Title 5

Banking

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Part I
State Banking Agencies
Chapter 1
STATE BANK COMMISSIONER
Subchapter I
General Provisions

§ 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:

(1) "Affiliate" means a person that directly or indirectly through 1 or more intermediaries, controls or is controlled by or is under common control with, the person specified.

(2) "Automated service branch" means an automated teller machine, cash dispensing machine or other electronic facility located in this State installed or operated by any bank, remote from its main office or any branch office, by which funds may be deposited into or withdrawn from established accounts, advances may be obtained against previously authorized lines of credit, transfers of funds between accounts may be made, loan and other payments may be made or cash may be received or dispensed.

(3) "Bank" means every bank and every corporation conducting a banking business of any kind or plan whose principal place of business is in this State, except a national bank.

(4) "Banking organization" means:

a. A bank or bank and trust company organized and existing under the laws of this State;

b. A national bank, including a federal savings bank, with its principal office in this State;

c. An Edge Act corporation organized pursuant to § 25(a) of the Federal Reserve Act, 12 U.S.C. § 611 et seq., or a state chartered corporation exercising the powers granted thereunder pursuant to an agreement with the Board of Governors of the Federal Reserve System, and maintaining an office in this State;

d. A federal branch or agency licensed pursuant to § 4 and § 5 of the International Banking Act of 1978, 12 U.S.C. § 3101 et seq., to maintain an office in this State;

e. A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of this title, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of this title; or

f. A resulting branch in this State of an out-of-state bank (as defined in § 795 of this title, and also including branch offices in this State of an out-of-state bank, as defined in § 795 of this title).

(5) The terms "borrowing," "deposit" and "extension of credit" as they relate to the activities of international banking facilities shall have the meanings ascribed to them in pertinent regulations adopted by the Board of Governors of the Federal Reserve System, as such regulations may be amended from time to time.

(6) "Capital stock" means both common stock and preferred stock.

(7) "Commissioner" means the State Bank Commissioner.

(8) "Control" means, directly or indirectly or acting through one or more other persons, to own, control or have the power to vote 25 percent or more of any class of voting securities, to control in any manner the election of a majority of the directors or trustees, or to exercise a controlling influence over the management or policies of a bank, trust company, other financial institution or any other company.

(9) "Financial institution" means any bank, trust company or other institution or person either licensed under this title or subject to the supervision and regulation of the State Bank Commissioner.

(10) "Foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company. The term "foreign bank" includes, without limitation, foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign companies are organized or operating.

(11) "Foreign bank agency" means an office in this State of a foreign bank that is exercising the powers authorized by § 1404(b) of this title.

(12) "Foreign bank branch" means an office in this State of a foreign bank that is exercising the powers authorized by § 1404(a) of this title.

(13) "Foreign bank limited purpose branch" means an office in this State of a foreign bank that is exercising the powers authorized by § 1404(c) of this title.

(14) "Foreign country" means any country other than the United States, and includes any colony, dependency or possession of any such country.

(15) "International banking facility" means a set of asset and liability accounts, segregated on the books and records of a banking organization, that includes only international banking facility deposits, borrowings and extensions of credit.

(16) "International banking transaction" means any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to § 771 of this title or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

a. The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;

b. The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;

c. The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;

d. The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;

e. The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to a banking organization described in subsection (4)c. of this section, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or

f. The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs a. through e. of this subdivision.

(17) "National bank" means a banking association organized under the authority of the United States and having a principal place of business in this State.

(18) "Person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated association or any other form of entity not specifically listed herein.

(19) "Representative office" means an office in this State of a foreign bank that is exercising the powers authorized by § 1423 of this title.

(20) "Subsidiary" means any association, corporation, partnership, statutory trust, business trust or other similar organization, having offices and exercising its powers within or without the State, that is controlled by a bank, trust company, other financial institution or any other company through:

a. Direct or indirect ownership or control of 25 percent or more of the voting rights;

b. Control of the election of majority of the directors; or

c. The power, directly or indirectly, to exercise a controlling influence over the management or policies of the organization.

(21) "Trust company" means a trust company or corporation or limited liability company doing a trust company business which has a principal place of business in this State.

(32 Del. Laws, c. 103 § 1; Code 1935 §§ 2274, 2289; 5 Del. C. 1953 § 101; 60 Del. Laws, c. 349 § 1; 61 Del. Laws, c. 544 § 1; 64 Del. Laws, c. 43 § 2; 65 Del. Laws, c. 444 § 2; 66 Del. Laws, c. 27 § 2; 68 Del. Laws, c. 303 §§ 1, 2; 69 Del. Laws, c. 165 §§ 1-4; 70 Del. Laws, c. 16 §§ 1, 2; 70 Del. Laws, c. 112 §§ 1-4; 71 Del. Laws, c. 254 § 2; 72 Del. Laws, c. 15 § 2; 72 Del. Laws, c. 35 §§ 2-5; 73 Del. Laws, c. 329 § 3; 76 Del. Laws, c. 383 § 1.)

§ 102 [Reserved.]

§ 103 Deputies and other employees.

(a) The State Bank Commissioner may appoint not more than 2 deputies and may employ such personnel as shall be necessary for making examinations of and giving adequate supervision over the corporations under the jurisdiction of the State Bank Commissioner. The Commissioner shall lend such aid and counsel to the officers and directors of those corporations as the situation or the circumstances may require, and in general, properly conduct the affairs of the Commissioner's office and discharge in a proper manner the duties imposed upon the Commissioner by law.

(b) The tenure, duties and compensation of the persons appointed or employed under subsection (a) of this section shall be determined by the State Bank Commissioner as provided by law, in a manner consistent with the Merit System of Personnel Administration, Chapter 59 of Title 29, where applicable.

(c) Upon the removal, resignation, death or disability of any person appointed or employed under subsection (a) of this section, the vacancy may be filled by the State Bank Commissioner.

(30 Del. Laws, c. 111 § 2; 36 Del. Laws, c. 89 § 2; 38 Del. Laws, c. 92 § 1(2); Code 1935 § 2275; 43 Del. Laws, c. 135 § 1; 48 Del. Laws, c. 225 § 1; 5 Del. C. 1953 § 103; 49 Del. Laws, c. 16; 57 Del. Laws, c. 740 §§ 16B-16D; 61 Del. Laws, c. 385 § 1; 68 Del. Laws, c. 303 §§ 3, 4; 70 Del. Laws, c. 186 § 1.)

§ 104 Qualifications of Commissioner and employees.

The Commissioner and the employees who work for the Commissioner shall be selected with respect to their knowledge of and

experience in banking and accounting. The Commissioner shall be a resident of the State. The Commissioner and the employees who work for the Commissioner shall not be stockholders in any corporation coming under this title.

(30 Del. Laws, c. 111 § 3; 38 Del. Laws, c. 92 § 1(3); Code 1935 § 2276; 5 Del. C. 1953 § 104; 57 Del. Laws, c. 740 §§ 16E, 16F; 61 Del. Laws, c. 359 § 1; 68 Del. Laws, c. 303 § 5.)

§ 105 Office; expenses; account of receipts; Regulatory Revolving Fund.

(a) The principal office of the Commissioner shall be in Dover. The necessary expenses of the office, the salaries or compensation of the Commissioner and the employees who work for the Commissioner, and the necessary expenses incurred by them in the performance of their respective duties shall be paid by the Secretary of Finance when and as vouchers therefor are presented to him or her by the Commissioner or the Secretary of State.

(b) There is hereby created within the State Treasury a special fund to be designated as the State Bank Commissioner Regulatory Revolving Fund which shall be used in the operation of the Office of the State Bank Commissioner in the performance of the various functions and duties required of the Office by law.

(c) All supervisory assessments, examination fees, payment for costs and expenses in acting as a receiver, reimbursement for expenses incurred in the operation of the office and any investigation fees collected by the Commissioner pursuant to this title shall be deposited in the State Treasury to the credit of said State Bank Commissioner Regulatory Revolving Fund to be used in the operation of the Office as authorized by the General Assembly in its annual operating budget. All other fees and/or taxes collected by the Commissioner shall not be deposited in said fund but shall be deposited in the General Fund.

(d) Money reposing in the State Bank Commissioner Regulatory Revolving Fund shall be used by the Commissioner in the performance of the Commissioner's various functions and duties as provided by law, subject always to annual appropriations by the General Assembly for salaries and other routine operating expenses of the Office. The Council on Banking shall submit comments on the budget request of the Commissioner to the Secretary of State, the Governor and members of the General Assembly.

(e) The maximum unencumbered balance which shall remain in the State Bank Commissioner Regulatory Revolving Fund at the end of any fiscal year shall be 15 percent of the total budget for the previous year and any amount in excess thereof shall be reverted to each financial institution in an amount proportionate to the sum paid by that financial institution in the previous calendar year pursuant to § 127(b) of this title in such a manner as prescribed by the State Bank Commissioner and submitted to the Council on Banking.

(30 Del. Laws, c. 111 § 4; 38 Del. Laws, c. 92 § 1(4); Code 1935 § 2277; 42 Del. Laws, c. 77; 43 Del. Laws, c. 135 § 2; 5 Del. C. 1953 § 105; 57 Del. Laws, c. 740 §§ 16E, 16G-16I; 61 Del. Laws, c. 435 §§ 1-3; 63 Del. Laws, c. 195 § 1B; 67 Del. Laws, c. 60 § 1; 68 Del. Laws, c. 303 § 6; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 19 §§ 1, 2.)

§ 106 Seal.

The Commissioner shall use the official seal, a full description of which, with the impress thereof, has heretofore been filed in the office of the Secretary of State. Such seal shall continue to be the official seal of the Commissioner until changed by authority of law.

(30 Del. Laws, c. 111 § 5; Code 1935 § 2278; 5 Del. C. 1953 § 106.)

§ 107 Annual report.

The Commissioner shall make an annual report of all the Commissioner's official acts to the Governor.

(30 Del. Laws, c. 111 § 14; Code 1935 § 2287; 5 Del. C. 1953 § 107; 70 Del. Laws, c. 186 § 1.)

§ 108 Prohibited relationships with supervised institutions.

The Commissioner, Deputy Commissioners, examiners or compliance reviewers employed by the Commissioner, or such person's spouse or such person's son or daughter residing at such person's residence shall not obtain a loan or utilize credit from any financial institution. To the extent that a licensee subject to the provisions of Chapter 22 or 29 of this title is examined solely for purposes of determining compliance with State law and consumer protection statutes, the above shall not apply unless the Commissioner finds that an actual conflict may arise. For the purposes of this section, an entity shall not be considered supervised or regulated by the Office of the State Bank Commissioner solely because it is exempt under § 2202 of this title or because it is subject to an escheat examination conducted by the Office of the State Bank Commissioner. The prohibition contained above shall not be construed as prohibiting such persons from being a depositor or member of any such financial institution on the same terms as available to the public generally.

(61 Del. Laws, c. 359 § 2; 69 Del. Laws, c. 165 § 5; 71 Del. Laws, c. 254 § 3.)

Subchapter II

Powers and Duties

§ 121 Supervision over banks and other financial institutions; administration and enforcement of title.

(a) The Commissioner shall have authority to administer and enforce all the provisions of this title and shall have supervision over:

(1) All state banks, savings banks, trust companies, building and loan associations and other corporations engaged in like business, incorporated under the laws of or doing business in this State, and the subsidiaries of the foregoing, and the Commissioner shall secure

the execution of all laws relative to such corporations, provided that with respect to any activity authorized by § 761(a)(14) or § 1661(a)(14) of this title, the Commissioner shall only have supervision to the extent such activity is not subject to the supervision of the Insurance Commissioner of this State or of another jurisdiction or, if it is subject to such supervision, when the Commissioner determines that such activity is likely to have a materially adverse effect on the safety and soundness of the bank;

(2) All persons, trustees or trustee systems, or any other combinations of persons who transact or attempt to transact the business of making small loans or loaning money as provided for or mentioned in Chapter 22 of this title, with all the powers, duties and responsibilities with respect thereto, as provided by this Code and any other laws with respect to banks, trust companies, building and loan associations, and other corporations engaged in like business and with like full power and authority to enforce all necessary rules and regulations as in the case of banks, trust companies, building and loan associations, and other corporations engaged in like business;

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

(b) The Commissioner may prescribe regulations to carry out the purposes of this title. No such regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof.

(c) The Commissioner may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him or her in any matter over which he or she has jurisdiction, control or supervision. The Commissioner may administer oaths and affirmations to any person whose testimony is required.

(d) If any person shall fail to comply with any subpoena issued by the Commissioner, or to testify with respect to any matter concerning which he or she may be lawfully interrogated, the Superior Court, on application of the Commissioner, may issue an order requiring the attendance of such person and the giving of testimony or production of evidence. Any person failing to obey the Court's order may be punished by Court as for contempt.

(e) [Repealed.]

(30 Del. Laws, c. 111 § 6; 36 Del. Laws, c. 89 § 3; Code 1935 §§ 2279, 2287; 5 Del. C. 1953 § 121; 61 Del. Laws, c. 92 § 1; 61 Del. Laws, c. 423 §§ 1, 2; 62 Del. Laws, c. 418 § 1; 66 Del. Laws, c. 22 §§ 2, 3; 66 Del. Laws, c. 27 § 3; 67 Del. Laws, c. 223 § 5; 67 Del. Laws, c. 344 § 3; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 25 § 2; 71 Del. Laws, c. 254 § 4; 72 Del. Laws, c. 15 § 3.)

§ 122 Examination of financial institutions.

(a) The Commissioner shall visit and examine each financial institution as frequently as the Commissioner deems it necessary or expedient. On the occasion of every such visit and examination, the Commissioner shall, in company with 1 or more of the officers of the institution visited, be given free access to every part of the office or place of business visited and to the assets, securities, books, papers and records of the institution.

(b) Any examination may be made by a deputy or by any person designated by the Commissioner, and in such case all the powers vested in the Commissioner by this section shall be possessed by the deputy or other persons making the examination. When any examination is made without the presence of the Commissioner, the Commissioner shall give written authority to the person conducting the examination which shall be exhibited to the officers of the institution visited.

(c) The examination required by this section shall be a thorough examination into the affairs of the institution, its resources and liabilities, the investment of its funds, the mode of conducting its business, the safety and prudence of its management, the acts of its officers, directors, trustees or managers, its compliance or noncompliance with its charter and bylaws, its compliance or noncompliance with this Code or any regulations promulgated thereunder, and any other statutes or regulations of this State or the United States, and also, such other matters, as in the judgment of the Commissioner may have relation to the solvency or insolvency of the institution.

(d) In connection with such examination, the Commissioner shall have power to examine, under oath or affirmation, the officers, directors, trustees, managers and employees, of the institution being examined, relative to its affairs, and for this purpose the Commissioner may administer oaths or affirmations.

(e) The Commissioner or the Commissioner's lawful designee shall examine banking organizations for compliance with the provisions of subchapter II of Chapter 11 of Title 12 and shall report the Commissioner's findings, on a confidential basis, to the State Escheator.

(30 Del. Laws, c. 111 § 8; 32 Del. Laws, c. 103 § 5; 38 Del. Laws, c. 92 §§ 1(5), (6); Code 1935 §§ 2281, 2293; 5 Del. C. 1953 § 122; 66 Del. Laws, c. 27 § 4; 67 Del. Laws, c. 268 § 1; 68 Del. Laws, c. 105 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 126 § 1.)

§ 123 False statements, entries or reports; penalty.

Every director, officer, agent, clerk or employee of any institution affected by § 122 of this title, who wilfully and knowingly subscribes or makes any false statement of facts or false entries in the books of the institution, or knowingly subscribes or exhibits any false paper, with intent to deceive any person authorized to examine as to the condition of the institution, or wilfully or knowingly subscribes to or makes any false report, shall be fined or imprisoned, or both.

(32 Del. Laws, c. 103 § 8; Code 1935 § 2296; 5 Del. C. 1953 § 123.)

§ 124 Commissioner's report of examination; cooperation with other regulatory agencies.

(a) The Commissioner shall make and file in the Commissioner's office a detailed report of each examination made by the Commissioner or any of the employees who work for the Commissioner, and shall furnish a copy of the report to the institution examined, and with respect to a state bank or trust company that is a member of the Federal Reserve Bank in the Federal Reserve District embracing the State, the Commissioner shall also furnish a copy of the report of the examination of the state bank or trust company to the Federal Reserve Bank,

and with respect to a state bank or trust company which has established a division pursuant to § 767 or § 1662(b) of this title, the Commissioner shall also furnish a summary, on a confidential basis, of the report of any examination of the state bank or trust company to the Insurance Commissioner. In order to protect the confidentiality of the contents of the examination report or other related documents, the Commissioner may prescribe regulations to prevent the disclosure of confidential information relating to the examination of any institution under the Commissioner's supervision.

(b) The Commissioner may enter into cooperative agreements with other regulatory authorities with respect to any institution subject to the Commissioner's supervision, which cooperative agreements may include, but not be limited to, the sharing of examination reports with appropriate state and federal authorities, and the Commissioner may enter into joint actions with other regulatory authorities with respect to any institution subject to the Commissioner's supervision, which joint action, among other things, may be to assure the safety and soundness of any Delaware bank and to assure compliance with applicable Delaware banking laws, consistent with the purposes of this chapter.

(30 Del. Laws, c. 111 § 11; 38 Del. Laws, c. 92 §§ 1(7), (8), (9), (10); 5 Del. C. 1953 § 124; 57 Del. Laws, c. 740 § 16E; 67 Del. Laws, c. 191 § 1; 67 Del. Laws, c. 223 § 6; 69 Del. Laws, c. 165 § 6; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 19 § 3; 71 Del. Laws, c. 25 § 3.)

§ 125 Disclosure of information; penalty.

(a) The Commissioner and each of the employees who work for the Commissioner shall be bound by their oath of office to keep secret all the facts and information obtained in the course of the examination, except insofar as public duty shall require a report to be made of the examination, and except when the Commissioner or any of the employees who work for the Commissioner, shall be called as a witness or witnesses in any criminal proceeding.

(b) Upon the request of any state bank or trust company which has made application for membership in the Federal Reserve Bank in the Federal Reserve District embracing the State, or which is a member of such Federal Reserve Bank, together with the request of the Federal Reserve Bank, the Commissioner shall furnish to the Federal Reserve Bank all the facts and information at any time in the Commissioner's possession concerning the state bank or trust company.

(c) If the Commissioner or any of the employees who work for the Commissioner disclose anything relative to the private accounts or transactions of any institution examined, or disclose any facts and information discovered in the course of the examination, or retain in their private possession, or remove from the office of the Commissioner, copies of any letters, papers, accounts, books or records disclosing such facts and information, except as provided in § 124 of this title and this section, whether during their term of office or employment or thereafter, they shall be subject to forfeiture of their office or employment, and may be fined not more than $1,000, or imprisoned not more than 2 years, or both.

(30 Del. Laws, c. 111 § 11; 38 Del. Laws, c. 92 §§ 1(7), (8), (9), (10); Code 1935 § 2284; 5 Del. C. 1953 § 125; 57 Del. Laws, c. 740 §§ 16E, 16J; 70 Del. Laws, c. 186 § 1.)

§ 126 Exemptions from examination.

(a) Any state bank or trust company which is a member of the Federal Reserve Bank in the Federal Reserve District embracing the State, and which shall be examined by a Federal Reserve Examiner, may be exempted from examination by the Commissioner; and the examination by the Federal Reserve Examiner may be accepted by the Commissioner as a sufficient compliance with the requirements of this chapter with respect to examinations.

(b) Any state bank or trust company, whether a member or nonmember of the Federal Reserve Bank, which shall be examined by a certified public accountant, may be exempted from examination by the Commissioner; and an examination by a certified public accountant may be accepted by the Commissioner as a sufficient compliance with the requirements of this chapter with respect to examinations.

(c) In the case of each exemption under this section, a certified report of the examination made by a Federal Reserve Examiner, or by a certified public accountant, shall be filed in the office of the Commissioner.

(30 Del. Laws, c. 111 § 12; Code 1935 § 2285; 5 Del. C. 1953 § 126.)

§ 127 Fees for examination; supervisory assessment.

(a) The Commissioner shall charge each institution examined by the Commissioner or by the Commissioner's direction an examination fee based on the actual costs of the examination. Costs of the examination are to include direct salaries paid and fringe benefits for salaries, charges and fees for filing, copying, inspecting and other services rendered. The Commissioner shall submit to the Council on Banking by July 10 each year, the calculated daily rate of pay for each examiner class. The rates for examinations shall be the basis for the charges to the institutions and shall be utilized during the ensuing fiscal year. The examination fees provided by this subsection shall be due and payable when invoiced by the Commissioner. If any institution shall fail to pay the examination fee due under this section on or before 30 days after the invoice date, a penalty of 0.05 percent shall be assessed for each day that the examination fee shall remain unpaid after such date.

(b) The Commissioner shall assess annually each institution subject to examination by the Commissioner or by the Commissioner's direction a supervisory assessment based on the total assets of said institutions as of December 31 each year; provided however, that there shall be allowed as a credit against this assessment the amount of the supervisory assessment otherwise due from a subsidiary of such institution. The supervisory assessments are to provide for the balance of the budget of the office of the Commissioner not covered under

subsection (a) of this section. The assessment shall not exceed 5 cents for each $1,000 of an institution's total assets. In no event shall the assessment to any institution be less than $500 when the examination is conducted within the State and $1,000 when the examination is conducted outside the State. The Commissioner shall compute the rate per $1,000 of assets required for the ensuing fiscal year and submit such data to the Council on Banking by July 10 each year. The rates shall be invoiced to the institutions on July 15 each year, and are due and payable on August 1 each year. If any institution shall fail to pay the supervisory assessment due under this section on or before the August 1 due date, a penalty of 0.05 percent shall be assessed for each day that the supervisory assessment shall remain unpaid after such date.

(c) The fees derived from subsections (a) and (b) of this section shall be deposited in the Regulatory Revolving Fund established under § 105 of this title and shall be accounted for by the Commissioner as part of the receipts for the Commissioner's office.

(d) The Chairperson of the Council on Banking may appeal to the Secretary of State any rates specified in subsections (a) and (b) of this section which the Council on Banking believes have been computed incorrectly, and the Secretary of State shall make the final determination and revise the rates if necessary.

(30 Del. Laws, c. 111 § 13; Code 1935 § 72286; 45 Del. Laws, c. 162 § 1; 5 Del. C. 1953 § 127; 49 Del. Laws, c. 119; 60 Del. Laws, c. 268 § 1; 61 Del. Laws, c. 436 § 1; 62 Del. Laws, c. 359 § 1; 64 Del. Laws, c. 141 § 2; 66 Del. Laws, c. 27 § 5; 69 Del. Laws, c. 165 §§ 7-9; 70 Del. Laws, c. 112 § 5; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 327 §§ 1, 2; 71 Del. Laws, c. 19 §§ 4-6; 71 Del. Laws, c. 254 § 5; 72 Del. Laws, c. 15 § 4; 79 Del. Laws, c. 3 § 1; 80 Del. Laws, c. 225 § 2.)

§ 128 Federal Reserve System reserve requirements.

The Commissioner, in determining, in the course of the Commissioner's examination, the amount of lawful money reserve required under this Code and any other law of this State to be maintained, at all times, by state banks and trust companies, shall not require those state banks and trust companies that hold reserves under federal statutes to maintain a greater reserve than that required by the Federal Reserve Act.

(30 Del. Laws, c. 111 § 9; Code 1935 § 2282; 5 Del. C. 1953 § 128; 62 Del. Laws, c. 246 § 1; 70 Del. Laws, c. 186 § 1.)

§ 129 Insufficient proportion of assets in cash or readily convertible securities; Commissioner's notice to directors, stockholders, etc.

Whenever the Commissioner shall be satisfied from the Commissioner's examination of any bank or trust company (other than savings banks and savings societies) that the bank or trust company has an insufficient proportion of its assets in cash and securities readily convertible into cash, the Commissioner shall so notify the board of directors of the bank or trust company, and thereupon the board of directors shall carry out the requirements of the Commissioner in that behalf, and upon their failure to do so within such time as the Commissioner considers reasonable, the Commissioner shall report the matter to the stockholders of the bank or trust company either at a regular or special meeting. The Commissioner may call a special meeting of the stockholders for this purpose should the Commissioner deem it advisable.

Nothing in this section shall be deemed to limit or curtail the powers and duties of the Commissioner as provided in §§ 131-135 of this title.

(37 Del. Laws, c. 132 § 1; Code 1935 § 2313; 5 Del. C. 1953 § 129; 49 Del. Laws, c. 129; 70 Del. Laws, c. 186 § 1.)

§ 130 Impaired capital; procedure upon failure to make good.

If the Commissioner believes that the capital of any bank or trust company under the Commissioner's jurisdiction has been impaired, the Commissioner may require it to make good the deficiency within such time as the Commissioner shall specify. If the bank or trust company shall fail to comply with the Commissioner's notice within the time prescribed, the Commissioner may forthwith take possession of the institution's place of business, and retain such possession until the institution shall have made good the deficiency, or has been finally liquidated, or a receiver shall have been appointed to take charge of its business and affairs. The Commissioner may cause proceedings to be instituted against the institution, and the Attorney General shall, upon the request of the Commissioner, institute such proceedings as the nature of the case may require.

(30 Del. Laws, c. 111 § 10; 32 Del. Laws, c. 103 § 6; 38 Del. Laws, c. 93 § 1(2); Code 1935 §§ 2283, 2294; 5 Del. C. 1953 § 130; 70 Del. Laws, c. 186 § 1.)

§ 131 Unsound condition of bank or trust company; receivership.

(a) If the Commissioner deems that the affairs of any bank or trust company are in an unsound condition because of illegal or unsafe investments, or that its liabilities exceed its assets, or that it is transacting business without authority or in violation of this Code or any other law, or that it is unsafe or inexpedient for such corporation to continue business, the Commissioner shall communicate the facts to the Attorney General who shall file in the Court of Chancery in any county where the bank or trust company is doing business a complaint setting forth the facts and applying for an order requiring the bank or trust company to show cause why its business should not be closed.

(b) In a proper case made, the Court shall have power to appoint a receiver to take charge of, settle and close up the affairs of the bank or trust company under the direction of the Court, and to enjoin it from doing business, or to make such other order or decree as the circumstances shall warrant and to the Court shall seem proper. The Court may make such rules and regulations, and such orders and decrees in the premises as it shall deem proper.

(c) In the case of a bank or trust company whose deposits are to any extent insured by the Federal Deposit Insurance Corporation or

successor corporation or agency, the receiver to be appointed shall be the Federal Deposit Insurance Corporation or such successor. In all instances in which the Federal Deposit Insurance Corporation or such successor shall pay any portion of the deposits of a bank or trust company, it shall be fully subrogated to the position of depositor to the extent of such deposits. In the case of a bank or trust company whose deposits are not so insured, the receiver to be appointed shall be the Commissioner or, in the Commissioner's absence or disability, a Deputy Commissioner. Neither the Commissioner nor the Deputy Commissioner shall receive any extra compensation for acting as receiver.

