

the International Banking Act of 1978), or organizations operating under section 25 or section 25(a)<sup>1</sup> of the Federal Reserve Act, whether appointed by the Comptroller of the Currency, by the Board of Governors of the Federal Reserve System, by a Federal Reserve Agent, by a Federal Reserve bank, or by the Federal Deposit Insurance Corporation, or appointed or elected under the laws of any State; but shall not apply to private examiners or assistant examiners employed only by a clearing-house association or by the directors of a bank.

(June 25, 1948, ch. 645, 62 Stat. 728; Pub. L. 101-647, title XXV, §2597(e), Nov. 29, 1990, 104 Stat. 4909; Pub. L. 103-322, title XXXIII, §330016(1)(H), (K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104-294, title VI, §606(a), Oct. 11, 1996, 110 Stat. 3511.)

#### HISTORICAL AND REVISION NOTES

Based on section 593 of title 12, U.S.C., 1940 ed., Banks and Banking (Dec. 23, 1913, ch. 6, §22, 38 Stat. 272; Sept. 26, 1918, ch. 177, §5, 40 Stat. 970; Feb. 25, 1927, ch. 191, §15, 44 Stat. 1232; Aug. 23, 1935, ch. 614, §326(a), 49 Stat. 715).

Other provisions of section 593 of title 12, U.S.C. 1940 ed., Banks and Banking, are incorporated in sections 217 and 218 of this title.

The words "and shall upon conviction thereof" were omitted as unnecessary, since punishment cannot be imposed until a conviction is secured.

The phrase "bank or banking institution which is a member of the Federal Reserve System or which is insured by the Federal Deposit Insurance Corporation" was substituted for "member bank or insured bank" to avoid the use of a definitive section based on sections 221a, 264(e)(8), and 588a of title 12, U.S.C., 1940 ed., Banks and Banking. Words "banks the deposits of which are insured by the Federal Deposit Insurance Corporation" were substituted for "insured banks" in second paragraph, for the same reason.

Punishment provision harmonized with that of section 656 of this title. (See also, reviser's notes under sections 641 and 645 of this title.)

Changes in phraseology were also made.

#### REFERENCES IN TEXT

Section 1(b) of the International Banking Act of 1978, referred to in text, is classified to section 3101 of Title 12, Banks and Banking.

Section 25 of the Federal Reserve Act, referred to in text, is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, was renumbered section 25A of that act by Pub. L. 102-242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

#### AMENDMENTS

1996—Pub. L. 104-294 substituted "\$1,000" for "\$100" in first par.

1994—Pub. L. 103-322, in first par., substituted "fined under this title" for "fined not more than \$5,000" after "organization, shall be" and for "fined not more than \$1,000" after "he shall be".

1990—Pub. L. 101-647, in first par., substituted "System, which is insured" for "System or which is insured", inserted "which is a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or which is an organization operating under section 25 or section 25(a) of the Federal Reserve Act," after "Federal Deposit Insurance Corporation," and "branch, agency, or organization," after "premises of such bank," and in second par. substituted "System, banks the deposits of which" for "System or banks the

deposits of which", and inserted "branches or agencies of foreign banks (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or organizations operating under section 25 or section 25(a) of the Federal Reserve Act," after "Federal Deposit Insurance Corporation,".

#### § 656. Theft, embezzlement, or misapplication by bank officer or employee

Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, depository institution holding company, national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a)<sup>1</sup> of the Federal Reserve Act, or a receiver of a national bank, insured bank, branch, agency, or organization or any agent or employee of the receiver, or a Federal Reserve Agent, or an agent or employee of a Federal Reserve Agent or of the Board of Governors of the Federal Reserve System, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank, branch, agency, or organization or holding company or any moneys, funds, assets or securities intrusted to the custody or care of such bank, branch, agency, or organization, or holding company or to the custody or care of any such agent, officer, director, employee or receiver, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both; but if the amount embezzled, abstracted, purloined or misapplied does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

As used in this section, the term "national bank" is synonymous with "national banking association"; "member bank" means and includes any national bank, state bank, or bank and trust company which has become a member of one of the Federal Reserve banks; "insured bank" includes any bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured by the Federal Deposit Insurance Corporation; and the term "branch or agency of a foreign bank" means a branch or agency described in section 20(9) of this title. For purposes of this section, the term "depository institution holding company" has the meaning given such term in section 3 of the Federal Deposit Insurance Act.

