SPONSOR: Sen. Mantzavinos & Sen. Pettyjohn & Rep. Bush & Rep. Spiegelman
Reps. Carson, D. Short

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 16
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE RELATING TO DELAWARE 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. This Act may be referred to as the "Delaware Banking Modernization Act of 2026."

Section 2. Amend § 101, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 101 Definitions.

For the purpose of this Code and any other laws of this State relating to banks or banking, unless otherwise specifically defined, or unless another intention clearly appears, or unless the context requires a different meaning:

(9) “Digital Asset” means any digital representation of value which is recorded on a cryptographically-secured distributed ledger or other similar technology, including virtual currency.

(23) “Virtual Currency” means a digital representation of value that is used as a medium of exchange, unit of account, or store of value; and is not money, whether or not denominated in money; and does not include any of the following:

a. A transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for money, bank credit, or virtual currency .

b. A digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

Section 3. Amend § 103, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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(d) The State Bank Commissioner may contract for and procure such additional and independent consulting, legal and other technical and professional services as may be required for discharge of the duties of the office.

Section 4. Amend § 167, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 167 Definitions.

For purposes of this subchapter, the following words and phrases shall have the meanings ascribed to them herein:

(1) "Control" means the power, directly or indirectly, to direct the management or policies of a Delaware chartered bank or trust company or to vote 25 percent or more of any class of voting securities of such bank or trust company. For purposes of this subchapter, the acquisition of 10 percent or more of the voting stock of a Delaware chartered bank or trust company shall be presumed to constitute control if such institution has any class of voting securities registered under § 12 of the Securities Exchange Act of 1934 [15 U.S.C. § 78l] or if immediately after the transaction no other person will own ~~an aggregate~~ a greater proportion of ~~the~~ that class of voting securities.

Section 5. Amend § 701, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

(a) Except as specifically provided by Chapter 15 or Chapter 16 of this title, banks and trust companies shall be established or created in this State under and in accordance with this chapter. This chapter shall not, however, apply to national banks, except as otherwise provided in subchapters VI and VII of this chapter. The terms "bank" or "banks," when used in this chapter, do not include such national banks, except as otherwise provided in subchapters VI and VII of this chapter. Furthermore, the provisions of this chapter specifically relating to capital stock or stockholders of a bank organized under this chapter shall not apply to a corporation without capital stock doing a savings bank business.

(b) The State Bank Commissioner shall have the authority to allow the establishment under this chapter of banks and trust companies that are authorized to exercise all or less than all of the powers, including incidental powers, that are conferred on them by this chapter, including banks and trust companies whose powers are limited in their articles of association and by order of the State Bank Commissioner. The State Bank Commissioner may promulgate regulations to carry out the State Bank Commissioner's authority under this subchapter, including adopting different forms of applications for a certificate of public convenience and advantage with differing requirements based on the underlying risks of the proposed activities of the bank or trust company.

Section 6. Amend § 723, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

(a) The articles of association shall set forth that the subscribers thereto associate themselves with the intention of forming a corporation, and shall specifically state:

(5) The number, or manner of fixing such number, of its directors, which shall not be less than 5;

Section 7. Amend § 728, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

The president and a majority of the directors elected at the organization meeting of the incorporators shall make, sign and make oath to, a certificate (hereinafter called "articles of organization") setting forth: (1) A true copy of the articles of association; (2) The names of the subscribers thereto; (3) The name, ~~residence and post-office address~~ residence, business, post office or mailing address of each of the officers of the corporation; and (4) The date of the first meeting and the successive adjournments thereof, if any.

Section 8. Amend § 742, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) The business of every corporation organized under this chapter shall be managed by a board of directors. ~~The number of directors which shall constitute the whole board shall be such as may be specified in the articles of association, but in no case shall the number be less than 5.~~ The number of directors which shall constitute the whole board shall be such as shall be fixed by, or in the manner provided in, the articles of association, but in no case shall the number of directors be less than 5. The bylaws shall prescribe how many directors shall constitute a quorum for the transaction of business.

Section 9. Amend § 761, Title 5 of the Delaware Code by adding a new subsection (c) to read as follows:

(c) For the purposes of this subchapter, "personal property" includes digital assets.

Section 10. Amend § 777, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

(b) No certificate of public convenience and advantage shall be issued with respect to any limited purpose trust company except on a finding:

~~(1) That the limited purpose trust company will be operated in a manner so as not to attract customers from the general public in this State to the substantial detriment of existing banks or trust companies located in this State other than corporations established under this subchapter, provided that such limited purpose trust company may be operated in a manner likely to attract and retain customers with whom it or any affiliate thereof have or have had business relations;~~

Section 11. Amend § 783, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

(a) Upon written approval by the State Bank Commissioner banks may be merged to result in a state bank, or a national bank may convert into a state bank as hereafter prescribed, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the laws of the United States which shall also govern the rights of its dissenting stockholders.