(d) The Court may vest the receiver with full power and authority to borrow such sum or sums of money as the Court shall determine in order the more readily or expeditiously to settle the affairs of the bank or trust company and to make payments to its creditors, depositors or stockholders. Such borrowing may be from any public or governmental or quasi-public or quasi-governmental corporation, board, commission or other agency or from any source whatsoever, and the Court may authorize the receiver to secure any loan by the pledge of any of the property or assets of the bank or trust company, and to give the lender a preference or priority as to the pledged property and assets over the other unsecured and unperfected secured creditors of the bank or trust company. The Court shall not have the power to authorize the receiver to (i) secure any loan by the pledge of any property or assets of the bank or trust company which would have a preference or priority over a security interest, lien or other encumbrance created and perfected prior to the appointment of the receiver, or (ii) avoid any security interest, lien or other encumbrance created and perfected prior to the appointment of the receiver provided, however, that the foregoing shall not affect any power, if any, granted to the Court under this subsection in existence prior to July 3, 1991, with respect to security interests held by affiliates of a bank or trust company created in connection with borrowings in excess of the amount of capital and surplus paid in of the bank or trust company. The holder of a perfected security interest, lien or other encumbrance against property or assets of the bank or trust company at the time of the appointment of a receiver shall have the rights and advantages of all other applicable laws.

(32 Del. Laws, c. 103 § 9; 38 Del. Laws, c. 93 §§ 1(3), (4); Code 1935 § 2297; 5 Del. C. 1953 § 131; 60 Del. Laws, c. 376 § 1; 68 Del. Laws, c. 87; 68 Del. Laws, c. 105 § 26; 70 Del. Laws, c. 186 § 1.)

§ 132 Possession and operation of bank or trust company by Commissioner without receivership.

If by reason of any circumstance or condition whatsoever, the Commissioner shall be satisfied that it is necessary for the protection of the depositors and the conservation of the assets of any state bank or trust company doing business in this State, the Commissioner may forthwith take possession of the place of business of the bank or trust company and take charge of its affairs and the conduct of its business for such time as the Commissioner deems necessary without first instituting or causing to be instituted any proceeding in the Court of Chancery, but every bank or trust company shall have the right to apply to the Court of Chancery for a rule on the Commissioner so taking possession of the bank or trust company to show cause why the Commissioner should continue in possession, and the Court may after a hearing upon such rule, direct the Commissioner to withdraw from the possession of the bank or trust company if the Court deems that the taking of such possession or the Commissioner's continuance therein is unnecessary or inexpedient. The Commissioner may keep the bank or trust company open and continue it in the transaction of business during the Commissioner's possession of it, and if the Commissioner deems it necessary, to prescribe restrictions as to the withdrawal of deposits, whether time or demand, and to prescribe the conditions upon which deposits, whether time or demand, may be withdrawn during the Commissioner's possession of the bank or trust company.

(32 Del. Laws, c. 103 § 9; 38 Del. Laws, c. 93 §§ 1(3), (4); Code 1935 § 2297; 5 Del. C. 1953 § 132; 70 Del. Laws, c. 186 § 1.)

§ 133 Employment of assistants.

The Secretary of State may employ such persons outside the regular force in the State Banking Department as the Secretary deems necessary or proper to assist the Commissioner in the performance of the Commissioner's duties, whether acting as receiver under order of Court or in possession of the bank or trust company on the Commissioner's own motion, under §§ 131 and 132 of this title, and may select some or all of the officers and employees of the bank or trust company for this purpose. He or she shall require such security as he or she deems proper from the persons appointed pursuant to this section.

(32 Del. Laws, c. 103 § 9; 38 Del. Laws, c. 93 §§ 1(3), (4); Code 1935 § 2297; 5 Del. C. 1953 § 133; 57 Del. Laws, c. 740 § 16I; 63 Del. Laws, c. 195 § 1B; 70 Del. Laws, c. 186 § 1.)

§ 134 Commissioner's costs and expenses as receiver; priority.

The costs and expenses incurred by the Commissioner in acting as the receiver for any bank or trust company, including the compensation and expenses of all assistants, shall be paid out of the assets of the said bank or trust company and shall have priority over all of its other corporate indebtedness. The costs and expenses incurred by the Commissioner in taking possession of a corporation without being appointed receiver thereof, including the compensation and expenses of all assistants, shall be paid out of the assets of the bank or trust company and shall have priority over its other debts.

(32 Del. Laws, c. 103 § 9; 38 Del. Laws, c. 93 §§ 1(3), (4); Code 1935 § 2297; 5 Del. C. 1953 § 134; 57 Del. Laws, c. 740 § 16J.)

§ 135 Moratorium on deposit withdrawals and segregation of new deposits.

The Commissioner may, in addition to all other powers, whenever in the Commissioner's judgment the circumstances warrant it, authorize any and all banks and trust companies under the Commissioner's jurisdiction to:

(1) Extend for a period of 90 days, and for a further period if the Commissioner deems it expedient, payment of any time accounts

where notice of withdrawal has been given or may thereafter be given;

(2) Postpone for any length of time the payment of any proportion of the deposits in demand accounts of any individual, firm or corporation as the Commissioner deems necessary and expedient, to be determined by the Commissioner according to the ability of any bank or trust company to pay such withdrawals;

(3) Receive new deposits which shall be segregated from the old deposits and which shall not be subject to the restriction or limitations authorized by subdivisions (1) and (2) of this section. The new deposits shall be invested in such liquid assets as may be approved by the Commissioner in order that banks and trust companies may at all times have sufficient funds to meet the demands for withdrawal of such new deposits.

(32 Del. Laws, c. 103 § 9; 38 Del. Laws, c. 93 §§ 1(3), (4); Code 1935 § 2297; 5 Del. C. 1953 § 135; 70 Del. Laws, c. 186 § 1.)

§ 136 Cease and desist orders.

(a) If, in the opinion of the Commissioner, a financial institution subject to this title or any other financial company is engaging in or has engaged in, or if the Commissioner has reasonable cause to believe that such institution or company is about to engage in any of the following:

(1) An unsafe or unsound practice in conducting the business of such financial institution or company;

(2) Violation of a law, rule or regulation relating to the supervision of such institution or company;

(3) Violation of any written agreement entered into with the Commissioner;

the Commissioner shall have the power and authority to issue and serve an order upon such institution or company requiring the institution or company to cease and desist from such violation or practice.

(b) Where, in the opinion of the Commissioner, extraordinary circumstances make such action necessary and appropriate for the protection of depositors, shareholders or the public, the Commissioner may, by order, restrict the withdrawal of funds from 1 or more financial institutions or financial companies.

(c) Such order may require the officers or directors of the institution or company to take affirmative action to correct any violation or practice.

(d) A cease and desist order issued pursuant to this section shall include a statement of the facts upon which the order is based, and specific activities which the financial institution or financial company must cease, the affirmative acts required of the financial institution or financial company and the effective date of the order. A cease and desist order may be served by any member of the State Bank Commissioner's office who is designated by the Commissioner. Service may be effected by hand delivering the order to the financial institution or financial company at its principal place of business in this State during normal working hours or, with respect to a financial institution or financial company that does not maintain a place of business in this State, by hand delivering the order to the registered agent in this State (or, if there is none, the Secretary of State, as provided in Title 8) and, within 7 days of such delivery, depositing in the United States mails, by registered mail, postage prepaid, a true and attested copy of the order, together with a statement that service is being made pursuant to this section, addressed to such financial institution or financial company at its address as the same appears on the records in the Commissioner's office.

(e) Except as provided in subsection (f) of this section, a cease and desist order shall not become effective in less than 10 days after the order is served. After an order is served, but before its effective date, upon petition of any interested party the Commissioner shall conduct a hearing. At the conclusion of such hearing, the Commissioner may affirm the cease and desist order as originally issued, or he may modify, amend or rescind such order.

(f) Whenever, in the opinion of the Commissioner, the violation or practice set forth in subsection (a) of this section represents an immediate danger or substantial harm to the interests of depositors or shareholders or the public, or where such violation or practice, or the continuation thereof, is likely to cause insolvency or substantial dissipation of the assets or earnings of the institution, the Commissioner may issue a cease and desist order pursuant to subsection (a) of this section which shall become effective upon service thereof, without prior notice or hearing. Upon the application of an interested party, the Commissioner shall afford an opportunity for a hearing to consider rescission of any order issued pursuant to this subsection and any action taken promptly thereafter.

(g) As used in this section, "financial company" and "company" mean any person transacting, conducting or engaged in any business or activity that is subject to licensing, regulation or supervision under this title.

(61 Del. Laws, c. 544 § 2; 71 Del. Laws, c. 19 § 7; 73 Del. Laws, c. 247 § 1.)

§ 137 Removal of officer or director.

The Commissioner shall have the power to remove any officer or director of a bank, trust company, building and loan association or building and industrial development corporation subject to supervision by the Commissioner and also to prohibit such person from further participation in any manner in the conduct of the affairs of any financial institution, in accordance with the procedures and subject to the conditions and limitations set forth in this section.

(1) The Commissioner may serve written notice of intent to remove an officer or director from office or to prohibit the officer's or director's further participation in any manner in the conduct of the affairs of any financial institution if, in the opinion of the Commissioner, such officer or director has:

a. Violated a law, rule, regulation or cease and desist order which has become final;

b. Engaged in or participated in any unsafe or unsound practice; or

c. Committed or engaged in any act, omission or practice which constitutes a breach of the officer's or director's fiduciary duties as such officer or director;

and the Commissioner determines that as a result of such action by the officer or director the financial institution has suffered or probably will suffer substantial financial loss or other damage, or that the interests of depositors or shareholders could be seriously prejudiced by reason of such violation, practice or breach of fiduciary duty; provided, however, that such violation, practice or breach of fiduciary duty must be found by the Commissioner to be one involving personal dishonesty on the part of such officer or director. The Commissioner may serve written notice of intent to remove an officer or director from office or to prohibit the officer's or director's further participation in any manner in the conduct of the affairs of any financial institution if, in the opinion of the Commissioner, such officer or director has, by conduct with respect to any other business entity which resulted, or is likely to result, in substantial financial loss or other damage, evidenced his personal dishonesty and unfitness to continue as an officer or director.

(2) The written notice required by paragraph (1) of this section shall set forth the following:

a. A statement of the facts upon which such removal or prohibition is based;

b. The time and place at which a hearing shall be held thereon, which date shall be not less than 30 nor more than 60 days after the service of the notice, unless such officer or director shall request an earlier or later hearing for good cause. The Commissioner shall serve written notice, in accordance with Chapter 101 of Title 29, upon the officer or director involved and copies of such notice shall be served upon the financial institution of which he or she is an officer or director or in the conduct of whose affairs he or she has participated.

(3) If the Commissioner deems it necessary for the protection of the institution or the interests of its depositors or shareholders, such written notice may suspend the officer or director from office or prohibit him from further participation in any manner in the conduct of the affairs of any financial institution.

(4) Any officer or director adversely affected by a suspension or prohibition contained in a written notice pursuant to paragraph (3) of this section may apply to the Court of Chancery in the county where the financial institution of which he or she is an officer or director has its main office for a stay of such suspension or prohibition pending completion of administrative proceedings required under this section. Such court shall have jurisdiction to stay such suspension or prohibition.

(5) The Commissioner shall hold a hearing at the time and place specified by the notice required under paragraph (2) of this section. Unless the officer or director affected shall appear at such hearing, the officer or director shall be deemed to have consented to the issuance of an order for the officer's or director's removal or prohibition. In the event of consent, or if upon the record made at any such hearing the Commissioner shall find that any of the grounds specified in the notice have been established, the Commissioner may issue such orders of suspension or removal from office or prohibition from participation in the conduct of the affairs of any financial institution as the Commissioner may deem appropriate. Notwithstanding any provision to the contrary such orders shall be issued not later than 30 days after the close of the hearing, if any, held pursuant to this section.

(6) Any order issued pursuant to paragraph (5) of this section shall become effective at the expiration of 30 days after service upon the officer or director and the financial institution concerned; provided, however, that an order issued upon consent shall become effective within the time specified therein. In either event, such order shall remain effective and enforceable except to the extent it is stayed, modified, terminated or set aside by action of the Commissioner or a court of competent jurisdiction.

(7) The Commissioner may issue written notice of a suspension or prohibition pursuant to paragraphs (2) and (5) of this section to any officer or director charged in any information, complaint or indictment with commission of or participation in a felony involving dishonesty or breach of trust, pursuant to laws of the State or of the United States. Such suspension or prohibition shall remain in effect until terminated by the Commissioner or until final disposition of such information, complaint or indictment. When a judgment of conviction with respect to such offense is entered against an officer or director, and such judgment is not subject to further appellate review, the Commissioner may issue and serve upon such officer or director an order removing the officer or director from office or prohibiting him or her from further participation in the conduct of the affairs of any financial institution except with the written consent of the Commissioner. Such order shall become effective on service upon the officer or director and the financial institution. A finding of not guilty or other disposition of the charge in this subdivision shall not preclude the Commissioner from instituting proceedings pursuant to this section on the grounds set forth in paragraph (1) of this section.

(61 Del. Laws, c. 544 § 3; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 15 § 5; 73 Del. Laws, c. 247 § 2.)

§ 138 Hearings.

A hearing conducted pursuant to § 136, § 137 or § 143 of this title shall be conducted in accordance with Chapter 101 of Title 29; provided, however, that such a hearing shall be a nonpublic hearing, notwithstanding any statute or rule to the contrary. A nonpublic hearing shall be identical in all respects to a public hearing; provided, however, that the notice of hearing, the transcript, the proposed findings and conclusions of the Commissioner, the findings and conclusions of the Commissioner and other papers which are filed in connection with any hearing shall not be made public.

(61 Del. Laws, c. 544 § 4; 68 Del. Laws, c. 303 § 7.)

§ 139 Judicial review.

(a) Orders issued by the Commissioner pursuant to §§ 136 and 137 of this title shall be enforced by the Court of Chancery, subject to the following conditions and limitations:

(1) Any person aggrieved and directly affected by an order of the Commissioner issued pursuant to §§ 136 and 137 of this title may appeal to the Court of Chancery within 30 days after the issuance of such order;

(2) The filing of an appeal shall not stay the enforcement of an order, but the Court may order a stay on such terms as it deems proper;

(3) The Court may affirm, modify, terminate or set aside, in whole or in part, the order of the Commissioner if such order was issued pursuant to an invalid statute or regulation, in excess of statutory authority or if such order was not supported by substantial evidence in the record;

(4) The judgment and decrees of the Court shall be final, except that it shall be subject to review by the Supreme Court.

(b) No person shall be subjected to any civil or criminal liability for any act or omission to act in good faith in reliance upon a subsisting order, regulation or definition of the Commissioner, notwithstanding a subsequent decision by any court invalidating the order, regulation or definition.

(61 Del. Laws, c. 544 § 5.)

§ 140 Notice to federal authorities.

In connection with any proceeding under this chapter involving a financial institution under the concurrent supervision of a federal agency and the Commissioner, the Commissioner shall provide the appropriate federal agency with notice of any such proceedings and the grounds therefor. Such proceeding may then be continued jointly or by either the federal agency or the Commissioner. Failure of the Commissioner to give such notice shall not constitute a ground for attacking the validity of the order.

(61 Del. Laws, c. 544 § 6.)

§ 141 Retention of financial institution records.

(a) All records of financial institutions and of federally chartered financial institutions, insofar as this section does not contravene paramount federal law, shall be retained for such minimum periods as the Commissioner may prescribe.

(b) The Commissioner shall from time to time issue regulations classifying all records kept by these institutions and prescribing the minimum period for which these records shall be retained. The periods may be permanent or for a lesser term. Such regulations may be amended or repealed from time to time. The regulations shall be promulgated as provided for in Chapter 101 of Title 29.

(c) In issuing the regulations required by subsection (b) of this section, the Commissioner shall consider:

(1) Court and administrative proceedings in which the production of these records might be necessary or desirable;

(2) State and federal statutes of limitation applicable to such proceedings;

(3) Availability of information from other sources; and

(4) Such other matters as the Commissioner shall deem pertinent in order that the regulations will require retention of records for such reasonable period as is commensurate with the interests of customers, depositors, stockholders and the peoples of the State in having such records available.

(d) The Commissioner shall additionally prescribe the substitution of reproductions for the originals to cover the periods for which such records shall be retained.

(e) Institutions may at their option dispose of any record which has been retained for the minimum period prescribed by the Commissioner.

(61 Del. Laws, c. 360 § 1.)

§ 142 Subpoena powers.

The Commissioner's authority to subpoena witnesses and documents outside the State shall exist to the maximum extent permissible under federal constitutional law.

(68 Del. Laws, c. 303 § 8.)

§ 143 General penalty.

(a)(1) Notwithstanding any other provisions of this title, the Commissioner may, if the Commissioner finds that any financial institution or financial company has violated any provision of this title or any regulation implementing said title:

a. Issue a notice of violation; and

b. Require the violator to take affirmative action to correct the violation.

(2) If a violator fails to take the affirmative action required under subparagraph (1)b. of this subsection, the Commissioner may impose a civil penalty in an amount that is appropriate in view of the facts and circumstances surrounding the violation for each violation from which the violator failed to cease and desist or for which the violator failed to take affirmative action to correct.

(b) In determining the amount of the financial penalty to be imposed under subsection (a) of this section, the Commissioner shall consider the following:

(1) The seriousness of the violation;

(2) The good faith of the violator;

(3) The violator's history of previous violations;

(4) The deleterious effect of the violation on the public and banking industry;

(5) The assets and overall financial condition of the violator; and

(6) Any other factors relevant to the determination of the financial penalty.

(c) In no event shall the penalty exceed $50,000 per violation.

(d) Notice of a civil penalty imposed pursuant to this section shall include a statement of facts upon which the civil penalty is based. A notice of civil penalty may be served by any member of the Commissioner's office who is designated by the Commissioner. Service may be effected by hand delivering the notice of civil penalty to the financial institution or financial company at its principal place of business in this State during normal working hours or, with respect to a financial institution or financial company that does not maintain a place of business in this State, by hand delivering the notice of civil penalty to the registered agent in this State (or, if there is none, the Secretary of State, as provided in Title 8) and, within 7 days of such delivery, depositing in the United States mails, by registered mail, postage prepaid, a true and attested copy of the notice, together with a statement that service is being made pursuant to this section, addressed to such financial institution or financial company at its address as the same appears on the records in the Commissioner's office.

(e) A civil penalty shall not become effective in less than 10 days after the notice of civil penalty is served. After notice of a civil penalty is served, but before its effective date, upon petition of any interested party, the Commissioner shall conduct a hearing. At the conclusion of such hearing, the Commissioner may affirm the civil penalty as originally issued, or the Commissioner may modify, amend or rescind such civil penalty.

(f) Any financial penalty imposed pursuant to this section may be in addition to any other action or remedy available to the Commissioner or any penalty, fine or sentence ordered by a court in any civil or criminal proceeding.

(g) Any penalty that may be imposed by the Commissioner shall be paid to the State Treasurer for deposit in the General Fund.

(h) As used in this section, "financial company" means any person transacting, conducting or engaged in any business or activity that is subject to licensing, regulation or supervision under this title.

(68 Del. Laws, c. 303 § 9; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 19 § 8; 73 Del. Laws, c. 247 § 3.)

§ 144 Restrictions on use of words "savings" or "trust" in corporate name.

No financial institution established under this title shall have or use the word "savings" in its title or name, except for a savings bank established under Chapter 16 of this title, nor shall any financial institution established, licensed or authorized to transact business under this title which is not a bank and trust company, a limited purpose trust company or a trust company have or use the word "trust" in its title or name, unless it, or an affiliate of such entity, is a regulated trust institution under the laws of this or any other state.

(70 Del. Laws, c. 6 § 1; 71 Del. Laws, c. 25 § 4; 73 Del. Laws, c. 247 § 4.)

§ 145 Financial institution supervisory privilege.

(a) For purposes of this section, the following definitions shall apply:

(1) "Confidential supervisory information" means any of the following information, or any portion of any such information, other than any ordinary business record, which is treated as, or considered to be, confidential information by the Commissioner, regardless of the medium in which the information is conveyed or stored:

a. Any report of examination and any information prepared or collected by the Commissioner or the Commissioner's designee in connection with the supervisory process, including any computer file, work paper or similar document.

b. Any correspondence or communication from the Commissioner or the Commissioner's designee to a financial institution as part of an examination or otherwise in connection with the supervisory process.

c. Any correspondence, communication or document, including any compliance and other reports, created by a financial institution in response to any request, inquiry or directive from the Commissioner or the Commissioner's designee in connection with any examination or other supervisory process and provided to the Commissioner or the Commissioner's designee.

d. Any record of the Commissioner, to the extent it contains information derived from any report, correspondence, communication or other information described above in subparagraph a., b. or c. of this paragraph.

(2) "Ordinary business record" means any book or record in the possession of the financial institution routinely prepared by the financial institution and maintained in the ordinary course of business or any information required to be made publicly available by any law or regulation of this State or of the United States.

(3) "Supervisory process" means any activity engaged in by the Commissioner or the Commissioner's designee to carry out the official responsibilities of the Commissioner with regard to the regulation or supervision of financial institutions.

(b) All confidential supervisory information shall be the property of the Commissioner and shall be privileged and protected from disclosure to any other person and shall not be discoverable or admissible into evidence in any civil action; provided, however, that the Commissioner may waive, in whole or in part, in the discretion of the Commissioner, any privilege established under this section, except as otherwise provided in § 125 of this title.

(c) No person in possession of confidential supervisory information may disclose such information, in whole or in part, without the prior authorization of the Commissioner, except for a disclosure made in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the affairs of any person.

(d) The Commissioner may require any person in possession of confidential supervisory information to notify the Commissioner

whenever the person is served with a subpoena, order, discovery request or other judicial or administrative process requiring the personal attendance of such person as a witness or requiring the production of such information in any proceeding.

(e) In any proceeding in this State in which a person seeks to compel production or disclosure by any person of any information or document prepared or collected by any bank regulatory or supervisory authority that would, had it been prepared or collected by or on behalf of the Commissioner, be confidential supervisory information for purposes of this section, such information or document shall be privileged to the same extent that confidential supervisory information is privileged in accordance with this section.

(f) The submission by a financial institution of any information to the Commissioner for any purpose in the course of the supervisory process shall not be construed as waiving, destroying or otherwise affecting any privilege such institution may claim with respect to such information.

(g) A person seeking discovery or disclosure, in whole or in part, of confidential supervisory information may not seek to obtain such information through subpoena, discovery procedures or other process from any person, except that such information may be sought in accordance with this section from the Commissioner, who shall determine in accordance with the standard established in § 125 of this title and within a reasonable period of time whether to disclose such information.

(h) Notwithstanding any other provision of this section or § 125 of this title, the Commissioner, without waiving any privilege, may authorize access to confidential supervisory information for any appropriate governmental, law enforcement or public purpose, as determined by the Commissioner.

(72 Del. Laws, c. 286 § 1.)

Subchapter III

Change in Bank Control

§ 160 Prior permission required.

(a) No person, acting directly or indirectly or through or in concert with 1 or more other persons, shall acquire control of any Delaware chartered bank or trust company through a purchase, assignment, transfer, pledge or other disposition of voting stock of such bank or trust company unless the State Bank Commissioner has been given at least 60 days' prior written notice of such proposed acquisition and within that time period the Commissioner has not issued a notice disapproving the proposed acquisition or extending for up to another 30 days the period during which such approval may issue. The period for disapproval may be further extended only if the Commissioner determines that any acquiring party has not furnished all the information required or that in his judgment any material information submitted is substantially inadequate. An acquisition may be made prior to the expiration of the disapproval period if the Commissioner issues written notice of his intent not to disapprove the action.

(b) Notwithstanding any other provision of this title, and subject to the provisions contained herein, an out-of-state bank holding company may acquire and retain an existing bank satisfying the conditions of subchapter I of Chapter 8 of this title and except for the requirement that such bank be a newly established bank, all other provisions of subchapter I of Chapter 8 of this title will be applicable to such out-of-state bank holding company and the bank so acquired; provided, however, that no acquisition shall be authorized by this subsection on or after January 1, 1997.

(66 Del. Laws, c. 24 § 1; 68 Del. Laws, c. 105 § 2; 71 Del. Laws, c. 19 § 9.)

§ 161 Publication required.

Any person filing a notice shall publish in a local newspaper of general circulation an announcement of the Commissioner's acceptance of the sufficiency of the notice.

(66 Del. Laws, c. 24 § 1.)

§ 162 Content of notice.

Except as otherwise provided by regulation of the Commissioner, a change of control notice filed under this subchapter shall contain at least the following information:

(1) The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past 5 years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a state or federal court.

(2) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the 5 years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the 5 fiscal years must be included, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person together with related statements of income, source and application of funds, as of a date not more than 90 days prior to the date of filing of the notice.

(3) The terms and conditions of the proposed acquisition as well as the manner in which the acquisition is to be made.

(4) The identity, source and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of

these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the proposed acquisition, the notice must include a description of the transaction, the names of the parties, and any arrangements, agreements or understandings with such persons.

(5) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or to merge it with any company or to make any other major change in its business or corporate structure or management.

(6) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer or arrangement for compensation.

(7) Copies of all invitations or tenders, or advertisements making a tender offer, to stockholders for the purpose of purchasing their stock that will be used in connection with the proposed acquisition.

(8) Any additional relevant information in such form as the Commissioner may require by regulation or by specific request in connection with any particular notice.

(66 Del. Laws, c. 24 § 1.)

§ 163 Disapproval of an application.

The Commissioner may disapprove any proposed acquisition if:

(1) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination of conspiracy to monopolize or attempt to monopolize the business of banking in the State;

(2) The effect of the proposed acquisition of control in Delaware may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any manner be in restraint of trade and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(3) The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interest of the depositors of the bank;

(4) The competence, experience or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank or in the interest of the public to permit such person to control the bank; or

(5) Any acquiring person neglects, fails or refuses to furnish the Bank Commissioner all the information required by the Bank Commissioner's office.

(66 Del. Laws, c. 24 § 1; 70 Del. Laws, c. 186 § 1.)

§ 164 Notice and hearing.

Having decided to disapprove any proposed acquisition the Commissioner shall promptly notify the acquiring party in writing of the disapproval. Such notice shall provide a statement for the basis of the disapproval. Within 10 days after the receipt of such notice of disapproval, the acquiring party may request a hearing before the Bank Commissioner on the proposed acquisition. The hearing shall be conducted in accordance with the provisions of Chapter 101 of Title 29.

(66 Del. Laws, c. 24 § 1.)

