking, and the fee therefor to be paid to said officer. Repealing all laws in conflict therewith, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The incorporations of any proposed State bank or trust company or bank and trust company, shall, in addition to the other things required by law, make application to the State Banking Board for a charter in such form as said Board may prescribe, and submit and present to said Board articles of incorporation, or association, as prescribed by law.

SEC. 2. Upon presentation of the articles of incorporation mentioned in Section 1 hereof, to the State Banking Board, said Board shall carefully examine the same and investigate and inform themselves as to the financial standing and charter of the incorporations, each such incorporation to show, to the satisfaction of said Board, through affidavit or otherwise as may be required by said Board, that he is worth over and above exemptions and liabilities, at least double the amount of the par value of the stock subscribed for by him. The said Board shall also inform itself as to the public necessity of the business in the community in which it is sought to establish the same, and determine whether the capital for which the business is sought to be capitalized is commensurate with the requirements of law, and the location of the business, and that the applicants are acting in good faith. Should said Board determine any of the foregoing requirements or questions unfavorably to the applicants the charter shall be refused; but if favorably, then the charter shall be granted and the articles of incorporation shall be filed with the Commissioner

of Insurance and Banking, who shall deliver a certified copy thereof to the incorporators.

SEC. 3. At the time of the articles of incorporation aforesaid are submitted to the State Banking Board, the applicants for charter shall deposit with the Commissioner of Insurance and Banking the fee required by law for the charter they seek to have granted. If the charter is refused by said Board, then the charter fee shall be returned to the applicants.

Before issuing and delivering to the incorporations a certified copy of the articles of incorporation, the incorporators shall present to the Commissioner of Insurance and Banking a receipt from the Secretary of State, showing that they have paid to the latter officer the required franchise tax, and annually thereafter the franchise tax shall be paid to the Secretary of State.

SEC. 4. All laws and parts of laws in conflict herewith are hereby repealed.

SEC. 5. The fact that there is now no law adequately providing for an examination and investigation of the facts and the solvency of incorporations of banks, trust companies, and bank and trust companies, creates an emergency and a public necessity that the constitutional requirement that the bills be read on three several days be suspended, and that this Act take effect from and after its passage, and it is so enacted.

[NOTE.—S. B. No. 218 passed the Senate by the following vote, yeas 17, nays 10; and passed the House of Representatives April 1, 1913, but no vote given.]

Approved April 2, 1913. [Session Laws 1913, ch. 110, pp. 211–212.]

The combined laws on guaranty of bank deposits in Texas are published in McEachin's Civil Statutes Annotated, 1913, pp. 281–294.

OKLAHOMA STATUTES.

Session Laws of 1909, chapter 5, and Session Laws, 1910–1911, chapter 31, are herein cited in the several sections in the Harris-Day Code.

[From compilation supplied by bank commissioner, February, 1914.]

BANKING BOARD.

DEPOSITORS' GUARANTY FUND. (ACT OF MARCH 6, 1913.)

SEC. 41. The banking board shall be composed of the bank commissioner and three other persons, which persons shall be appointed by the governor, by and with the advice and consent of the senate, no one of whom shall be an officer or director of a national bank. Said three members shall hold office concurrently with the governor, and as soon as said members are appointed under the provision of this act the board shall select one of its members as treasurer. Said appointments shall be made within ten days after the passage and approval of this act. The members of the board, other than the bank commissioner, shall receive no compensation for their services, and they shall be paid their actual and necessary expenses incurred in the performance of their duties, the same to be paid out of the general revenue fund. The bank commissioner shall be chairman of said board. Said board shall have the supervision and control of the de-

positors' guaranty fund, and shall have the power to adopt all necessary rules and regulations not inconsistent with law for the management and administration of said fund. If a vacancy shall at any time occur in the membership of said board, the governor shall fill the same by appointment as herein provided.

