



SPONSOR: Sen. Adams
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Capano, Fallon, Carey, Brady,
Houghton, Keeley & Scott

DELAWARE STATE SENATE

140th GENERAL ASSEMBLY

SENATE BILL NO.

AN ACT TO AMEND TITLE 5 OF THE DELAWARE CODE RELATING TO BANKS AND OTHER FINANCIAL INSTITUTIONS

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

1 Section 1. This Act may be referred to as the "Banking and Financial Services Amendments Act
2 of 1999".

3 Section 2. Amend subsection (9) of §101 of Title 5 of the Delaware Code by inserting the words
4 "or person" after the words "or other institution" and before the words "either licensed under this title".

5 Section 3. Amend §121 of Title 5 of the Delaware Code by adding to the title thereof the words
6 and punctuation "; administration and enforcement of title" after the word "institutions" and before the
7 period, by adding to the beginning of subsection (a) thereof the words "shall have authority to administer
8 and enforce all the provisions of this title and" after the words "The Commissioner" and before the words
9 "shall have supervision", by deleting the period at the end of subparagraph (2) of subsection (a) and
10 inserting in lieu thereof a semi-colon, and by adding a new subparagraph (3) at the end of subsection (a)
11 thereof, as follows:

12 "(3) All persons who have been issued a license pursuant to any of the provisions of this
13 title."

14 Section 4. Amend subsection (b) of §127 of Title 5 of the Delaware Code by deleting the eighth
15 and ninth sentences thereof.

16 Section 5. Amend §137 of Title 5 of the Delaware Code by deleting from the first sentence
17 thereof the words "financial institution organized pursuant to this title" and inserting in lieu thereof the
18 words and punctuation "bank, trust company, building and loan association, or building and industrial
19 development corporation subject to supervision by the Commissioner".

20 Section 6. Amend Chapter 8 of Title 5 of the Delaware Code by deleting the word "Existing"
21 from the titles of Subchapters III and IV thereof.

22 Section 7. Amend subparagraph (3) of subsection (b) of §909 of Title 5 of the Delaware Code by
23 deleting all of the words and punctuation after the word "subsidiary" and before the period, and inserting
24 in lieu thereof the words "other than a subsidiary referred to in subsection (e) of this section".

25 Section 8. Amend §924 of Title 5 of the Delaware Code by adding to subsection (a)(3) thereof
26 the symbol "(i)" after the word "which" and before the words "is established", by further adding to
27 subsection (a)(3) thereof the words and punctuation "(including so-called Totten Trust accounts) or (ii)
28 pursuant to an agreement with the banking organization, is payable on request to the depositor during the
29 depositor's lifetime and, on the depositor's death, to a beneficiary (including so-called payable-on-death
30 accounts)" after the word "decree" and before the period, and by adding to subsection (e) thereof the
31 words and punctuation "or payable on death of all of the depositors to a beneficiary," after the words and
32 punctuation "in trust for another," and before the words "such account".

33 Section 9. Amend §936 of Title 5 of the Delaware Code by deleting from the first sentence
34 thereof the words "as contained in subdivision (10) of §101 of this title" and inserting in lieu thereof the
35 words and punctuation ", as they relate to the activities of international banking facilities and as defined in
36 §101 of this title,", and by deleting from the second sentence thereof the words "in subdivision (10) of
37 §101 of this title" and inserting in lieu thereof the words "within the aforementioned terms 'deposit',
38 'borrowing' and 'extension of credit'".

39 Section 10. Amend subparagraph c. of subsection (4) of §941 of Title 5 of the Delaware Code by
40 deleting the words "in installments" and inserting in lieu thereof the words "otherwise in accordance with
41 the agreement governing the plan" after the words "time to time in full or" and before the semi-colon.

42 Section 11. Amend §951 of Title 5 of the Delaware Code by deleting the text of that section in its
43 entirety and inserting in lieu thereof the following:

44 “In the event a borrower defaults under the terms of a plan, the bank may, if the
45 borrower’s account is referred to an attorney (not a regularly salaried employee of the
46 bank) or to a third party for collection and if the agreement governing the revolving credit
47 plan so provides, charge and collect from the borrower a reasonable attorney’s fee. In
48 addition, following a borrower’s default, the bank may, if the agreement governing the
49 plan so provides, recover from the borrower all court, alternative dispute resolution or
50 other collection costs (including, without limitation, fees and charges of collection
51 agencies) actually incurred by the bank.”