§ 165 Civil actions and penalties.

Any person who wilfully violates any provision of this subchapter, or any regulation or order issued by the Commissioner pursuant thereto, shall forfeit and pay the civil penalty of not more than $10,000 per day for each day during which such violation continues. The Commissioner shall have authority to assess such a civil penalty, after giving notice and an opportunity to the person to submit data, views and arguments, and after giving due consideration to the appropriateness, the penalty with respect to the size of the financial resources and good faith of the person charged, the gravity of the violation, and any data, views and arguments submitted. The Bank Commissioner may collect such civil penalty by agreement with the person or by bringing an action in the Court of Chancery, except that in any such action, the person against whom the penalty has been assessed shall have a right of trial de novo.

(66 Del. Laws, c. 24 § 1.)

§ 166 Injunction.

The State Bank Commissioner is empowered to seek an injunction for violation of this subchapter and any such action shall be brought in the Court of Chancery.

(66 Del. Laws, c. 24 § 1.)

§ 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 proportion of the class of voting securities.

(2) "Delaware chartered bank or trust company" includes any Delaware bank holding company or Delaware savings and loan holding company.

(66 Del. Laws, c. 24 § 1; 69 Del. Laws, c. 165 §§ 10, 11; 71 Del. Laws, c. 25 § 5.)

§ 168 Exceptions; authority for emergency acquisitions.

(a) This subchapter shall not apply to the formation of new banks and trust companies, the merger of existing banks or trust companies or to the formation of bank holding companies or savings and loan holding companies or the acquisition by bank holding companies or savings and loan holding companies of Delaware banks and trust companies which otherwise require application to and approval by the Commissioner.

(b) Notwithstanding any other provision of this title, the Commissioner may approve the change of control of any Delaware chartered bank or trust company upon determining that the Delaware chartered bank or trust company is in default or in danger of default; provided, however, that the Delaware chartered bank or trust company has not been caused to be in default or in danger of default for the specific purpose of engaging in a change of control transaction pursuant to this subsection. For purposes of this subsection, the term "in danger of default" with respect to a Delaware chartered bank or trust company means that in the opinion of the Commissioner, the Delaware chartered bank or trust company is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course of business and there is no reasonable prospect that it will be able to meet such demands or pay such obligations without assistance, or the Delaware chartered bank or trust company has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect that its capital will be replenished without assistance.

(66 Del. Laws, c. 24 § 1; 71 Del. Laws, c. 25 § 6; 72 Del. Laws, c. 286 § 2.)

Part II
Banks and Trust Companies
Chapter 7
CORPORATION LAW FOR STATE BANKS AND TRUST COMPANIES
Subchapter I
General Provisions

§ 701 Establishment of banks and trust companies; savings banks and national banks.

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.

(38 Del. Laws, c. 94 §§ 1, 2; Code 1935 §§ 2370, 2371; 5 Del. C. 1953 § 701; 64 Del. Laws, c. 42 § 2; 70 Del. Laws, c. 327 § 3; 70 Del. Laws, c. 336 § 1; 71 Del. Laws, c. 19 § 19; 71 Del. Laws, c. 25 § 7.)

§ 702 Applicability of other laws.

Every corporation (but not including a limited liability company) created under this chapter shall be deemed to be subject to and entitled to the benefit of this Code and any other general statutes of this State making provision for the regulation of banks and trust companies, or for the regulation and governance of corporations established under Title 8 of this Code, where the same are not inconsistent with the express provisions of this chapter. Every limited liability company created under this chapter shall be deemed to be subject to and entitled to the benefit of this Code and any other general statutes of this State making provision for the regulation of trust companies, or for the regulation and governance of limited liability companies formed under Title 6, where the same are not inconsistent with the express provisions of this chapter.

(38 Del. Laws, c. 94 § 32; Code 1935 § 2401; 5 Del. C. 1953 § 702; 64 Del. Laws, c. 156 § 2; 76 Del. Laws, c. 383 § 2.)

§ 703 Taxation.

Every corporation and limited liability company created by or under this chapter, and every corporation and limited liability company whose charter, certificate of incorporation or certificate of formation is amended under this chapter, shall be subject to the same taxation as shall be fixed by the laws of this State for banks and trust companies.

(38 Del. Laws, c. 94 § 34; Code 1935 § 2403; 5 Del. C. 1953 § 703; 61 Del. Laws, c. 490 § 1; 76 Del. Laws, c. 383 § 3.)

§ 704 Reserved power of State to amend or repeal this chapter.

This chapter may be amended or repealed, at the pleasure of the General Assembly, but such amendment or repeal shall not take away or repeal any remedy against any corporation established under this chapter, or its officers, for any liability which shall have been previously incurred.

(38 Del. Laws, c. 94 § 35; Code 1935 § 2404; 5 Del. C. 1953 § 704.)

§ 705 Revocation for nonuse of charters granted prior to July 1, 1933.

Every charter authorizing the establishment of a bank or trust company in this State and which was granted or passed by the General Assembly of this State prior to the 1st day of July, 1933, shall be deemed and held to be revoked for nonuse of corporate franchise unless the corporation created or authorized by such charter was actively engaged in business in this State on December 31, 1933.

(32 Del. Laws, c. 103 § 22; 38 Del. Laws, c. 93 § 1(8); Code 1935 § 2310; 5 Del. C. 1953 § 705.)

§ 706 Limited liability companies as trust companies, conversions.

(a) Notwithstanding any other provision of law to the contrary, a trust company, including a limited purpose trust company, may be a limited liability company and any trust company that is a limited liability company shall have all the powers and privileges of, and, except to the extent expressly otherwise provided in this Code, shall be subject to all the duties, restrictions and liabilities of, a trust company that is a corporation. Except to the extent expressly otherwise provided in this Code, a trust company that is a limited liability company shall be subject to all of the same laws and regulations of this State that relate to a trust company that is a corporation.

(b) Unless another intention clearly appears or unless the context requires a different meaning, any terms used in this Code that apply to a trust company that is a corporation shall be construed to apply in the same manner, or in a manner as similar as possible given the context, to a trust company that is a limited liability company, and without limiting the generality of the foregoing, each reference in this Code to:

(1) "Capital stock" or "stock" that refers to the stock of a trust company that is a corporation shall also refer to the limited liability company interests in a trust company that is a limited liability company and, correspondingly, each reference in this Code to "common stock", "preferred stock" and "voting stock" that refers to common stock, preferred stock and voting stock, respectively, of a trust company that is a corporation shall also refer to common limited liability company interests, preferred limited liability company interests and voting limited liability company interests, respectively, in a trust company that is a limited liability company;

(2) "Certificate of incorporation" or "charter" that refers to the certificate of incorporation, charter or articles of association, as applicable, of a trust company that is a corporation shall also refer to the certificate of formation and/or articles of association, as applicable, of a trust company that is a limited liability company;

(3) "Corporate" that relates to a trust company that is a corporation shall mean "limited liability company" in relation to a trust company that is a limited liability company;

(4) "Corporation" that refers to a trust company that is a corporation shall also refer to a trust company that is a limited liability company; provided, that nothing in this chapter shall be construed to affect the status of a trust company that is a limited liability company as a limited liability company rather than a corporation;

(5) "Director" or "board of directors" that refers to a director or the board of directors of a trust company that is a corporation shall also refer to a manager or the board of managers of a trust company that is a limited liability company;

(6) "Dividends" that refers to dividends of a trust company that is a corporation shall also refer to distributions of a trust company that is a limited liability company;

(7) "Incorporated" or "incorporation" that refers to a trust company that is a corporation shall refer to the formation status or formation of a trust company that is a limited liability company; provided that, notwithstanding the foregoing, a trust company that is a limited liability company is formed rather than incorporated;

(8) "Incorporator" that refers to an incorporator of a trust company that is a corporation shall also refer to an initial member of a trust company that is a limited liability company;

(9) "Shares" that refers to the shares of stock of a trust company that is a corporation shall also refer to the units into which the limited liability company interests in a trust company that is a limited liability company are divided; and

(10) "Stockholder" or "shareholder" that refers to a stockholder of a trust company that is a corporation shall also refer to a member of a trust company that is a limited liability company.

(c) The limited liability company agreement of a trust company that is a limited liability company shall be comprised solely of the articles of association of the trust company and the bylaws of the trust company and shall be subject to the approval of the State Bank Commissioner as to form and substance. The bylaws of a trust company that is a limited liability company shall not contain any provision that is inconsistent with the articles of association of the trust company. The business and affairs of a trust company that is a limited liability company shall be managed by or under the direction of a board of managers, which shall be designated as a "board of directors" and each manager shall be a natural person and shall be designated as a "director". Each member of a trust company that is a limited liability company shall be designated as a "stockholder." The limited liability company interests in a trust company that is a limited liability company shall be designated as "stock." The units into which limited liability company interests in a trust company that is a limited liability company are divided shall be designated as "shares."

(d) With the prior approval of the State Bank Commissioner, a trust company that is a corporation may convert to a trust company that is a limited liability company by following the applicable procedures set forth in Titles 6 and 8 for the conversion of a corporation incorporated under Chapter 1 of Title 8 to a limited liability company formed under Chapter 18 of Title 6, provided, that, in lieu of filing in the office of the Secretary of State a certificate of formation that complies with § 18-201 of Title 6 pursuant to § 18-214 of Title 6, articles of organization of the limited liability company that comply with § 730 of this title shall be filed in the office of the Secretary of State and, upon the filing of a certificate of conversion to limited liability company as required by § 18-214 of Title 6 and the articles of organization as required by § 730 of this title, the Secretary of State shall issue a certificate of formation for such limited liability company pursuant to § 731 of this title. Such a conversion shall be subject to, and shall have all of the effects provided for under, § 18-214 of Title 6 and § 266 of Title 8 to the extent the same are not inconsistent with the express provisions of this chapter.

(e) With the prior approval of the State Bank Commissioner, a trust company that is a limited liability company may convert to a trust company that is a corporation by following the applicable procedures set forth in Titles 6 and 8 for the conversion of a limited liability company formed under Chapter 18 of Title 6 to a corporation incorporated under Chapter 1 of Title 8, provided, that, in lieu of filing in the office of the Secretary of State a certificate of incorporation pursuant to § 265 of Title 8, articles of organization of the corporation that comply with § 730 of this title shall be filed in the office of the Secretary of State and, upon the filing of a certificate of conversion to corporation as required by § 265 of Title 8 and the articles of organization as required by § 730 of this title, the Secretary of State shall issue a certificate of incorporation for such corporation pursuant to § 731 of this title. Such a conversion shall be subject to, and shall have all of the effects provided for under, § 265 of Title 8 and § 18-216 of Title 6 to the extent the same are not inconsistent with the express provisions of this chapter.

(76 Del. Laws, c. 383 § 4.)

Subchapter II

Formation of Bank or Trust Company

§ 721 Restrictions on use of words "savings" or "trust" in corporate name.

(Repealed by 70 Del. Laws, c. 6 § 2, eff Feb 10, 1995.)

§ 722 Incorporators; number and qualifications.

Three or more persons, at least 2 of whom must be citizens and residents of this State, of lawful age who associate themselves by a written agreement, hereinafter called "articles of association," for the purpose of forming a bank or trust company may, upon compliance with this chapter, become a corporation, with the powers conferred by this chapter and subject to the regulations prescribed by this chapter and subject also to the regulations prescribed for banks and trust companies by any general statute of this State. Notwithstanding the foregoing, in the case of a trust company that is a limited liability company, 1 or more persons, whether individuals or nonnatural persons, each of whom will be an initial stockholder of the limited liability company and regardless of the citizenship, residency or domicile of such persons, who associate themselves by a written agreement, or in the case of 1 person, who executes a written agreement, in each case hereinafter called "articles of association," for the purpose of forming a trust company may, upon compliance with this chapter, form a limited liability company with the powers conferred by this chapter and subject to the regulations prescribed for trust companies by any general statute of this State.

(38 Del. Laws, c. 94 § 4; Code 1935 § 2373; 5 Del. C. 1953 § 722; 63 Del. Laws, c. 3 § 1; 71 Del. Laws, c. 25 § 8; 76 Del. Laws, c. 383 § 5.)

§ 723 Articles of association; contents and execution.

(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:

(1) The name by which the corporation shall be known;

(2) The purpose for which it is formed;

(3) The city or town where its place of business will be located;

(4) The amount of its capital stock, and the number of shares into which it is to be divided;

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

(6) Whether or not the corporation is to have perpetual existence, and if not the time when its existence is to cease;

(7) Whether the private property of the stockholders shall be subject to the payment of corporate debts, and if so, to what extent.

(b) The articles of association may also contain other provisions defining, limiting and regulating the powers of the corporation, the powers and duties of the directors, and the powers of the stockholders, if such provisions are consonant with the object, purpose and provisions of this chapter and are not in conflict with this Code or any other general statute of this State relating to banks and trust companies.

(c) Each incorporator shall subscribe to the articles his or her name, residence, post-office address and the number of shares of stock which he or she agrees to take, and shall acknowledge the same to be his or her act and deed before some officer authorized by the laws of this State to take acknowledgments of deeds.

(d) The articles of association may contain an article which provides that any article or provision thereof shall not be amended, modified, repealed or otherwise changed in any manner whatsoever. Such an article, when approved by the Commissioner under § 729 of this title, shall be valid, binding and enforceable against the corporation and its shareholders notwithstanding any other provision of this title.

(38 Del. Laws, c. 94 § 5; Code 1935 § 2374; 5 Del. C. 1953 § 723; 64 Del. Laws, c. 386 § 1; 70 Del. Laws, c. 186 § 1.)

§ 724 Notice of intention to incorporate; publication.

Notice of the intention of the incorporators to form a bank or trust company shall be given to the State Bank Commissioner, and a notice in such form as the Commissioner shall approve shall be published at least once a week, for 2 successive weeks, in 1 or more newspapers designated by the Commissioner, at least 1 of which newspapers shall be published in the county where it is proposed to establish the bank or trust company. The published notice shall specify the names of all the associates, the name of the proposed corporation, the city or town where it is to be located, and the amount of its capital stock.

(38 Del. Laws, c. 94 § 6; Code 1935 § 2375; 5 Del. C. 1953 § 724; 57 Del. Laws, c. 740 § 19A; 71 Del. Laws, c. 254 § 6.)

§ 725 Application for a certificate of public convenience and advantage.

Within 60 days after the second publication of the notice of intention to incorporate but not before the expiration of 20 days from the date of the second publication, the incorporators shall apply to the State Bank Commissioner for a certificate that public convenience and advantage will be promoted by the establishment of the bank or trust company.

(38 Del. Laws, c. 94 § 6; Code 1935 § 2375; 5 Del. C. 1953 § 725; 57 Del. Laws, c. 740 § 19A; 71 Del. Laws, c. 254 § 7.)

§ 726 Determination of public convenience.

Upon the application for a certificate that public convenience and advantage will be promoted by the establishment of the bank or trust company, the State Bank Commissioner shall consider and determine whether public convenience and advantage would be promoted by the establishment of the bank or trust company, and whether the terms and provisions of the articles of association are in compliance with this

chapter and shall issue or refuse to issue a certificate in accordance with such determination. If the Commissioner refuses to issue a certificate, no further proceedings shall be had, but the application may be renewed after 1 year from the date of the refusal. If the Commissioner issues the certificate, the incorporators shall hold the first meeting and follow the procedure prescribed by § 727 of this title.

(38 Del. Laws, c. 94 § 7; Code 1935 § 2376; 5 Del. C. 1953 § 726; 57 Del. Laws, c. 740 § 19A.)

§ 727 Organization meeting of incorporators; notice; proceedings.

(a) The first meeting of the incorporators shall be called by a notice signed either by the incorporator who is designated in the articles of association for the purpose, or by a majority of the incorporators. The notice shall state the time, place and purposes of the meeting. A copy of the notice shall, at least 7 days before the day appointed for the meeting, be given to each incorporator, or left at the incorporator's residence or usual place of business, or deposited in the post office, postage prepaid, and addressed to the incorporator at his or her residence or usual place of business, and another copy thereof and an affidavit of 1 of the incorporators that the notice has been duly served shall be filed and recorded with the records of the corporation. If all the incorporators shall in writing, endorsed upon the articles of association, waive such notice and fix the time and place of the meeting, no notice shall be required.

(b) At the first meeting, or at any adjournment thereof, the incorporators shall organize by the choice by ballot of a temporary secretary, by the adoption of bylaws and by the election in such manner as the bylaws may determine, of directors, a president, a secretary, and such other officers as the bylaws may prescribe. All the officers so elected shall be sworn to the faithful performance of their duties. The temporary secretary shall make and attest a record of the proceedings until the secretary has been chosen and sworn, including a record of such choice and qualification.

(38 Del. Laws, c. 94 § 8; Code 1935 § 2377; 5 Del. C. 1953 § 727; 70 Del. Laws, c. 186 § 1.)

§ 728 Articles of organization.

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 of each of the officers of the corporation; and

(4) The date of the first meeting and the successive adjournments thereof, if any.

(38 Del. Laws, c. 94 § 9; Code 1935 § 2378; 5 Del. C. 1953 § 728.)

§ 729 Approval of articles of organization.

The articles of organization, together with the records of the proposed corporation, shall be submitted to the State Bank Commissioner. The Commissioner shall examine the same, and may require such amendment thereof or such additional information as it may consider proper or necessary. If the Commissioner finds that the provisions of law have been complied with, the Commissioner shall endorse its approval upon the articles of organization.

(38 Del. Laws, c. 94 § 9; Code 1935 § 2378; 5 Del. C. 1953 § 729; 57 Del. Laws, c. 740 § 19A.)

§ 730 Filing of articles of organization.

The articles of organization with the endorsement of the State Bank Commissioner shall, within 30 days after the date of the endorsement, be filed in the office of the Secretary of State.

(38 Del. Laws, c. 94 § 9; Code 1935 § 2378; 5 Del. C. 1953 § 730; 57 Del. Laws, c. 740 § 19A.)

§ 731 Certificate of incorporation; issuance, form, recording and evidence.

(a) Upon the filing of the articles of organization as required by § 730 of this title, the Secretary of State shall issue a certificate of incorporation in the following form:

STATE OF DELAWARE

Be it known that whereas (the names of the incorporators) have associated themselves with the intention of forming a corporation under the name of (the name of the corporation), for the purpose (the purpose declared in the articles of association), with a capital stock of (the amount fixed in the articles of association), and having its place of business in (the city or town where its place of business will be located) and have complied with the statutes of this State in such case made and provided, as appears from the articles of organization of the corporation, duly approved by the State Bank Commissioner and on file in this office; now, therefore, I (the name of the Secretary of State), Secretary of the State of Delaware, do hereby certify that (the names of the incorporators), their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of (name of the corporation), with the powers, rights and privileges, and subject to the limitations, duties and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed, and the great Seal of the State of Delaware hereunto affixed, this..... day of..... in the year..... (the date of the filing of the articles of organization).

(b) Notwithstanding the foregoing, in the case of a trust company that is a limited liability company, upon the filing of the articles of organization as required by § 730 of this title, the Secretary of State shall issue a certificate of formation in the following form:

STATE OF DELAWARE

Be it known that whereas (the name(s) of the incorporator(s)) [has executed articles of association for the purpose][have associated themselves with the intention] of forming a limited liability company under the name of (the name of the limited liability company), for the purpose (the purpose declared in the articles of association), with a capital stock of (the amount fixed in the articles of association), and having its place of business in (the city or town where its place of business will be located) and [has][have] complied with the statutes of this State in such case made and provided, as appears from the articles of organization of the limited liability company, duly approved by the State Bank Commissioner and on file in this office; now, therefore, I (the name of the Secretary of State), Secretary of the State of Delaware, do hereby certify that (the name(s) of the incorporator(s)), [his][her][its][their] associates and successors, are legally formed and established as, and [is][are] hereby made, an existing limited liability company under the name of (name of the limited liability company), with the powers, rights and privileges, and subject to the limitations, duties and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed, and the great Seal of the State of Delaware hereunto affixed, this.....day of.....in the year.....(the date of the filing of the articles of organization).

(c) The Secretary of State shall sign the certificate of incorporation or certificate of formation, as applicable, and cause the Great Seal of the State to be thereto affixed and shall deliver the same to the corporation or the limited liability company, as applicable, together with a certified copy of the articles of organization and the endorsement of the State Bank Commissioner thereon, upon payment of the costs and charges therefor. A certified copy of the certificate shall be kept on file in the office of the Secretary of State with the articles of organization, and the certificate together with the articles of organization and the endorsement thereon of the State Bank Commissioner shall be recorded in the office of the recorder of deeds for the county in which the place of business of the corporation is to be located.

(d) The certificate or a copy thereof duly certified by the Secretary of State, together with a certified copy of the articles of organization and the endorsement thereon of the State Bank Commissioner, accompanied with the certificate of the recorder of deeds for the county wherein the same is recorded under his or her hand and the seal of his or her office, stating that the certificate and articles of organization have been recorded in the office of the recorder, or a copy of the record duly certified by the recorder, shall be evidence in all courts of this State.

(38 Del. Laws, c. 94 § 9; Code 1935 § 2378; 5 Del. C. 1953 § 731; 57 Del. Laws, c. 740 § 19A; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 383 §§ 6, 7.)

§ 732 Commencement of corporate existence.

Upon the issuance of the certificate of incorporation or certificate of formation by the Secretary of State and the recording of the certificate and articles of organization as provided in § 731 of this title, the corporation or limited liability company named in such certificate and articles of organization shall from the date of the certificate be and constitute a corporation or limited liability company, for the purposes and by the name set forth in the certificate, subject to dissolution, termination or the revocation or forfeiture of the franchise under this chapter or under this Code or any other statute of this State relating to the dissolution or termination of or to the revocation or forfeiture of the charter or franchise of banks or trust companies; but the corporation or limited liability company shall not have the right to do any business until it has secured from the State Bank Commissioner of this State the certificate provided for in § 733 of this title.

(38 Del. Laws, c. 94 § 9; Code 1935 § 2378; 5 Del. C. 1953 § 732; 76 Del. Laws, c. 383 § 8.)

§ 733 Commencement of business; certificate authorizing.

A certified copy of the certificate of incorporation and of the articles of organization and the endorsement of the approval of the State Bank Commissioner shall be filed with the State Bank Commissioner; and when the whole capital stock has been issued, a list of the stockholders, with the name, residence and post-office address of each, and the number of shares held by each, shall be filed with the State Bank Commissioner, which list shall be certified by the president and the cashier or treasurer of the corporation. Upon receipt of the list the Commissioner shall cause an examination to be made of the method of payment of the capital stock and if, after such examination, it appears that the whole capital stock has been paid in cash, and that all requirements of this Code and any other law have been complied with, the Commissioner shall issue a certificate authorizing the corporation to begin the transaction of business. No corporation shall begin the transaction of business until a certificate has been granted.

(38 Del. Laws, c. 94 § 10; Code 1935 § 2379; 5 Del. C. 1953 § 733; 57 Del. Laws, c. 740 § 19A.)

§ 734 Revocation of charter for failure to commence business within reasonable time.

Every corporation created under this chapter shall, after the expiration of a reasonable time from the date of its incorporation, as determined by the State Bank Commissioner, be actively engaged in the business for which it was created or its certificate of incorporation and corporate franchise shall be deemed and held to be revoked. The Commissioner shall by regulations prescribe the criteria to be applied in determining what constitutes a reasonable period of time.

(38 Del. Laws, c. 94 § 33; Code 1935 § 2402; 5 Del. C. 1953 § 734; 63 Del. Laws, c. 3 § 2.)

§ 735 Fees of Secretary of State and Commissioner.

The following fees shall be collected by and paid to the Secretary of State, for the use of the State:

(1) For making and issuing the certificate of incorporation, $11.50;

(2) For making the certified copy of the articles of association, $11.50;

(3) For making the certified copy of the certificate of incorporation to be kept on file in the office of the Secretary of State and for filing and indexing the same and the articles of association in said office, $5.75;

(4) For supplying any additional certified copy of the certificate of incorporation or articles of association requested by the corporation, $5.75.

Before issuing the certificate authorizing the corporation to begin the transaction of business, the State Bank Commissioner shall collect from the corporation, for the use of the State, the sum of $5,750. In addition the applicant shall pay an investigation fee of $1,150 which shall not be refundable and shall be submitted with the application.

(38 Del. Laws, c. 94 § 34; Code 1935 § 2403; 5 Del. C. 1953 § 735; 60 Del. Laws, c. 268 §§ 2, 3; 67 Del. Laws, c. 260 § 1; 68 Del. Laws, c. 9 § 7.)

Subchapter III

Conduct of Internal Corporate Affairs

§ 741 Bylaws, adoption, amendment and repeal.

A corporation may adopt bylaws for the proper management of its affairs, and may establish regulations controlling the assignment and transfer of its shares. The first set of bylaws shall be adopted at the meeting of the incorporators, as provided in § 727 of this title, but thereafter the power to make, alter or repeal bylaws shall be in the stockholders, provided that any corporation may, in the certificate of incorporation, confer that power upon the directors.

(38 Del. Laws, c. 94 § 12; Code 1935 § 2381; 5 Del. C. 1953 § 741; 50 Del. Laws, c. 381 § 1.)

§ 742 Directors; number, quorum, term, vacancies and oath.

(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 bylaws shall prescribe how many directors shall constitute a quorum for the transaction of business.

(b) The directors elected at the organization meeting of the incorporators, as provided in § 727 of this title, shall hold office until the succeeding annual meeting of the stockholders and until their successors have been duly chosen and qualified, and thereafter directors shall be elected at the annual meeting of the stockholders or at an adjournment of the annual meeting. Vacancies in the board of directors shall be filled by a majority of the remaining directors, though less than a quorum, and the directors so chosen shall hold office until the next annual election and until their successors shall be duly elected and qualified.

(c) Every director shall be sworn to the faithful performance of the director's duties.

(32 Del. Laws, c. 103 § 17; 38 Del. Laws, c. 94 § 11; Code 1935 §§ 2305, 2380; 5 Del. C. 1953 § 742; 49 Del. Laws, c. 124; 63 Del. Laws, c. 142 § 3; 64 Del. Laws, c. 156 § 1; 70 Del. Laws, c. 186 § 1.)

§ 743 Stockholders' meetings; time, place, adjournment and quorum.

(a) Meetings of stockholders (except the meeting of incorporators referred to in § 727 of this title) shall be held in this State. The bylaws shall fix the time of the annual meeting and may provide for special or called meetings of stockholders.

(b) Any meeting of the stockholders may be adjourned and at such adjourned meeting, any business may be transacted that could have been acted on at the meeting which was adjourned.

(c) The bylaws may prescribe what number of shares shall be represented at any stockholders' meeting to constitute a quorum, but in the absence of such a provision, any number of shares represented at a stockholders' meeting shall be sufficient for the transaction of business thereat.