SEC. 42. The governor shall appoint, by and with the advice and consent of the senate, a bank commissioner, who shall hold office for a term of four years and until his successor is appointed and qualified; provided, the bank commissioner shall have had at least five years' actual experience in the banking business but who shall not, after his appointment, be connected with any bank as officer, director, or stockholder.

The bank commissioner's salary shall be four thousand dollars per annum, and traveling expenses including only railroad fare, livery hire, and hotel bills while on business connected with his department, payable out of the general revenue fund of the State.

Nothing herein contained shall affect the incumbency of the present bank commissioner during the present term of office.

There is hereby created and established not to exceed eleven positions, each to be known as assistant to the bank commissioner, and all but two of them shall have had at least three years' experience in actual banking; one of them shall have had at least three years' experience in actual handling and control of building and loan associations and shall be designated by the bank commissioner as the building and loan auditor. All such positions shall be filled by appointment by the bank commissioner, subject to the approval of the banking board, and the incumbents thereof shall hold office at the pleasure of the banking board and the bank commissioner. The salary of each of the assistants to the bank commissioner shall be two thousand dollars per annum, and traveling expenses, including only railroad fare, livery hire, and hotel bills, while on business of the department, payable monthly out of general revenue fund of the State: *Provided*, That no person shall hold the position of assistant to the bank commissioner who after his appointment shall be interested, directly or indirectly, in any bank or building and loan association, nor shall any person become interested, directly or indirectly, in any bank or building and loan association while holding such position.

The bank commissioner shall appoint a secretary, subject to the approval of the banking board, who shall have had at least three years' experience in the banking business, who shall be assistant bank commissioner and secretary to the banking board, and in case of absence or disability of the bank commissioner, the secretary shall have authority to perform the duties imposed by law upon the bank commissioner. He shall receive a salary of two thousand dollars per annum, payable monthly, out of the general revenue fund of the State.

The bank commissioner and members of the banking board shall before entering upon the discharge of their duties take and subscribe to the usual oath of office. The bank commissioner shall execute to the State of Oklahoma a bond in the sum of twenty-five thousand dollars, with sufficient surety, for the faithful performance of his duty. Each of said members of the banking board shall execute a bond to the State of Oklahoma in the sum of five thousand dollars,

with a sufficient surety, for the faithful performance of his duty, said bonds to be approved and filed as provided by law.

SEC. 43. The directors of each State bank shall have the authority to select a person to represent it in making recommendations to the governor for the appointment of a bank commissioner and members of the banking board. Said persons selected by the board of directors of each of such State banks shall constitute the State Bankers' Association, and such association shall select an executive council of not less than nine nor more than fifteen members, who shall recommend to the governor the names of three persons having qualifications prescribed in this act for the office of bank commissioner, from which to select a bank commissioner, and the names of nine persons, having qualifications in this act prescribed for members of the banking board, from which to select the members of the banking board. The governor shall appoint said bank commissioner and banking board from the names so submitted.

SEC. 44. Banks organized subsequent to the enactment of this act shall pay into the depositors' guaranty fund three per cent of the amount of their capital stock when they open for business, but said three per cent shall not be required of new banks formed by the reorganization or consolidation of banks which have previously complied with the banking laws of this State.

SEC. 45. The bank commissioner and the members of the banking board shall be subject to removal by the governor for cause; two-thirds of the representatives of the State banks, expressed in such a manner as they may determine, shall have the authority to make recommendations to the governor in exercising the power of removal, and due consideration shall be given by the governor to the recommendation of the majority of said representatives of State banks in ascertaining the grounds for removal of the bank commissioner and the members of the banking board.

SEC. 46. There is hereby levied against the capital stock of each and every bank organized and existing under the laws of this State an annual assessment equal to one-fifth of one per cent, and no more, of its average daily deposits during its continuance as a banking corporation, for the purpose of creating a depositors' guaranty fund; provided that the State banking board, in their discretion, may levy an additional special assessment of one-fifth of one per centum as providing herein during the fiscal years ending June 30, 1914, June 30, 1915, and June 30, 1916. Such fund so created shall be known as the depositors' guaranty fund of the State of Oklahoma and shall be used solely for the purpose of liquidating deposits of failed banks and retiring warrants provided for in this act.

