

CHAPTER 403
FORMERLY
HOUSE BILL NO. 412

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE RELATING TO LIMITATIONS ON PLEDGING OR HYPOTHECATING ASSETS OF BANKS AND TRUST COMPANIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 918, Chapter 9, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 918. Limitations on pledging or hypothecating assets.

(a) No bank or trust company shall pledge or hypothecate any of its assets except ~~as follows~~ to undertake any of the following:

(1) To ~~borrow~~ secure any borrowing, guarantee, credit exposure, or other potential liability in an aggregate amount up to but not exceeding the amount of its capital and surplus actually paid in and undiminished by losses or otherwise;

(2) To ~~borrow~~ secure any borrowing, guarantee, credit exposure, or other potential liability in an amount in excess of the limitation of paragraph (1) of this subsection ~~when~~ upon written consent of the State Bank Commissioner ~~shall have given his or her written consent~~;

(3) To ~~borrow~~ secure any borrowing, guarantee, credit exposure, or other potential liability, in addition to the amounts specified in paragraphs (1) and (2) of this subsection, ~~any amount~~ for the purpose of buying United States bonds, United States Treasury certificates, or notes or obligations of the United States or any United States government agency, and in such case the consent of the State Bank Commissioner shall not be required;

(4) To qualify itself to receive deposits of money of the United States or any United States government agency;

(5) To qualify itself to receive deposits of money of the State or any political subdivision or municipality thereof; ~~or~~;

(6) To qualify itself to exercise any of the powers of a trust company or to act in any fiduciary capacity; provided, however, that assets pledged in accordance with this subsection shall not be counted for purposes of satisfying the minimum capital stock and paid-in surplus required to be maintained by any bank, trust company or limited purpose trust company pursuant to § 745 of this title.

(b) No bank or trust company shall repledge or rehypothecate any property held by it or delivered to its account in pledge or hypothecation as collateral which belongs to any other corporation or person, unless such property is accompanied by the obligation of the original borrower from or counterparty to, the institution.

(c) No ~~loan made~~ borrowing, guarantee, credit exposure, or other potential liability entered into in contravention of this section shall be rendered illegal for this cause as against the lender, creditor, or holder thereof,

but the ~~borrowing corporation~~ bank or trust company shall be subject to appropriate proceedings by the State Bank Commissioner for a violation of law.

(d) Any savings bank or savings society doing business in this State may borrow money, and may secure the same by the assignment or pledge of any mortgage, mortgages, bonds, or other assets held by said savings bank or savings society, provided that the amount borrowed from all sources shall not at any time exceed in the aggregate ~~25 percent~~ 25% of the amount set aside for surplus and reserves. The amounts borrowed from all sources shall at all times, irrespective of whether or not the same are secured, constitute a preferred claim superior to all other claims on the assets of said savings bank or savings society. Provided, however, that any savings bank or savings society may borrow in excess of the ~~25 percent~~ 25% limitation set out above on written approval by the State Bank Commissioner.

(e) The limitation on pledges and hypothecations in subsection (a)(1) of this section and the limitation on repledges and rehypothecations in subsection (b) of this section shall not apply to any pledge, hypothecation, repledge, or rehypothecation by a bank or trust company supervised by a federal banking agency if the pledge, hypothecation, repledge, or rehypothecation is permitted under applicable federal law or regulations or orders promulgated thereunder by the federal banking agency.

Approved August 29, 2018