(b) In the case of a merger of banks, without any order or action on the part of any court or otherwise, all appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, custodian, registrar of stocks and bonds, guardian of estates, assignee, receiver, trustee of estates of persons mentally ill and in every other fiduciary capacity, shall be automatically vested in the resulting bank; provided, however, that any party in interest shall have the right to apply to an appropriate court or tribunal for a determination as to whether the resulting bank shall continue to serve in the same fiduciary capacity as the merging bank not surviving such merger, or whether a new and different fiduciary should be appointed.

(c) In the case of a conversion of national banks or federal savings associations to a state bank, without any order or action on the part of any court or otherwise, all appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, custodian, registrar of stocks and bonds, guardian of estates, assignee, receiver, trustee of estates of persons mentally ill and in every other fiduciary capacity, automatically shall remain vested in the state bank resulting from such conversion.

Section 12. Amend Subchapter VII, Chapter 7, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter VII

~~Merger or Consolidation with Out-Of-State-Banks~~

Merger, Consolidation or Conversion with or of Out-of-State Trust Companies

Section 13. Amend § 795, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 795 Definitions.

As used in this subchapter:

(7) "Delaware state trust company" means any trust company chartered under the laws of this State.

(15) "Out-of-state trust company" means an out-of-state state trust company or an out-of-state national trust bank.

(16) "Out-of-state state trust company" means any trust company chartered under the laws of a state other than Delaware that is not engaged in the business of receiving deposits other than trust funds.

(18) “Out-of-state national trust bank” means a national bank whose operations are limited to those of a trust company and activities related thereto and that is not located in this State.

(21) “Trust company” means a Delaware state trust company or an out-of-state trust company.

Section 14. Amend § 795A, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~It is the express intent of this subchapter to permit interstate branching by merger under § 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, in accordance with the provisions set forth in this subchapter.~~

It is the express intent of this subchapter to do all of the following:

(1) Permit interstate branching by merger under § 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, in accordance with the provisions set forth in this subchapter.

(2) Facilitate the relocation of out-of-state banks and out-of-state trust companies to Delaware.

Section 15. Amend § 795B, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(d) With the prior written approval of the State Bank Commissioner, a Delaware state trust company may establish, maintain, and operate one or more branch offices, trust offices or other places of business in a state other than this State pursuant to an interstate merger or conversion transaction in which the Delaware state trust company is the resulting trust company.

Section 16. Amend § 795D, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 795D Merger with or conversion into resulting Delaware state ~~bank.~~ bank or Delaware state trust company.

(a) Upon written approval by the State Bank Commissioner, out-of-state banks may be merged with or into Delaware banks to result in a Delaware state bank in the same manner as that prescribed in §§ 784, 788, 789, 790, 791 and 792 of this title and as prescribed in subsection (b) of this ~~section;~~ section, and subject to the other restrictions of this chapter, out-of-state trust companies may be merged with or into Delaware state trust companies to result in a Delaware state trust company, in each case in the same manner as that prescribed in §§ 784, 788, 790, 791 and 792 of this title (applied with respect to out-of-state trust companies and Delaware state trust companies as if they are banks thereunder) and as prescribed in subsection (b) of this section; provided, that the action by a national bank shall be taken in the manner prescribed by and subject to limitations and requirements imposed by the laws of the United States, which shall also govern

the rights of its dissenting stockholders; and further provided, that the action by an out-of-state state bank or out-of-state state trust company, as applicable, shall be taken in the manner prescribed by and subject to limitations and requirements imposed by the laws of the state under whose laws such out-of-state state bank or out-of-state state trust company, as applicable, is chartered, which shall also govern the rights of its dissenting ~~stockholders.~~ stockholders or members.

(b) Following the approval of the merger agreement both in substance and form by the State Bank Commissioner, in the same manner as that prescribed in § 784 of this title, the procedure for a merger which is to result in a Delaware state bank or a Delaware state trust company, as applicable, and the legal effect of any such merger (except as regards the rights to payment for their shares of dissenting stockholders of any merging bank that is a Delaware state ~~bank)~~ bank or of any merging trust company that is a Delaware state trust company, as applicable) and the manner of making and effecting the same shall be as prescribed in Chapter 1 of Title 8 for the merger or consolidation of domestic and foreign corporations or Chapter 18 of Title 6 for the merger or consolidation of domestic and foreign limited liability companies, as applicable .

(c) Upon written approval by the State Bank Commissioner an out-of-state state bank may convert into a Delaware state bank, or an out-of-state trust company may convert into a limited purpose trust company, as hereinafter described, except that the action by a national bank shall be taken in the manner prescribed by and subject to limitations and requirements imposed by the laws of the United States, which shall also govern the rights of its dissenting stockholders, and the action by an out-of-state state bank or out-of-state state trust company shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the laws of the state in which the out-of-state state bank or out-of-state state trust company is chartered and such laws will also govern the rights of its dissenting stockholders or members.