The assessment for the year 1913 shall be payable immediately after this act takes effect, and thereafter the annual assessment shall become due and payable on the eleventh day of March of each year, and all assessments shall be computed on the average daily deposits for the preceding year. Such assessments shall be paid by cashier's checks, which checks shall be held by the banking board until in its judgment it is necessary to collect the same, but such checks shall not bear interest during the time they are so held.

It shall be the duty of the banking board to keep an accurate account of the condition of the depositors' guaranty fund, showing

all collections from assessments and assets of failed banks, and from all other sources, together with the disbursements of said fund and the certificates of indebtedness outstanding, or other obligations chargeable against the same, and to send each bank operating under the laws of this State a quarterly financial statement showing the exact condition of the depositors' guaranty fund.

When the depositors' guaranty fund shall amount to as much as two per cent of the average daily deposits of the State banks, computing upon the last preceding annual statements of such average deposits of said State banks, over and above all certificates of indebtedness, or other obligations chargeable against the same, the annual assessment herein provided for shall cease, and thereafter it shall be the duty of the State banking board to keep and maintain said depositors' guaranty fund to the amount of two per cent of such average daily deposits by making from time to time assessments against the capital stock of State banks operating under the banking laws of this State, but such assessments shall not exceed one-fifth of one per cent of the average daily deposits of any bank in any year, except as otherwise herein provided, during the fiscal years ending June 30, 1914, June 30, 1915, and June 30, 1916; and authority to make such assessments is hereby expressly conferred upon the said State banking board, and said board shall have authority to make all necessary rules and regulations not inconsistent with the laws of this State for the purpose of collecting and equalizing the assessments and the amount paid thereon among the banks operating under the banking laws of this State.

If at any time the depositors' guaranty fund on hand shall be insufficient to pay the depositors of failed banks, or other indebtedness properly chargeable against the same, the banking board shall have authority to issue certificates of indebtedness to be known as "Depositors' guaranty fund warrants of the State of Oklahoma," in order to liquidate the deposits of failed banks, or any other indebtedness properly chargeable against said depositors' guaranty fund.

Depositors' guaranty fund warrants of the State of Oklahoma shall bear six per cent interest from date of issue, payable annually, and shall be issued in such form as may be prescribed by the banking board, and shall constitute a charge and first lien upon the depositors' guaranty fund when collected, as well as a first lien against the capital stock, surplus, and undivided profits of each and every bank operating under the banking laws of the State of Oklahoma to the extent of liability of any such bank to the depositors' guaranty fund under the provisions of this act, and said banking board shall have authority to negotiate or otherwise dispose of such depositors' guaranty fund warrants, at not less than par value, in such manner as it may see fit, to facilitate the liquidation of failed banks.

All warrants heretofore issued by the banking board shall be paid serially in the order of their issuance from any funds on hand when this act takes effect or provided for by the terms of this act, and all warrants hereafter issued shall be in numerical order and retired in like order.

As rapidly as the assets of failed banks are liquidated and realized upon by the bank commissioner the proceeds thereof, after deducting the expenses of liquidation, shall be paid to the State banking board, and by said board credited to the depositors' guaranty fund.

Quarterly, and on the dates provided for financial statement in this act, or oftener if deemed advisable, the banking board shall call for payment such outstanding warrants, if any, as can be liquidated from the available funds on hand.

No corporation doing a trust business shall be liable for assessments to create or maintain the depositors' guaranty fund, nor participate in the protection thereof in any manner whatsoever.