(June 25, 1948, ch. 645, 62 Stat. 729; Pub. L. 101-73, title IX, §961(b), Aug. 9, 1989, 103 Stat. 499; Pub. L. 101-647, title XXV, §§2504(b), 2595(a)(1), 2597(f), Nov. 29, 1990, 104 Stat. 4861, 4906, 4909; Pub. L. 103-322, title XXXIII, §330016(1)(H), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104-294, title VI, §§601(f)(1), 606(a), Oct. 11, 1996, 110 Stat. 3499, 3511.)

#### HISTORICAL AND REVISION NOTES

Based on sections 592, 597 of title 12, U.S.C., 1940 ed., Banks and Banking (R.S. 5209; Dec. 23, 1913, ch. 6, §22(i), as added June 19, 1934, ch. 653, §3, 48 Stat. 1107; Sept. 26, 1918, ch. 177, §7, 40 Stat. 972; Aug. 23, 1935, ch. 614, §316, 49 Stat. 712).

Section 592 of title 12, U.S.C., 1940 ed., Banks and Banking, was separated into three sections the first of which, embracing provisions relating to embezzlement, abstracting, purloining, or willfully misapplying mon-

<sup>1</sup> See References in Text note below.

eys, funds, or credits, constitutes part of the basis for this section. Of the other two sections, one section, 334 of this title, relates only to the issuance and circulation of Federal Reserve notes and the other, section 1005 of this title, to false entries or the wrongful issue of bank obligations.

The original section, containing more than 500 words, was verbose, diffuse, redundant, and complicated. The enumeration of banks affected is repeated eight times. The revised section without changing in any way the meaning or substance of existing law, clarifies, condenses, and combines related provisions largely rewritten in matters of style.

The words "national bank" were substituted for "national banking association," the terms being synonymous by definition of section 221 of title 12, U.S.C., 1940 ed., Banks and Banking, written into the last paragraph of this section. This change made possible the use of the term "such bank" in substitution for the words "such Federal Reserve bank, member bank, or such national banking association, or insured bank," in each of seven instances.

The special and separate provisions of the original section relating to embezzlement by national bank receivers or Federal Reserve agents are readily combined in the revised section by including these officers in the initial enumeration of persons at whom the act is directed and by inserting the word "purloins" after "embezzles, abstracts," and the phrase "or any moneys, funds, assets, or securities entrusted to the custody or care," following the words "of such bank".

The last paragraph of the revised section includes the definitions of sections 221 and 264(c) of title 12, U.S.C., 1940 ed., Banks and Banking, made applicable by express provision of the original section. These were written in, with only such changes of phraseology as were necessary, in order to make the revised section complete and self-contained. For meaning of "bank," as used in bank robbery statute, see section 2113 of this title.

Section 597 of title 12, U.S.C., 1940 ed., Banks and Banking, likewise was separated into two parts, one of which was combined with the embezzlement provisions of said section 592 to form this section. The other part was combined with the related provisions of said section 592 to form section 1005 of this title.

It will be noted that section 597 of title 12, U.S.C., 1940 ed., Banks and Banking, was limited to "Whoever, being connected in any capacity with a Federal Reserve bank"; that it enumerated "note, debenture, bond, or other obligation, or draft, mortgage, judgment, or decree"; and that it stipulated punishment by fine of not more than \$10,000 or imprisonment of not more than 5 years, or both.

In combining these provisions, the words "or connected in any capacity" were written into the new section after the words "employee of," thus making them applicable not only to Federal Reserve banks but to the other banks as well. The phrase of section 592 of title 12, U.S.C., 1940 ed., Banks and Banking, "or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree," was modified to include the enumeration of like obligations in section 597 of title 12, U.S.C., 1940 ed., Banks and Banking, and to read as follows: "whoever without such authority makes, draws, issues, puts forth, or assigns any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond, or other obligation or mortgage, judgment, or decree". (See section 1005 of this title.)

As thus changed the new section is clear, simple, and unambiguous. The very slight changes of substance that have been noted, were unavoidable if the two sections were to be combined. Without combination any constructive revision of these duplicitous and redundant provisions was impossible. It is believed that the revised sections adequately and correctly represent the intent of Congress as the same can be gathered from

the overlapping and confusing enactments. At any rate, the severest criticism of the revised sections is that a person connected with a Federal Reserve bank who violates these sections can at most be punished by a fine of \$5,000 or imprisonment of 5 years, or both, whereas under section 597 of title 12, U.S.C., 1940 ed., Banks and Banking, he might have been fined \$10,000 or imprisoned 5 years, or both. Obviously an embezzler will rarely be financially able to pay even a \$5,000 fine even where such fine is imposed. Certainly if it is an adequate fine for a national bank president it is not too disproportionate for a person "connected in any capacity with a Federal Reserve bank".

The smaller punishment for an offense involving \$100 or less was added. (See reviser's notes under sections 641, 645 of this title.)