52 Section 12. Amend §952(a) of Title 5 of the Delaware Code by deleting the words and
53 punctuation “(i) a bank may at any time and from time to time amend the terms of such agreement in any
54 respect and (ii)” and inserting in lieu thereof the words and punctuation “a bank may at any time and from
55 time to time amend such agreement in any respect, whether or not the amendment or the subject of the
56 amendment was originally contemplated or addressed by the parties or is integral to the relationship
57 between the parties. Without limiting the foregoing, such amendment may change terms by the addition
58 of new terms or by the deletion or modification of existing terms, whether relating to plan benefits or
59 features, the rate or rates of periodic interest, the manner of calculating periodic interest or outstanding
60 unpaid indebtedness, variable schedules or formulas, interest charges, fees, collateral requirements,
61 methods for obtaining or repaying extensions of credit, attorney’s fees, plan termination, the manner for
62 amending the terms of the agreement, arbitration or other alternative dispute resolution mechanisms, or
63 other matters of any kind whatsoever. Unless the agreement governing a revolving credit plan otherwise
64 expressly provides,” and by adding at the end of that section the following new sentence:

65 “Any notice of an amendment sent by the bank may be included in the same envelope
66 with a periodic statement or as part of the periodic statement or in other materials sent to
67 the borrower.”

Section 13. Amend §952(c) of Title 5 of the Delaware Code by deleting existing paragraphs (2) and (3) thereof in their entirety, renumbering existing paragraphs (4) and (5) thereof as new paragraphs (5) and (6), respectively, and by adding thereto new paragraphs (2), (3) and (4), as follows:

“(2) Any change to a plan that increases the rate or rates in effect immediately prior to the change by less than 1/4 of 1 percentage point per annum; provided that a bank may not make more than one such change in reliance on this paragraph with respect to a plan within any 12-month period;

(3) (i) A change in the schedule or formula used under a variable rate plan under §944 of this title that varies the determination date of the applicable rate, the time period for which the applicable rate will apply or the effective date of any variation of the rate, or any other similar change, or (ii) any other change in the schedule or formula used under a variable rate plan under §944 of this title; provided that the initial interest rate that would result from any such change under this paragraph (3), as determined on the effective date of the change or, if notice of the change is mailed or delivered to the borrower prior to the effective date, as of any date within 60 days before mailing or delivery of such notice, will not be an increase from the rate in effect on such date under the existing schedule or formula;

(4) A change from a variable rate plan to a fixed rate, or from a fixed rate to a variable rate plan so long as the initial rate that would result from such a change, as determined on the effective date of the change, or if the notice of the change is mailed or delivered to the borrower prior to the effective date, as of any date within 60 days before mailing or delivery of such notice, will not be an increase from the rate in effect on such date under the existing plan;"

Section 14. Amend §971 of Title 5 of the Delaware Code by deleting the text of that section in its entirety and inserting in lieu thereof the following:

93 "In the event an individual borrower defaults under the terms of a loan, the bank may, if
94 such borrower's account is referred to an attorney (not a regularly salaried employee of
95 the bank) or to a third party for collection and if the agreement governing, or the bond,
96 note or other evidence of, the loan so provides, charge and collect from the borrower a
97 reasonable attorney's fee. In addition, following an individual borrower's default, the
98 bank may, if the agreement governing, or the bond, note or other evidence of, the loan so
99 provides, recover from such borrower all court, alternative dispute resolution or other
100 collection costs (including, without limitation, fees and charges of collection agencies)
101 actually incurred by the bank."

102 Section 15. Amend §1101(h) of Title 5 of the Delaware Code by deleting the reference therein to
103 "§101(7)c. of this title" and inserting in lieu thereof a reference to "§101(4)c. of this title".

104 Section 16. Amend subparagraph (4) of subsection (c) of §1104 of Title 5 of the Delaware Code
105 by deleting the words and punctuation ";provided, however, that this paragraph shall not apply in the case
106 of any banking organization, trust company or federal savings bank not headquartered in this State but
107 maintaining branches in this State if such banking organization, trust company or federal savings bank not
108 headquartered in this State but maintaining branches in this State, or any predecessor thereof, had taxable
109 income (as defined in §1101(a) or (b) of this title) of \$200,000 or more for any of the 3 taxable years
110 immediately preceding the taxable year involved" after the words "preceding taxable year" and before the
111 period.