SEC. 47. Any trust company, building and loan association, or insurance company organized under the laws of this State may invest its capital and surplus in depositors' guaranty fund warrants authorized to be issued by this act, and any foreign corporation, which under the laws of this State is required to deposit securities in the office of the State treasurer in order to do business in this State, may deposit depositors' guaranty fund warrants in lieu of any other securities required by law to be so deposited. The officers having charge of any sinking fund of the State, or of any county, city, town, township, or school district thereof, may invest the sinking fund of the State, or of such county, city, town, township, or school district, in warrants issued under the provisions of this act, and said warrants shall constitute security for the deposit of any public funds and for the investment of trust funds, and said warrants shall be nontaxable for any purpose whatsoever.

SEC. 48. From and after the passage of this act no charter or authority to engage in the banking business of this State shall be issued, and no bank shall be permitted to engage in business, except on certificate issued by the bank commissioner upon approval of the banking board.

The issuance of such certificate shall rest solely in the discretion of the bank commissioner and the banking board.

Each and every State bank operating under the laws of this State shall deposit with the State banking board as security for all its liabilities to the depositors' guaranty fund, bonds or warrants of the State of Oklahoma, county, municipal, or school district bonds or warrants, to be approved by the banking board, in an amount equal to not less than one per cent of its average daily deposits, computed as herein provided, and shall at all times maintain with said banking board bonds or warrants for an amount equal to its pro rata share of all outstanding warrants; provided, that no bank shall deposit less than five hundred dollars ($500.00) of such securities with said banking board. Such bonds or securities shall not be charged out of the assets of the bank, but shall be carried in the assets under the heading "Securities with the State banking board," until such time as said bank shall default in payment of any of its liabilities to the depositors' guaranty fund.

The bonds or securities so deposited with the banking board shall be converted into cash whenever the bank shall make default in any liability to the depositors' guaranty fund, upon official notice and failure of the bank to cover such liability. Whenever any State bank shall liquidate or cease to operate under the banking laws of this State, it shall be liable for its pro rata of any existing indebtedness against the said depositors' guaranty fund or any unpaid assessments.

Whenever such securities shall have been converted into cash by the banking board the proceeds thereof shall be applied to the payment

of any defaulted assessments or pro rata liability of any such bank to the depositors' guaranty fund of the State of Oklahoma.

SEC. 49. No deposit in a State bank, otherwise secured, shall be protected by or paid out of the depositors' guaranty fund created under the laws of the State of Oklahoma, nor included in the computation of average daily deposits as a basis for assesments.

No deposit in any State bank on which there is a greater rate of interest allowed or paid, either directly or indirectly, than is permitted by the rules of the bank commissioner, shall participate in the benefits of the guaranty fund.

SEC. 50. The banking board shall cause one of the examiners to visit each bank doing business under the provisions of this act at least twice each year, and oftener if the commissioner deems it necessary. Upon such examination the examiner shall make a careful, thorough, and complete examination into the conditions and affairs of such bank, and for such purpose each examiner is hereby empowered to administer oaths and to examine under oath any officer, director, employee, agent, clerk, stockholder, depositor, or borrower of such bank. They shall make complete detailed reports of all their examinations and findings, and shall make such recommendations to the commissioner as in their judgment may be necessary for the better management or to better the condition of any bank examined by them. Such reports shall be transmitted to the commissioner as soon as made up and shall be kept on file in the commissioner's office.

Any commissioner, assistant commissioner, secretary, examiner, or employee of the banking department, who shall be guilty of any corruption or misconduct in office, or who shall accept any gratuity, reward, or present from any bank or bank officer, or shall take or accept any fee or compensation from any bank or banker during his term of office, shall be deemed guilty of corruption in office, and upon conviction shall be punished by imprisonment in the State penitentiary for a term of not less than one nor more than ten years; and any commissioner, secretary, examiner, or employee of the banking department who shall neglect to perform any duty, or who shall prove to be incompetent, negligent, or insubordinate, may be summarily removed by the State banking board.