The words "shall be deemed guilty of a misdemeanor" were omitted as unnecessary in view of definitive section 1 of this title.

Words "upon conviction thereof" were omitted as unnecessary, since punishment cannot be imposed without conviction.

Words "In any district court of the United States" were omitted as unnecessary since section 3231 of this title gives the district courts jurisdiction of criminal prosecution.

#### SENATE REVISION AMENDMENT

Certain words were stricken from the section as being unnecessary and inconsistent with other sections of this revision defining embezzlement and without changing existing law. See Senate Report No. 1620, amendment No. 6, 80th Cong.

#### REFERENCES IN TEXT

Section 25 of the Federal Reserve Act, referred to in text, is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25(a) of the Federal Reserve Act, which is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, was renumbered section 25A of that act by Pub. L. 102-242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281.

Section 3 of the Federal Deposit Insurance Act, referred to in text, is classified to section 1813 of Title 12.

#### AMENDMENTS

1996—Pub. L. 104-294, in first par., substituted "Federal Reserve Act," for "Federal Reserve Act,," and "\$1,000" for "\$100".

1994—Pub. L. 103-322, in first par., substituted "fined under this title" for "fined not more than \$1,000" after "he shall be".

1990—Pub. L. 101-647, §2597(f)(1), in first par., directed substitution of "national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a) of the Federal Reserve Act," for "national bank, or insured bank" which was executed by making the substitution for "national bank or insured bank" to reflect the probable intent of Congress, and inserted "insured bank, branch, agency, or organization" after "receiver of a national bank,," "branch, agency, or organization" after "misapplies any of the moneys, funds or credits of such bank", and "branch, agency, or organization" after "custody or care of such bank,".

Pub. L. 101-647, §2595(a)(1)(A), (B), in first par., inserted "depository institution holding company," after "Federal Reserve Bank, member bank," and "or holding company" after "such bank" in two places.

Pub. L. 101-647, §2504(b), in first par., substituted "30 years" for "20 years".

Pub. L. 101-647, §2597(f)(2), in second par., struck out "and" after "one of the Federal Reserve Banks;" and directed insertion of "; and the term 'branch or agency of a foreign bank' means a branch or agency described in section 20(9) of this title" before the period which was executed by making the insertion before the period at end of first sentence to reflect the probable intent of Congress.

Pub. L. 101-647, §2595(a)(1)(C), in second par., inserted at end "For purposes of this section, the term 'depository institution holding company' has the meaning given such term in section 3 of the Federal Deposit Insurance Act."

1989—Pub. L. 101-73, in first par., substituted "\$1,000,000" for "\$5,000" and "20 years" for "five years".

**§ 657. Lending, credit and insurance institutions**

Whoever, being an officer, agent or employee of or connected in any capacity with the Federal Deposit Insurance Corporation, National Credit Union Administration, any Federal home loan bank, the Federal Housing Finance Agency, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, or the Farm Credit System Insurance Corporation, a Farm Credit Bank, a bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution, other than an insured bank (as defined in section 656), the accounts of which are insured by the Federal Deposit Insurance Corporation, or by the National Credit Union Administration Board or any small business investment company, or any community development financial institution receiving financial assistance under the Riegle Community Development and Regulatory Improvement Act of 1994, and whoever, being a receiver of any such institution, or agent or employee of the receiver, embezzles, abstracts, purloins or willfully misapplies any moneys, funds, credits, securities or other things of value belonging to such institution, or pledged or otherwise intrusted to its care, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both; but if the amount or value embezzled, abstracted, purloined or misapplied does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 729; May 24, 1949, ch. 139, §11, 63 Stat. 90; July 28, 1956, ch. 773, §1, 70 Stat. 714; Pub. L. 85-699, title VII, §703, Aug. 21, 1958, 72 Stat. 698; Pub. L. 87-353, §3(q), Oct. 4, 1961, 75 Stat. 774; Pub. L. 90-19, §24(a), May 25, 1967, 81 Stat. 27; Pub. L. 91-468, §4, Oct. 19, 1970, 84 Stat. 1016; Pub. L. 101-73, title IX, §§961(c), 962(a)(7), (8)(A), Aug. 9, 1989, 103 Stat. 499, 502; Pub. L. 101-624, title XXIII, §2303(e), Nov. 28, 1990, 104 Stat. 3981; Pub. L. 101-647, title XVI, §1603, title XXV, §§2504(c), 2595(a)(2), Nov. 29, 1990, 104 Stat. 4843, 4861, 4907; Pub. L. 103-322, title XXXIII, §§330004(6), 330016(1)(H), Sept. 13, 1994, 108 Stat. 2141, 2147; Pub. L. 103-325, title I, §119(c), Sept. 23, 1994, 108 Stat. 2188; Pub. L. 104-294, title VI, §606(a), Oct. 11, 1996, 110 Stat. 3511; Pub. L. 106-78, title VII, §767, Oct. 22, 1999, 113 Stat. 1174; Pub. L. 110-289, div. A, title II, §1216(c), July 30, 2008, 122 Stat. 2792; Pub. L. 111-203, title III, §377(2), July 21, 2010, 124 Stat. 1569.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 1026(b) and 1514(c) of title 7, U.S.C., 1940 ed., Agriculture, and sections 264(u), 984, 1121,

