

No. 284

AN ACT

To amend the act, approved the seventh day of June, one thousand nine hundred and seventeen (Pamphlet Laws, four hundred forty-seven), entitled "An act relating to the administration and distribution of the estates of decedents and of minors, and of trust estates; including the appointment, bonds, rights, powers, duties, liabilities, accounts, discharge and removal of executors, administrators, guardians, and trustees, herein designated as fiduciaries; the administration and distribution of the estates of presumed decedents; widow's and children's exemptions; debts of decedents; rents of real estate as assets for payment thereof, the lien thereof, sales and mortgages of real estate for the payment thereof, judgments and executions therefor, and the discharge of real estate from the lien thereof; contracts of decedents for the sale or purchase of real estate; legacies, including legacies charged on land; the discharge of residuary estates and of real estate from the lien of legacies and other charges; the appraisement of real estate devised at a valuation; the ascertainment of the curtilage of dwelling houses or other buildings devised; the abatement and survival of actions, and the substitution of executors and administrators therein, and suits against fiduciaries; investments by fiduciaries; the organization of corporations to carry on the business of decedents; the audit and review of accounts of fiduciaries; re-funding bonds; transcripts to the court of common pleas of balances due by fiduciaries; the rights, powers, and liabilities of nonresident and foreign fiduciaries; the appointment, bonds, rights, powers, duties, and liabilities of trustees durante absentia; the recording and registration of decrees, reports and other proceedings, and the fees therefor; appeals in certain cases; and, also, generally dealing with the jurisdiction, powers, and procedure of the orphans' court in all matters relating to fiduciaries concerned with the estates of decedents," as amended, by further modifying the terms, qualifications, and other conditions under which the investment of trust funds may be made by fiduciaries; by further providing for additional investments of trust funds by fiduciaries; and by further providing with respect to the retention or sale of certain investments in the hands of fiduciaries.

Section 1. Be it enacted, &c., That subsection four, subsection eight, subsection nine, subsection ten, subsection eleven, and subsection twelve of paragraph one of clause (a) of section forty-one of the act, approved the seventh day of June, one thousand nine hundred and seventeen (Pamphlet Laws, four hundred forty-seven), entitled "An act relating to the administration and distribution of the estates of decedents and of minors, and of trust estates; including the appointment, bonds, rights, powers, duties, liabilities, accounts, discharge and removal of executors, administrators, guardians, and trustees, herein designated as fiduciaries; the administration and distribution of the estates of presumed decedents; widow's and children's exemptions; debts of decedents, rents of real estate as assets for payment thereof, the lien thereof, sales and mortgages of real estate for the payment thereof, judgments

Subsections 4, 8, 9, 10, 11, and 12 of paragraph 1 of clause (a) of section 41, act of June 7, 1917 (P. L. 447), which were added by act of July 2, 1935 (P. L. 545), amended.

and executions therefor, and the discharge of real estate from the lien thereof; contracts of decedents for the sale or purchase of real estate; legacies, including legacies charged on land; the discharge of residuary estates and of real estate from the lien of legacies and other charges; the appraisal of real estate devised at a valuation; the ascertainment of the curtilage of dwelling houses or other buildings devised; the abatement and survival of actions, and the substitution of executors and administrators therein, and suits against fiduciaries; investments by fiduciaries; the organization of corporations to carry on the business of decedents; the audit and review of accounts of fiduciaries; refunding bonds; transcripts to the court of common pleas of balances due by fiduciaries; the rights, powers, and liabilities of nonresident and foreign fiduciaries; the appointment, bonds, rights, powers, duties, and liabilities of trustees *durante absentia*; the recording and registration of decrees, reports and other proceedings, and the fees therefor; appeals in certain cases; and, also, generally dealing with the jurisdiction, powers, and procedure of the orphans' court in all matters relating to fiduciaries concerned with the estates of decedents," which were added to the said section by the act, approved the second day of July, one thousand nine hundred and thirty-five (Pamphlet Laws, five hundred forty-five), are hereby amended to read as follows:

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

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

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

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

(3) Such mortgage shall be payable not more than five years after the date thereof, or the date of any renewal or extension thereof, *or the date of the investment*

therein by the fiduciary; or it shall be amortized, in installments totalling in each year not less than three per centum per annum, of the face amount of the bonds or other obligations secured thereby, over a period not exceeding twenty years from the date thereof, or the date of any renewal or extension thereof.