SEC. 51. Any owner of any of the shares of the capital stock of any banking corporation may make disposition of such shares by written assignment endorsed upon the certificates of stock and by delivery of the same, but no such assignment shall be effectual to transfer the title to such shares of stock until the same are transferred upon the stock books of the corporation. Any shareholder who shall sell, assign, or in any manner dispose of his shares of stock shall, in the event of the insolvency of such corporation, continue to be liable thereon jointly with the owner thereof, to the extent of the liability of such owner, for a period of one year from the date of the transfer of such shares upon the books of such corporation, or until the bank has been examined and the sale approved by the State bank commissioner.

SEC. 52. Every officer, director, employee, or agent of any bank, who embezzles, abstracts, or wilfully misapplies any of the moneys, funds, credits, or securities of the bank, with intent in either case to injure or defraud the bank or any individual, person, company, or corporation, or to deceive any officer of the bank, or the bank com-

missioner or any agent appointed to examine the affairs of the bank, and any person who with like intent aids or abets any officer, director, employee, or agent of such bank in any violation of this section, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not less than five hundred nor exceeding five thousand dollars and imprisonment in the penitentiary for a period not less than one year nor more than fifty years; and the principal offenders and those abetting same may be charged in the same count, and separate offenses may be charged, in separate counts in the same indictment, and tried together.

Sec. 53. Every officer, director, employee, or agent of any bank who issues or puts forth any certificate of deposit, draws any draft or bill of exchange, makes any acceptance, assigns any notes, bond, draft, bill of exchange, mortgage, judgment, or decree, or who makes any use of the bank in any manner, with intent in either case to injure or defraud the bank or any individual, person, company, or corporation, or to deceive any officer of the bank or the bank commissioner, or any agent appointed to examine the affairs of such bank, and any person who with like intent aids or abets any such officer, director, employee, or agent of such bank to violate this section shall be guilty of a felony, and upon conviction shall be punished by a fine of not less than five hundred nor more than ten thousand dollars and by imprisonment in the penitentiary for not less than one year nor more than fifty years; and the principal offenders and the aiders and abettors may be charged in the same count, and separate offenses of the above classes may be charged in separate counts of the same indictment or information and be tried together.

Sec. 54. Every officer, director, employee, or agent of any bank who shall certify any check, draft, or order drawn upon the bank, unless the person, firm, or corporation drawing such check, draft, or order has on deposit with the bank at the time such check, draft, or order is certified an amount of money equal to the amount specified in such check, and any person aiding or abetting any such officer, director, employee, or agent of such bank so to do, shall be deemed guilty of a felony, and upon conviction shall be fined not more than five thousand dollars or imprisoned not more than five years, or both such fine and imprisonment, within the discretion of the court or jury fixing the punishment. And the principal offenders and the aiders and abettors may be charged in the same count, and separate offenses may be charged in separate count of the same indictment or information and be tried together.

Sec. 55. Every officer, director, employee, or agent of any bank who makes any false entry in any book, report, or statement of the bank, with intent in either case to injure or defraud the bank or any other person, firm, or corporation, or to deceive any officer of the bank, or the bank commissioner, or any agent appointed to examine the affairs of any such bank, and any person who, with like intent, aids or abets any such officer, director, employee, or agent to violate this section, shall be deemed guilty of a felony, and upon conviction shall be punished by a fine not exceeding ten thousand dollars and by imprisonment in the penitentiary for a period not exceeding ten years. And the principal offenders and aiders and abettors may be charged in the same count, and separate offenses may be charged in

separate counts of the same indictment or information, and be tried together.

SEC. 56. Every officer, director, employee, or agent of any bank who shall wilfully dispose of any of the moneys, funds, credits, or securities of such bank, or make or counsel or aid in making, or in causing such bank to make any contract or agreement the effect of which would be to reduce the value of the assets of said bank, or increase the liabilities or indebtedness of said bank, with the intent in either case to accomplish or to aid in accomplishing the insolvency of such bank and thereby to injure or defraud said bank or any other person, firm, or corporation, to cause the depositors of said bank to be paid out of the guaranty fund, or from other funds or by other securities or means than the money, funds, credits, and securities of said bank, and any person aiding any such officer, director, employee, or agent to violate this section shall be deemed guilty of a felony, and upon conviction shall be punished by a fine of not exceeding five thousand dollars and by imprisonment not exceeding ten years, and any wilful violation of any of the orders, rules, or requirements of the banking board, or of the bank commissioner, or of any agent appointed to examine the affairs of such bank, or any law relative to the conduct of banks, by any such officer, director, employee, or agent of such bank, shall be prima facie evidence of his intention to accomplish such fraudulent insolvency of said bank. And the principal offenders, aiders, and abettors may be charged in the same count, and separate offenses may be charged in separate counts of the same indictment or information and be tried together.