112 Section 17. Amend Chapter 11 of Title 5 of the Delaware Code by adding thereto new §1113,
113 §1114 and §1115, as follows:

114 "§1113. Secrecy of returns and information; penalty.

115 (a) Except in accordance with proper judicial order or as otherwise provided by law, it
116 shall be unlawful for the Commissioner or any person who is an officer or employee in the Office
117 of the Commissioner, or for any other officer or employee of this State who has access to tax
118 returns or information from tax returns under this chapter, to disclose or make known to any

119 person in any manner the amount of income or any particulars set forth or disclosed in any report
120 or return required under this chapter.

121 (b) Nothing in this section shall be construed to prohibit the publication of statistics classified so
122 as to avoid identification of specific taxpayers, or to prohibit the disclosure of the tax return or
123 return information of any taxpayer to such person or persons as the taxpayer may designate in a
124 written request or consent to such disclosure.

125 (c) For purposes of this section, the term 'officer or employee' shall include present and former
126 officers and employees, and any person or persons employed or retained by the State on an
127 independent contractor basis.

128 (d) Any violation of this section shall be a misdemeanor, punishable upon conviction by a fine
129 not to exceed \$1,000, or imprisonment not to exceed 6 months, or both. The Superior Court shall
130 have exclusive original jurisdiction over such misdemeanor.

131 §1114. Abatements.

132 (a) The Commissioner is authorized to abate the unpaid portion of the assessment of any
133 tax, interest, penalty, additional amount or addition to the tax, or any liability in respect thereof,
134 which is:

135 (1) Excessive in amount;

136 (2) Assessed after the expiration of the period of limitations properly applicable
137 thereto; or

138 (3) Erroneously or illegally assessed.

139 (b) The Commissioner is authorized to abate any portion (whether or not theretofore
140 paid) of the assessment of any tax, interest, penalty, additional amount or additions to the tax, or
141 any liability in respect thereof, if the Commissioner determines under uniform rules prescribed by
142 the Commissioner that the administration and collection costs involved would not warrant
143 collection of the amount due.

144 §1115. Closing Agreements.

The Commissioner, or any person authorized in writing by the Commissioner, is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of another person for whom such person acts) with respect to any tax imposed under this chapter for any taxable period. Such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(1) The case shall not be reopened as to matters agreed upon or the agreement modified by any officer, employee or agent of this State; and

(2) In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded."

Section 18. Amend §1501 of Title 5 of the Delaware Code by inserting the words and punctuation "including institutions that accept collateral for extensions of credit by holding deposits under \$100,000, and by other means" after the words and punctuation "chartered under the laws of this State," and before the words "that engage only in credit card operations".

Section 19. Amend §1512 of Title 5 of the Delaware Code by deleting from the first sentence thereof the number "3" and inserting in lieu thereof the number "2" after the word "for" and before the words "successive weeks".

Section 20. Amend §1513 of Title 5 of the Delaware Code by deleting the word "third" and inserting in lieu thereof the word "second" after the number and words "60 days after the" and before the word "publication", and by deleting the number and words "30 days from the date of the 3rd publication" and inserting in lieu thereof the number and words "20 days from the date of the second publication" after the words "before the expiration of" and before the comma.

Section 21. Amend § 1541(a)(4) of Title 5 of the Delaware Code by inserting the words and punctuation ", and to accept collateral for extensions of credit by holding deposits under \$100,000, and by other means" after the words "not less than \$100,000" and before the semi-colon.

170 Section 22. Amend §1623 of Title 5 of the Delaware Code by deleting from the first sentence
171 thereof the number "3" and inserting in lieu thereof the number "2" after the word "for" and before the
172 words "successive weeks".

173 Section 23. Amend §1624 of Title 5 of the Delaware Code by deleting the word "third" and
174 inserting in lieu thereof the word "second" after the number and words "60 days after the" and before the
175 word "publication", and by deleting the number and words "30 days from the date of the third
176 publication" and inserting in lieu thereof the number and words "20 days from the date of the second
177 publication" after the words "before the expiration of" and before the comma.