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

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

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

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

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

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

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

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

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

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

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

(6) In its fiscal year immediately preceding the date of the investment, and in three of its four fiscal years immediately preceding such date, its income available for its fixed charges, as hereinafter defined, shall have been at least equal to its fixed charges for its fiscal year immediately preceding the date of such investment for any of such fiscal years ending [during the period from December thirty-first, one thousand nine hundred and thirty] prior to December thirty-first, one thousand nine hundred and thirty-five, [inclusive] and shall have been not less than one and one-half times its fixed charges for its fiscal year immediately preceding the date of such investment for any such fiscal [year] years ending after December thirty-first, one thousand nine hundred and thirty-five: *Provided, That if there was a public offering of securities of any such railroad corporation during its fiscal year immediately preceding the date of such investment, or since the close of such fiscal year, its fixed charges for such year shall be deemed to be its fixed charges immediately after the issue of said securities, adjustments being made for any securities retired in the new financing.*

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

(1) The obligations shall be—

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

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

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

(2) Such obligations shall also be—

(A) Bonds containing an unconditional promise to pay interest thereon, secured by a mortgage, which shall be a first lien, on not less than two-thirds of the

total length of the railroad lines covered by its lien, a part of which two-thirds shall constitute a part of a through route between two or more municipal corporations, each of at least forty thousand inhabitants as determined by the preceding United States Census. [The railroad lines covered by] *Unless such bonds are the bonds of a qualified railroad corporation, the income of which, available for its fixed charges in each of its three fiscal years immediately preceding the date of the investment therein by the fiduciary, shall have been not less than three times its fixed charges for its fiscal year immediately preceding the date of such investment, the mortgage securing such bonds shall be either subject to a mortgage inferior in lien to such mortgage, or, in the case of leased railroad lines, if there is no such inferior lien, [then] the lease shall provide for a rental in an amount sufficient to enable the lessor to pay dividends upon at least one class of its capital stock: Provided, That if there was a public offering of securities of any such railroad corporation during its fiscal year immediately preceding the date of such investment, or since the close of such fiscal year, its fixed charges for such year shall be deemed to be its fixed charges immediately after the issue of said securities, adjustments being made for any securities retired in the new financing; or*

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

(C) Equipment trust obligations comprising bonds, notes, or certificates issued in connection with the purchase for use on railroads of new standard-gauge rolling stock through the medium of an equipment trust agreement, and which obligations, so long as any thereof shall be outstanding and unpaid or unprovided for shall be secured either by an instrument—(1) vesting title to such equipment, free of encumbrance in a trustee; or (2) creating a first lien on such equipment; or (3) pending such vesting of title, or the attachment of such lien, providing for the deposit of cash in trust to an amount equal to the face amount of such obligations issued in respect of such equipment, title to which is not yet so vested or subject to such lien. The maximum amount of such obligations so issuable shall not exceed seventy-five per centum of the cost of such equipment, and the owner, purchaser or lessee, or the owners, purchasers or lessees, of such equipment shall be obligated by the terms of such obligations or of such instrument—(1) to maintain such equipment in proper repair; (2) to replace any thereof that may be destroyed or released with other equipment of equal value, or,

if released in connection with a sale thereof, to deposit the proceeds of such sale in trust for the benefit of the holders of such obligations pending replacement of such equipment; (3) to pay any and all taxes or other governmental charges that may be required by law to be paid upon such equipment; (4) to pay, in accordance with the provisions of such obligations, or of such instrument, to holders, or to such trustee for the benefit of holders of such obligations the amount of interest due thereon, or of the dividends payable in respect thereof; (5) to pay the amount of the entire issue of such obligations, within a period of not exceeding fifteen years from the first date of issue of any thereof, in approximately equal annual or semi-annual installments beginning not later than three years after such date of issue; or

(D) Bonds of a qualified railroad corporation secured by an irrevocable pledge as collateral under a trust agreement of other railroad obligations meeting the requirements hereinbefore set forth in this subsection. The total face amount of such pledged railroad obligations shall be not less than the total face amount of the bonds which they secure and the annual interest, derived from such pledged railroad obligations and available for the payment of the interest upon the bonds which they secure, shall be not less than the interest due upon the bonds which they secure.

(c) For the purposes of this subsection—

(1) The amount of income available for fixed charges shall be the amount obtained by deducting from gross income all items deductible in ascertaining net income other than contingent income interest and those constituting fixed charges, *and by deducting interest and dividends received by any such corporation on its own obligations and securities, and on obligations and securities, the interest or dividends on which it is obligated to pay as rental under any lease agreement which such corporation may own.* Fixed charges shall be—rent for leased roads, miscellaneous rents, funded debt interest which the corporation has unconditionally promised to pay, interest on unfunded debt and amortization of discount on funded debt, *but shall not include interest and dividends paid or accrued by such corporation on its own obligations and securities, and on obligations and securities, the interest or dividends on which it is obligated to pay as rental under lease agreement and which are owned by such corporation in its own right.*

