3. If principal and interest payments are not required by the terms of the loan-contract, total obligations secured by a first mortgage shall not exceed 50% of the appraised value of the real estate securing the obligations. In this class, maturity may not exceed 5 years as the previous law required.

Appraisals must be evidenced in writing by two competent disinterested appraisers within one year prior to the investment.

The Act also permits investments, without court order, in the common stock of any solvent private corporation incorporated under the laws of any state or territory.[25] The stock must be a part of an issue of stock rated in one of the first six classifications established by a standard rating service specified by the Department of Financial Institutions. The stock must also (1) be listed or admitted to trading or (2) to be listed or admitted to trading on the New York Stock Exchange, New York Curb Exchange, Chicago Stock Exchange, or the San Francisco Exchange. There is a further qualification that the listing or admission of the stock must have been consummated within one year after public issue, and a cash dividend paid on the issue at least once in each of the ten years prior to investment. The Department of Financial Institutions may alter the rules on the classifications established for common stock or decrease the number of classifications eligible for investment.

Trust investments, without court order, may also be made in preferred stock of private corporations, if the common stock of the corporation is an authorized investment.[26] The preferred stock must be entitled to rights, privileges and preferences prior to those of the common stock.

Previously only a bank or trust company could hold participating interest certificates in common trust funds in its fiduciary capacity. It is now permissible to hold them with any co-fiduciary acting with it.[27]

FINANCIAL INSTITUTIONS

Branch Banks—" . . . it shall hereafter be unlawful to establish any branch bank within the state until . . . it be first determined after a public hearing on due notice by the

25. Ind. Acts 1947, c. 297, §1 (f).
26. Id. §1 (g).
27. Id. §1 (h).

agency which chartered or regulates the bank seeking to establish such branch bank that public convenience and necessity require the establishment of said branch bank and that such establishment will not jeopardize the sound financial structure of any authorized bank . . . "[1] The act purports to apply to both state and national banks.[2] It is supplemental to existing laws of the state upon the same subject,[3] which laws provide, inter alia: "Except as hereinafter otherwise provided, any bank or trust company may open or establish a branch bank in any city or town within the limits of the county in which the principal office of such bank or trust company is located, if there is no bank or trust company located in such town. . . . "[4]

It is submitted that insofar as the act purports to apply to national banks, it is unenforceable. National banks are instruments of the United States created by Congress for a public purpose. Any state law in conflict with any Act of Congress concerning them violates the supremacy clause of the United States Constitution.[5] Congress has declared that a national banking association may, with approval of the Comptroller of the Currency, establish and operate new branches " . . . (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recoguition, and subject to the restrictions as to location imposed by the law of the State on State banks. . . . "[6] There is no suggestion that an unqualified or unconditional right need be given by the state law to state banks to establish

1. Ind. Acts 1947, c. 246, §2.
2. "It is hereby declared to be the public policy of this state that no state or national bank shall establish a branch bank except. . ." Ind. Acts 1947, c. 246, § 1. "The attorney general may . . . seek injunctive relief under the laws of the United States or the State of Indiana against any state or national bank establishing or attempting to establish a branch bank in violation of law." Id. § 3.
3. Ind. Acts 1947, c. 246, §4.
4. Ind. Stat. Ann. (Burns, Supp. 1945) §18-1707.
5. U.S. Const., Art. VI, §2; First National Bank v. Calif., 262 U.S. 366 (1923); Osborne v. The Bank, 9 Wheat. 738 (U.S. 1824); McCulloch v. Md., 4 Wheat. 316 (U.S. 1819).
6. 12 U.S.C. §36 (c) (1941).

branches before national banks may do likewise,[7] but only that authority to establish branches be specifically granted. Such authority has been granted by the State of Indiana.[8] Subject, therefore, to state limitations as to location, national banks need look only to the terms of the national bank act for approval of their actions.[9]

Banks and Trust Companies—Any bank or trust company incorporated in Indiana may cause securities held by it in a fiduciary capacity to be registered and held in the name of a nominee, provided that: (1) if there is a co-fiduciary, his consent must be obtained, and (2) the fiduciary must keep the securities in its possession and keep records clearly showing the ownership of the securities. The fiduciary is individually liable for acts or omissions of the nominee to the same extent as if it held the securities in its own name.[10]

This act was apparently passed to remove difficulties existing under the common law, whereunder it was practically impossible for a fiduciary to sell trust securities on the stock exchanges. At common law, the nominee was used at the fiduciary's risk, since it was liable for all losses sustained upon any trust property not designated as such.[11] The later tendency has been to hold the fiduciary liable only to the extent that the loss resulted from this "breach of duty,"[12] but fiduciaries have understandably adherred to the traditional practice of "earmarking," in the absence of any statute expressly abrogating the common law rule.[13] The corporation or transfer agent is thus put upon notice that the prospective seller is a trustee and must investigate his authority to make the transfer before issuing new certificates to the transferee

7. Rushton, ex rel. Comm'r v. Mich. Nat'l. Bank, 298 Mich. 417, 430, 299 N.W. 129, 134 (1941), 136 A.L.R. 458, 465 (1942), holding consent by the state comm'r. of banking unnecessary to the establishment of a branch nat'l. bank, although required for state banks.

