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DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE BILL NO. 316

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. Amend § 136 of Title 5 of the Delaware Code as follows: In subsection (a), insert after the words “a
2 financial institution subject to this title” the words “or any other financial company”. In subsection (b), insert after the
3 words “financial institutions” and before the period, the words “or financial companies”. In subsection (d), insert after the
4 words “financial institution”, as such words appear throughout that subsection, the words “or financial company”. Add a
5 new subsection (g) as follows:

6 “(g) As used in this section, ‘financial company’ and ‘company’ mean any person
7 transacting, conducting or engaged in any business or activity that is subject to licensing, regulation
8 or supervision under this title.”

9 Section 2. Amend § 137 of Title 5 of the Delaware Code as follows: In the first sentence of the first paragraph,
10 insert after the words and punctuation “industrial development corporation subject to supervision by the Commissioner,”
11 the words and punctuation “and also to prohibit such person from further participation in any manner in the conduct of the
12 affairs of any financial institution, ”. In the first sentence of subsection (1) delete the words “the financial institution” as
13 they appear after the words “in the conduct of the affairs of”, and insert in lieu thereof the words “any financial
14 institution”. In the last sentence of subsection (1), delete the words “the financial institution”, and insert in lieu thereof
15 the words “any financial institution”. In subsection (3), delete the words and punctuation “the institution.” at the end of
16 that subsection, and insert in lieu thereof the words and punctuation “any financial institution.” In subsection (5), delete

17 from the third sentence of that subsection the words “the financial institution”, and insert in lieu thereof the words “any
18 financial institution”. In subsection (7), delete from the third sentence the words “the financial institution”, and insert in
19 lieu thereof the words “any financial institution”.

20 Section 3. Amend § 143 of Title 5 of the Delaware Code as follows: In subsection (a)(1), insert after the words
21 “financial institution” the words “or financial company”. In subsection (b)(3), delete the word “institution’s”, and insert
22 in lieu thereof the word “violator’s”. In subsection (c), delete the words and punctuation “for any financial institution
23 subject to this title” and insert a period after the word “violation”. In subsection (d), insert after the words “financial
24 institution” as such words appear throughout such subsection, the words “or financial company”. Add a new subsection
25 (h) as follows:

26 “(h) As used in this section, ‘financial company’ means any person transacting,
27 conducting or engaged in any business or activity that is subject to licensing, regulation or
28 supervision under this title.”

29 Section 4. Amend § 144 of Title 5 of the Delaware Code by inserting the words and
30 punctuation ", unless it, or an affiliate of such entity, is a regulated trust institution under the laws of
31 this or any other state" after the word "name" and before the period at the end of that section.

32 Section 5. Amend §928 of Title 5 of the Delaware Code by inserting in the title thereof the
33 words "or of a trust company" after the word "deposits" and before the period, and by inserting in the
34 text of the first sentence of subsection (a) the words "or other person" after the word "corporation"
35 and before the words "who in any manner represents", and by further inserting in the text of the first
36 sentence of subsection (a) the words and punctuation "or as engaged in the business of a trust
37 company within the boundaries of the State," after the word and punctuation "State," and before the
38 words "not being authorized", and by inserting in the text of subsection (b) the words and punctuation
39 "or as engaged in the business of a trust company within the boundaries of the State," after the word
40 and punctuation "State," and before the words "it shall be prima facie evidence", and by further

41 inserting in the text of subsection (b) the words "or other person" after the word "corporation" and
42 before the period.

43 Section 6. Amend § 1404 of Title 5 of the Delaware Code by designating all of the existing
44 text of subsection (a) thereof as subparagraph (1) of that subsection, and adding thereto a new
45 subparagraph (2) to subsection (a), as follows:

46 “(2) A foreign bank holding a certificate of authority pursuant to this subchapter may
47 establish and maintain a foreign bank branch in this State at the location stated therein and may
48 engage in a general banking business thereat, even though the foreign bank has not elected this State
49 as its home state as provided in subparagraph (1) of this subsection, if the foreign bank upgrades an
50 agency established under subsection (b) of this section or a limited purpose branch established under
51 subsection (c) of this section, provided that such agency or limited purpose branch has been in
52 operation for at least 5 years.”