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

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

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

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

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

(2) The sum of the total amount of the outstanding full-paid capital stock of such corporation, plus the total amount of its outstanding obligations not containing an unconditional promise to pay interest thereon, shall, at the close of its fiscal year preceding the invest-

ment by the fiduciary, or, if there has been a public offering of securities since the close of its last fiscal year, then, after the necessary adjustments have been made therefor, be not less than two-thirds of the total amount of its obligations containing an unconditional promise to pay interest thereon. *The term "total amount of the outstanding full-paid capital stock" of any such corporation shall consist of the aggregate par value of all its issued shares having a par value, plus the aggregate amount of capital or value applicable to all of its issued shares having no nominal or par value, as shown by the books of such corporation.*

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

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

(5) In determining the qualifications of any bond under this subsection, where a corporation shall have acquired its property, or any substantial part thereof,

within the five years immediately preceding the date of such investment by consolidation or by merger, or by the purchase of all or a substantial portion of the property of any other corporation or corporations, the gross operating revenues, net earnings, and interest charges of the several predecessor or constituent corporations shall be consolidated and adjusted, so as to ascertain whether the requirements of the preceding paragraph have been complied with.

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

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

(7) Such bonds must be part of an issue of not less than one million dollars, or of an issue of which a total of not less than one million dollars shall at some time have been outstanding in one or more series, and must be mortgage bonds secured by a first or refunding mortgage upon property owned and operated by the corporation issuing or assuming them, or must be underlying mortgage bonds secured by property owned and operated by the corporations issuing or assuming them: Provided, That a mortgage junior to such underlying mortgage bonds provides for their refunding or retire-

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

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

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

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

(1) Such corporation shall have been in existence for a period of not less than eight fiscal years, and at no time, within the period of eight fiscal years immediately preceding the date of such investment, shall such corporation have failed to pay punctually and regularly the matured principal and interest of all its indebted-

ness, direct, assumed, or guaranteed, but the period of life of the corporation together with the period of life of any predecessor corporation or corporations from which a major portion of its property was acquired by consolidation, merger, or purchase, shall be considered together in determining the required period: Provided, Such corporation shall file with the Federal Communications Commission, or a public service commission, or similar regulatory body having jurisdiction over it, and make public, in each year, a statement and a report giving the income account covering the previous fiscal year, and a balance sheet showing in reasonable detail the assets and liabilities at the end of the year.

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

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

(4) Such bonds must be part of an issue of not less than five million dollars or of an issue of which a

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

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

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

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

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

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

Subsection (11). Mortgages Insured by Federal Housing Administrator.—[Mortgages] *Mortgage bonds or other obligations* of one or more individuals or corporations [securing bonds or other obligations] insured by the Federal Housing Administrator prior to the first day of July, one thousand nine hundred and [thirty-seven] *thirty-nine*, pursuant to the provisions of [Title two of] the National Housing Act, approved the twenty-seventh day of June, one thousand nine hundred and thirty-four, *its amendments and supplements, or thereafter insured by such administrator with like force and effect pursuant to any amendment, revision or extension of the provisions of the said act. At the date of the investment in any such mortgage, the said insurance thereon shall be in good standing, in full force and effect.*

Subsection (12). Debentures Issued by the Federal Housing Administrator and Guaranteed by the United States.—Debentures issued by the Federal Housing Administrator and fully guaranteed as to principal and interest by the United States, pursuant to the provisions of the National Housing Act, approved the twenty-seventh day of June, one thousand nine hundred and thirty-four, *its amendments and supplements, and*

either purchased by the fiduciary as an investment or accepted by the fiduciary in payment of any mortgage insured by the Federal Housing Administrator in which the fiduciary may theretofore have invested monies in its hands to be invested.

Subsections 13, 14, 15, 16, 17, and 18, added to clause (a) of section 41.

Section 2. That after subsection twelve of paragraph one of clause (a) of section forty-one of the said act the following new subsections are hereby added:

Subsection (13). Federal Land Bank Bonds.—*Bonds of any Federal land bank or consolidated bonds of all of the Federal land banks, being the joint and several obligations of the said Federal land banks issued pursuant to the provisions of the act of Congress of the United States, approved the seventeenth day of July, one thousand nine hundred and sixteen, its supplements and amendments.*

Subsection (14). Interest-Bearing Deposits.—*Interest-bearing deposits, including certificates of deposit, saving accounts, and other forms of deposits, upon which interest is paid in any bank, bank and trust company, savings bank or national banking association, located within this Commonwealth. The maturity date or the permissible date of withdrawal of any such deposit shall not exceed one year from the date of the deposit, or any renewal thereof. A fiduciary shall not invest more than five hundred dollars of the funds of any trust estate in such deposits, nor shall such investments be made in deposits in the institution which is fiduciary of such estate.*