(38 Del. Laws, c. 94 § 12; Code 1935 § 2381; 5 Del. C. 1953 § 743; 63 Del. Laws, c. 219 § 1.)

§ 744 Voting rights of stockholders.

Each stockholder shall, at every meeting of the stockholders, be entitled to 1 vote in person or by proxy for each share of the capital stock held by such stockholder on all issues on which such stockholder is entitled to vote. No stock shall be voted which shall have been transferred on the books of the corporation within 20 days next preceding the stockholders' meeting.

(38 Del. Laws, c. 94 § 12; Code 1935 § 2381; 5 Del. C. 1953 § 744; 60 Del. Laws, c. 350 § 1.)

§ 745 Capital stock; minimum required.

The capital stock of a bank organized under this chapter shall be as follows: not less than $500,000 if the bank is located in a city or town having a population of more than 50,000 persons; not less than $350,000 if the bank is located in a city or town of not more than 50,000 nor less than 5,000 persons; and not less than $250,000 if the bank is located in a town of not more than 5,000 persons, or such greater amount as the Commissioner may require after review of the charter, business plan and proposed activities of the bank. The capital stock of a trust company or limited purpose trust company organized under the law of this State shall not in any case be less than $500,000; provided, however, that this requirement shall not apply to trust companies organized under the laws of this State prior to February 28, 1933, and authorized by a certificate issued by the State Bank Commissioner to transact the business of a trust company on January 1, 1997. In

addition to the capital stock required by the foregoing, every such bank, trust company or limited purpose trust company shall have a paid-in surplus account equal to no less than one-half of the minimum capital stock required by this section. The minimum capital stock and paid-in surplus required to be maintained by such corporation in its banking or trust company business pursuant to this section may not be utilized to satisfy the capital or reserve requirements to which the corporation may be subject with respect to any activity authorized by § 761(a)(14) of this title.

(38 Del. Laws, c. 94 § 13; Code 1935 § 2382; 5 Del. C. 1953 § 745; 63 Del. Laws, c. 261 § 5; 67 Del. Laws, c. 55 § 1; 67 Del. Laws, c. 223 § 3; 71 Del. Laws, c. 19 § 20.)

§ 746 Par value of stock; payment for and issuance; increase and reduction.

The capital stock shall be divided into shares of a stated par value. No business shall be transacted by the corporation until the whole amount of its capital stock is subscribed for and actually paid in in cash. No stock shall be issued by any corporation until the par value thereof shall be fully paid in in cash. Any corporation may, subject to the approval of the State Bank Commissioner, increase or reduce its capital stock in the manner hereinafter provided. In the case of a reduction, the capital stock shall not be reduced to less than the amount required by § 745 of this title.

(38 Del. Laws, c. 94 § 13; Code 1935 § 2382; 49 Del. Laws, c. 120; 51 Del. Laws, c. 14; 64 Del. Laws, c. 386 § 2.)

§ 747 Stockholders' liability.

The private property of the stockholders shall not be subject to the payment of the corporate debts except as otherwise provided in the articles of association.

(38 Del. Laws, c. 94 § 14; Code 1935 § 2383; 5 Del. C. 1953 § 747.)

§ 748 Dividends.

The directors of a bank or trust company may declare dividends on common or preferred stock of so much of the net profits of the corporation as they shall judge expedient; but the corporation shall, before the declaration of a dividend on common stock from the net profits, carry 50% of its net profits of the preceding period for which the dividend is paid to its surplus fund until the same shall amount to 50% of its capital stock; and thereafter shall carry 25% of its net profits of the preceding period for which the dividend is paid to its surplus fund until the same shall amount to 100% of its capital stock.

(32 Del. Laws, c. 103 § 19; 38 Del. Laws, c. 93 § 1(8); 38 Del. Laws, c. 94 § 28; Code 1935 §§ 2307, 2397; 5 Del. C. 1953 § 748; 60 Del. Laws, c. 458 § 1.)

§ 749 Amendment of charter.

(a) Banks and trust companies heretofore or hereafter created by or under this Code or any other special act or general law of this State, except as provided in Chapters 15 or 16 of this title, shall hereafter amend their charters, certificates of incorporation, certificates of formation or articles of association by and under this section.

(b) Any bank or trust company in this State whether created under this chapter or by special act of the General Assembly (but not under Chapters 15 or 16 of this title), may, from time to time, when and as desired, amend its charter, certificate of incorporation or articles of association relating to the regulation and governance of corporations established under Title 8, or, in the case of a trust company that is a limited liability company, its certificate of formation or articles of association relating to regulation and governance of limited liability companies formed under Title 6, in each case where the same are not inconsistent with the express provisions of this chapter, including, but not limited to, addition to its corporate powers and purposes, or diminution thereof, or both (provided such additional corporate power or purpose to be such as is authorized or contemplated under any of the provisions of this chapter); or by increasing or decreasing its authorized capital stock (provided that such increase or decrease be expressly approved by the State Bank Commissioner, and provided also that the capital stock shall not be reduced below the amount prescribed by § 745 of this title); by changing the number or par value of its shares of stock; or by changing its corporate title (provided that the word "savings" shall not be used in the amended title, and provided further that no corporation not authorized to do a trust company business shall use the word "trust" in its amended title); and by increasing or decreasing its number of directors (provided that in no case shall the whole number of directors be less than 5). Any or all such changes or alterations may be effected by 1 certificate of amendment. No amendment shall contain a provision which would not have been lawful and proper to insert in an original charter, certificate of incorporation, certificate of formation or articles of association adopted granted or issued under this chapter, but nothing contained in this section shall prohibit the increase in capital stock of a trust company organized prior to February 28, 1933 and authorized by a certificate issued by the State Bank Commissioner to transact the business of a trust company on January 1, 1997, to any amount which may be less than required in § 745 of this title. In the case of an increase of capital stock, the amendment may provide that the increased stock may in whole or in part be disposed of without being offered to the stockholders, but in no case shall any stock be issued except upon payment in full in cash.

(c) The procedure for amendment and the manner of making and effecting the same shall be as prescribed in Chapter 1 of Title 8 for the amendment of the certificate of incorporation of a corporation having a capital stock or, in the case of a trust company that is a limited liability company, as prescribed in Chapter 18 of Title 6 for the amendment of the certificate of formation or limited liability company agreement of a limited liability company. No certificate of amendment shall be received or filed by the Secretary of State or be deemed or held to be effective unless and until the proposed certificate of amendment shall have been submitted to the State Bank Commissioner and

shall have been approved both in substance and in form by said Commissioner.

(38 Del. Laws, c. 94 §§ 3, 30; Code 1935 §§ 2372, 2399; 46 Del. Laws, c. 251 § 3; 5 Del. C. 1953 § 749; 49 Del. Laws, c. 121; 51 Del. Laws, c. 15; 57 Del. Laws, c. 740 § 19A; 64 Del. Laws, c. 386 § 3; 66 Del. Laws, c. 26 § 1; 71 Del. Laws, c. 19 § 21; 71 Del. Laws, c. 25 §§ 9, 10; 76 Del. Laws, c. 383 §§ 9-13.)

§ 750 Merger and consolidation.

(Repealed by 70 Del. Laws, c. 327 § 4, eff May 2, 1996.)

§ 751 Acquisition or sale of assets, assumption of liabilities, consolidation and merger; Commissioner's approval; title to property.

(a) No bank or trust company doing business in this State, whether or not organized under this chapter, shall merge or consolidate with, sell any substantial portion of its assets to, or take over any substantial portion of the assets and/or assume the liabilities, in whole or in part, of any other bank or trust company, savings bank, national bank, federal savings association (as defined in the Home Owners' Loan Act, 12 U.S.C. § 1461 et seq.) or out-of-state bank (as defined in § 795 of this title) (whether any of the foregoing is then doing business or has ceased to do business or has surrendered its charter or has dissolved) unless and until such action shall be approved by the State Bank Commissioner.

(b) The Commissioner may require that he or she be furnished with such information as to the assets and liabilities and as to the condition of the banks or trust companies concerned as he or she deems necessary or proper to determine whether to give or withhold his approval.

The State Bank Commissioner shall refuse his or her approval whenever in his opinion the transaction will weaken or tend to weaken any bank or trust company concerned.

(c) No title to any property shall pass where the transaction is in violation of this section.

(37 Del. Laws, c. 131 § 1; 32 Del. Laws, c. 103; Code 1935 § 2314; 5 Del. C. 1953 § 751; 70 Del. Laws, c. 112 §§ 6, 7.)

§ 752 Fees for merger, consolidation or acquisition of assets and assumption of liabilities.

(Repealed by 70 Del. Laws, c. 327 § 4, eff May 2, 1996.)

Subchapter IV

Powers and Prohibitions

§ 761 General powers of corporations organized under this chapter.

(a) A corporation established under and in compliance with this chapter shall have power to:

(1) Sue and be sued, complain and defend in any court of law or equity;

(2) Make and use a common seal and alter the same at pleasure;

(3) Hold, purchase, convey, mortgage or lease real and personal property;

(4) Borrow and lend money;

(5) Discount bills, promissory notes or other evidences of debt;

(6) Receive deposits of money either on time or demand;

(7) Buy and sell gold and silver bullion and foreign money and coin;

(8) Purchase securities for the investment of the funds under its control and sell the same;

(9) Take mortgages and obligations of all kinds for payment of money for the investment of funds under its control and sell the same;

(10) Receive for safekeeping securities and all types of choses in action and all kinds of personal property;

(11) Keep deposit boxes and rent them to customers or patrons;

(12) Engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities;

(13) Exercise the powers and engage in the activities permissible for such corporations through 1 or more subsidiaries;

(14) Act as an insurer and transact the business of insurance in accordance with the provisions of Title 18; except that no corporation established under and in compliance with this chapter shall have power to act as a title insurer and transact the business of title insurance;

(15) Act as guarantor or surety for the debt or obligation of another, including specifically but without limitation the rediscounting with recourse of commercial paper and the issuance of letters of credit as defined in § 5-103(1)(a) of Title 6 and standby letters of credit. As used herein, the term "standby letter of credit" includes every letter of credit (or similar arrangement however named or designated) which represents an obligation to the beneficiary on the part of the issuer to repay money borrowed by or advanced to or for the account of the customer, or to make payment on account of any evidence of indebtedness undertaken by the customer, or to make payment on account of any default by the customer in performance of an obligation. The terms "beneficiary," "issuer" and "customer" as used herein have the same meaning as in § 5-103(1) of Title 6; and

(16) Authorize an affiliated insured depository institution (as those terms are defined in § 796 of this title) to engage in the authorized agency activities provided in § 796A of this title.

(17) Generally, use, exercise and enjoy all of the powers, rights, privileges and franchises incident to a banking corporation and, if established as a trust company, incident to a trust company, and which are necessary or proper for the transaction of the business of the corporation.

(b) All powers conferred by this section are subject to and are to be construed as qualified by the limitations, restrictions and regulations prescribed by the Commissioner or in other sections of this chapter or by this Code or any other statute of this State providing regulations for banks and trust companies.

(38 Del. Laws, c. 94 § 15; Code 1935 § 2384; 5 Del. C. 1953 § 761; 66 Del. Laws, c. 27 § 6; 67 Del. Laws, c. 223 § 2; 70 Del. Laws, c. 112 § 8.)

§ 762 Ownership of real estate used for transaction of business.

A corporation established under this chapter may hold real estate suitable for the transaction of its business; but, if the aggregate amount invested and proposed to be invested therein, including the cost of alterations and additions in the nature of permanent fixtures, exceeds, directly or indirectly, 50 percent of its capital, surplus and undivided profit accounts, the excess investment shall be made only with the approval of the State Bank Commissioner. The amount of money invested by the corporation in the securities of any corporation, trust or other organization which holds real estate in whole or in part used for the transaction of the business of the corporation or intended for such use, shall be included in determining the amount of real estate that may be held by the corporation under this section.

(38 Del. Laws, c. 94 § 19; Code 1935 § 2388; 5 Del. C. 1953 § 762; 62 Del. Laws, c. 3 § 3.)

§ 763 Membership in Federal Reserve System.

(a) Any bank or trust company incorporated under this Code or any other laws of this State may become a member of the Federal Reserve Bank, organized or to be organized in the Federal Reserve District in which such bank or trust company is located, under the act of Congress known as the Federal Reserve Act, approved December 23, 1913, and such bank or trust company may subscribe for, purchase, hold and surrender, from time to time, such amounts of the capital stock of such Federal Reserve Bank as the bank or trust company may deem advisable or as may be required under the Federal Reserve Act, or any amendment thereof, in order to obtain and continue such membership, and upon the purchase of such stock, to assume the liabilities and become entitled to the benefits recited in the Federal Reserve Act.

(b) Any corporation which becomes a member of the Federal Reserve System may, while it continues as a member bank of the System, have and exercise any and all of the corporate powers and privileges which may be exercised by member banks of the System.

(28 Del. Laws, c. 107 § 1; 38 Del. Laws, c. 94 § 21; Code 1935 §§ 2273, 2390; 5 Del. C. 1953 § 763.)

§ 764 Capital notes or debentures.

(a) With the approval of the State Bank Commissioner, any bank or trust company in this State, whether or not organized under this chapter, may at any time through action of its board of directors and without requiring any action of its stockholders issue and sell its capital notes or debentures. The capital notes or debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors.

(b) The term "capital" as used in this Code and any other laws of this State relating to banking shall be construed to embrace the amount of outstanding capital notes and debentures legally issued by any bank or trust company in this State and sold by it. The capital stock of any bank or trust company may be deemed to be unimpaired when the amount of the capital notes and debentures as represented by cash or sound assets exceeds the impairment as found by the State Bank Commissioner. Before any capital notes or debentures are retired or paid by the bank or trust company, any existing deficiency of its capital (disregarding the notes or debentures to be retired) must be paid in cash, to the end that the sound capital assets shall at least equal the capital stock of the bank or trust company.

(c) The capital notes or debentures shall in no case be subject to any assessment. The holders of capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of the bank or trust company and shall not be held liable for assessments to restore impairments in the capital of the institution.

(40 Del. Laws, c. 149 § 1; Code 1935 § 2407; 5 Del. C. 1953 § 764; 63 Del. Laws, c. 3 § 4.)

§ 765 Power of trust company.

In the case of a corporation established as a trust company under this chapter, the powers conferred by § 761 of this title shall include the right or power to be appointed executor of a will, codicil or writing testamentary, administrator with the will annexed or administrator of the estate of any decedent, receiver, assignee, guardian, conservator or trustee by will or by any written instrument or other act of the parties, or by any court or official, under the same circumstances, in the same manner, and subject to the same control by the court having jurisdiction of the same, as a legally qualified individual.

(38 Del. Laws, c. 94 § 22; Code 1935 § 2391; 5 Del. C. 1953 § 765.)

§ 766 Power of trust company to act as agent, registrar, trustee, etc.

A trust company established under this chapter may act as agent for the purpose of issuing, registering or countersigning the certificates of stock, bonds, or other evidences of indebtedness of a corporation, association, municipal corporation, state or national government, on such terms as may be agreed upon, and may also act as trustee for the bondholders of a corporation, and for such purpose may receive

transfers of real and personal property upon such terms as may be agreed upon.

(38 Del. Laws, c. 94 § 25; Code 1935 § 2394; 5 Del. C. 1953 § 766.)

§ 767 Limitations on powers and activities of banks and trust companies.

(a) Any bank or trust company which engages in any activity authorized by § 761(a)(14) of this title otherwise than through a subsidiary thereof shall engage in each such activity through a department or division which shall maintain financial records separate and distinct from other records of such bank or trust company; provided, that such division may be established and may engage in each such activity only in accordance with the provisions of Title 18.

(b) A bank or trust company which engages in any activity authorized by § 761(a)(14) of this title, whether through a department, division or subsidiary, may make loans to and transact other business with such department, division or subsidiary, provided such loan or other transaction is made on terms and under circumstances substantially the same as for comparable transactions with or involving other customers, or, in the absence of comparable transactions, upon terms and under circumstances that in good faith would be offered to or would apply to other customers.

(c) No department, division or subsidiary of a bank or trust company which engages in any activity authorized by § 761(a)(14) of this title shall utilize in any manner or for any purpose the information contained in any insurance contract between a nonaffiliated insurer and the insured which such company has obtained from the insured in connection with any request for an extension of credit.

(d) No bank or trust company which engages in any activity authorized by § 761(a)(14) of this title shall, in evaluating any request or application for the extension of credit, discriminate against an applicant on the basis that such applicant is a competitor of such bank or trust company in any such activity.

(e) The offer to sell or the sale of any insurance product authorized to be sold under this section shall be made only by those individuals who are validly licensed as insurance agents or brokers in the State or other jurisdiction in which the sale of insurance is offered or consummated. The offer to sell insurance products shall include, but not be limited to, solicitation by mail, telephone, electronic or print media, and by personal contact. Violation of this subsection shall subject the violator and the employer of the violator to the penalties prescribed in Title 18 for solicitation or sale of insurance and the receipt or payment of commissions to unauthorized persons, if the violation occurred in this State. The Banking Commissioner and the Insurance Commissioner shall be charged to advise regulators in other states or jurisdictions when it is discovered that such violations have occurred in such other state or jurisdiction.

(38 Del. Laws, c. 94 §§ 16, 26; Code 1935 §§ 2385, 2395; 5 Del. C. 1953 § 767; 63 Del. Laws, c. 3 § 5; 66 Del. Laws, c. 27 § 7; 67 Del. Laws, c. 223 § 4; 67 Del. Laws, c. 224 §§ 1, 2; 70 Del. Laws, c. 112 § 9; 71 Del. Laws, c. 254 § 8.)

§ 768 Loans on security of and purchase of its own capital stock.

No corporation established under this chapter or under Chapter 15 of this title shall directly or indirectly make a loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. The stock so purchased or acquired shall, within 6 months after its purchase or acquisition, be sold or disposed of at public or private sale. Notwithstanding the foregoing, the Commissioner may approve the purchase by such a corporation of the shares of its own capital stock, subject to such terms and conditions, if any, as the Commissioner may require.

(38 Del. Laws, c. 94 § 18; Code 1935 § 2387; 5 Del. C. 1953 § 768; 64 Del. Laws, c. 42 § 4; 71 Del. Laws, c. 19 § 22; 80 Del. Laws, c. 1 § 1.)

§ 769 Ownership of capital stock of another bank or trust company.

No bank or trust company shall hold more than 10 percent of the capital stock of any other bank or trust company without the approval of the Commissioner. In determining whether to grant such approval, the Commissioner shall consider the convenience and needs of the public of this State. Any acquisition by a bank or trust company of more than 10 percent of the capital stock of any other bank or trust company that was approved by the Commissioner before January 1, 1996, shall be deemed to have been approved by the Commissioner without the survival of any conditions required by former subsection (b) of this section.

(32 Del. Laws, c. 103 § 21; 38 Del. Laws, c. 93 § 1(8); 38 Del. Laws, c. 94 § 29; Code 1935 §§ 2309, 2398; 5 Del. C. 1953 § 769; 64 Del. Laws, c. 386 § 4; 64 Del. Laws, c. 461 § 1; 68 Del. Laws, c. 303 § 11; 70 Del. Laws, c. 112 §§ 10, 11; 70 Del. Laws, c. 327 § 5.)

§ 770 Branch office.

(a)(1) Any bank or trust company, if authorized by its charter, may open a branch office or place of business, or branch offices or places of business in this State, upon application submitted to and approved by the State Bank Commissioner and upon the issuance of a certificate of authority of the State Bank Commissioner. For the purposes of this section, a branch office or place of business shall include any location, except as provided by §§ 771 and 772 of this title, at which deposits are received or checks paid or money lent. The application shall state the exact location of the intended branch office and the necessity for its opening and the Commissioner shall inquire into the matter, and if the Commissioner deems that the public convenience will be served thereby and that there is good and sufficient reason that the corporation shall have the branch office, the Commissioner shall issue its written permission for the opening of the branch office. Any certificate of authority issued by the Commissioner shall be void and of no effect if after the expiration of a reasonable period of time, as determined by the State Bank Commissioner, such branch is not actually opened for business. The Commissioner shall by regulations

prescribe the criteria to be applied in determining what constitutes a reasonable period of time.

(2) The applicant shall pay to the Commissioner an investigation fee of $250, which shall not be refundable and shall be submitted with the application.

(b) Nothing in this section contained shall deny any bank or trust company the right to continue a branch office or branch offices if such branch office or branch offices shall have been actually established prior to the 1st day of January, 1934, and business continuously conducted thereat since such establishment.

(c)(1) Any bank or trust company that is authorized by its charter to operate a branch office may open a mobile branch upon application submitted to and approved by the Commissioner and upon the issuance of a certificate of authority of the Commissioner. For purposes of this section, a "mobile branch" means a branch that operates at more than one location. The application for a mobile branch shall specify the manner of operation of the mobile branch, the area in which the mobile branch will operate, and the necessity for the opening of the mobile branch. If the Commissioner deems that the public convenience will be served and that there is good and sufficient reason that the bank or trust company should operate the mobile branch, the Commissioner shall issue written permission for its opening. Any certificate of authority that the Commissioner issues shall be void and have no affect if, after the expiration of a reasonable period of time as determined by the Commissioner, the mobile branch is not actually open for business. The Commissioner shall by regulation prescribe the criteria to be applied for determining what constitutes a reasonable period of time.

(2) The applicant for a mobile branch shall pay the Commissioner an investigation fee of $250 which shall not be refundable and shall be submitted with the application.

(32 Del. Laws, c. 103 § 4; 38 Del. Laws, c. 93 § 1(1); 38 Del. Laws, c. 94 § 20; Code 1935 §§ 2292, 2389; 46 Del. Laws, c. 251 §§ 1, 2; 5 Del. C. 1953 § 770; 49 Del. Laws, c. 127; 56 Del. Laws, c. 155; 57 Del. Laws, c. 740 § 19A; 60 Del. Laws, c. 268 §§ 5, 6; 62 Del. Laws, c. 245 § 1; 63 Del. Laws, c. 3 § 6; 63 Del. Laws, c. 255 § 1; 67 Del. Laws, c. 260 § 1; 68 Del. Laws, c. 303 § 12; 69 Del. Laws, c. 165 § 15; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 19 § 23; 71 Del. Laws, c. 25 § 11; 73 Del. Laws, c. 22 § 1.)

§ 771 Foreign branch offices.

(a) Any bank or trust company having a paid-in capital and surplus exceeding $1,000,000 or more may open branch offices or places of business without the State, in the United States of America, or its possessions or in any other state of the United States of America or in foreign countries upon issuance of a certificate of authority by the State Bank Commissioner and upon such conditions and under such regulations as the State Bank Commissioner may prescribe; provided, however, that the Commissioner shall be authorized to exempt from the coverage of this section such places of business or classes of places of business as the Commissioner shall find inappropriate to include in order to effectuate the purposes of this section.

(b) If any bank or trust company has opened and occupied a branch office in a foreign country pursuant to subsection (a) of this section, it may, unless otherwise advised by the State Bank Commissioner, open and occupy an additional branch office or branch offices in such country without having to apply for the approval of the Commissioner provided that it gives the Commissioner notice of at least 30 days (or such shorter period as the Commissioner in individual cases may approve) before opening and occupying any such additional branch office.

(c) The applicant shall pay to the Commissioner an investigation fee of $250, which shall not be refundable and shall be submitted with the application for the issuance of a certificate under subsections (a) or (e) of this section.

(d) Electronic devices or machines located without the State which may be utilized to accomplish banking transactions by customers of banks located within the State, by whatever arrangement, shall not be deemed to be a branch office under this section or any other provision of Delaware law, nor shall any such arrangement require approval of the State Bank Commissioner.

(e) Any corporation established under this chapter or Chapter 16 of this title or by act of the General Assembly having paid-in capital and surplus exceeding $1,000,000 may open affiliated offices or places of business inside or outside this State, in the United States of America or its possessions or in foreign countries solely to conduct activities authorized by § 761(a)(14) or § 1661(a)(14) of this title upon the issuance of a certificate of authority by the Commissioner, and upon such conditions and under such regulations as may be prescribed.

(63 Del. Laws, c. 3 § 7; 63 Del. Laws, c. 255 § 2; 67 Del. Laws, c. 223 § 7; 67 Del. Laws, c. 260 § 1; 70 Del. Laws, c. 112 § 12; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 25 §§ 12, 13; 73 Del. Laws, c. 22 § 2.)

§ 772 Automated service branch.

Any bank or resulting bank (as defined in § 795 of this title) may install or operate 1 or more automated service branches in this State without approval of, or notice to, the Commissioner.

(68 Del. Laws, c. 303 § 13; 69 Del. Laws, c. 165 § 16; 71 Del. Laws, c. 19 §§ 24-26; 74 Del. Laws, c. 210 §§ 1-3.)

Subchapter V

Limited Purpose Trust Companies

§ 773 Definitions.

As used in this subchapter:

(1) "Affiliate" means a person that directly, or indirectly through 1 or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. "Control" means beneficial ownership directly, or indirectly through 1 or more

intermediaries, of more than 50 per centum of the voting securities or partnership interests in any person other than an individual.

(2) "Loans" means consumer loans for personal, property or household purposes, mortgage loans and commercial loans other than to affiliates.

(3) "Located in the State" means, with respect to state chartered banks or trust companies, banks or trust companies created under the laws of this State and, with respect to national banking associations, banks or trust companies whose principal place of business is located in this State.

(4) "Trust company powers" means all of the powers, rights, privileges and franchises incident to a trust company established under subchapter IV of this chapter, except:

a. To receive deposits subject to check or to repayment upon presentation of a passbook, certificate or deposit or other evidence of debt, or upon request of the depositor; and

b. To make loans.

(63 Del. Laws, c. 261 § 3.)

§ 774 Establishment.

A corporation established under this subchapter shall be known as a limited purpose trust company. The Commissioner shall issue no certificate of public convenience and advantage with respect to any corporation proposed to be established under this chapter solely for the purpose of exercising trust company powers, excepting a corporation organized under this subchapter.

(63 Del. Laws, c. 261 § 3.)

§ 775 Powers; restrictions.

(a) With respect to a limited purpose trust company, the powers conferred by subchapter IV of this chapter or otherwise by law shall be limited solely to such powers as are necessary or incidental to the performance of trust company powers.

(b) No limited purpose trust company established under this subchapter may:

(1) Amend its articles of association, charter, certificate of incorporation or bylaws by addition to its corporate purpose or powers;

(2) Merge or consolidate, except with:

a. An affiliate or affiliates; or

b. A corporation or corporations established under this subchapter;

(3) Have more than a single office within this State open to the public for the conduct of its business; or

(4) Exercise any power of appointment in a manner inconsistent with § 3548 of Title 12.

(63 Del. Laws, c. 261 § 3; 73 Del. Laws, c. 37 § 2.)