53 Section 7. Amend Chapter 21 of Title 5 of the Delaware Code by adding a new § 2116 to that chapter as
54 follows:

55 “§ 2116. Penalty.

56 Any person who violates any provision of this chapter shall be fined not less than
57 \$50.00 nor more than \$200.00 or imprisoned for not more than 3 months or both for each such
58 offense.”

59 Section 8. Amend § 2902 of Title 5 of the Delaware Code as follows: In subsection (b), delete the second
60 sentence of that subsection, and insert in lieu thereof the following: “The application shall contain the name of the
61 applicant; the address(es) where the business is or is to be conducted; the name and resident address(es) of the owner or
62 partners or, if a corporation or association, of the directors, trustees and principal officers, and such other pertinent
63 information as the Commissioner may require.” In subsection (c), delete the phrase “\$115 for each additional branch of
64 the licensee maintained in this State”, and insert in lieu thereof “\$287.50 for each additional office of the licensee”. In
65 subsection (d), delete the words “or branch” from that subsection.

66 Section 9. If any provision of this Act or the application of any section or part thereof to any person or
67 circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act that can be given
68 effect without the invalid provision or application.

69 Section 10. The provisions of this Act shall be effective upon its enactment into law.

SYNOPSIS

Section 1. This section amends § 136 of Title 5 of the Delaware Code to clarify that the State Bank Commissioner has authority to issue cease and desist orders against unlicensed financial companies that engage in businesses or conduct activities that are regulated in Title 5.

Section 2. This section amends § 137 of Title 5 of the Delaware Code so that the State Bank Commissioner may prohibit a person who has been removed from office for wrongful conduct from participating in the affairs of any financial institution that the Commissioner regulates or supervises.

Section 3. This section amends § 143 of Title 5 of the Delaware Code to clarify that the State Bank Commissioner has authority to impose a civil money penalty on unlicensed financial companies that engage in businesses or conduct activities that are regulated in Title 5.

Section 4. This section amends § 144 of Title 5 of the Delaware Code to clarify that the word "trust " may be used in the name of a financial institution that is an affiliate of a regulated trust institution.

Section 5. This section amends § 928 of Title 5 of the Delaware Code to provide a penalty for unauthorized persons who represent themselves as being engaged in the business of a trust company, the same as the penalty for unauthorized persons who represent themselves as being engaged in the business of receiving deposits as a bank or trust company, and by otherwise clarifying the meaning of the section.

Section 6. This sections amends §1404(a) of Title 5 relating to foreign bank branches, and encourages economic development by providing enhanced opportunities for foreign banks to conduct business in the State. Section 1404(a) already authorizes foreign bank "home state" branches in Delaware. New §1404 (a)(2) authorizes foreign banks that have operated agencies or limited purpose branches for at least five years to upgrade those to foreign bank branches, even though Delaware has not been elected as the "home state" for the foreign bank's U.S. operations. This takes advantage of an opportunity created under an amendment to the federal International Banking Act of 1978 that allows states to authorize foreign bank "host state" branches even though, like Delaware, those states do not permit "de novo" branching for domestic US. Banks based in other states.

Section 7. This section imposes a criminal penalty on anyone who violates the provisions of Chapter 21, dealing with mortgage brokers. This penalty provision is substantially similar to the criminal penalty provisions that appear in other licensing chapters under Title 5, and clarifies the legal basis for the Attorney General to initiate enforcement actions for violations.

Section 8. This section amends § 2902 of Title 5 of the Delaware Code by eliminating the license fee differential for in-state and out-of-state offices of motor vehicle sales finance companies by raising the fee for additional in-state office locations to \$287.50 from \$115.00. This is consistent with comparable provisions in other licensing chapters, under which the same fee for additional office locations is charged for both in-state and out-of-state offices. This amendment also clarifies § 2902 by eliminating the word "branch", which previously referred to additional in-state office locations as opposed to other types of offices.

Section 9. This section provides for the severability of the provisions of the Act.

Section 10. This section provides that the Act will become effective upon its enactment.

Author: Senator Adams