Subsection (15). Consolidated Federal Intermediate Credit Bank Debentures.—*Consolidated debentures of all of the Federal Intermediate* Credit Banks, being the joint and several obligations of said Federal Intermediate Credit Banks, issued pursuant to the provisions of the act of Congress of the United States, approved the fourth day of March, one thousand nine hundred and twenty-three, its amendments and supplements.*

Subsection (16). Federal Home Loan Bank Obligations.—*Debentures, bonds or other obligations of any of the Federal Home Loan Banks, or consolidated debentures of all of the Federal Home Loan Banks, being the joint and several obligations of said Federal Home Loan Banks, issued pursuant to the provisions of the act of Congress of the United States, approved the twenty-second day of July, one thousand nine hundred and thirty-two, its supplements and amendments.*

Subsection (17). Shares Insured by Federal Savings and Loan Insurance Corporation.—*Shares of any building and loan association, incorporated under the laws of this Commonwealth, or of any Federal Savings*

* "Intermedite" in the original.

and Loan Association incorporated under the laws of the United States, the withdrawal or repurchase value of which are insured by the Federal Savings and Loan Insurance Corporation, pursuant to the provisions of the act of Congress of the United States, approved the twenty-seventh day of June, one thousand nine hundred and thirty-four, its supplements and amendments.

Subsection (18). Obligations of the General State Authority and Housing Authorities.—Bonds of General State Authority, issued pursuant to the provisions of the act, approved the twenty-eighth day of June, one thousand nine hundred and thirty-five (Pamphlet Laws, four hundred fifty-two), its amendments and supplements, and bonds of any housing authority, issued pursuant to the provisions of the laws of this Commonwealth relating to the creation or operation of such housing authorities.

Section 3. That subsection thirteen of paragraph one of clause (a) of section forty-one of the said act, which was added to the said section by the act, approved the second day of July, one thousand nine hundred thirty-five (Pamphlet Laws, five hundred forty-five), is hereby renumbered to read as follows:

Subsection 13, clause (a), section 41, as added by act of July 2, 1935 (P. L. 545), renumbered.

Subsection [(13)] (19). General Provisions.—

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

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

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

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

filed and preserved among the records of the fiduciary.

Paragraph 2,
clause (e), sec-
tion 49, amended.

Section 4. That paragraph two of clause (e) of section forty-nine of the said act is hereby amended to read as follows:

2. Where stocks, bonds, or other securities have been distributed in kind, as above provided, to any fiduciary, [it shall be the duty of such fiduciary to use reasonable diligence in converting such securities as shall not be investments now or hereafter authorized by law; and] if such fiduciary be doubtful as to the propriety of *retaining* or making sale of such securities, he may apply to the orphans' court having jurisdiction of his accounts, by petition, for authority and direction to *retain* or sell the same; whereupon, after due notice to all parties interested, the said court shall make such order in the premises as to it may appear proper.

Fiduciary may
apply for au-
thority to sell or
retain stocks,
bonds, etc.

When effective.

Section 5. This act shall become effective immediately upon final enactment.

APPROVED—The 28th day of May, A. D. 1937.

GEORGE H. EARLE

No. 285

AN ACT

To amend section one of the act, approved the seventeenth day of July, one thousand nine hundred nineteen (Pamphlet Laws, one thousand twenty-five), entitled "A supplement to an act, approved the second day of May, one thousand eight hundred and ninety-nine (Pamphlet Laws, one hundred and eighty-four), entitled 'An act to provide revenue by imposing a mercantile license tax on vendors of or dealers in goods, wares, and merchandise, and providing for the collection of said tax,' " by providing for the annual appointment by the Auditor General of mercantile appraisers in cities of the first class, and terminating the terms of certain mercantile appraisers.

Section 1, act of
July 17, 1919
(P. L. 1025),
amended.

Section 1. Be it enacted, &c., That section one of the act, approved the seventeenth day of July, one thousand nine hundred nineteen (Pamphlet Laws, one thousand twenty-five), entitled "A supplement to an act, approved the second day of May, one thousand eight hundred and ninety-nine (Pamphlet Laws, one hundred and eighty-four), entitled 'An act to provide revenue by imposing a mercantile license tax on vendors of or dealers in goods, wares, and merchandise, and providing for the collection of said tax,' " is hereby amended to read as follows:

Cities of the
first class.
Mercantile
appraisers.

Section 1. Be it enacted, &c., That in all cities of the first class, on or before the [thirteenth] *first* day of [December] *June*, [one thousand nine hundred and nineteen] *one thousand nine hundred and thirty-seven*, and [quadrennially] *on or before the first day of June*