§ 776 Organization; number of incorporators.

(a) Except as otherwise required by this subchapter, the organization of a limited purpose trust company shall be governed by subchapter II of this chapter, provided that:

(1) The articles of association of a limited purpose trust company shall specifically state that the formation of a limited purpose trust company is the purpose for which the subscribers thereto associate themselves;

(2) Any application for a certificate of public convenience and advantage made with respect to a limited purpose trust company shall plainly state on its face that the application is for such a certificate with respect to a limited purpose trust company and not for a certificate with respect to a bank or trust company; and

(3) Any certificate of public convenience and advantage issued by the Commissioner on such application shall similarly state on its face that such certificate approves the formation of a limited purpose trust company pursuant to this subchapter.

(b) The number of persons who associate themselves for the purpose of forming a limited purpose trust company shall be no less than 3, except to the extent otherwise provided in § 722 of this title for a trust company that is formed as a limited liability company.

(63 Del. Laws, c. 261 § 3; 76 Del. Laws, c. 383 § 14.)

§ 777 Certificate of public convenience and advantage.

(a) In determining whether a certificate of public convenience and advantage shall be issued with respect to any limited purpose trust company, the Commissioner shall consider:

(1) The financial and managerial resources of the limited purpose trust company and whether it will have sufficient capital to support its business operations; provided however, that in no event shall the capital of the limited purpose trust company be less than that required by § 745 of this title;

(2) The future prospects of the limited purpose trust company;

(3) The financial history of affiliates of the limited purpose trust company, if any;

(4) Whether the organization of the limited purpose trust company may result in undue concentration of resources or substantial lessening of competition in this State; and

(5) The convenience and needs of the public and this State.

(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;

(2) That the limited purpose trust company itself, or together with its affiliates, will employ within 3 years of its commencement of business in this State at least 100 persons within this State; provided, that the Commissioner shall extend, upon request of the limited purpose trust company, the time within which to employ such 100 persons to a 4th year if 50 such persons are employed by the end of the 3rd year and thereafter to a 5th year for reasonable cause shown; provided however, that the requirements of this paragraph shall not apply to a limited purpose trust company established under this subchapter on or after January 1, 1996;

(3) That the limited purpose trust company itself, or together with its affiliates, has a total ownership equity of at least $25,000,000; provided, however, that the requirements of this paragraph shall not apply to a limited purpose trust company established under this subchapter on or after January 1, 1996;

(4) That the limited purpose trust company shall maintain its headquarters in this State; and

(5) That, pursuant to its application for such certificate, the limited purpose trust company has specifically agreed to be bound by the conditions set forth in this subchapter.

(c) Every corporation formed under this subchapter shall operate in compliance with the standards set forth in subsection (b) of this section; provided however, that any limited purpose trust company established under this subchapter before January 1, 1996, may file an application with the Commissioner for the waiver of either or both of the conditions specified in subsections (b)(2) and (3) of this section. Such application shall contain such information as the Commissioner may by regulation require, shall be accompanied by an investigation fee of $1,150 payable to the Office of the State Bank Commissioner and shall be approved by the Commissioner upon finding that the applicable provisions of law have been complied with. In determining whether to approve an application pursuant to this subsection, the Commissioner shall consider the convenience and needs of the public of this State and, in the case of an application to waive the requirement of subsection (b)(3) of this section, whether the limited purpose trust company will have sufficient capital to support its business operations; provided however, that in no event shall the capital of the limited purpose trust company be less than that required by § 745 of this title.

(63 Del. Laws, c. 261 § 3; 70 Del. Laws, c. 327 §§ 6-10; 71 Del. Laws, c. 254 § 9.)

§ 778 Violations.

If any limited purpose trust company is found by the Commissioner to have violated any condition of § 777(c) of this title or to have exercised powers beyond those conferred by § 775 of this title, the Commissioner shall issue an order pursuant to § 136 of this title to cease and desist such violation by a date certain. Upon a finding that the limited purpose trust company has not complied with such order, the Commissioner shall take such steps as set forth in § 131 of this title as regards violations of this Code.

(63 Del. Laws, c. 261 § 3.)

§ 779 Applicability of other provisions of law.

To the extent not inconsistent with the object, purpose, and provisions of this subchapter, a limited purpose trust company shall be subject to any section of this Code or any other statute or law of this State applicable to trust companies.

(63 Del. Laws, c. 261 § 3; 68 Del. Laws, c. 303 § 14.)

Subchapter VI

Merger, Consolidation or Conversion of National, State Bank or Trust Company

§ 781 Definitions.

As used in this subchapter:

(1) "Bank" means a state or a national bank.

(2) "Continuing bank" means a merging bank, the charter of which becomes the charter of the resulting bank.

(3) "Converting bank" means a bank converted from a state to a national bank, or the reverse.

(4) "Merger" includes consolidation.

(5) "Merging bank" means a party to a merger.

(6) "National bank" means a national bank association located in this State.

(7) "Resulting bank" means the bank resulting from a merger or conversion.

(8) "State bank" means a bank or trust company chartered under the laws of this State.

(5 Del. C. 1953 § 781; 49 Del. Laws, c. 126.)

§ 782 Merger with or conversion into national bank.

(a) Nothing in the laws of this State shall restrict the right of a bank created under this chapter or Chapter 16 of this title or under any

special act of the General Assembly to merge with or convert into a resulting national bank. The action to be taken by such merging or converting state bank and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of the action by the laws of the United States and not by the laws of this State, except that a vote of the holders of two thirds of each class of voting stock of a state bank shall be required for the merger or conversion, and that on conversion by a state into a national bank the rights of dissenting stockholders shall be those specified in § 788 of this title.

(b) Upon the completion of the merger or conversion, the certificate and charter of any merging or converting state bank shall automatically terminate.

(c) A resulting national bank shall be considered the same business and corporate entity as each merging bank or as the converting bank with all the property, rights, powers, duties and obligations of each merging bank or the converting bank, except as affected by the federal law and by the charter and bylaws of the resulting bank.

(5 Del. C. 1953 § 782; 49 Del. Laws, c. 126; 64 Del. Laws, c. 42 § 5; 71 Del. Laws, c. 25 § 14.)

§ 783 Merger with or conversion into state bank.

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.

(5 Del. C. 1953 § 783; 49 Del. Laws, c. 126; 57 Del. Laws, c. 740 § 19C.)

§ 784 Premerger procedure for resulting state bank.

(a) The board of directors of each merging state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

(1) The name of each merging bank and location of each office;

(2) With respect to the resulting bank: (i) its name and the location of the principal and of each additional office which shall not be at places other than preexisting offices of any merging bank; (ii) the name and residence of each director to serve until the next annual meeting of the stockholders; (iii) the name and residence of each officer; (iv) the amount of capital, the number of shares and the par value of each share, or a statement that the resulting bank will be a nonstock corporation; (v) whether preferred stock is to be issued and the amount, terms and preferences; (vi) the designation of the continuing bank, the charter of which is to be the charter of the resulting bank, together with the amendments to the continuing charter and to the continuing bylaws;

(3) Provisions governing the manner of converting the shares of the merging banks into shares of the resulting state bank and, if any shares of any of the merging banks are not to be converted solely into shares or other securities of the resulting state bank, the cash, property, rights or securities of any other bank or corporation which the holders of such shares are to receive in exchange for, or upon conversion of, such shares and the surrender of the certificates evidencing them, which cash, property, rights or securities of any other bank or corporation may be in addition to or in lieu of shares of other securities of the resulting state bank and such other details or provisions as are deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interest or rights, or for any other arrangement with respect thereto consistent with § 155 of Title 8;

(4) A statement that the agreement is subject to approval by the State Bank Commissioner and by the stockholders of each merging bank;

(5) Provisions governing the manner of disposing of the shares of the resulting state bank not taken by dissenting stockholders of merging banks; and

(6) Such other provisions as the State Bank Commissioner may require to enable him or her to discharge his or her duties with respect to the merger.

(b) After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the State Bank Commissioner for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any merging national bank.

(c) Within 30 days after receipt by the State Bank Commissioner of the papers specified in subsection (a) of this section, the Commissioner shall approve or disapprove the merger agreement, and if no action is taken, the agreement shall be deemed approved; provided, however, that before the expiration of such 30-day period or any extension thereof, the Commissioner in the Commissioner's sole discretion may by order extend such period for up to an additional 30 days in order to enable the Commissioner to fulfill the Commissioner's responsibilities with respect to the merger. The Commissioner shall approve the agreement if it appears that:

(1) The resulting state bank meets the requirements of state law as to the formation of a new state bank;

(2) The agreement provides an adequate capital structure, including surplus, in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken;

(3) The agreement is fair; and

(4) The merger is not contrary to the public interest.

(d) If the State Bank Commissioner disapproves an agreement, the State Bank Commissioner shall state the objections thereto and give

an opportunity to the merging banks to amend the merger agreement to obviate such objections.

(5 Del. C. 1953 § 784; 49 Del. Laws, c. 126; 57 Del. Laws, c. 740 § 19D; 63 Del. Laws, c. 186 § 7; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 19 § 27; 71 Del. Laws, c. 25 § 15.)

§ 785 Merger procedure for resulting state bank.

Following the approval of the merger agreement both in substance and in form by the State Bank Commissioner, the procedure for a merger which is to result in a state bank and the legal effect of any such merger (except as regards the rights of dissenting stockholders to payment for their shares) 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 2 or more corporations organized under the provisions of that chapter.

(5 Del. C. 1953 § 785; 49 Del. Laws, c. 126; 57 Del. Laws, c. 740 § 19E.)

§ 786 Conversion of national banks and federal savings associations into state banks.

(a) Except as provided in § 789 of this title, a national bank or federal savings association (as defined in the Home Owners' Loan Act, as amended, at 12 U.S.C. § 1462) located in this State which follows the procedure prescribed by the laws of the United States to convert into a state bank 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 (b) of this section. Notwithstanding any other provision of this title, a state bank resulting from the conversion of a national bank or federal savings association may retain and exercise all the powers and rights of the converting national bank or federal savings association, in addition to all the powers and rights available to a state bank under this title.

(b) The national bank or federal savings association may apply for such charter by filing with the State Bank Commissioner:

(1) A certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the laws of the United States governing the conversion of a national bank or federal savings association to a state bank; and

(2) The plan of conversion and the proposed articles of incorporation, approved by the stockholders or members, for the operation of the bank as a state bank.

(5 Del. C. 1953 § 786; 49 Del. Laws, c. 126; 57 Del. Laws, c. 740 §§ 19F, 19G; 71 Del. Laws, c. 19 §§ 28-30; 71 Del. Laws, c. 25 § 16.)

§ 787 Use of old name.

A resulting bank shall have the right to use the name of any merging bank or of the converting bank whenever it deems it more convenient to do so.

(5 Del. C. 1953 § 787; 49 Del. Laws, c. 126.)

§ 788 Dissenting stockholders.

(a) The owner of shares of a state bank (other than the continuing bank), which were voted against a merger to result in a state bank, or against the conversion of a state bank into a national bank, shall be entitled to receive their value in cash, if and when the merger or conversion becomes effective, upon written demand, made to the resulting state or national bank at any time within 30 days after the effective date of the merger or conversion accompanied by the surrender of the stock certificates. The value of such shares shall be determined, as of the date of the stockholders' meeting approving the merger or conversion, by 3 appraisers, 1 to be selected by the owners of two thirds of the shares involved, 1 by the board of directors of the resulting state or national bank, and the third by the 2 so chosen. The valuation agreed upon by any 2 appraisers shall govern. If the appraisal is not completed within 90 days after the merger or conversion becomes effective the State Bank Commissioner shall cause an appraisal to be made.

(b) The expenses of appraisal shall be paid by the resulting state bank.

(c) The resulting state or national bank may fix an amount which it considers to be not more than the value of the shares of a merging or the converting bank at the time of the stockholders' meeting approving the merger or conversion, which it will pay dissenting shareholders of that bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state or national bank.

(5 Del. C. 1953 § 788; 49 Del. Laws, c. 126.)

§ 789 Abandonment of trust powers and provision for successor fiduciaries.

Where a resulting state bank is not to exercise trust powers, the State Bank Commissioner shall 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.

(5 Del. C. 1953 § 789; 49 Del. Laws, c. 126; 57 Del. Laws, c. 740 § 19H.)

§ 790 Nonconforming assets or business.

If a merging or converting bank has assets which do not conform to the requirements of state laws for the resulting state bank or carries on business activities which are not permitted for the resulting state bank, the State Bank Commissioner may permit a reasonable time to conform with state law.

(5 Del. C. 1953 § 790; 49 Del. Laws, c. 126; 57 Del. Laws, c. 740 § 19F.)

§ 791 Book value of assets.

Without approval by the State Bank Commissioner no asset shall be carried on the books of the resulting bank at a valuation higher than that on the books of a merging or converting bank at the time of its last examination by a state or national bank examiner before the effective date of the merger or conversion.

(5 Del. C. 1953 § 791; 49 Del. Laws, c. 126.)

§ 792 Investigation fee.

The resulting bank shall pay to the office of the State Bank Commissioner an investigation fee of $1,150 which shall not be refundable and shall be submitted with the application.

(60 Del. Laws, c. 268 § 7; 67 Del. Laws, c. 260 § 1; 71 Del. Laws, c. 25 § 17.)

§ 793 Conversion of credit card institution on or after September 29, 1997.

(a) Any credit card institution formed under Chapter 15 of this title, upon filing with the Commissioner an application in such form as the Commissioner shall from time to time prescribe, submitted and sworn to by the directors of the credit card institution, may become a bank which shall be deemed as having been formed under and which shall be governed by the provisions of Chapter 7 of this title.

(b) Upon a determination that the applicant(s) have satisfied the requirements of subsection (a) of this section, the Commissioner shall issue a certificate certifying such compliance and ordering and approving the conversion of the credit card institution, which certificate shall be duly filed with the Secretary of State. A certified copy of such filing shall constitute the certificate authorizing commencement of business pursuant to § 733 of this title. From and after such filing, the credit card institution shall become a bank governed by the provisions of Chapters 7 and 8 of this title and any other law of this State regulating banks generally and shall not be subject to any provision of Chapter 15 of this title or any regulation promulgated thereunder.

(c) The resulting bank shall pay to the Commissioner an investigation fee of $1,150 which shall not be refundable and which shall be submitted with the application.

(70 Del. Laws, c. 112 § 14; 71 Del. Laws, c. 19 § 32; 71 Del. Laws, c. 25 § 18.)

§ 794 Conversion of a building and loan association.

(a) Notwithstanding any other provision of this title, a building and loan association with voting stock regulated pursuant to Chapter 17 of this title may become a bank which shall be deemed as having been formed under and which shall be governed by the provisions of Chapter 7 of this title. The application for conversion filed with the Commissioner shall be in such form as the Commissioner shall from time to time prescribe, submitted and sworn to by the directors of the building and loan association. A 45-day comment period shall commence upon the date of the first notice required under subsection (b) of this section.

(b) The Commissioner shall, at least once during each of the first 2 weeks following the filing of an application under this section, cause to be filed in a newspaper having statewide circulation, at the expense of the applicants, a notice of the filing of such application, which notice shall invite public inspection and comment hereon prior to the expiration of the 45-day period.

(c) If, based upon the application and any other information filed with the Commissioner in support of or objection to such application, the Commissioner shall have cause to believe that a certificate of public convenience and advantage would not be issued to the applicants, the Commissioner shall, not later than 45 days after the close of the comment period, advise applicants of such objection, together with support therefor. At the request of the applicants, the Commissioner shall forthwith proceed to give notice and conduct a hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(d) Upon a determination that the applicants have met the requirements of this section, the Commissioner shall issue a certificate certifying such compliance and ordering and approving a conversion of the building and loan association, which certificate shall be duly filed with the Secretary of State. From and after such filing, the resulting bank shall be governed by the provisions of Chapter 7 of this title and any other law of this State regulating banks generally.

(e) If an application is made for conversion of a building and loan pursuant to this section in connection with an application for acquisition of an existing bank pursuant to subchapter IV of Chapter 8 of this title, the Commissioner may consider and approve or reject both applications concurrently.

(f) The resulting bank shall pay to the Office of the State Bank Commissioner a fee of $5,000 for the use of the State if there is an approval of the conversion. In addition, the resulting bank shall pay an investigation fee of $1,000 which shall not be refundable and which shall be submitted with the application for conversion.

(69 Del. Laws, c. 165 § 17.)

Subchapter VII

Merger or Consolidation with Out-Of-State Banks

§ 795 Definitions.

As used in this subchapter:

(1) "Bank" means a Delaware state bank, out-of-state state bank, Delaware national bank or out-of-state national bank.

(2) "Bank holding company" has the meaning specified in the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq.

(3) "Branch office" has the meaning specified in § 770 of this title.

(4) "Delaware bank" means a Delaware national bank or a Delaware state bank.

(5) "Delaware national bank" means a national banking association created under the National Bank Act (12 U.S.C. § 21 et seq.) that is located in this State.

(6) "Delaware state bank" means a bank (as defined in § 101 of this title) chartered under the laws of this State.

(7) "Existing Delaware bank" means: (i) a Delaware state bank whose initial Delaware charter (whether or not subsequently amended or converted to a national charter) bears an effective date not less than 5 years prior to the effective date of the merger of such bank with an out-of-state bank, (ii) a Delaware national bank whose authorization to conduct a banking business in Delaware pursuant to the National Bank Act bears an effective date not less than 5 years prior to the effective date of the merger of such bank with an out-of-state bank, (iii) a building and loan association which has become a Delaware state bank pursuant to § 794 of this title and whose initial Delaware charter or authorization to conduct a building and loan business in Delaware bears an effective date not less than 5 years prior to the effective date of the merger of such building and loan association with an out-of-state bank, (iv) a consumer credit bank which became a Delaware state bank pursuant to this title and whose initial Delaware charter or authorization to operate as a consumer credit bank in Delaware bears an effective date not less than 5 years prior to the effective date of the merger of such consumer credit bank with an out-of-state bank, or (v) a credit card institution which has become a Delaware state bank pursuant to § 793 of this title and whose initial Delaware charter or authorization to operate as a credit card institution in Delaware bears an effective date not less than 5 years prior to the effective date of the merger of such credit card institution with an out-of-state bank.

(8) "Located in this State" means, with respect to a state-chartered bank, a bank created under the law of this State and, with respect to a national banking association, a bank whose organization certificate identifies an address in this State as the place at which its discount and deposit operations are to be carried out.

(9) "Merger" includes merger, consolidation and the purchase or sale of all or substantially all assets.

(10) "Merging bank" means a bank that is a party to a merger.

(11) "National bank" means a Delaware national bank or an out-of-state national bank.

(12) "Out-of-state bank" means an out-of-state state bank or an out-of-state national bank.

(13) "Out-of-state state bank" means a state bank, as defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813(a), that is not chartered under the laws of this State.

(14) "Out-of-state national bank" means a national bank association created under the National Bank Act (12 U.S.C. § 21 et seq.) that is not located in this State.

(15) "Resulting" with respect to a bank means the bank resulting from a merger, and with respect to a branch means the branch office(s) of the bank resulting from a merger.

(16) "Savings and loan holding company" has the meaning specified in the Home Owners' Loan Act, as amended, at 12 U.S.C. § 1467a.

(70 Del. Laws, c. 112 § 15; 71 Del. Laws, c. 19 §§ 33, 34; 71 Del. Laws, c. 25 § 19; 71 Del. Laws, c. 254 § 10.)

§ 795A Purpose.

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.

(70 Del. Laws, c. 112 § 15.)

§ 795B Authority for interstate branch offices.

(a) The place of business or main office and all branch offices of a merging bank may continue as branch offices, or one of them may be designated as the place of business or main office, of the resulting bank.

(b) A resulting bank that is an out-of-state state bank may open additional branch offices in this State in such manner as the Commissioner shall prescribe by regulation.

(c) Nothing in this subchapter shall be deemed to permit interstate branching either through the original establishment of a branch office in this State by an out-of-state bank or through acquisition of a branch office in this State by an out-of-state bank, without merger with a Delaware bank as provided in this subchapter.

(70 Del. Laws, c. 112 § 15.)

§ 795C Merger with resulting Delaware national bank.

(a) Delaware banks may merge with or into out-of-state banks to form a resulting Delaware national bank. The action to be taken by a merging Delaware bank that is a Delaware state bank and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of the action by the laws of the United States and not by the laws of this State, except that a vote of the holders of two thirds of each class of voting stock of a Delaware state bank shall be required for the merger, and that upon the merger of a Delaware state bank into a resulting Delaware national bank the rights of dissenting stockholders of the merging Delaware state bank

shall be the same as those specified in § 788 of this title.

(b) Upon the completion of the merger of a Delaware bank that is a Delaware state bank with or into out-of-state banks to form a resulting Delaware national bank, the certificate and charter of any such merging Delaware state bank shall automatically terminate.

(c) A resulting Delaware national bank shall be considered the same business and corporate entity as each merging bank with all the property, rights, powers, duties and obligations of each merging bank, except as affected by the federal law and by the charter and bylaws of the resulting bank.

(70 Del. Laws, c. 112 § 15.)

§ 795D Merger with resulting Delaware state bank.

(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; 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 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 is chartered, which shall also govern the rights of its dissenting stockholders.

(b) Following the approval of the merger agreement both in substance and form by the 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 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) 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.

(70 Del. Laws, c. 112 § 15.)

§ 795E Merger with resulting out-of-state national bank.

(a) Existing Delaware banks may merge with or into out-of-state banks to form a resulting out-of-state national bank. The action to be taken by a merging existing Delaware bank that is a Delaware state bank and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of the action by the laws of the United States and not by the laws of this State, except that a vote of the holders of two thirds of each class of voting stock of a Delaware state bank shall be required for the merger, and that upon the merger of a Delaware state bank into a resulting out-of-state national bank the rights of dissenting stockholders of the merging Delaware state bank shall be the same as those specified in § 788 of this title.

(b) Upon the completion of the merger of an existing Delaware bank that is a Delaware state bank into a resulting out-of-state national bank, the certificate and charter of any such merging Delaware state bank shall automatically terminate.

(c) A resulting out-of-state national bank shall be considered the same business and corporate entity as each merging bank with all the property, rights, powers, duties and obligations of each merging bank, except as affected by the federal law and by the charter and bylaws of the resulting bank.

(70 Del. Laws, c. 112 § 15.)

§ 795F Merger with resulting out-of-state state bank.

(a) Existing Delaware banks may be merged with or into out-of-state banks to result in an out-of-state state bank; provided, that written approval by the State Bank Commissioner is required for any such merger of an existing Delaware bank that is a Delaware state bank, which shall be 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; further 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 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 is chartered, which shall also govern the rights of its dissenting stockholders.

(b) Following the approval of the merger agreement both in substance and form by the Commissioner, in the same manner as that prescribed in § 784 of this title, the procedure for a merger involving a Delaware state bank which is to result in an out-of-state state bank 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) 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.

(70 Del. Laws, c. 112 § 15.)

§ 795G Authority for emergency mergers.

Notwithstanding any other provision in this title, the Commissioner may approve the merger of a Delaware state bank with an out-of-state bank upon determining that the merging Delaware state bank is in default or in danger of default; provided, however, that the merging Delaware state bank has not been caused to be in default or in danger of default for the specific purpose of engaging in a merger pursuant to this section. For purposes of this section, the term "in danger of default" with respect to a Delaware state bank means that, in the opinion of

the Commissioner, the Delaware state bank is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course of business and there is no reasonable prospect that it will be able to meet such demands or pay such obligations without assistance, or the Delaware state bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect that its capital will be replenished without assistance. The procedure for an emergency merger in accordance with this section with a resulting Delaware national bank, Delaware state bank, out-of-state national bank or out-of-state state bank shall be the same as provided in §§ 795C, 795D, 795E and 795F of this subchapter, respectively.

(70 Del. Laws, c. 112 § 15.)

§ 795H Concentration limits; approval of Commissioner.

The Commissioner may approve a merger, in accordance with §§ 795C, 795D, 795E, 795F and 795G of this title, even though the resulting bank (including all insured depository institutions, as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c), which would be affiliates of the resulting bank), upon consummation of the transaction, would control 30 percent or more of the total amount of deposits of insured depository institutions in this State. In determining whether to approve a merger pursuant to this section, the Commissioner shall consider the convenience and needs of the public of this State.

(70 Del. Laws, c. 112 § 15.)

§ 795I Powers.

(a) An out-of-state state bank which establishes and maintains one or more branch offices in this State under this subchapter may conduct any activities at such branch office or offices that are authorized under the laws of this State for Delaware state banks.

(b) A Delaware state bank may conduct any activities at any branch office outside this State that are permissible for a Delaware state bank, a bank chartered by the state where such branch office is located, or a branch office of any national bank located in the state where such branch office of the Delaware state bank is located.

(70 Del. Laws, c. 112 § 15; 71 Del. Laws, c. 254 § 11.)

§ 795J Examinations; periodic reports; cooperative agreements; regulations; fees.

(a) The Commissioner may make such examinations of any branch office in this State of an out-of-state state bank as the Commissioner may deem necessary to determine whether such branch office is operating in compliance with the laws of this State and to ensure that the branch office is being operated in a safe and sound manner. The provisions of this title shall apply to such examinations.

(b) The Commissioner may require periodic reports regarding any out-of-state state bank that maintains a branch office in this State and from any bank holding company or savings and loan holding company that controls such out-of-state state bank, for the purpose of ensuring continuing compliance with the provisions of this title. Such reports shall be provided by such out-of-state state bank or by the regulatory authority having primary responsibility for such out-of-state state bank.

(c) The Commissioner may enter into cooperative agreements with the appropriate regulatory authorities for the periodic examination of any branch office in this State of an out-of-state state bank or of any branch office in another state of a Delaware state bank, and may accept reports of examination and other records from such authorities in lieu of conducting the Commissioner's own examination. The Commissioner may enter into joint actions with other regulatory authorities with respect to such branch offices or may take such actions independently to carry out the Commissioner's responsibilities to assure the safety and soundness of any bank or branch office in this State and to assure compliance with applicable Delaware banking laws.

(d) Each out-of-state state bank that maintains one or more branch offices in this State may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this State and regulations of the Commissioner.

(70 Del. Laws, c. 112 § 15; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 25 § 20.)

§ 795K Enforcement.

If the Commissioner determines that a branch office maintained by an out-of-state state bank in this State is being operated in violation of any provision of the laws of this State, or that such branch office is being operated in an unsafe and unsound manner, the Commissioner shall have the authority to take all such enforcement actions as if the branch office were a Delaware state bank.

(70 Del. Laws, c. 112 § 15.)

§ 795L Regulations.

The Commissioner may promulgate regulations to carry out the Commissioner's responsibilities under this subchapter.

(70 Del. Laws, c. 112 § 15; 70 Del. Laws, c. 186 § 1.)