178 Section 24. Amend §1703 of Title 5 of the Delaware Code by adding thereto a new subsection
179 "(e)", as follows:

180 "(e) Notwithstanding any other provision of this title, a building and loan association
181 with less than \$2,000,000 in assets shall be charged no more than the cost of 5 examiner man
182 days for an examination under this section. For the purposes of this section, an examiner man
183 day is the calculated daily rate of pay for an examiner."

184 Section 25. Amend §1726 of Title 5 of the Delaware Code by deleting the words and punctuation
185 ", and, in default of payment, imprisoned not more than 30 days" after the word "violation" and before the
186 period.

187 Section 26. Amend §1727 of Title 5 of the Delaware Code by deleting from the first sentence the
188 amount "\$4,000,000" and inserting in lieu thereof the amount "\$5,000,000" after the words "total assets
189 exceed" and before the words "or registered office".

190 Section 27. Amend Chapter 18 of Title 5 of the Delaware Code by adding thereto new §1807,
191 §1808 and §1809, as follows:

192 "§1807. Secrecy of returns and information; penalty.

193 (a) Except in accordance with proper judicial order or as otherwise provided by law, it
194 shall be unlawful for the Commissioner or any person who is an officer or employee in the Office
195 of the Commissioner, or for any other officer or employee of this State who has access to tax
196 returns or information from tax returns under this chapter, to disclose or make known to any

197 person in any manner the amount of income or any particulars set forth or disclosed in any report
198 or return required under this chapter.

199 (b) Nothing in this section shall be construed to prohibit the publication of statistics classified so
200 as to avoid identification of specific taxpayers, or to prohibit the disclosure of the tax return or
201 return information of any taxpayer to such person or persons as the taxpayer may designate in a
202 written request or consent to such disclosure.

203 (c) For purposes of this section, the term 'officer or employee' shall include present and former
204 officers and employees, and any person or persons employed or retained by the State on an
205 independent contractor basis.

206 (d) Any violation of this section shall be a misdemeanor, punishable upon conviction by a fine
207 not to exceed \$1,000, or imprisonment not to exceed 6 months, or both. The Superior Court shall
208 have exclusive original jurisdiction over such misdemeanor.

209 §1808. Abatements.

210 (a) The Commissioner is authorized to abate the unpaid portion of the assessment of any
211 tax, interest, penalty, additional amount or addition to the tax, or any liability in respect thereof,
212 which is:

213 (1) Excessive in amount;

214 (2) Assessed after the expiration of the period of limitations properly applicable
215 thereto; or

216 (3) Erroneously or illegally assessed.

217 (b) The Commissioner is authorized to abate any portion (whether or not theretofore
218 paid) of the assessment of any tax, interest, penalty, additional amount or additions to the tax, or
219 any liability in respect thereof, if the Commissioner determines under uniform rules prescribed by
220 the Commissioner that the administration and collection costs involved would not warrant
221 collection of the amount due.

222 §1809. Closing Agreements.

The Commissioner, or any person authorized in writing by the Commissioner, is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of another person for whom such person acts) with respect to any tax imposed under this chapter for any taxable period. Such agreement shall be final and conclusive, and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(1) The case shall not be reopened as to matters agreed upon or the agreement modified by any officer, employee or agent of this State; and

(2) In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded."

Section 28. Amend §2106 of Title 5 of the Delaware Code by deleting from the second sentence thereof the words and punctuation "and the date and place of its organization or formation, if applicable" after the word "licensee" and before the period, by deleting from the fourth sentence thereof the words "endorse the change of location on the license without charge" and inserting in lieu thereof the words "issue without charge an amended license showing the new location" after the word "shall" and before the period, and by deleting from the fifth sentence thereof the words "endorse such name change on the license without charge" and inserting in lieu thereof the words "issue without charge an amended license showing the new name" after the word "shall" and before the period.

Section 29. Amend subsection (2) of §2201 of Title 5 of the Delaware Code by inserting the words and punctuation "and, in addition, means any person or class of persons exempt from any or all of the provisions of this chapter in accordance with §2202(b) of this title, to the extent and for such purposes as determined by the Commissioner in order to effectuate the purposes of this chapter" after the words "pursuant to this chapter" and before the period.

Section 30. Amend subsection (b) of §2202 of Title5 of the Delaware Code by inserting the words "from any or all of the provisions of this chapter" after the word "exempt" and before the words "such persons", and by adding at the end of that subsection the words and punctuation "The

249 Commissioner may by regulation establish procedures for application, fees and other requirements for an
250 exemption pursuant to this subsection."