SEC. 57. Every officer, director, employee, or agent of any bank who shall, with intent to defraud, knowingly issue any check, bill of exchange, draft, or other order for the payment of money, upon or against any bank, without first having with such bank money sufficient for its payment, or who, with intent, falsely makes, forges, or alters any check, bill of exchange, draft, or other order for the payment of money, purporting to be drawn upon or against any bank, or who shall, with like intent, knowingly pass, utter, publish, or sell, or knowingly attempt to pass, utter, publish, or sell any check, bill of exchange, draft, or other order for the payment of money drawn upon or against any bank with which the drawer has not moneys sufficient for its payment, or any such falsely made, forged, or altered check, bill of exchange, draft, or other order for the payment of money, shall be deemed guilty of a felony, and upon conviction be punished by a fine of not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not less than one year nor more than five years, or by both such fine and imprisonment. And the principal offenders and aiders and abettors may be charged in the same count, and separate offenses may be charged in separate counts of the same indictment or information and be tried together.

SEC. 58. Every officer, director, employee, or agent of any bank who shall, without having the written authority or consent of all of the board of directors of such bank, loan or advance any of the funds of the bank with which he is officially connected, to any person, firm, company, or corporation with which he is associated in business, either directly or indirectly, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not less than one hundred dollars nor to exceed one thousand dollars, or by imprison-

ment in the penitentiary not less than one year nor to exceed three years, or by both such fine and imprisonment. And the principal offenders and aiders and abettors may be charged in the same count. Separate offenses may be charged in separate counts of the same indictment or information, and be tried together.

SEC. 59. Every person who shall publish, utter, or circulate any false, malicious, unprivileged statement or representation for the purpose of injuring any banking association chartered and existing under and by virtue of the laws of the State of Oklahoma shall be guilty of a felony and on conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or imprisonment in the penitentiary not less than one year nor more than five years, or by both such fine and imprisonment.

SEC. 60. Every officer, director, employee, or agent of any bank who, for the purpose of concealing any fact or suppressing evidence against himself or other persons, abstracts, removes, destroys, or secretes any papers, books, or records of any bank from such bank or the house in which such bank carried on its business or from the custody of the bank commissioner or the banking board shall be guilty of a felony and on conviction thereof shall be fined in any sum not less than one hundred dollars and not to exceed one thousand dollars and imprisoned in the penitentiary not less than one year and not to exceed three years. And the principal offenders and aiders and abettors may be charged in the same count, and separate offenses may be charged in separate counts of the same indictment or information and be tried together.

SEC. 61. No person who has been convicted for the violation of the banking laws of this or any other State shall be permitted to engage in or become an officer or official in any bank organized in this State. (End of act of March 6, 1913.)

SEC. 73. Every person who, with intent to cheat and defraud, shall obtain or attempt to obtain from any other person or persons any money, property, or valuable thing by means or by use of any trick or deception or false or fraudulent representation or statement or pretence or by any other means or instrument or device, commonly called the "confidence game," or by means or by use of any false or bogus check or by any other written or printed or engraved instrument or spurious coin or metal, shall be deemed guilty of a felony and, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding seven years. (Act of March 20, 1913.)

SECTIONS 3, 9, 11, 15, 16, AND 26 OF BANK LAW.