§ 795M Notice of subsequent merger, etc.

An out-of-state state bank that maintains a branch office in this State established pursuant to this subchapter shall give at least 30 days prior written notice (or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state and federal law) to the Commissioner of any merger or other transaction that would cause a change of control with respect to such out-of-state state bank or any bank holding company that controls such bank, with the result that an application would be required to be filed pursuant to the Change in Bank Control Act of 1978, as amended, 12 U.S.C. § 1817(j), or the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or any successor statutes thereto.

(70 Del. Laws, c. 112 § 15.)

§ 795N Other mergers or consolidations with out-of-state banks not permitted.

Except as otherwise provided in this subchapter or by applicable law of the United States, no Delaware bank may merge with or into any out-of-state bank and retain any branch office in this State or otherwise continue to conduct a banking business in this State.

(70 Del. Laws, c. 112 § 15; 71 Del. Laws, c. 19 § 35.)

Subchapter VIII

Bank Agencies

§ 796 Definitions.

As used in this subchapter:

(1) "Affiliate" has the meaning specified in § 2(k) of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841(k).

(2) "Branch office" has the meaning specified in § 770 of this chapter and also includes a foreign branch office as specified in § 771 of this chapter.

(3) "Insured depository institution" has the meaning specified in 12 U.S.C. § 1813(c).

(70 Del. Laws, c. 112 § 16; 71 Del. Laws, c. 254 § 12.)

§ 796A Authorized agency activities.

(a) Any bank may, upon compliance with the requirements of this section, agree to receive deposits, renew time deposits, close loans, service loans, receive payments on loans and other obligations, and perform such other services as may receive the prior approval of the Commissioner as an agent for any affiliated insured depository institution. For purposes of this subsection: The term "receive deposits" means the taking of deposits to be credited to an existing account and is not meant to include the opening or origination of new deposit accounts at an affiliated institution by the agent institution; the term "service loans" means that agent banks may perform ministerial functions for the principal bank making a loan, including such activities as providing loan applications, assembling documents, providing a location for returning documents necessary for making the loan, providing loan account information (such as outstanding loan balances) and receiving payments, but not including such loan functions as evaluating applications or disbursing loan funds; and the term "close loans" does not include the making of a decision to extend credit or the extension of credit.

(b) A bank that proposes to enter into an agency agreement under this section shall file with the Commissioner, at least 30 days before the effective date of the agreement:

(1) A notice of intention to enter into an agency agreement with an affiliated insured depository institution;

(2) A description of the services proposed to be performed under the agency agreement; and

(3) A copy of the agency agreement.

(c) If any proposed service is not specifically designated in subsection (a) of this section, and has not previously been approved in a regulation issued by the Commissioner, the Commissioner shall decide whether to approve the offering of such service within 30 days after receipt of the notice required by subsection (b); provided, that if the Commissioner requests additional information after reviewing such notice, the time limit for the Commissioner's decision shall be 30 days after receiving such additional information. In deciding whether to approve, either by regulation or order, any proposed service that is not specifically designated in subsection (a), the Commissioner shall consider whether such service would be consistent with applicable federal and State law and the safety and soundness of the principal and agent institutions. The Commissioner shall give appropriate notice to the public of each approval, by regulation or order, of any proposed service pursuant to this subsection (c).

(d) Any proposed service subject to subsection (c) shall be deemed approved if the Commissioner takes no action on the notice required by subsection (b) within the time limits specified in subsection (c).

(e) A bank may not under an agency agreement:

(1) Conduct any activity as an agent that it would be prohibited from conducting as a principal under applicable state or federal law; or

(2) Have an agent conduct any activity that the bank as principal would be prohibited from conducting under applicable state or federal law.

(f) The Commissioner may order a bank or any other institution subject to the Commissioner's enforcement powers to cease acting as an agent or principal under any agency agreement that the Commissioner finds to be inconsistent with safe and sound banking practices.

(g) Notwithstanding any other provision of the law of this State, a bank acting as an agent for an affiliated insured depository institution in accordance with this section shall not be considered to be a branch office of that institution.

(70 Del. Laws, c. 112 § 16.)

§ 796B Regulations.

The Commissioner may promulgate regulations to carry out the responsibilities under this subchapter.

(70 Del. Laws, c. 112 § 16; 70 Del. Laws, c. 186 § 1.)

Part II
Banks and Trust Companies
Chapter 8
ACQUISITION OF INTERESTS IN BANKING INSTITUTIONS; BANK HOLDING COMPANIES
Subchapter I
Acquisition of Stock in New Banks in Delaware before September 29, 1995

§ 801 Definitions.

As used in this subchapter:

(1) "Bank" means a bank or trust company created under this title or a national banking association created under the National Bank Act (12 U.S.C. § 21 et seq.) after February 18, 1981.

(2) "Out-of-state bank holding company" has the meaning specified in the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 et seq.).

(3) "Commissioner" means the State Bank Commissioner of the State of Delaware.

(4) "Divest" means to transfer all interest, legal or equitable, to a person or other entity in which the transferor has no interest, direct or indirect, or which has no interest, direct or indirect, in the transferor.

(5) "Located in this State" means, with respect to state-chartered banks, banks created under the law of this State and, with respect to national banking associations, banks whose organization certificate identifies an address in this State as the place at which its discount and deposit operations are to be carried out.

(6) "Subsidiary" means, with respect to an out-of-state bank holding company:

a. Any company 25% or more of whose voting shares is directly or indirectly owned or controlled by such bank holding company, or is held by it with power to vote; or

b. Any company the election of a majority of whose directors is controlled in any manner by such bank holding company.

(63 Del. Laws, c. 2 § 2; 63 Del. Laws, c. 186 §§ 3, 4; 68 Del. Laws, c. 303 § 15; 70 Del. Laws, c. 112 § 18.)

§ 802 Scope; construction.

This subchapter deals with conditions under which out-of-state bank holding companies or subsidiaries thereof may acquire and hold shares of voting stock in banks located in this State before September 29, 1995; it shall not be construed to limit the powers granted to any bank in this State to conduct its business.

(63 Del. Laws, c. 2 § 2; 63 Del. Laws, c. 186 §§ 3, 4; 70 Del. Laws, c. 112 § 19.)

§ 803 Requirements for bank acquisitions before September 29, 1995.

(a) Except as provided in 12 U.S.C. § 1842 and as provided in this chapter, no out-of-state bank holding company or any subsidiary thereof may acquire or hold, directly or indirectly, more than 5% of any voting shares of, interest in, or all or substantially all of the assets of any bank located in this State. Notwithstanding the foregoing, an out-of-state bank holding company or any subsidiary thereof may acquire and hold all or substantially all of the voting shares of not more than 2 banks located in this State when and for so long as the following conditions are satisfied:

(1) Each bank whose stock is to be acquired is a newly established bank that has or will have when chartered no more than a single office located in this State open to the public for the conduct of banking business;

(2) At least 1 of the banks whose stock is to be acquired has or will have on the date of commencement of banking business in this State a minimum capital stock and paid-in surplus of $10,000,000 and will have within 1 year of the date of its commencement of banking business in this State a minimum capital stock and paid-in surplus of $25,000,000;

(3) The bank whose stock is to be acquired employs on the date of commencement of its banking business in this State or will employ within 1 year of such date not less than 100 persons in this State in its business and, if the stock of a second bank is acquired, that bank, together with its "affiliates" as that term is defined in § 773 of this title, will employ within 1 year of its commencement of business in this State at least 200 persons within the State;

(4) Each bank whose stock is to be acquired is operated in a manner and at a location that is not likely to attract customers from the general public in this State to the substantial detriment of existing banking institutions located in this State; provided that each such bank may be operated in a manner likely to attract and retain customers with whom that bank, the out-of-state holding company or such holding company's bank or nonbanking subsidiaries have or have had business relations; and

(5) Such acquisitions have received the prior approval of the Commissioner.

(b) The provisions of subsection (a) of this section apply only to banks first acquired pursuant to this subchapter before September 29,

1995. Subsequent acquisitions of such banks shall not affect the application of the provisions of subsection (a) of this section, except as provided in subsection (c) of this section.

(c) Notwithstanding subsection (a) of this section, any bank described in subsection (a) of this section may file an application with the Commissioner for the waiver of any or all of the conditions specified in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section, except as otherwise provided in this title. Such application shall contain such information as the Commissioner may by regulation require, shall be accompanied by a fee of $6,000 payable to the Office of the State Bank Commissioner and shall be approved by the Commissioner upon finding that the applicable provisions of law have been complied with. In determining whether to approve an application pursuant to this subsection (c), the Commissioner shall consider the convenience and needs of the public of this State.

(63 Del. Laws, c. 2 § 2; 63 Del. Laws, c. 186 §§ 3, 5; 64 Del. Laws, c. 42 § 6; 64 Del. Laws, c. 461 § 2; 70 Del. Laws, c. 112 §§ 20-22; 71 Del. Laws, c. 19 § 36.)

§ 804 Application; approval by Commissioner.

(a) Any out-of-state bank holding company or subsidiary thereof proposing an acquisition pursuant to § 803 of this title before September 29, 1995 shall file an application with the Commissioner for approval to make such acquisition. Such application shall contain such information as the Commissioner may by regulation require, and shall specifically acknowledge applicant's agreement to be bound by the conditions set forth in § 803 of this title. In addition, such application shall designate a resident of this State as applicant's agent for the service of any paper, notice or legal process upon applicant in connection with matters arising out of this subchapter and shall be accompanied by a filing fee in the amount of $5,750 for the use of the State.

(b) In determining whether to approve an acquisition by an out-of-state bank holding company or any subsidiary thereof of any voting stock of a bank located in this State, the Commissioner shall consider:

(1) The financial and managerial resources of the out-of-state bank holding company or its subsidiary;

(2) The future prospects of the out-of-state bank holding company and the bank whose assets or shares it will acquire or its subsidiary;

(3) The financial history of the out-of-state bank holding company or its subsidiary;

(4) Whether such acquisition or holding may result in undue concentration of resources or substantial lessening of competition in this State; and

(5) The convenience and needs of the public of this State.

(c) No application shall be filed pursuant to this section on or after September 29, 1995.

(63 Del. Laws, c. 2 § 2; 63 Del. Laws, c. 186 §§ 3, 4; 68 Del. Laws, c. 303 § 16; 70 Del. Laws, c. 112 §§ 23, 24.)

§ 805 Reports.

An out-of-state bank holding company that directly or indirectly, through any subsidiary, acquires and holds voting stock of a bank pursuant to this subchapter shall file with the Commissioner upon the Commissioner's request copies of all regular and periodic reports which such bank holding company is required to file under § 13 or § 15(d) of the Securities and Exchange Act of 1934, as amended [15 U.S.C. § 78m or § 78o(d)], but excluding any portions not available to the public.

(63 Del. Laws, c. 2 § 2; 63 Del. Laws, c. 186 §§ 3, 4; 70 Del. Laws, c. 112 § 25.)

§ 806 Rules; regulations; orders.

The Commissioner may adopt rules and regulations and issue orders under this subchapter including, but not limited to, rules, regulations and orders for the following purposes:

(1) To prescribe information or forms required in connection with an application pursuant to § 804(a) of this title;

(2) To establish procedures in connection with approvals pursuant to § 804(b) of this title and the filing of required reports pursuant to § 805 of this title;

(3) To issue orders under § 807 of this title and establish procedures governing such issuances.

(63 Del. Laws, c. 2 § 2; 63 Del. Laws, c. 186 §§ 3, 4; 70 Del. Laws, c. 112 § 26.)

§ 807 Divestiture.

(a) Upon the Commissioner's determination that any out-of-state bank holding company or subsidiary thereof is holding stock in a bank located in this State in violation of the conditions set forth in § 803 of this title or of its agreement pursuant to § 804(a) of this title the Commissioner may order such out-of-state holding company or subsidiary thereof to take steps to remedy such violation by a date certain.

(b) The Commissioner shall have the authority to order an out-of-state bank holding company or subsidiary thereof to divest any shares of a bank that it has acquired under this subchapter upon the Commissioner's determination that such holding company or subsidiary continues to own shares of stock of a bank located in this State in violation of the conditions contained in § 803 of this title or of its agreement pursuant to § 804(a) of this title after the date fixed for compliance by any order issued under subsection (a) of this section.

(c) An out-of-state bank holding company or subsidiary thereof shall divest any shares of a bank that it has acquired under this subchapter within 2 years of the date an order issued under subsection (b) of this section becomes final and subject to no further judicial review; provided that the Commissioner may extend such 2-year period for a further period or periods upon the Commissioner's determination that such an extension would not be detrimental to the public interest.

(d) The Court of Chancery of the State will have exclusive original jurisdiction of any judicial review of an order issued under subsection

(b) of this section, any other provision of law notwithstanding. Such review may be sought by the out-of-state bank holding company or subsidiary thereof that is the subject of such divestiture order at any time within 1 year of the date of such order. Review of a divestiture order shall be de novo and such order will be specifically enforced by the Court of Chancery upon a final determination that, at the time of its issuance, the divestiture order was valid in all respects. An order issued under subsection (a) of this section shall not be subject to judicial review.

(63 Del. Laws, c. 2 § 2; 63 Del. Laws, c. 186 §§ 3, 4; 70 Del. Laws, c. 186 § 1.)

Subchapter II

Acquisition of Stock and Assets of, and Interests in, Banks to Which the State Has Provided Financial Assistance and Obtained an Ownership Interest

§ 821 Definitions.

As used in this subchapter:

(1) "State assisted bank" means a bank which the State has, in order to relieve financial distress determined to exist by the State Bank Commissioner, assisted by means of a grant, loan, asset purchase or deposit made pursuant to a plan or agreement if:

a. The State owns an equity interest in the bank which the State obtained pursuant to the plan or agreement; and

b. Such equity interest together with any equity interest previously obtained and still held by the State aggregates not less than 25% of the voting rights of all holders of stock or other voting rights.

(2) "Bank" means a bank or trust company existing under the laws of the State, or a national banking association existing under the National Bank Act, as amended (12 U.S.C. § 21 et seq.), whose main office is in this State.

(3) "Out-of-state bank holding company" means an out-of-state bank holding company as defined in § 801(2) of this title.

(4) "Subsidiary" means a subsidiary as defined in § 801(6) of this title.

(63 Del. Laws, c. 186 § 6.)

§ 822 Purpose; findings.

The purpose of this subchapter is to permit the acquisition by an out-of-state bank holding company, or a subsidiary thereof, of any voting shares of, interest in, or all or substantially all of the assets of, a state assisted bank, notwithstanding any other provision of state law. The General Assembly of the State hereby finds that it is in the interest of the State that the State have the ability to divest its interest in a state assisted bank to an out-of-state bank holding company, and that such ability does not exist unless legislation of the State, as presently required under § 3(d) of the federal Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1842(d)), permits out-of-state bank holding companies or their subsidiaries to acquire a state assisted bank.

(63 Del. Laws, c. 186 § 6.)

§ 823 Authorized acquisitions.

Pursuant to the present requirement of 12 U.S.C. § 1842(d) and notwithstanding any other provision of state law, any out-of-state bank holding company, or any subsidiary thereof, may acquire pursuant to this subchapter, and it and any successor thereto by merger, consolidation or other corporate reorganization may retain and hold, voting shares of, interest in, or all or substantially all of the assets of a state assisted bank and any successor thereto. Such acquisition, retention and holding of voting shares of, interest in, or all or substantially all of the assets of a state assisted bank shall not be construed to limit in any manner the franchise powers or privileges of such bank to conduct its business; provided, however, that this section does not authorize: (1) The establishment in this State of branch offices of a banking subsidiary of an out-of-state bank holding company making an acquisition pursuant to this section if such banking subsidiary does not have its principal place of business in this State; or (2) the acquisition by a bank acquired pursuant to this section of a bank engaged in business in this State (other than one organized under subchapter I of this chapter) by merger, consolidation or purchase of all or substantially all of its assets, or more than 10% of its voting shares. The limitation in clause (1) of this section applies at any time when the combined effect of federal and state law is to prohibit such establishment in this State of branch offices by a bank controlled by an out-of-state bank holding company and the limitation in clause (2) of this section applies at any time when the combined effect of federal and state law is to prohibit the acquisition in the manner described in clause (2) above of a bank engaged in business in this State by a bank controlled by an out-of-state bank holding company.

(63 Del. Laws, c. 186 § 6.)

§ 824 Application for approval of acquisition.

(a) An out-of-state bank holding company or subsidiary thereof proposing an acquisition pursuant to § 823 of this title shall file an application with the Commissioner for approval to make such acquisition either pursuant to § 751 or § 781 et seq. of this title, as the case may be, if applicable.

(b) If no application under § 751 or § 781 et seq. of this title is required for such acquisition, then an application under this subsection shall be filed with the Commissioner for his or her consent to the acquisition. Such application shall contain such information as the

Commissioner may require by regulation. Such application shall designate a resident of this State as applicant's agent for the service of any paper, notice or legal process upon the applicant in connection with matters arising out of this subchapter. The Commissioner may shorten or modify the normal application procedures required for any acquisition authorized by this subchapter where the circumstances involving the state assisted bank indicate that delay in approving the acquisition may be detrimental to such bank.

(c) In determining whether to approve an acquisition by an out-of-state bank holding company or any subsidiary thereof pursuant to this subchapter, the Commissioner shall consider:

(1) The financial and managerial resources of the out-of-state bank holding company or its subsidiary;

(2) The future prospects of the out-of-state bank holding company and the state assisted bank or its subsidiary whose assets, interest in or shares it will acquire;

(3) The financial history of the out-of-state bank holding company or its subsidiary;

(4) Whether such acquisition or holding may result in undue concentration of resources or substantial lessening of competition in this State;

(5) The convenience and needs of the public of this State; and

(6) Whether such acquisition or holding will strengthen the financial condition of the state assisted bank.

(63 Del. Laws, c. 186 § 6; 70 Del. Laws, c. 186 § 1.)

§ 825 Required reports.

An out-of-state bank holding company that directly or indirectly through any subsidiary acquires, retains and holds voting stock of a bank pursuant to this subchapter shall file with the Commissioner upon the Commissioner's request either: (1) Copies of all regular and periodic reports which such bank holding company is required to file under § 13 or § 15(d) of the Securities Exchange Act of 1934, as amended [15 U.S.C. § 78m or § 78o(d)], but excluding any portions not available to the public; or (2) In the case of a bank holding company which is not required to file such reports, such periodic reports as the Commissioner may require by regulation.

(63 Del. Laws, c. 186 § 6; 70 Del. Laws, c. 112 § 27.)

§ 826 Rules, regulations and orders.

The Commissioner may adopt rules and regulations and issue orders under this subchapter for the following purposes:

(1) To prescribe information or forms required in connection with an application pursuant to § 824 of this title;

(2) To establish procedures in connection with approvals pursuant to § 824 of this title and the filing of required reports pursuant to § 825 of this title.

(63 Del. Laws, c. 186 § 6.)

Subchapter III

Acquisition of Delaware Savings Banks

§ 831 Definitions.

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

(1) "Acquire" or "acquisition" means:

a. The merger or consolidation of a savings and loan holding company with another savings and loan holding company or with a bank holding company;

b. The assumption by a savings institution, savings and loan holding company or bank holding company of direct or indirect ownership or control of the voting shares of a savings institution or savings and loan holding company if, after the effective date thereof, the savings institution, savings and loan holding company or bank holding company making the acquisition will directly or indirectly own or control more than 5 percent of any class of voting shares of the other savings institution or savings and loan holding company; or

c. The assumption of ownership or control of all or substantially all of the assets of a savings institution or savings and loan holding company.

(2) "Bank holding company" means a bank holding company as defined in the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 et seq.).

(3) "Commissioner" and "divest" shall have the meanings ascribed to them in § 801 of this title.

(4) "Control" shall have the same meaning as set forth in the Home Owners' Loan Act of 1933, as amended, at 12 U.S.C. § 1467a.

(5) "Delaware savings and loan holding company" means a savings and loan holding company located in Delaware which owns or controls a Delaware savings bank.

(6) "Delaware savings bank" means:

a. A savings bank organized and existing under the laws of this State that is not a "bank" as defined in § 842(1) of this title; or

b. A federal savings bank or federal savings association organized and existing under the Home Owners' Loan Act (12 U.S.C. § 1461 et seq.), which is located in Delaware.

(7) "Deposit" or "deposits" means:

a. When referring to a savings institution or a savings institution subsidiary of a savings and loan holding company or bank holding company, a "deposit" as defined in § 3(l) of the Federal Deposit Insurance Act, 12 U.S.C. § 1813(l); and

b. When referring to a bank subsidiary of a bank holding company, a "deposit" as defined in § 204.2(a) of Regulation D of the Federal Reserve Board (12 C.F.R. § 204.2(a)).

(8) "Location" or "located" means:

a. When referring to a savings and loan holding company, the state in which the amount of aggregate deposits in the United States offices of all of its directly or indirectly owned or controlled savings institution or nonsavings institution subsidiaries (as well as all of the savings institution or nonsavings institution subsidiaries of any savings and loan holding company which owns or controls that savings and loan holding company) is greatest;

b. When referring to a savings institution, the state in which the amount of aggregate deposits of all its offices in that state is greatest; and

c. When referring to a bank holding company, the state in which the amount of aggregate deposits in the United States offices of all of its directly or indirectly owned or controlled banking or savings institution or nonbanking or nonsavings institution subsidiaries (as well as all of the banking or savings institution or nonbanking or nonsavings institution subsidiaries of any bank holding company which owns or controls that bank holding company) is greatest.

(9) "Out-of-state bank holding company" shall have the meaning specified in § 801 of this title.

(10) "Out-of-state savings and loan holding company" means a savings and loan holding company located in a state other than Delaware.

(11) "Out-of-state savings institution" means a savings institution located in a state other than Delaware.

(12) "Savings and loan holding company" means a savings and loan holding company as defined in the Home Owners' Loan Act of 1933, as amended, at 12 U.S.C. § 1467a.

(13) "Savings institution" means a savings bank or savings and loan association chartered under the laws of any state, or a federal savings bank or federal savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(14) "Subsidiary" means, with respect to a savings institution, savings and loan holding company or bank holding company:

a. Any company 25 percent or more of whose voting shares is directly or indirectly owned or controlled by such savings institution, savings and loan holding company or bank holding company, or is held by it with power to vote; or

b. Any company the election of a majority of whose directors is controlled in any manner by such savings institution, savings and loan holding company or bank holding company.

(66 Del. Laws, c. 33 § 3; 70 Del. Laws, c. 327 §§ 11-20; 71 Del. Laws, c. 25 § 21.)

§ 832 Acquisition authority.

(a) An out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company, or any subsidiary of the foregoing, may acquire or retain ownership or control of a Delaware savings bank or a Delaware savings and loan holding company; provided, that the out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company, or any subsidiary of the foregoing, makes application under and at all times complies with all regulations, decrees, cooperative agreements and orders duly promulgated by the Commissioner with respect to both the implementation of this subchapter generally, and the operations of such out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company and the Delaware savings bank that it acquires specifically.

(b) The Commissioner may approve an acquisition, in accordance with subsection (a) of this section, even though the out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company, or any subsidiary of the foregoing, that acquires a Delaware savings bank or a Delaware savings and loan holding company, would control, together with any affiliated insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c)), 30 percent or more of the total amount of deposits of insured depository institutions in this State. In determining whether to approve an acquisition pursuant to this subsection, the Commissioner shall consider the convenience and needs of the public of this State.

(c) Except as otherwise provided in this title or by applicable law of the United States, no out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company, or any subsidiary of the foregoing, may acquire or retain ownership or control of a Delaware savings bank or a Delaware savings and loan holding company.

(66 Del. Laws, c. 33 § 3; 70 Del. Laws, c. 327 § 21; 71 Del. Laws, c. 25 §§ 22-24.)

§ 833 Application process.

(a) An out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company, or any subsidiary of the foregoing, shall make application to acquire a Delaware savings bank or a Delaware savings and loan holding company upon such forms and in accordance with such regulations and rulings as are promulgated from time to time by the Commissioner. Such application shall designate a resident of this State as the applicant's agent for the service of any paper, notice or legal process upon the applicant in connection with matters arising out of this subchapter and shall be accompanied by a nonrefundable filing fee in the amount of $5,750 for the use of the State, and a nonrefundable processing fee in such amount as the Commissioner shall from time to time fix by

regulation, payable to and for the use of the Office of the Bank Commissioner.

(b) Following publication, notice and hearing in the manner prescribed by the Commissioner, the Commissioner shall approve or disapprove an application by an out-of-state savings institution, out-of-state savings and holding company or out-of-state bank holding company, or any subsidiary of the foregoing, to acquire or control a Delaware savings bank or a Delaware savings and loan holding company upon a determination of whether such acquisition will serve the public convenience and advantage. As part of such determination, but not by way of limitation, the Commissioner shall consider the following criteria:

(1) Whether the acquisition will, based upon the managerial and financial resources, financial history and business plan of the applicant, adversely affect the safe and sound operation of the Delaware savings bank or other savings institutions located in this State which are owned or controlled by the applicant;

(2) Whether the acquisition will adversely affect the quantity or quality of financial services available to 1 or more communities served by the Delaware savings bank prior to the acquisition;

(3) Whether, as a result of a prior or simultaneous acquisition of another Delaware savings bank, the acquisition of the Delaware savings bank will result in undue concentration of resources or a substantial lessening of competition in this State; and

(4) Whether the acquisition will foster economic development and the financing of business enterprises to the end that employment opportunities will either be increased or, where there is a prospect for a reduction, retained.

(c) In conjunction with the approval of any application filed under this section, the Commissioner may require as a condition of such approval that the out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company enter into a cooperative agreement binding it to such special terms and conditions regarding its operations and its maintenance and preservation of the capital and assets in Delaware of the Delaware savings bank as the Commissioner shall deem to be necessary to assure that the acquisition serves the public convenience and advantage.

(66 Del. Laws, c. 33 § 3; 68 Del. Laws, c. 303 § 17; 71 Del. Laws, c. 25 §§ 25-27.)

§ 834 Duties and powers of Commissioner.