1138d(c), 1311, 1441(c), 1467(c), and 1731(c) of title 12, U.S.C., 1940 ed., Banks and Banking, and section 616(c) of title 15, U.S.C., 1940 ed., Commerce and Trade (Dec. 23, 1913, ch. 6, §12B(u), as added June 16, 1933, ch. 89, §8, 48 Stat. 178; July 17, 1916, ch. 245, §31, fourth paragraph, 39 Stat. 382; July 17, 1916, ch. 245, §211(a), as added Mar. 4, 1923, ch. 252, §2, 42 Stat. 1459; Mar. 4, 1923, ch. 252, title II, §216(a), 42 Stat. 1471; Jan. 22, 1932, ch. 8, §16(c), 47 Stat. 11; July 22, 1932, ch. 522, §21(c), 47 Stat. 738; Mar. 27, 1933, Ex. Ord. No. 6084; June 13, 1933, ch. 64, §8(c), 48 Stat. 135; June 16, 1933, ch. 98, §64(c), 48 Stat. 268; Jan. 31, 1934, ch. 7, §13, 48 Stat. 347; June 27, 1934, ch. 847, §512(c), 48 Stat. 1265; Aug. 23, 1935, ch. 614, §101, 49 Stat. 701; July 22, 1937, ch. 517, title IV, §52(b), 50 Stat. 532; Feb. 16, 1938, ch. 30, title V, §514(c), 52 Stat. 76; Aug. 14, 1946, ch. 964, §3, 60 Stat. 1064).

Each of the eleven sections from which this section was derived contained similar provisions relating to embezzlement, false entries, and fraudulent issuance or assignment of obligations with respect to one or more named agencies or corporations.

These were separated and the embezzlement and misapplication provisions of all form the basis of this section, and with one exception the remaining provisions of each section forming the basis for section 1006 of this title. The sole exception was that portion of said section 616(c) of title 15 as to the disclosure of information which now forms section 1904 of this title.

The revised section condenses and simplifies the constituent provisions without change of substance except as in this note indicated.

The punishment in each section was the same except that in section 1026(b) of title 7, U.S.C., 1940 ed., Agriculture, and sections 984, 1121, and 1311 of title 12, U.S.C., 1940 ed., Banks and Banking, the maximum fine was \$5,000. The revised section adopts the \$5,000 maximum. (For same penalty covering similar offense, see section 656 of this title.)

The smaller punishment for an offense involving \$100 or less was added. (See reviser's notes to sections 641-645 of this title.)

The enumeration of "moneys, funds, credits, securities, or other things of value" does not occur in any one of the original sections but is an adequate, composite enumeration of the instruments mentioned in each.

References to persons aiding and abetting contained in sections 984, 1121, 1311 of title 12, U.S.C., 1940 ed., Banks and Banking, were omitted as unnecessary, such persons being made principals by section 2 of this title.

The term "receiver" is used in sections 1121 and 1311 of title 12, U.S.C., 1940 ed., Banks and Banking, with reference to Federal intermediate banks and agricultural credit corporations, and is undoubtedly embraced in the term "connected in any capacity with," but the phrase "and whoever, being a receiver of any such institution" was inserted in this section to obviate all doubt as to its comprehensive scope.

The suggestion has been made that "private examiners" should be included. These undoubtedly are covered by the words "connected in any capacity with." (See also section 655 of this title.)

The term "or any department or agency of the United States" was inserted in each revised section in order to clarify the sweeping provisions against fraudulent acts and to obviate any possibility of ambiguity by reason of the omission of specific agencies named in the constituent sections. (See section 6 of this title defining "department and agency." For other verbal changes and deletions see reviser's note under section 656 of this title.)

SENATE REVISION AMENDMENT

Certain words were stricken from the section as being unnecessary and inconsistent with other sections of this revision defining embezzlement and without changing existing law. See Senate Report No. 1620, amendment No. 7, 80th Cong.

1949 ACT

[Section 11] conforms section 657 of title 18, U.S.C., to administrative practice which in turn was modified to