251 Section 31. Amend §2206(a) of Title 5 of the Delaware Code by deleting from the first sentence
252 thereof the words and punctuation ", and the date and place of its incorporation, if applicable" after the
253 word "licensee" and before the period, by deleting from the third sentence thereof the words "endorse the
254 change of location on the license without charge" and inserting in lieu thereof the words "issue without
255 charge an amended license showing the new location" after the word "shall" and before the period, and by
256 deleting from the fourth sentence thereof the words "endorse such name change on the license without
257 charge" and inserting in lieu thereof the words "issue without charge an amended license showing the new
258 name" after the word "shall" and before the period.

259 Section 32. Amend subparagraph c. of subsection (1) of §2214 of Title 5 of the Delaware Code
260 by deleting the words "in installments" and inserting in lieu thereof the words "otherwise in accordance
261 with the agreement governing the plan" after the words "time to time in full or" and before the semi-
262 colon.

263 Section 33. Amend §2223 of Title 5 of the Delaware Code by deleting the text of that section in
264 its entirety and inserting in lieu thereof the following:

265 "In the event a borrower defaults under the terms of a plan, the licensee may, if the
266 borrower's account is referred to an attorney (not a regularly salaried employee of the
267 licensee) or to a third party for collection and if the agreement governing the revolving
268 credit plan so provides, charge and collect from the borrower a reasonable attorney's fee.
269 In addition, following a borrower's default, the licensee may, if the agreement governing
270 the plan so provides, recover from the borrower all court, alternative dispute resolution or
271 other collection costs (including, without limitation, fees and charges of collection
272 agencies) actually incurred by the licensee."

273 Section 34. Amend §2224(a) of Title 5 of the Delaware Code by deleting the words and
274 punctuation "(i) a licensee may at any time and from time to time amend the terms of such agreement in

275 any respect and (ii)" and inserting in lieu thereof the words and punctuation "a licensee may at any time
276 and from time to time amend such agreement in any respect, whether or not the amendment or the subject
277 of the amendment was originally contemplated or addressed by the parties or is integral to the relationship
278 between the parties. Without limiting the foregoing, such amendment may change terms by the addition
279 of new terms or by the deletion or modification of existing terms, whether relating to plan benefits or
280 features, the rate or rates of periodic interest, the manner of calculating periodic interest or outstanding
281 unpaid indebtedness, variable schedules or formulas, interest charges, fees, collateral requirements,
282 methods for obtaining or repaying extensions of credit, attorney's fees, plan termination, the manner for
283 amending the terms of the agreement, arbitration or other alternative dispute resolution mechanisms, or
284 other matters of any kind whatsoever. Unless the agreement governing a revolving credit plan otherwise
285 expressly provides," and by adding at the end of that section the following new sentence:

286 "Any notice of an amendment sent by the licensee may be included in the same envelope
287 with a periodic statement or as part of the periodic statement or in other materials sent to
288 the borrower."

289 Section 35. Amend §2224(c) of Title 5 of the Delaware Code by deleting existing paragraphs (2)
290 and (3) thereof in their entirety, renumbering existing paragraphs (4) and (5) thereof as new paragraphs
291 (5) and (6), respectively, and by adding thereto new paragraphs (2), (3) and (4), as follows:

292 "(2) Any change to a plan that increases the rate or rates in effect immediately prior to
293 the change by less than 1/4 of 1 percentage point per annum; provided that a licensee may
294 not make more than one such change in reliance on this paragraph with respect to a plan
295 within any 12-month period;

296 (3) (i) A change in the schedule or formula used under a variable rate plan under §2217
297 of this title that varies the determination date of the applicable rate, the time period for
298 which the applicable rate will apply or the effective date of any variation of the rate, or
299 any other similar change, or (ii) any other change in the schedule or formula used under a
300 variable rate plan under §2217 of this title; provided that the initial interest rate that

301 would result from any such change under this paragraph (3), as determined on the
302 effective date of the change or, if notice of the change is mailed or delivered to the
303 borrower prior to the effective date, as of any date within 60 days before mailing or
304 delivery of such notice, will not be an increase from the rate in effect on such date under
305 the existing schedule or formula;