In order to effectuate the provisions of this subchapter, the Commissioner shall, in addition to exercising the authority provided in §§ 833 and 835 of this title:

(1) Adopt and issue such regulations, decrees, orders, rulings and forms, and enter into such cooperative agreements with out-of-state savings institutions, out-of-state savings and loan holding companies and out-of-state bank holding companies, or any subsidiaries of the foregoing, as he deems to be necessary and proper;

(2) Require by negotiation, administrative order or cooperative agreement the maintenance and production of such documents and reports, the periodic conduct of such examinations, and otherwise supervise and govern the activities of the out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company as he deems necessary and proper;

(3) Have the authority to examine any out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company which acquires a Delaware savings bank or a Delaware savings and loan holding company. The Commissioner may require reports of each out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company which acquires a Delaware savings bank or Delaware savings and loan holding company in accordance with this subchapter. Such reports shall be filed under oath with such frequency and in such scope and detail as may be appropriate for the purpose of assuring continuing compliance with this subchapter and the safety and soundness of any Delaware savings bank;

(4) Prior to approving the acquisition of any Delaware savings bank or Delaware savings and loan holding company by an out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company, the Commissioner may enter into cooperative agreements with the appropriate regulatory authorities for the periodic examination of any out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company which acquires a Delaware savings bank or Delaware savings and loan holding company, and may accept reports of examination and other records from such authorities in lieu of conducting an examination. The Commissioner may enter into joint actions with other regulatory authorities having concurrent jurisdiction over any out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company that acquires a Delaware savings bank or Delaware savings and loan holding company or may take such actions independently to carry out the responsibilities under this subchapter to assure the safety and soundness of any Delaware savings bank or Delaware savings and loan holding company and to assure compliance with this subchapter and applicable Delaware banking laws.

(66 Del. Laws, c. 33 § 3; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 327 § 22; 71 Del. Laws, c. 25 §§ 28, 29.)

§ 835 Divestiture.

Upon the Commissioner's determination that an out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company is in violation of the requirements of this subchapter, or any order, regulation, ruling, cooperative agreement or decree issued or entered into by the Commissioner, or any order of any court of competent jurisdiction, or otherwise operating a Delaware savings bank in an unsafe and unsound manner, then the Commissioner shall have the authority to order such out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company, or any subsidiary of the foregoing, to remedy such violation by a date certain, or to cease and desist from operating in an unsafe and unsound manner, in default of which the Commissioner shall have the authority to order such out-of-state savings institution, out-of-state savings and loan holding company or out-

of-state bank holding company, or any subsidiary of the foregoing, to divest itself of any shares or assets of any Delaware savings bank which it has acquired under this subchapter. The procedure governing such divestiture, and the authority of the Commissioner to enforce an order directing the same against an out-of-state savings institution, out-of-state savings and loan holding company or out-of-state bank holding company shall be the same as provided in relation to an out-of-state bank holding company in § 807(b) through (d) of this title.

(66 Del. Laws, c. 33 § 3; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 327 § 23; 71 Del. Laws, c. 25 § 30.)

§ 836 Powers of an acquired, savings bank.

Nothing contained in this chapter shall be construed as abridging the rights, powers and authorities granted to any Delaware savings bank required under its charter, the provisions of this title, or any other current, former or future law of the State or the United States governing the formation, conversion, merger, corporate powers, branching, operation or dissolution of a Delaware savings bank.

(66 Del. Laws, c. 33 § 3; 70 Del. Laws, c. 327 § 24; 71 Del. Laws, c. 25 § 31.)

§ 837 Scope; construction.

This subchapter deals with the conditions under which out-of-state savings institutions, out-of-state savings and loan holding companies and out-of-state bank holding companies may acquire a Delaware savings bank or a Delaware savings and loan holding company; it shall not be construed to have any applicability to Part III of this title relating to building and loan associations nor to constitute any authority for the acquisition of Delaware building and loan associations.

(66 Del. Laws, c. 33 § 3.)

Subchapter IV

Acquisition of Stock in Delaware Banks and Bank Holding Companies

§ 841 Title.

This subchapter may be cited as "The Delaware Interstate Banking Act."

(66 Del. Laws, c. 32 § 1; 70 Del. Laws, c. 112 § 28.)

§ 842 Definitions.

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

(1) "Bank" shall mean a "bank" as defined in § 2(c) of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841(c), that is:

a. A bank organized and existing under the laws of this State; or

b. A national bank organized and existing as a national banking association pursuant to the National Bank Act, as amended (12 U.S.C. § 21 et seq.), and maintaining its principal office in Delaware; or

c. Where the context clearly provides, a state-chartered bank organized and located in, or a national bank principally located in, either any state or group of states other than Delaware; or any state or states including Delaware;

(2) "Out-of-state bank holding company," "Commissioner," "divest" and "subsidiary" shall have the meanings ascribed to them in § 801 of this title;

(3) "Existing bank" means a bank whose initial Delaware charter (whether or not subsequently amended or converted to a national charter) or authorization to conduct a banking business in Delaware pursuant to the National Bank Act bears an effective date not less than 5 years prior to the effective date of the acquisition of such bank, or a building and loan association which has become a bank pursuant to § 794 of this title whose initial Delaware charter or authorization to conduct a building and loan business in Delaware bears an effective date not less than 5 years prior to the effective date of the acquisition of such building and loan association;

(4) "Bank holding company" has the meaning specified in the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 et seq.).

(5) "Location" or "located" when referring to the state of domicile of a bank holding company means the state in which the amount of aggregate deposits in the United States offices of all its directly or indirectly owned or controlled bank or nonbank subsidiaries (as well as all of the bank or nonbank subsidiaries of any bank holding company which owns or controls that bank holding company) is greatest;

(6) "Acquisition" means:

a. The merger or consolidation of 1 bank holding company with another bank holding company; or

b. The assumption by a bank holding company of direct or indirect ownership or control of the voting shares of another bank holding company or a bank if, after the effective date thereof, the bank holding company making the acquisition will directly or indirectly own or control more than 5 percent of any class of voting shares of the other bank holding company or bank; or

c. The assumption of ownership or control of all or substantially all of the assets of a bank holding company or bank;

(7) "Control" shall have the same meaning as set forth in § 2(a)(2) of the federal Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841(a)(2));

(8) "Deposit" shall be as defined in § 204.2(a) of Regulation D of the Federal Reserve Board (12 C.F.R. § 204.2(a)).

(66 Del. Laws, c. 32 § 1; 69 Del. Laws, c. 165 § 18; 70 Del. Laws, c. 112 §§ 29-31.)

§ 843 Acquisition authority.

(a) An out-of-state bank holding company or subsidiary thereof may acquire or retain ownership or control of a bank or bank holding company located in Delaware; provided, that the out-of-state bank holding company makes application under and at all times complies with all regulations, decrees, cooperative agreements and orders duly promulgated by the Commissioner with respect to both the implementation of this subchapter generally, and the operations of such bank holding company and the bank which it acquires specifically; and further provided that, except as otherwise provided in this title, no out-of-state bank holding company or any subsidiary thereof may acquire or retain ownership or control of either a bank located in Delaware created before September 29, 1995, that is not an existing bank or a bank holding company that owns or controls such bank.

(b) The Commissioner may approve an acquisition, in accordance with subsection (a) of this section, even though the out-of-state bank holding company, or any subsidiary thereof, that acquires a bank or bank holding company located in Delaware, would control, together with any affiliated insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c)), 30 percent or more of the total amount of deposits of insured depository institutions in this State. In determining whether to approve an acquisition pursuant to this subsection (b), the Commissioner shall consider the convenience and needs of the public of this State.

(c) Except as otherwise provided in this title or by applicable law of the United States, no out-of-state bank holding company or subsidiary thereof may acquire or retain ownership or control of a bank or bank holding company located in Delaware.

(66 Del. Laws, c. 32 § 1; 70 Del. Laws, c. 112 §§ 32-34.)

§ 844 Application process.

(a) An out-of-state bank holding company shall make application to acquire a bank or bank holding company located in this State which owns or controls a bank upon such forms and in accordance with such regulations and rulings as are promulgated from time to time by the Commissioner. Such application shall designate a resident of this State as applicant's agent for the service of any paper, notice or legal process upon applicant in connection with matters arising out of this subchapter and shall be accompanied by a nonrefundable filing fee in the amount of $5,750 for the use of the State and a nonrefundable processing fee in such amount as the Commissioner shall from time to time fix by regulation, payable to and for the use of the Office of the Bank Commissioner.

(b) Following publication, notice and hearing in the manner prescribed by the Commissioner, the Commissioner shall approve or disapprove an application by an out-of-state bank holding company to own or control a bank or a bank holding company located in this State upon a determination of whether such an acquisition will serve the public convenience and advantage. As part of such determination, but not by way of limitation, the Commissioner shall consider the following criteria:

(1) Whether the acquisition will, based upon the managerial and financial resources, financial history and business plan of the applicant, adversely affect the safe and sound operation of the bank or any other bank located in this State which is owned or controlled by the bank holding company;

(2) Whether the acquisition will adversely affect the quantity or quality of banking services available to 1 or more communities served by the bank prior to the acquisition;

(3) Whether, as a result of a prior or simultaneous acquisition of another bank, the acquisition of the bank will result in an undue concentration of resources or a substantial lessening of competition in this State; and

(4) Whether the acquisition will foster economic development and the financing of business enterprises to the end that employment opportunities will either be increased or, where there is a prospect for a reduction, retained.

(c) In conjunction with the approval of any application filed under this section, the Commissioner may require as a condition of such approval that the out-of-state bank holding company enter into a cooperative agreement binding it to such special terms and conditions regarding its operations and its maintenance and preservation of the capital and assets in Delaware of the bank as the Commissioner shall deem to be necessary to assure that the acquisition serves the public convenience and advantage.

(66 Del. Laws, c. 32 § 1; 68 Del. Laws, c. 303 § 18; 70 Del. Laws, c. 112 §§ 35-37.)

§ 845 Duties and powers of Commissioner.

In order to effectuate the provisions of this subchapter, the Commissioner shall, in addition to exercising the authority provided in §§ 844 and 846 of this title:

(1) Adopt and issue such regulations, decrees, orders, rulings and forms, and enter into such cooperative agreements with out-of-state bank holding companies, as the Commissioner deems to be necessary and proper;

(2) Require by negotiation, administrative order or cooperative agreement the maintenance and production of such documents and reports, the periodic conduct of such examinations, and otherwise supervise and govern the activities of the out-of-state bank holding companies as the Commissioner deems necessary and proper;

(3) Have the authority to examine any out-of-state bank holding company owning a bank. The Commissioner may require reports of each out-of-state bank holding company subject to this subchapter. Such report shall be filed under oath with such frequency and in such scope and detail as may be appropriate for the purpose of assuring continuing compliance with this subchapter and the safety and soundness of the bank;

(4) Prior to approving the acquisition of the bank or bank holding company located in Delaware by an out-of-state bank holding

company, the Commissioner may enter into cooperative agreements with the appropriate regulatory authorities for the periodic examination of any out-of-state bank holding company that has a bank subsidiary or bank holding company located in Delaware or any subsidiary of such holding company, and may accept reports of examination and other records from such authorities in lieu of conducting the Commissioner's own examination. The Commissioner may enter into joint actions with other regulatory authorities having concurrent jurisdiction over any out-of-state bank holding company that owns or controls a bank or bank holding company subsidiary or may take such actions independently to carry out the responsibilities under this subchapter to assure the safety and soundness of any bank and to assure compliance with this subchapter and applicable Delaware banking laws.

(66 Del. Laws, c. 32 § 1; 70 Del. Laws, c. 112 § 38; 70 Del. Laws, c. 186 § 1.)

§ 846 Divestiture.

Upon the Commissioner's determination that an out-of-state bank holding company is in violation of the requirements of this subchapter or any order, regulation, ruling, cooperative agreement or decree issued or entered into by the Commissioner or any order of a court of competent jurisdiction, or is otherwise operating a bank in an unsafe and unsound manner, the Commissioner shall have the authority to order such out-of-state bank holding company or subsidiary thereof to remedy such violation by a date certain, or to cease and desist from operating in an unsafe and unsound manner, in default of which the Commissioner shall have the authority to order such out-of-state bank holding company or subsidiary thereof to divest itself of any shares or assets of any bank located in this State. The procedure governing such divestiture, and the authority of the Commissioner to enforce an order directing the same, shall be the same as provided in § 807(b)—(d) of this title.

(66 Del. Laws, c. 32 § 1; 70 Del. Laws, c. 112 § 39.)

§ 847 Powers of an acquired bank.

Except as to subchapter I of this chapter, nothing contained in this chapter shall be construed as abridging the rights, powers and authorities granted to any bank acquired under any subchapter of this chapter by its charter, the provisions of this title or any other current, former or future law of the State governing the formation, conversion, merger, corporate powers, branching, operation or dissolution of a bank.

(66 Del. Laws, c. 32 § 1; 70 Del. Laws, c. 112 §§ 40-42.)

Subchapter V

Regulation of Delaware Bank Holding Companies

§ 851 Definitions.

As used in this subchapter:

(1) "Bank holding company" means a company, as defined by the federal Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), which is or becomes a bank holding company within the provisions of the federal act including, without limitation, its provisions for determining what constitutes control.

(2) "Institution" means a national bank whose principal place of business is located in Delaware or a Delaware-chartered bank or bank and trust company.

(3) "Delaware bank holding company" means a bank holding company with bank subsidiaries whose operations are principally conducted in Delaware. For the purposes of this subchapter, the operations of a bank holding company's subsidiaries are principally located in this State if the total deposits of all such subsidiaries in this State are greater than in any other state.

(66 Del. Laws, c. 25 § 1.)

§ 852 Becoming a bank holding company.

(a) Except as provided in 12 U.S.C. § 1842, subchapters I, II, III and IV of this chapter, and Chapter 7 of this title, no bank holding company other than a Delaware bank holding company may control a Delaware institution.

(b) Any corporation intending to become a Delaware bank holding company shall file an application with the Commissioner for approval to acquire an institution. The application shall contain such information as the Commissioner may by regulation require, shall, if not a Delaware corporation, designate a resident of the State as the applicant's agent for the service of any paper, notice of legal process on the applicant in connection with matters arising out of this subchapter and shall be accompanied by a filing fee in the amount of $5,750 for the use of the State and a nonrefundable processing fee in such amount as the Commissioner shall from time to time fix by regulation, payable to and for the use of the Office of the Bank Commissioner.

(c) In determining whether or not to approve such acquisition by a Delaware bank holding company, the Commissioner shall consider:

(1) The financial and the managerial resources of the Delaware bank holding company;

(2) The future prospects of the bank holding company and the bank whose assets or shares it will acquire;

(3) The financial history of the bank holding company;

(4) Whether such acquisition or holding may result in undue concentration of resources or substantial lessening of competition within

this State; and

(5) The convenience and needs of the public of this State.

(66 Del. Laws, c. 25 § 1; 68 Del. Laws, c. 303 § 19; 70 Del. Laws, c. 112 § 43; 71 Del. Laws, c. 19 § 37.)

§ 853 [Reserved.]

§ 854 Reports.

A Delaware bank holding company shall file with the Commissioner upon the Commissioner's request copies of all regular and periodic reports which a bank holding company is required to file under the federal Bank Holding Company Act of 1956 [12 U.S.C. § 1841 et seq.] or under § 13 or § 15(d) of the Securities and Exchange Act of 1934, as amended [15 U.S.C. § 78m or § 78o(d)], but excluding any portions not available to the public.

(66 Del. Laws, c. 25 § 1; 70 Del. Laws, c. 112 § 44.)

§ 855 Supervision and examination.

The Commissioner shall have supervision over all Delaware bank holding companies and shall have the right to examine all such companies, including their nonbank subsidiaries. The costs of the examination shall be assessed against and paid by the company in an amount to be set by regulation of the Commissioner. The examination authorized by this section shall be conducted jointly, concurrently or in lieu of examinations made by a federal bank regulatory agency. The Commissioner shall use, to the extent deemed feasible, filings and reports made by the company to federal or other State bank regulatory authority pursuant to a written agreement providing for the exchange of reports of examination between the Commissioner and the federal or other State bank regulatory authority.

(66 Del. Laws, c. 25 § 1.)

§ 856 Nonexclusivity.

Nothing in this subchapter or any law of this State shall be deemed to prohibit or limit a Delaware bank holding company from acquiring a bank or bank holding company located in any jurisdiction which acquisition is otherwise permitted by applicable law of the United States and any state.

(66 Del. Laws, c. 25 § 1.)

§ 857 Bank Commissioner cooperative agreements.

Prior to approving the acquisition by any Delaware bank holding company of any bank located in another state or bank holding company, the Commissioner may enter into cooperative agreements with the appropriate regulatory authorities for the periodic examinations of any out-of-state bank holding company or bank acquired by a Delaware bank holding company and may accept reports of examination and other records from such authorities in lieu of conducting his own examination. The Commissioner may enter into joint actions with other regulatory authorities having concurrent jurisdiction over any out-of-state bank holding company or bank acquired by a Delaware bank holding company or may take such actions independently to carry out his responsibilities under this subchapter to assure the safety and soundness of any Delaware bank and to assure compliance with applicable Delaware banking laws.

(66 Del. Laws, c. 25 § 1.)

Subchapter VI

Regulation of Delaware Savings and Loan Holding Companies

§ 861 Definitions.

As used in this subchapter:

(1) "Delaware savings and loan holding company" means a savings and loan holding company (as defined in the Home Owners' Loan Act, as amended, at 12 U.S.C. § 1467a) located in Delaware that owns or controls a Delaware savings bank.

(2) "Delaware savings bank" means a savings bank organized and existing under the laws of this State that is not a bank as defined in § 2(c) of the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841(c).

(3) "Located" has the meaning specified in § 831 of this title.

(71 Del. Laws, c. 25 § 32.)

§ 862 Becoming a Delaware savings and loan holding company.

(a) Any corporation intending to become a Delaware savings and loan holding company shall file an application with the Commissioner for approval to acquire a Delaware savings bank. The application shall contain such information as the Commissioner may by regulation require, shall, if not a Delaware corporation, designate a resident of the State as the applicant's agent for the service of any paper or notice of legal process on the applicant in connection with matters arising out of this subchapter and shall be accompanied by a filing fee in the amount of $5,750 for the use of the State and a nonrefundable investigation fee in such amount as the Commissioner shall from time to time fix by regulation, payable to and for the use of the office of the Bank Commissioner.

(b) In determining whether or not to approve such acquisition by a Delaware savings and loan holding company, the Commissioner shall consider:

(1) The financial and the managerial resources of the Delaware savings and loan holding company;

(2) The future prospects of the Delaware savings and loan holding company and the Delaware savings bank whose assets or shares it will acquire;

(3) The financial history of the Delaware savings and loan holding company;

(4) Whether such acquisition or holding may result in undue concentration of resources or substantial lessening of competition within this State; and

(5) The convenience and needs of the public of this State.

(71 Del. Laws, c. 25 § 32.)

§ 863 Reports.

A Delaware savings and loan holding company shall file with the Commissioner, upon the Commissioner's request, copies of all regular and periodic reports which a savings and loan holding company is required to file under the Home Owners' Loan Act, as amended [12 U.S.C. § 1461 et seq.] or under § 13 or § 15(d) of the Securities and Exchange Act of 1934, as amended [15 U.S.C. § 78m or § 78o(d)], but excluding any portions not available to the public.

(71 Del. Laws, c. 25 § 32.)

§ 864 Supervision and examination.

The Commissioner shall have supervision over all Delaware savings and loan holding companies and shall have the right to examine all such companies, including their nonbank subsidiaries. The costs of the examination shall be assessed against and paid by the company in an amount to be set by regulation of the Commissioner. The examination authorized by this section may be conducted jointly, concurrently or in lieu of examinations made by a federal bank regulatory agency. The Commissioner may use, to the extent deemed feasible, filings and reports made by the company to federal or other State bank regulatory authority pursuant to a written agreement providing for the exchange of reports of examination between the Commissioner and the federal or other State bank regulatory authority.

(71 Del. Laws, c. 25 § 32.)

§ 865 Nonexclusivity.

Nothing in this subchapter or any law of this State shall be deemed to prohibit or limit a Delaware savings and loan holding company from making an acquisition that is otherwise permitted by applicable law of the United States and any state.

(71 Del. Laws, c. 25 § 32.)

§ 866 Bank Commissioner cooperative agreements.

The Commissioner may enter into cooperative agreements or joint actions with other regulatory authorities to carry out the Commissioner's responsibilities under this subchapter and to assure the safety and soundness of any Delaware savings bank and to assure compliance with applicable Delaware banking laws.

(71 Del. Laws, c. 25 § 32; 70 Del. Laws, c. 186 § 1.)

Part II
Banks and Trust Companies
Chapter 9
REGULATIONS GOVERNING BUSINESS OF BANKS AND TRUST COMPANIES
Subchapter I
General Provisions

§ 901 Corporate charter to do business as bank or trust company.

No banking business or the business of a trust company shall be conducted within this State except under a corporate charter valid in this State authorizing the conduct of such business in this State.

(32 Del. Laws, c. 103 § 2; Code 1935 § 2290; 5 Del. C. 1953 § 901.)

§ 902 Certificate required to transact business or open place of business.

No bank or trust company not actively engaged in business in this State prior to January 1, 1933, shall transact any business in this State or open a place of business in this State without having first secured from the State Bank Commissioner a certificate authorizing it to begin the transaction of business and to open a place of business in this State.

(32 Del. Laws, c. 103 §§ 3, 22; 38 Del. Laws, c. 93 § 1(8); Code 1935 §§ 2291, 2310; 5 Del. C. 1953 § 902.)

§ 903 Issuance of certificate to transact business.

(a) The Commissioner shall not give any certificate required by § 902 of this title until satisfied by proper evidence that all the requirements of the charter of the corporation applying for the certificate and all the requirements of this Code and any other laws of this State applicable to such a case have been complied with and that the whole capital stock has been fully paid in cash, unless the charter shall expressly provide otherwise.

(b) No certificate shall be issued until the corporation has filed with the Commissioner a duly certified copy of its charter and all amendments thereof, and a copy of its bylaws; and thereafter the corporation shall file with the Commissioner a duly certified copy of every subsequent amendment of its charter and of every subsequent amendment of its bylaws and a failure to file within 30 days after any amendment of its charter or bylaws has been effected, shall render the corporation liable to a penalty of $50 to be sued for by the Commissioner in the name of the State if the Commissioner considers such failure to have been wilful.

(c) A fee of $5,750 for every certificate shall be required by the Commissioner before issuing the same.

(d) In addition, the applicant shall pay an investigation fee of $1,150 which shall not be refundable and shall be submitted with the application.

(32 Del. Laws, c. 103 §§ 3, 22; 38 Del. Laws, c. 93 § 1(8); Code 1935 §§ 2291, 2310; 5 Del. C. 1953 § 903; 62 Del. Laws, c. 247 §§ 1, 2; 68 Del. Laws, c. 303 § 20; 70 Del. Laws, c. 186 § 1.)

§ 904 Reports to Commissioner.

(a) Every bank and trust company shall make and transmit to the State Bank Commissioner at least 4 reports during each year, according to the form which may be prescribed by the Commissioner, verified by the oaths or affirmations of the president or vice-president, and cashier, or treasurer or secretary of the corporation, and attested by the signatures of at least 2 directors. Each report shall exhibit under appropriate heads the resources and liabilities of the corporation at the close of business on any day past specified by the Commissioner, and shall be transmitted to the Commissioner within 30 days after the receipt of a request or requisition therefor.

(b) The Commissioner shall have power to call for special reports whenever in the Commissioner's judgment the same are necessary. The Commissioner may require a separate report as to each department or subsidiary of any bank or trust company.

(c) The making of reports to the Commissioner under this section shall be in lieu of the making of reports to any other state official except for the purpose of assessment or taxation.

(32 Del. Laws, c. 103 § 7; Code 1935 § 2295; 5 Del. C. 1953 § 904; 61 Del. Laws, c. 82 § 1; 66 Del. Laws, c. 27 § 8; 70 Del. Laws, c. 112 § 45; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 19 §§ 39, 40.)

§ 905 Reports by national banks, federal savings associations and out-of-state banks.

National banks, out-of-state banks (as defined in § 795 of this title) having one or more branch offices in this State, and federal savings associations (as defined in the Home Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.) doing business in this State shall make and transmit to the State Bank Commissioner reports according to the form which may be prescribed by the Commissioner when the Commissioner calls upon such banks for the reports; the object and purpose of such reports being the public good and not the regulation of said banks. The Commissioner shall have power to call for special reports whenever in the Commissioner's judgment the same are necessary.

(32 Del. Laws, c. 103 § 7; Code 1935 § 2295; 5 Del. C. 1953 § 905; 70 Del. Laws, c. 112 §§ 46, 47; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 254 § 13.)

§ 906 Failure to make reports; penalty.

Every bank or trust company failing to comply with §§ 904 and 905 of this title shall be subject to a penalty of $25 for each day that it continues in such failure; unless the Commissioner is satisfied that such failure was not wilful. Any penalty that may be imposed by the Commissioner hereunder shall be paid to the State Treasurer for deposit in the General Fund.

(32 Del. Laws, c. 103 § 7; Code 1935 § 2295; 5 Del. C. 1953 § 906; 70 Del. Laws, c. 6 §§ 3, 4.)

§ 907 Reserve requirements.

(a) "Demand deposits" as used in this section shall mean all deposits payable within 30 days; and time deposits shall comprise all deposits payable after 30 days, all savings accounts, certificates of deposit, and postal savings which are subject to not less than 30 days notice before payment.

(b) Every bank, trust company or savings bank shall maintain reserves as follows:

(1) Seven percent of the average aggregate of its demand deposits and 3 percent of the average aggregate of its time deposits, except that no reserves need be maintained against deposits of the United States or any agency or instrumentality thereof, or the State or any political subdivision or municipality thereof which are collateralized; and

(2) Such reserves shall consist of cash in the possession of the bank or of net balances payable on demand with banking institutions within or without the State which have been approved in writing as reserve depositories by the State Bank Commissioner or 50% of such required reserves may be maintained in unencumbered obligations of or guaranteed by the United States or any agency or instrumentality thereof including, without limitation, obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and public housing authorities, or obligations of the State or its municipalities, subdivisions, agencies or instrumentalities and having a like market value.

(c) Whenever the State Bank Commissioner determines that the maintenance of sound banking practices or the prevention of injurious credit expansion or contraction makes such action advisable, he may, by general regulation, change, from time to time, the requirements as to reserves against demand or time deposits, or both, in banking institutions doing business in this State which are not members of the Federal Reserve System. The reserves so specified shall be not less than the statutory requirement, nor greater than those requirements of the Federal Reserve Bank in this district applicable to member banks in this State. Reserves maintained under federal statute by state chartered nonmember banks shall satisfy the reserve requirements of this section.

(d) No money held in a fiduciary capacity whether as executor, administrator, guardian, trustee or otherwise, which is on deposit with other banking institutions, shall be carried or counted as a part of the required reserves in any bank or trust company, exclusive of Federal Reserve Member Banks, unless it shall first set aside, earmarked for the trust department, obligations of or guaranteed by the United States or any agency or instrumentality thereof including, without limitation, obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and public housing authorities or obligations of the State, its municipalities, subdivisions, agencies or instrumentalities having a maturity of not more than 5 years from the date of earmarking for the trust department and having a current market value of at least 110 percent of the amount on deposit.