SEC. 3. *Amount of deposit—Interest.*—A banking corporation organized under the provisions of this act shall be permitted to receive money on deposit not to exceed ten (10) times the amount of its paid-up capital and surplus, deposits of other banks not included, and to pay interest thereon not to exceed the rate that may from time to time be fixed by the bank commissioner as the maximum rate that may be paid upon deposits by banks in this State; to buy and sell exchange, gold, silver, coin, bullion, uncurrent money, bonds of the United States, or of this State, or of any city, county, school district, or other municipal corporation thereof, and State, county, city, township, school district, or other municipal indebtedness; to lend

money on chattel and personal security, or on real estate secured by first mortgages running not longer than one year: *Provided*, That such real estate loans shall not exceed twenty (20) per cent of the aggregate loans of any such bank; to own a suitable building, furniture, and fixtures for the transaction of its business, the value of which shall not exceed one-third of the capital of such bank fully paid: *Provided*, That nothing in this section shall prohibit such bank from holding and disposing of such real estate as it may acquire through the collection of debts due it: *And provided further*, That all banking institutions now organized as corporations doing business in this State are hereby permitted to continue said business as at present incorporated, but in all other respects their business, and the manner of conducting same and the operation of said bank, shall be carried on subject to the laws of this State and in accordance therewith: *And provided further*, That no bank except those that have complied with or that may be organized under the laws of this State relating to trust companies shall engage in any business other than is authorized by this act. And whenever it shall appear from the preceding year reports made by such banking corporation that the total deposits are more than ten (10) times the amount of its paid-up capital and surplus, deposits of other banks not included, the bank commissioner shall have power and it shall be his duty to require such bank within thirty days to increase its capital or surplus to conform to the provisions of this act or cease to receive deposits. (Sec. 259, Harris-Day Code.)

SEC. 9. *Liability of stockholders.*—The shareholders of every bank organized under this act shall be additionally liable for the amount of stock owned, and no more. (Sec. 265, Harris-Day Code.)

SEC. 11. *Reserve required—Depositories—Penalty—Savings associations.*—Every bank doing business under the laws of this State shall have on hand at all times in available funds the following sums, to-wit: Banks located in towns or cities having a population of less than twenty-five hundred persons, an amount equal to twenty per cent of their entire deposits; banks located in cities having over twenty-five hundred population, an amount equal to twenty-five per cent of their entire deposits, two-thirds of such amounts may consist of balances due to them from good, solvent banks, selected from time to time with the approval of the bank commissioner, and one-third shall consist of actual cash; provided, that any bank that has been made the depository for the reserve of any other bank or banks shall have on hand at all times, in the manner provided herein, twenty-five per cent of its deposits. Whenever the available funds in any bank shall be below the required amount, such bank shall not increase its liability by making any new loans or discounts otherwise than the discounting or purchasing bills of exchange payable at sight, nor make any dividends of its profits until the required proportion between the aggregate amount of its deposits and its lawful money reserve has been restored; and the bank commissioner shall notify any bank whose lawful money reserve shall be below the amount required to be kept on hand to make good such reserve, and if such bank or association shall fail to do so for a period of thirty days after such notice, it shall be deemed to be insolvent, and the bank commissioner shall take possession of the same and proceed in the

manner provided in this act relating to insolvent banks; the bank commissioner may refuse to consider, as a part of its reserve, balance due to any bank from any other bank association which shall refuse or neglect to furnish him with such information as he may require from time to time relating to its business with any other bank doing business under this act, which shall enable him to determine its solvency; provided, that all savings associations which do not transact a general banking business shall be required to keep on hand at all times in actual cash a sum equal to ten per cent of their deposits, and shall be required to keep a like sum invested in good bonds of the United States, or State, county, school district, or municipal bonds of the State of Oklahoma, worth not less than par. (Sec. 267, Harris-Day Code.)