306 (4) A change from a variable rate plan to a fixed rate, or from a fixed rate to a variable
307 rate plan so long as the initial rate that would result from such a change, as determined on
308 the effective date of the change, or if the notice of the change is mailed or delivered to the
309 borrower prior to the effective date, as of any date within 60 days before mailing or
310 delivery of such notice, will not be an increase from the rate in effect on such date under
311 the existing plan;"

312 Section 36. Amend §2236 of Title 5 of the Delaware Code by deleting the text of that section in
313 its entirety and inserting in lieu thereof the following:

314 "In the event a borrower defaults under the terms of a loan, the licensee may, if the
315 borrower's account is referred to an attorney (not a regularly salaried employee of the
316 licensee) or to a third party for collection and if the agreement governing, or the bond,
317 note or other evidence of, the loan so provides, charge and collect from the borrower a
318 reasonable attorney's fee. In addition, following a borrower's default, the licensee may,
319 if the agreement governing, or the bond, note or other evidence of, the loan so provides,
320 recover from the borrower all court, alternative dispute resolution or other collection
321 costs (including, without limitation, fees and charges of collection agencies) actually
322 incurred by the licensee."

323 Section 37. Amend §2308 of Title 5 of the Delaware Code by adding to the title of that section
324 the words and punctuation "; license requirements; acquisition" after the word "approval" and before the

325 period, by designating all of the existing text of that section as subsection "(a)" thereof, and by adding to
326 the text of that section new subsections "(b)" and "(c)", as follows:

327 "(b) Each license issued under this chapter shall state the address at which the business is
328 to be conducted and shall state fully the name of the licensee. A copy of such license shall be
329 prominently posted in each place of business of the licensee. In case such location be changed,
330 the Commissioner shall issue without charge an amended license showing the new location. In
331 case there is a change of name but no change in corporate structure, the Commissioner shall issue
332 without charge an amended license showing the new name. Such license shall not be otherwise
333 transferable or assignable. No licensee shall maintain an office at any other location than that
334 designated in the license. The Commissioner may issue more than 1 license to the same applicant
335 upon payment of the required fees and compliance with all applicable provisions of law.

336 (c) Upon written request, the Commissioner may in the Commissioner's discretion grant
337 conditional approval for an acquired licensee to conduct its business under its existing license for
338 a period not to exceed 60 days when control of the licensee changes and a new application for
339 licensure has been filed in accordance with this chapter."

340 Section 38. Amend §2718 of Title 5 of the Delaware Code by deleting the words and punctuation
341 "if the licensee is a corporation, the date of its incorporation;".

342 Section 39. Amend §2724 of Title 5 of the Delaware Code by inserting in the title of that section
343 the words and punctuation "; change of name" after the word "area" and before the period, by designating
344 all of the existing text of that section as subsection "(a)" thereof, and by adding thereto a new subsection
345 "(b)", as follows:

346 "(b) In case there is a change in name but no change in corporate structure of a licensee,
347 the Commissioner shall issue without charge an amended license showing the new name."

348 Section 40. Amend §2744 of Title 5 of the Delaware Code by deleting the first sentence of that
349 section.

350 Section 41. Amend §2902 of Title 5 of the Delaware Code by deleting from the second sentence
351 of subsection (b) thereof the words and punctuation "date of incorporation, if incorporated;" after the

352 word and punctuation "applicant;" and before the words "the address", by deleting from the second
353 sentence of subsection (d) thereof the words "endorse the change of location on the license without
354 charge" and inserting in lieu thereof the words "issue without charge an amended license showing the new
355 location" after the word "shall" and before the period, and by deleting from the second sentence of
356 subsection (e) thereof the words "endorse such name change on the license without charge" and inserting
357 in lieu thereof the words "issue without charge an amended license showing the new name" after the word
358 "shall" and before the period.

359 Section 42. If any provision of this Act or the application of any section or part thereof to any
360 person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of
361 this Act that can be given effect without the invalid provision or application.

362 Section 43. Section 16 of this Act shall be effective for tax years beginning after December 31,
363 1998. Section 24 of this Act shall be effective as of January 1, 1999. All other provisions of this Act
364 shall be effective upon its enactment into law.

SYNOPSIS

This Act continues the practice of annually amending the State's laws on banking and financial services to keep them current and in conformance with other laws and industry developments.

Section 1. Provides a title for the Act.

Section 2. Amends §101(9) of Title 5 of the Delaware Code to clarify that the term "financial institution" includes any person licensed under Title 5 or subject to the supervision and regulation of the State Bank Commissioner.