8. Ind. Stat. Ann. (Burns, Supp. 1945) §18-1707.

9. Rushton, ex rel. Comm'r v. Mich. Nat'l. Bank, supra, n. 7.

10. Ind. Acts 1947, c. 115.

11. Nalter v. Dolan, 108 Ind. 500, 8 N.E. 289 (1886); Gilbert v. Welsch, 75 Ind. 557 (1881); 3 Bogert, "Trusts and Trustees" (1935) §596; Restatement, "Trusts" (1935) §179, and comment d; Note (1937) 106 A.L.R. 271.

12. 3 Bogert, "Trusts and Trustees" (1940 Supp.) §596; Note (1944) 150 A.L.R. 805.

13. E.g., Ore. Laws 1937, c. 358, §3; Pa. Stat. Ann. (Purdon, Supp. 1946) title 7, §819-1108.

and making the book transfer, on penalty of being liable for participating in the breach of trust should the transfer be unauthorized.[14] These investigations, which take about a week, render it impractical for the fiduciary to sell trust securities on the stock exchanges.[15] Chapter 115 removes this evil by permitting the trust securities to be held by a nominee and, therefore, transferred in his name only.

Savings Banks—Saving bank employee bond requirements were altered[16] by: (1) permitting a blanket bond for all employees; (2) requiring an affidavit of net worth of each individual person signing a bond as surety; (3) prohibiting an officer or trustee of the savings bank from signing as surety on any other employee's bond; (4) providing that the bonds be made payable to the bank itself, rather than to the State for the use of the bank, creditors, or depositors; (5) providing that the amount of each surety bond be fixed by the department of financial institutions and the board of trustees of the bank, rather than the judge; and (6) eliminating neglect from the types of conduct of employees to be secured by the bonds.[17]

The length of time which a Savings Bank may hold real estate "purchased or otherwise acquired to secure any debts due to it" was extended from three years[18] to five years.[19] The time may be extended as considered necessary by the department of financial institutions.[20]

Loan and Investment Companies—It is no longer necessary that real estate upon which a mortgage loan is to be made be appraised by "disinterested" appraisers.[21]

---

14. 4 Bogert, "Trusts and Trustees" (1935) §902 and cases cited. Ind. Stat. Ann. (Burns, 1933) §31-103 (Uniform Fiduciaries Act, §3) relieves the corporation and transfer agent of this duty, but the practice of investigating has persisted. Note (1938) 48 Yale L. J. 106.
15. Christy, "Transfer of Stock" (1929) §§200, 281. Current N.Y. Stock Exchange rules require delivery to be made within a period of one to seven days (depending on the type of sale) after the contract of sale is entered into.
16. Ind. Acts 1947, c. 138, §1.
17. Amending Ind. Stat. Ann. (Burns, 1933) §18-2614.
18. Ind. Stat. Ann. (Burns, 1933) §18-2627.
19. Ind. Acts 1947, c. 138, §2.
20. Ibid.
21. Ind. Acts 1947, c. 196, §1(c). This section amends Ind. Stat. Ann. (Burns, Supp. 1945) §18-3109 by simply omitting the words "and disinterested."

The length of time which a loan and investment company may hold real estate "purchased or otherwise acquired to secure any debts due to it" was extended from 3 years[22] to five years.[23] The time may be extended in cases of necessity by the department of financial institutions.[24]

Loan and investment companies are prohibited from making any new loans or paying any dividends when its reserve balance is below the statutory requirement.[25]

Credit Unions—The law requiring that four-fifths of the members of a credit union give written consent as a condition precedent to voluntary dissolution was amended by an act providing that consent by two-thirds of the members shall be adequate.[26] Other provisions relating to voluntary dissolution were not altered.

INSURANCE

To view the Indiana insurance legislation in the proper perspective a short resumé of past regulation precedes the discussion of the enactments of the 1947 General Assembly.

Introduction—In 1869, the United States Supreme Court in *Paul v. Virginia*,[1] decided that "issuing a policy of insurance is not a transaction of commerce."[2] This decision was reaffirmed in 1895[3] and again in 1913.[4] Then the "precedent smashing"[5] *South-Eastern Underwriters*[6] decision was handed down. The United States brought an indictment against certain insurance underwriters under the Sherman Anti-Trust act.[7] The action was dismissed in the court below on

22. Ind. Stat. Ann. (Burns, Supp. 1945) §18-3111.
23. Ind. Acts 1947, c. 135, § 2(d). This time limit accords with that of Ind. Acts 1947, c. 138, § 2, which applies to Savings Banks.
24. Ind. Acts 1947, c. 135, §2(d).
25. Id. §3. Reserve balance requirements are specified in Ind. Stat. Ann. (Burns, Supp. 1945) §18-3113.
26. Ind. Acts 1947, c. 243, amending Ind. Stat. Ann. (Burns, 1933) §18-2226.
1. 8 Wall. 168 (U.S. 1869).
2. Id. at 183.
3. Hooper v. California, 155 U.S. 648 (1895).
4. New York Life Ins. Co. v. Deer Lodge County, 231 U.S. 495 (1913).
5. Sen. Rep. No. 1112, 78th Cong., 2d Sess. 2 (1944).
6. U.S. v. South-Eastern Underwriters Association, 322 U.S. 533 (1944); compare Polish National Alliance v. N.L.R.B., 322 U.S. 643 (1944).
7. 26 Stat. 209 (1890), 15 U.S.C. §§1-2 (1940).