(d) Except as provided in subsection (g) of this section, an out-of-state state bank or out-of-state state trust company which follows the procedure prescribed by the laws of the state in which the out-of-state state bank or out-of-state state trust company is chartered as well as the conversion procedures set forth in Chapter 1 of Title 8 of the Code or Chapter 18 of Title 6 of the Code, as applicable, to convert into a Delaware state bank or a limited purpose trust company may be granted a state charter with the approval of the State Bank Commissioner; provided, however, that the conversion shall be deemed approved if no action is taken by the State Bank Commissioner within 30 days after receipt of the completed application in accordance with subsection (e) of this section.

(e) The out-of-state state bank or out-of-state state trust company may apply for such charter pursuant to subsection (d) of this section by filing all of the following with the State Bank Commissioner:

(1) A certificate signed by its president and cashier or treasurer and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the laws of the state in which the out-of-state state bank or out-of-state state trust company is chartered, as applicable.

(2) The plan of conversion and the proposed articles of association and bylaws (if applicable), approved by the stockholders or members, for the operation of the out-of-state state bank or out-of-state state trust company as a Delaware state bank or limited purpose trust company.

(f) Following the approval of the conversion by the State Bank Commissioner under subsection (c) of this section, the legal effect of a conversion which is to result in a Delaware state bank or a Delaware state trust company, and the manner of making and effecting the same, shall be as prescribed in Chapter 1 of Title 8 for the conversion of domestic and foreign corporations or Chapter 18 of Title 6 for the conversion of domestic and foreign limited liability companies, as applicable.

(g) Where a resulting Delaware state bank is not to exercise trust powers, the State Bank Commissioner may not approve a merger or conversion until satisfied that adequate provision has been made for successors to fiduciary positions held by the merging banks or the converting bank.

(h) In the case of a merger of banks or trust companies, without any order or action on the part of any court or otherwise, all appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, custodian, registrar of stocks and bonds, guardian of estates, assignee, receiver, trustee of estates of persons mentally ill and in every other fiduciary capacity, shall be automatically vested in the resulting bank or trust company; provided, however, that any party in interest shall have the right to apply to an appropriate court or tribunal for a determination as to whether the resulting bank or trust company shall continue to serve in the same fiduciary capacity as the merging bank or trust company that is not the resulting bank or trust company, or whether a new and different fiduciary should be appointed.

(i) In the case of a conversion of banks or trust companies, without any order or action on the part of any court or otherwise, all appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, custodian, registrar of stocks and bonds, guardian of estates, assignee, receiver, trustee of estates of persons mentally ill and in every other fiduciary capacity, automatically shall remain vested in the bank or trust company resulting from such conversion.

Section 17. Amend § 795I, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(c) A Delaware state trust company may conduct any activities at any branch office or other place of business outside this State that are permissible for a Delaware state trust company and that are permissible under the laws of the state where such branch office or other place of business is located.

Section 18. Amend § 913, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 913 Authority of national ~~bank~~ bank, out-of-state state bank and out-of-state state trust company to act as fiduciary.

(a) Any national bank located in this State, when authorized by the laws of the United States, may act by any and every method of appointment, and in any capacity whatever, as trustee, executor, administrator, or register of stocks and bonds.

(b) A bank or trust company organized and doing business under the laws of any state of the United States other than Delaware, duly authorized by the laws of such state and its organizational documents, including its certificate of incorporation, bylaws, certificate of formation or limited liability company agreement or their equivalent based on the form of organization, so to act, may be appointed by any last will and testament or other testamentary writing, probated within this State, or by a deed of trust, mortgage or other agreement, as executor, guardian, trustee or other fiduciary, and may act as such within this State, when and to the extent that the laws of the state in which the bank or trust company is organized confer like powers upon banks or trust companies organized and doing business under the laws of this State.

Section 19. Amend § 1622, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

(a) The articles of association shall set forth that the subscribers thereto associate themselves with the intention of forming a corporation, and shall specifically state:

(5) The ~~number~~ number, or manner of fixing such number, of its directors, which shall not be less than 5 ;

Section 20. Amend § 1627, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

The president and a majority of the directors elected at the organization meeting of the incorporators shall make, sign and make oath to a certificate (hereinafter called "articles of organization") setting forth:

(3) The name, ~~residence and post-office address~~ business, post office or mailing address of each of the officers of the corporation; and

Section 21. Amend § 1642, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) The business of every corporation organized under this chapter shall be managed by a board of directors. ~~The number of directors which shall constitute the whole board shall be such as may be specified in the articles of association, but in no case shall the number be less than 5.~~ The number of directors which shall constitute the whole board shall be such

as shall be fixed by, or in the manner provided in, the articles of association, but in no case shall the number of directors be less than 5. The bylaws shall prescribe how many directors shall constitute a quorum for the transaction of business.

Section 22. Amend § 1661, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(c) For the purposes of this subchapter, "personal property" includes digital assets.

Section 23. Sections 1 through 4 and Sections 6 through 23 of this Act are effective immediately.

Section 24. Section 5 of this Act is effective immediately and is to be implemented the earlier of the following:

(1) One year from the date of the Act's enactment.

(2) Notice by the State Banking Commissioner published in the Register of Regulations that final regulations to implement this Act have been promulgated.