Section 3. Amends §121 of Title 5 of the Delaware Code to clarify the State Bank Commissioner's authority to administer and enforce all the provisions of Title 5, and to supervise all persons issued a license under Title 5.

Section 4. Amends §127(b) of Title 5 of the Delaware Code by deleting an outdated provision for a supervisory assessment on out-of-state bank holding companies that formed banks in Delaware pursuant to the Financial Center Development Act of 1981. Federal law no longer permits such assessments on out-of-state bank holding companies that form new banks in Delaware.

Section 5. Amends §137 of Title 5 of the Delaware Code to clarify that the State Bank Commissioner has the power, under appropriate circumstances, to remove any officer or director from any state-chartered bank, trust company, building and loan association, or building and industrial development company subject to supervision by the Commissioner.

Section 6. Amends the titles of Subchapters III and IV of Chapter 8 of Title 5 of the Delaware Code to clarify that those subchapters apply to all Delaware savings banks, banks and bank holding companies, not just to those that are defined as "existing", or in existence for at least five years.

Section 7. Amends §909(b)(3) of Title 5 of the Delaware Code to exempt from the general loan limitations of §909 any loan to a subsidiary or affiliate of a bank. Federal law already provides such an exemption for national banks. This amendment also establishes parity between the making of loan to a subsidiary and the making of an investment in a subsidiary by a Delaware bank under §910 of Title 5.

Section 8. Amends §924 of Title 5 of the Delaware Code to authorize Delaware banks to offer payable-on-death accounts, pursuant to which the bank, under the terms of its contract with the depositor, agrees to pay the proceeds remaining in the account to a named beneficiary upon the depositor's death. Delaware law already authorizes Totten Trusts, which are the functional equivalent of payable-on-death accounts, in this section of the Code.

Section 9. Amends §936 of Title 5 of the Delaware Code to correct cross-references in that section to the terms "deposit", "borrowing" and "extension of credit" as defined in §101 of Title 5.

Sections 10 and 32. Amend §941(4)c. and §2214(1)c. of Title 5 of the Delaware Code to clarify that a bank or licensed lender, as provided under the terms of the agreement with the borrower, may require repayment in full or otherwise in accordance with the terms of the agreement governing the plan.

Sections 11, 14, 33 and 36. Amend §951, §971, §2223 and §2236 of Title 5 of the Delaware Code to clarify and confirm existing law about the collection of fees paid to a third party. Specifically, these amendments clarify and confirm that banks and licensed lenders do not have to first refer an account to an attorney rather than a third party collector to recover collection fees. To encourage banks and licensed lenders to use attorneys so that they might recoup the fees incurred would be inefficient and, in many cases, result in higher costs to consumers. In addition, these amendments clarify that alternative dispute resolution costs are recoverable.

Sections 12 and 34. Amend §952(a) and §2224(a) of Title 5 of the Delaware Code to clarify certain provisions of the state's open-end credit banking provisions in order to accommodate developments in banking and

lending practices and to maintain the competitive advantages of operating credit card and other open-end credit programs out of banks located in Delaware or lenders licensed to conduct business in Delaware. These amendments to the changes-in-terms section of the open-end credit provisions clarify that, except as expressly limited by agreement, a bank or licensed lender may amend the agreement governing a revolving credit plan in any respect, whether by adding, deleting or modifying terms, and such a change in terms may affect any aspect of the plan regardless of whether the subject of the amendment was contemplated or addressed in the original agreement. In addition, the bank or licensed lender's notice of the amendment, if any, may be inserted in the same envelope as a periodic statement or other materials.

Sections 13 and 35. Amend §952(c) and §2224(c) of Title 5 of the Delaware Code to further update, clarify and streamline the methods by which amendments may be made to open-end credit plans by specifying certain types of amendments that are not deemed to increase the interest rates charged by a bank or licensed lender.

Section 15. Amends §1101(h) of Title 5 of the Delaware Code to correct a cross-reference within that subsection to the definition of an Edge Act Corporation.