SEC. 15. *Insolvent bank prevented from receiving deposits—Penalty.*—No bank shall accept or receive on deposit, with or without interest, any money, bank bills or notes, or United States Treasury notes, gold or silver certificates, or currency, or other notes, bills, checks, or drafts, when such bank is insolvent; and any officer, director, cashier, manager, member, party, or managing party of any bank who shall knowingly violate the provisions of this section, or be accessory to or permit or connive at the receiving or accepting of any such deposit, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment in the penitentiary not exceeding five years, or by both such fine and imprisonment. (Sec. 271, Harris-Day Code.)

SEC. 16. *None but banks and trust companies to receive deposits.*—It shall be unlawful for any individual, firm, or corporation to receive money upon deposit or transact a banking business except as authorized by this act. Any person violating any provision of this section, either individually or as an interested party in any association or corporation, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than three hundred dollars or more than one thousand dollars, or by imprisonment in the county jail not less than thirty days or more than one year, or by both such fine and imprisonment. (Sec. 272, Harris-Day Code.)

SEC. 26. *Rewards may be offered and paid.*—The State banking board shall have power to offer and pay out of the depositors' guaranty fund, under such conditions as it may deem proper, and not to exceed the sum of five hundred dollars in any one case, rewards for the arrest and conviction of any officer, agent, director, or employee of any bank charged with violating any of the laws of this State relating to banks and banking for which a criminal penalty is provided, or for the arrest and conviction of any person charged with stealing, with or without force, any money, property, or thing of value of any bank. (Sec. 283, Harris-Day Code.)

SOUTH DAKOTA STATUTE.

The law is published in the Compiled Laws of 1910 (vol. 2, pp. 166a–166d, 167) and Session Laws of 1909 (ch. 299). This law is not being used.

COURT DECISIONS CONTINUED.

In addition to the court decisions described at page 6, are the following:

KANSAS.

An action of mandamus to compel the bank commissioner to admit the national banks of the State to the benefits of the bank guaranty act can not be maintained until some national bank desires and unavailingly asks for admission. (State *v.* Dolley, 83 Kans., 80, 1910.)

Section 2, chapter 125, laws of 1911, upheld, providing that the charter board may decide as to the public necessity of establishing banks in a community. An application to establish a fifth bank in Abilene was denied. (Schaake *v.* Dolley, 85 Kans., 598, 1911.)

NEBRASKA.

The proviso in chapter 8 of laws of 1911, amending section 45 of the banking law of 1909, chapter 10, held invalid, because denying equal protection of the laws. (State *v.* Farmers & Merchants' Bank of Oakland, 93 Nebr., 1, 1913.)

The bank act of 1909, as amended by chapter 8, laws of 1911, repealed that portion of the laws of 1891 requiring depository banks to give bonds for safe-keeping and return of public funds. (State *v.* Hevelene, 92 Nebr., 748, 1913.)

OKLAHOMA.

The bank commissioner is a State officer, and the banking department is a part of the executive branch of the State government. (State v. Cockrell, 27 Okla., 630; 112 Pac., 1000.)

The depositors' guaranty fund and the funds of a failed bank in the hands of a bank commissioner for the purpose of reimbursing the depositors' guaranty fund is as much a fund of the State as the common-school fund. The title to such fund and property vests in the State, and are held in trust by the State for a specific purpose. (State *v.* Cockrell, 27 Okla., 630; 112 Pac., 1000.)

Where a specific system for the protection of a fund deposited in a State bank is established by law, other than the depositors' guaranty fund law, the protection extended to general depositors in such banks by the depositors' guaranty fund does not apply. (Columbia Bank & Trust Co. *v.* United States Fidelity & Guaranty Co., 33 Okla., 535; 126 Pac., 556.)

The depositors' guaranty fund is created for the payment of depositors only. The State has a first lien upon the assets of a failed bank and upon all liabilities against stockholders, officers, or directors thereof, and other persons; such liabilities may be enforced by the State for the benefit of the depositors' guaranty fund. The State is therefore a preferred creditor until any deficiency in the guaranty fund created by the payment therefrom of the depositors of a failed bank is made up. (Lankford, Bank Commissioner, *v.* Oklahoma Engraving & Printing Co., 130 Pac., 278.)

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