Section 16. Amends §1104(c)(4) of Title 5 of the Delaware Code to reintroduce an exemption for all bank franchise taxpayers from the provisions in §1104(c) for additional tax for underpayment of estimated bank franchise tax. This exemption applies when total estimated tax payments equal or exceed the amount of actual bank franchise tax owed for the preceding year. This exemption had applied for many years to all bank franchise taxpayers, but was limited to small taxpayers for 1998. The reintroduction of this exemption for all bank franchise taxpayers is based on the experience of the Office of the State Bank Commissioner in administering the bank franchise provisions of the Code.

Sections 17 and 27. Amend Chapters 11 and 18 of Title 5 of the Delaware Code by adding new §1113 and §1807 to clarify that tax returns filed with the State Bank Commissioner are confidential, the same as tax returns filed with the Department of Finance, as provided in §368 of Title 30, and by adding new §1114, §1115, §1808 and §1809 to clarify that the Bank Commissioner has authority, comparable to that of the Director of Revenue under §538 ("Abatements") and §564 ("Closing Agreements") of Title 30, to abate bank franchise tax assessments under limited circumstances and to enter into closing agreements to resolve the bank franchise tax liability of any taxpayer.

Sections 18 and 21. Amend §1501 and 1541(a)(4) of Title 5 of the Delaware Code to conform the activities permitted for a state-chartered credit card institution to those specified in the federal Bank Holding Company Act by authorizing the acceptance of collateral for extensions of credit by holding deposits under \$100,000, and by other means.

Sections 19-20. Amend §1512 and §1513 of Title 5 of the Delaware Code to conform the public notice requirements for applications to form new Delaware state-chartered credit card institutions to the comparable public notice requirements in §724 and §725 of Title 5 for Delaware state-chartered commercial banks.

Sections 22-23. Amend §1623 and §1624 of Title 5 of the Delaware Code to conform the public notice requirements for applications to form new Delaware state-chartered savings banks to the comparable public notice requirements in §724 and §725 of Title 5 for Delaware state-chartered commercial banks.

Section 24. Amends §1703 of Title 5 of the Delaware Code to reintroduce a limit on the cost of examination for small building and loan associations with assets less than \$2,000,000. This limit had existed for many years, but was removed in 1996. The reintroduction of this limit is based on the experience of the Office of the State Bank Commissioner in administering the Banking Code.

Section 25. Amends §1726 of Title 5 of the Delaware Code to delete the provision for imprisonment as a penalty for conducting the business of a building and loan association without a license.

Section 26. Amends §1727 of Title 5 of the Delaware Code by increasing from \$4,000,000 to \$5,000,000 the threshold amount of total assets above which a building and loan association is required to obtain federal deposit insurance.

Sections 28, 31, 38, 39 and 41. Amend §2106, §2206(a), §2718, §2724 and §2902 of Title 5 of the Delaware Code to update the license requirements for mortgage loan brokers, licensed lenders, check cashers and

motor vehicle sales finance companies, respectively, by deleting unnecessary requirements relating to the date and/or place of incorporation or organization, and providing that changes of name or location be reflected in amended licenses issued without charge, rather than requiring endorsements of those changes on existing licenses.

Sections 29 and 30. Amend §2201(2) and §2202(b) of Title 5 of the Delaware Code to authorize the State Bank Commissioner to issue regulations relating to persons exempt from some or all of the requirements of licensees under Chapter 22 ("Licensed Lenders") of Title 5. These regulations might include procedures for applications and fees for such exemptions. In addition, these amendments would clarify that the Commissioner may authorize exempt persons to lend money in Delaware pursuant to provisions of Chapter 22, the same as licensed lenders.

Section 37. Amends §2308 of Title 5 of the Delaware Code to include provisions for license requirements for check sellers and money transmitters that are comparable to the license requirements for other Title 5 licensees.

Section 40. Amends §2744 of Title 5 of the Delaware Code to remove an outdated restriction on persons engaged in certain activities from obtaining licenses as check cashers under Chapter 27 of Title 5. Removing this restriction would permit pawnbrokers, for example, to become licensed check cashers.

Section 42. Provides for the severability of the provisions in the Act.

Section 43. Provides that Section 16 of the Act, relating to the amendment to §1104(c)(4) of Title 5, shall be effective for tax years beginning after December 31, 1998, and that Section 24 of the Act, relating to the amendment to §1703 of Title 5, shall be effective as of January 1, 1999. The retroactive effectiveness of these sections assists the Office of the State Bank Commissioner in administering these provisions of the Banking Code. The remaining provisions of the Act shall become effective upon its enactment into law.

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