(e) If the reserve of any corporation comprehended by this section shall be less than prescribed by general regulations issued by the State Bank Commissioner, the corporation shall not make any new loans or discounts, other than discounting bills of exchange payable on sight, nor shall the corporation declare or pay any dividends until the full amount of its reserve shall have been restored. Upon failure of any corporation to make good its reserve within 30 days after notice from the State Bank Commissioner, the Commissioner may treat such corporation as in an unsound condition and may proceed against it accordingly.

(f) For purposes of subsection (b) of this section, "deposits" as they relate to activities of international banking facilities shall not be included in the terms "demand deposits" or "time deposits" as such terms are defined in subsection (a) of this section.

(32 Del. Laws, c. 103 § 10; Code 1935 § 2298; 43 Del. Laws, c. 139 § 1; 44 Del. Laws, c. 130 § 1; 45 Del. Laws, c. 163 § 1; 5 Del. C. 1953 § 907; 61 Del. Laws, c. 96 §§ 1-3; 62 Del. Laws, c. 248 § 1; 64 Del. Laws, c. 43 § 3; 69 Del. Laws, c. 165 § 19.)

§ 908 Value at which assets shall be carried on books.

No bank or trust company shall carry on its books any of its assets at a sum in excess of the cost value thereof except by and with the written consent of the State Bank Commissioner.

(32 Del. Laws, c. 103 § 11; Code 1935 § 2299; 5 Del. C. 1953 § 908.)

§ 908A Bank distinct from bank insurance department or division.

The assets of any bank or trust company shall be liable for and applicable to the payment and satisfaction of the liabilities, obligations and expenses of such bank or trust company only, and not to those liabilities, obligations and expenses of any insurance department or division of such bank or trust company established pursuant to § 767(a) or § 1662(b)(1) of this title. The liabilities, obligations and expenses of any such bank or trust company shall be applied against and paid and satisfied out of the assets of such bank or trust company only, and not out of the assets of any insurance department or division of such bank or trust company established pursuant to § 767(a) or § 1662(b)(1) of this title.

(67 Del. Laws, c. 223 § 8; 71 Del. Laws, c. 25 § 33.)

§ 909 Loan limitations.

(a) No bank, trust company or savings bank shall make any loans, directly or indirectly, to any person, firm, association or corporation, aggregating an amount which (including any extension of credit to such person, firm, association or corporation, by means of the issuance of letters of credit, or the discount or purchase of the notes, bills of exchange or other obligations of, such person, firm, association or corporation, or the acceptance, discount or purchase of drafts not eligible for discount by a Federal Reserve bank) shall exceed the following percentage of the lender's total capital, which for this purpose means, in the case of a bank (including a bank and trust company and a savings bank), the bank's Tier 1 and Tier 2 capital included in the bank's risk-based capital under the capital guidelines of the appropriate federal banking agency, plus the balance of the bank's allowance for loan and lease losses not included in the bank's Tier 2 capital for purposes of the calculation of risk-based capital by the appropriate federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. § 1817(a)(3), or, in the case of a trust company (other than a bank and trust company), the sum of the capital, surplus, undivided profit and the valuation portion of the loan loss reserve accounts of the lender:

(1) Fifteen percent, if the loan be without collateral security. Nothing herein contained shall prohibit the taking or receiving of any kind, character or amount of security whatsoever, either real or personal, for the protection of any loan made under this paragraph, but no such loan or any part thereof shall be considered or construed as a secured loan within the meaning of this paragraph unless the whole thereof has collateral security worth at least 15 percent more than the amount of such loan; or

(2) Ten percent (in addition to the amount that may be loaned under paragraph (1) of this subsection) upon collateral security worth at least 15 percent more than the amount of such loan so secured; provided, the aggregate amount which can be loaned under paragraph (1) of this subsection and this paragraph to any 1 person, firm, association or corporation shall not exceed 25 percent of the lender's total capital; and provided further that no loan which is without collateral security shall be combined or blended with a loan which has collateral security, but the 2 classes of loans shall be kept separate and independent and each shall be represented by a separate evidence of indebtedness; or

(3) Twenty-five percent upon collateral security worth at least 15 percent more than the amount of the loans so secured. When loans so secured are made to this amount, then no loans not so secured shall be permitted in addition to such secured loans, except as set forth in subsection (b) below.

(b) None of the limitations or restrictions contained in subsection (a) of this section shall apply to:

(1) Loans, discounts or other extensions of credit secured by bonds or other obligations of the United States (defined to include any Federal Reserve bank or any department, bureau, board, agency, instrumentality, commission or establishment of the United States including any corporation wholly owned directly or indirectly by the United States) or of this State (defined to include any department, bureau, board, agency, instrumentality, commission or establishment of this State, including any corporation wholly owned directly or indirectly by this State);

(2) Any loan, discount or extension of credit, to the extent that any of the loans, discounts or extensions of credit are to, or are secured or covered by, guaranties, or by commitments, or agreements to take over or to purchase any such loans, discounts or extensions of credit made by the United States or this State, provided that such guaranties, agreements or commitments are unconditional and must be performed by payment of cash or its equivalent within 60 days after demand;

(3) Any loan, discount or extension of credit to an affiliate or subsidiary other than a subsidiary referred to in subsection (e) of this section.

(4) The sale of federal funds to depository institutions as defined in § 19 of the Federal Reserve Act [12 U.S.C. § 461] and to Edge Act corporations [12 U.S.C. § 611 et seq.] or the purchase of securities under agreements to resell provided such sales and purchases shall be repayable on the banking day next following their date of execution;

(5) The purchase or discount of bankers acceptances of the kind described in § 13 of the Federal Reserve Act [12 U.S.C. § 342 et seq.] and issued by other banks;

(6) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the persons negotiating it with recourse;

(7) Loans or extensions of credit secured by a segregated deposit account in the lending bank;

(8) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guaranty by the person transferring the paper, which shall be subject to a maximum loan limitation equal to 25 percent of such total capital;

(9) Loans and extensions of credit secured by bills of lading, warehouse receipts or similar documents transferring or securing title to readily marketable staples which shall be subject to a limitation of 35 percent of such total capital, if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 15 percent more than the outstanding amount of such loan or extension of credit;

(10) The acceptance of a draft eligible for discount by a Federal Reserve bank drawn on the bank or the issue or confirmation of time letters of credit calling for the creation of such acceptances, which shall be subject to a loan limitation of 10 percent of such total capital, unless, with respect to that part in excess of 10 percent of such total capital, the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance; and

(11) Any provisional debit, loan or extension of credit made by the lending bank or trust company to the demand deposit account of a customer of the lending bank or trust company in the course of settling overlimit checks drawn on such demand deposit account, provided that any such debit, loan or extension of credit is revocable at will by the lending bank or trust company as of the close of business the banking day next following the settlement of such checks, and provided further that any such debit, loan or extension of credit is funded by the customer within such time period.

(c) In computing loans to each of the following types of borrower, the loans shall be computed for such type of borrower only on the basis set forth in the applicable subparagraph below designated for such type of borrower and not with reference to either of the other subparagraphs:

(1) In computing loans to any individual person under this section, there shall be included all loans or extensions of credit by the lending corporation to:

a. Any partnership or unincorporated association of which the borrower is a member, to the extent that the borrower is actually liable to the lending corporation for the liabilities of the partnership or unincorporated association; and

b. All loans made for the borrower's benefit, or for the benefit of any partnership or unincorporated association, of which the borrower is a member, except partnerships of which the borrower is a limited partner and not also a general partner, and is not otherwise liable for the liabilities of such partnership to the lending corporation.

(2) In computing the loans to any partnership, or unincorporated association under this section there shall be included:

a. All liabilities of its members to the lending corporation except liabilities of limited partners who are not also general partners, and who are not generally liable for the debts of the limited partnership, either by agreement or by operation of law; and

b. All loans made for the benefit of the partnership, or unincorporated association or any member thereof, except limited partners who are not also general partners, and who are not generally liable for the debts of the limited partnership, either by agreement or by operation of law.

(3) In computing the loans to any corporation under this section there shall be included all loans made for the benefit of the corporation. A loan shall not be deemed to be made for the benefit of a corporation if such loan is made to a person other than the corporation, including a subsidiary or affiliate of the corporation, unless the loan proceeds are to be loaned to the corporation or are to be transferred to the corporation without fair and adequate consideration, but the discharge of an equivalent amount of debt previously incurred in good faith and for value shall be considered fair and adequate consideration.

(d) No bank, trust company or savings bank shall make any loans directly or indirectly to any of its executive officers or directors in an amount that, when aggregated with the amount of all other extensions of credit to that person, exceeds the lesser of $500,000 or 5% of the bank's total capital, except on the following conditions:

(1) That the loan be approved by the vote of a majority of the whole board of directors, or where the granting of loans is vested in a committee of the board of directors, then by a vote of a majority of the whole committee, and the proposed borrower shall not be present when the application for the loan is acted on;

(2) That at the time the loan shall be voted upon, there shall be submitted to and examined by the directors voting upon the loan a written statement signed by the proposed borrower setting forth clearly his financial condition and disclosing his assets and liabilities, and in case the loan shall be granted, the statement shall be preserved and kept with the evidence of the loan while the same remains unpaid, but no such statement shall be necessary where the loan is secured by liquid collateral worth at least 20 percent more than the amount of the loan.

(e) A department or division or subsidiary of a bank or trust company which engages in any activity authorized by § 761(a)(14) or § 1661(a)(14) of this title shall be deemed a corporation subject to the limitations of this section.

(32 Del. Laws, c. 103 § 12; 38 Del. Laws, c. 93 § 1(5); Code 1935 § 2300; 44 Del. Laws, c. 131 § 2; 5 Del. C. 1953 § 909; 61 Del. Laws, c. 524 § 1; 62 Del. Laws, c. 2 § 21; 63 Del. Laws, c. 319 §§ 1-5; 64 Del. Laws, c. 141 § 1; 64 Del. Laws, c. 428 § 1; 67 Del. Laws, c. 223 § 9; 69 Del. Laws, c. 165 §§ 20-22; 71 Del. Laws, c. 19 § 41; 71 Del. Laws, c. 25 § 34; 72 Del. Laws, c. 15 § 7.)

§ 910 Investment limitations.

No bank or trust company shall invest more than 25 percent of its total capital, surplus and undivided profits in the stock, bonds or other obligations of any 1 corporation or political entity or political division except bonds or other obligations of or guaranteed by the United States or any agency or instrumentality thereof including, without limitation, obligations of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and public housing authorities, or obligations of the State or its municipalities, subdivisions, agencies or instrumentalities; provided, that:

(1) The limitation on investment in this section shall not apply to the investment by a bank or trust company in 1 or more subsidiaries;

(2) The underwriting of or dealing in stocks, bonds, debentures, notes or other securities, or certificates of deposit or bankers' acceptances, shall not constitute an investment within the meaning of this section;

(3) No bank or trust company which engages in activities authorized by § 761(a)(14) or § 1661(a)(14) of this title through subsidiaries or divisions shall initially allocate more than 25 percent of its total capital, surplus and undivided profits in the aggregate to all such subsidiaries or divisions, or shall thereafter allocate to all such subsidiaries or divisions (i) in any 1 year, without the approval of the Commissioner, any amount in excess of 3 percent of its total capital, surplus and undivided profits or (ii) in any event, any amount in excess of 25 percent of its then current total capital, surplus and undivided profits in the aggregate; and

(4) No bank or trust company which engages in activities authorized by § 761(a)(14) or § 1661(a)(14) of this title through subsidiaries or divisions shall allocate any of its total capital, surplus or undivided profits to any such subsidiaries or divisions unless such allocations are "unimpaired" within the meaning of Title 18 and free of all liens and encumbrances.

(32 Del. Laws, c. 103 § 13; Code 1935 § 2301; 5 Del. C. 1953 § 910; 61 Del. Laws, c. 93 § 1; 65 Del. Laws, c. 256 §§ 1, 2; 66 Del. Laws, c. 27 § 9; 67 Del. Laws, c. 223 § 10; 69 Del. Laws, c. 165 § 23; 71 Del. Laws, c. 25 § 34.)

§ 911 Ownership of real estate used for transaction of business.

Section 762 of this title shall be applicable to all banks and trust companies of this State, except with respect to the investment or expenditure of money prior to July 1, 1933.

(32 Del. Laws, c. 103 § 16; 38 Del. Laws, c. 93 § 1(6); Code 1935 § 2304; 5 Del. C. 1953 § 911.)

§ 912 Limitations upon loans on security of and purchase of own capital stock.

No bank or trust company shall purchase shares of its own capital stock, nor make any loan on the faith or pledge of shares of its own capital stock; but nothing in this section shall inhibit such purchase or loan when necessary to prevent loss on debts created prior to March 31, 1921, nor shall it affect the holding of stock acquired by any bank or trust company prior to March 31, 1921. Notwithstanding the foregoing, the Commissioner may approve the purchase by a bank or trust company of the shares of its own capital stock, subject to such terms and conditions, if any, as the Commissioner may require.

(32 Del. Laws, c. 103 § 14; Code 1935 § 2302; 5 Del. C. 1953 § 912; 80 Del. Laws, c. 1 § 2.)

§ 913 Authority of national bank to act as fiduciary.

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.

(29 Del. Laws, c. 118 § 1; Code 1935 § 2368; 5 Del. C. 1953 § 913.)

§ 914 Appointment of trust company as trustee.

Any court, judge or officer, authorized by law to appoint any person or corporation to any office of trust, may appoint to such office any trust company incorporated under the laws of this State, and having its principal office or place of business in this State, if the court, judge or officer is satisfied that the capital stock of the trust company has been fully paid in cash, and that the trust company is authorized by its charter to perform the duties of the office.

(22 Del. Laws, c. 388 § 1; Code 1915 §§ 635, 641, 3872; 37 Del. Laws, c. 52 § 2; Code 1935 §§ 525, 4398; 5 Del. C. 1953 § 914.)

§ 915 Fiduciary funds held as separate trust.

(Repealed by 59 Del. Laws, c. 271 § 1, eff Mar 23, 1974.)

§ 916 Preference of funds held on deposit.

Whenever any bank or trust company holds on deposit funds as a part of its deposit liabilities for the account of an estate for which it is acting as executor, administrator, guardian, trustee or in any other fiduciary capacity, the liability of such institution to the estate entitled to the funds shall be at all times a preferred claim superior to all unsecured claims of other creditors, including depositors of the institution. This section shall not be construed to subordinate the security of any secured creditor of any such institution to the preference hereby accorded to the deposits of any estate.

(32 Del. Laws, c. 103 § 23; 38 Del. Laws, c. 93 § 1(8); 38 Del. Laws, c. 94 § 23; Code 1935 §§ 2311, 2392; 45 Del. Laws, c. 161 § 1; 45 Del. Laws, c. 164 § 1; 5 Del. C. 1953 § 916; 61 Del. Laws, c. 491 § 1.)

§ 917 Surety not required on bond of trust company or national bank; liability and lien upon real estate.

(a)(1) Whenever a trust company is appointed to an office of trust or to act in a fiduciary capacity, no surety need be required, in the discretion of the appointing court, judge or officer, on any bond given by it for the faithful performance of its duties, by reason of such appointment, unless otherwise stipulated in the will or other instrument making the appointment, or unless required in or by an order or decree of court having jurisdiction in the premises; but all of the capital stock, surplus and property owned by the trust company shall be specially and primarily liable for the obligation of the trust company while acting in such trust or fiduciary capacity.

(2) All liabilities and obligations, arising from or growing out of any such trusts, shall be liens upon its real estate prior and paramount to any other lien or encumbrance the trust company may create or suffer respecting the same.

(b) In case any national bank located in this State shall be appointed trustee, executor or administrator, it need not be required, in the discretion of the appointing person, corporation, court, judge, officer, or authority, to give security on any bonds, which it may by law be compelled to give by reason of such appointment.

(22 Del. Laws, c. 388 § 2; Code 1915 §§ 635, 641, 2911, 3872; 37 Del. Laws, c. 52 § 2; 29 Del. Laws, c. 118 § 2; 38 Del. Laws, c. 94 § 24; Code 1935 §§ 525, 2369, 2393, 3416, 4398; 5 Del. C. 1953 § 917.)

§ 918 Limitations on pledging or hypothecating assets.

(a) No bank or trust company shall pledge or hypothecate any of its assets except as follows:

(1) To borrow up to but not exceeding the amount of its capital and surplus actually paid in and undiminished by losses or otherwise;

(2) To borrow in excess of the limitation of paragraph (1) of this subsection when the State Bank Commissioner shall have given his or her written consent;

(3) To borrow, 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, 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;

(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 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 the institution.

(c) No loan made in contravention of this section shall be rendered illegal for this cause as against the lender or holder thereof, but the borrowing corporation 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 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 limitation set out above on written approval by the State Bank Commissioner.

(32 Del. Laws, c. 103 § 18; 38 Del. Laws, c. 93 § 1(7); Code 1935 § 2306; 44 Del. Laws, c. 131 § 1; 5 Del. C. 1953 § 918; 54 Del. Laws, c. 85; 60 Del. Laws, c. 374 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 24 § 1.)

§ 919 Filing of rules and regulations on time and savings deposits.

(Repealed by 70 Del. Laws, c. 112 § 48, eff Sept 29, 1995.)

§ 920 Deposits by minors.

(a) Any bank, savings bank, savings institution or trust company may receive money on deposit from or in the name of any minor. When any deposit of money shall be made by or in the name of any minor with any bank, savings bank, savings institution or trust company in this State, the same shall be held for the benefit of the depositor, in the same way and to the same extent as if the depositor were an adult person. The minor depositor may make drafts or withdrawals of his deposits, and the deposits shall be paid, together with the dividends and interest thereon, to the person in whose name the deposit shall have been made, or upon his or her written order. The receipt or acquittance of a minor shall be a valid and sufficient release and discharge to the bank, savings bank, savings institution or trust company for the deposit, or any part thereof.

(b) Any bank, savings bank, savings institution or trust company shall have the right to refuse any deposit offered by or in the name of a minor.

(c) Any minor depositing money with a bank, savings bank, savings institution or trust company shall be subject, in all transactions connected therewith, as between himself or herself and the bank, savings bank, savings institution or trust company, to all the obligations, equities and defenses to which an adult person would be subject in similar transactions.

(27 Del. Laws, c. 196 §§ 1, 2; Code 1915 § 2113; Code 1935 § 2267; 5 Del. C. 1953 § 920.)

§ 921 Deposits of married women.

(Repealed by 71 Del. Laws, c. 19 § 42, eff Apr 23, 1997.)

§ 922 Deposits of decedents.

Banks, trust companies, savings banks, and savings societies may pay out deposits of decedents, without requiring letters of administration to be issued upon the estates of such decedents, when and as provided by §§ 2306 and 2307 of Title 12.

(Code 1915 § 2115; Code 1935 § 2269; 5 Del. C. 1953 § 922.)

§ 923 Deposits in names of two or more persons.

When a deposit in any bank, trust company, savings bank or other banking institution in this State, is made in the name of 2 or more persons, deliverable or payable to either, or to their survivor or survivors, the deposit, or any part thereof, or the increase thereof, may be delivered or paid to either of the persons, or to the survivor or survivors, in due course of business.

(28 Del. Laws, c. 107 § 1; Code 1935 § 2270; 5 Del. C. 1953 § 923.)

§ 924 Bank deposit accounts in trust form.

(a) The following terms shall have the following definitions for the purposes of this section.

(1) A "beneficiary" is a natural person, or a nonprofit organization (as qualified under 26 U.S.C. § 501(c)(3)), that is described by a

depositor as a person for whom a trust account is established and maintained. There shall be no more than 1 beneficiary per trust account, unless otherwise provided by the respective banking organization's agreements, rules or regulations.

(2) A "depositor" is a natural person in whose name a trust account subject to this part is established or maintained. There shall be no more than 2 depositors per trust account, unless otherwise provided by the respective banking organization's agreements, rules or regulations.

(3) A "trust account" includes all deposits in a savings account, interest- or noninterest-bearing transaction account, time deposit whether or not evidenced by a certificate or any similar deposit account in a banking organization which:

a. Is established by a depositor as trustee for another, other than a depositor describing himself as acting under a will, trust instrument or other document, court order or decree (including so-called Totten Trust accounts), or

b. Pursuant to an agreement with the banking organization, is payable on request to the depositor during the depositor's lifetime and, on the depositor's death, to a beneficiary (including so-called payable-on-death accounts).

(b) All funds in a trust account, including any interest or additions thereto, shall be trust funds subject to the following terms:

(1) Except as otherwise provided by the respective banking organization's agreements, rules or regulations, the trust can be revoked, terminated or modified in whole or in part by any depositor during the depositor's lifetime by means of, and to the extent of, partial or total withdrawals from or charges against the trust account made or authorized by the depositor or by a writing, other than a will or other similar testamentary disposition, received by the banking organization wherein the account is maintained during the lifetime of the depositor.

(2) The trust account cannot be revoked, terminated or modified in whole or in part by any depositor by will or other similar testamentary disposition.

(3) If the depositor survives the beneficiary, the trust shall terminate and title to the funds shall continue in the depositor free and clear of the trust.

(4) If the beneficiary survives the depositor, the trust shall terminate and title to the funds shall vest in the beneficiary free and clear of the trust.

(5) If the depositor and beneficiary die under circumstances where it is impossible to determine which survived the other, it shall be conclusively presumed that the depositor was the survivor and title to the funds shall vest in the depositor's estate, free and clear of the trust.

(c) If the beneficiary survives the depositor under the circumstances provided in paragraph (4) of subsection (b) of this section, the funds shall be paid to the beneficiary upon the beneficiary's order, if, at the time of the beneficiary's demand for payment of all or part of the funds, the beneficiary is 18 or more years of age. If the beneficiary survives the depositor under the circumstances provided in paragraph (4) of subsection (b) of this section and if the beneficiary is under 18 years of age at the time demand for payment of any part or all of the funds is made, the funds may be paid to the order of the parent or parents of the beneficiary to be held for the use and benefit of such minor beneficiary or to the order of the duly appointed guardian of the property of the beneficiary.

(d) A banking organization which, upon the death of a depositor prior to service upon it of a restraining order, injunction or other appropriate process from a court of competent jurisdiction prohibiting payment, makes payment to a beneficiary or, if the beneficiary is under 18 years of age, to the guardian of the property or to the parent or parents of the minor beneficiary pursuant to subsection (c) of this section, shall, to the extent of such payment, be released from liability to any person claiming a right to the funds and the receipt or acquittance of the person to whom payment is made shall be a valid and sufficient release and discharge of the banking organization.

(e) If a trust account is established in the names of more than 1 depositor, in form to be paid or delivered to any or the survivor of them, in trust for another, or payable on death of all of the depositors to a beneficiary, such account shall be subject to the terms of this section, except that the title to the funds on deposit and any additions and accruals thereon, as between the depositors, shall be the property of such depositors as joint tenants; and the property, together with all the additions and accruals thereon, may be paid or delivered to any of such depositors during the lifetime of such depositors subject to the terms of § 923 of this title, and, after the death of 1 of them, title to the property, together with all additions and accruals thereon, shall become property of the surviving depositor or surviving depositors, subject to the trust which may be revoked, terminated or modified by the surviving depositor or depositors, as the case may be, in accordance with the terms of this section.

(66 Del. Laws, c. 263 § 1; 72 Del. Laws, c. 15 § 8; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 153 § 1.)

§ 925 [Reserved.]

§ 926 Subrogation of Federal Deposit Insurance Corporation to rights of owners of insured deposits in closed institutions.

Whenever a receiver has been appointed by the Court of Chancery for a bank or trust company in this State and the Federal Deposit Insurance Corporation pays or makes available for payment to the receiver the insured deposit liabilities of the closed institution, the Federal Deposit Insurance Corporation shall be subrogated to all the rights against the closed institution of the owners of the insured deposits in the same manner and to the same extent as if the owners had lawfully assigned to the Federal Deposit Insurance Corporation so much or such of their deposits as the Federal Deposit Insurance Corporation has paid or is ready to pay to the receiver.

(40 Del. Laws, c. 231 § 1; Code 1935 § 2408; 5 Del. C. 1953 § 926.)

§ 927 Penalty for false statements regarding financial condition.

Whoever wilfully and maliciously makes, circulates or transmits to another or others, any false statement, rumor or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank, trust company, savings bank, or other banking institution in this State, shall be fined not more than $2,000 or imprisoned not more than 2 years, or both.

(28 Del. Laws, c. 107 § 1; Code 1935 § 2272; 5 Del. C. 1953 § 927.)

§ 928 Penalty for representing or holding oneself out as engaged in business of receiving deposits or of a trust company.

(a) Any person, firm, or association of individuals or any agent or official of any corporation or other person who in any manner represents or holds out himself, herself, themselves or itself, whether by public advertisement, placard, handbill or otherwise, as engaged in the receipt of deposits of money as a savings fund, bank or trust company or any business substantially similar thereto within the boundaries of the State, or as engaged in the business of a trust company within the boundaries of the State, not being authorized under this Code or any other laws of this State to engage in such business or any business substantially similar thereto, shall be fined $1,000 per day in accordance with § 143 of this title, except that § 143(c) of this title shall not apply. In addition, any such person or agent or official of any such corporation, firm or association of individuals may be imprisoned not more than 1 year.

(b) When the name of any person or persons, firm, association or corporation appears in or on any handbill, placard, advertisement or other representation advertising or holding out such person, firm, association or corporation as engaged in the business of receiving deposits of money within the boundaries of the State, or as engaged in the business of a trust company within the boundaries of the State, it shall be prima facie evidence of its presence there by the authority and with the knowledge of such person, firm, association or corporation and of the officers and representatives in this State of the corporation or other person.

(22 Del. Laws, c. 467 §§ 1, 2; Code 1915 §§ 3507, 3508; Code 1935 §§ 3987, 3988; 5 Del. C. 1953 § 928; 70 Del. Laws, c. 6 § 5; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 247 § 5.)

§ 929 Tying arrangements prohibited.

(a) No bank or trust company shall, either directly or indirectly through any subsidiary, division or 3rd person, in any manner extend credit, sell any product or furnish any service to any person, or fix or vary the consideration for any of the foregoing, on the condition or requirement that:

(1) The person shall obtain some additional credit, product or service from such bank or trust company or its affiliate other than a loan, discount, deposit or trust service; or

(2) The person provide some additional credit, product or service to such bank or trust company or its affiliate other than those related to and usually provided in connection with a loan, discount, deposit or trust services; or

(3) The person shall not obtain some other credit, product or service from a competitor of such bank or trust company or its affiliate, other than a condition or requirement that such bank or trust company shall reasonably impose in a credit transaction to assure the soundness of the credit.

(b) No bank or trust company which is first authorized to engage in any activity by § 761(a)(14) or § 1661(a)(14) of this title shall, while an application for a loan, credit or other services previously submitted to such bank or trust company by any person is pending, accept from such person, either directly or through any division or subsidiary, an application for a policy of insurance directly related to the applied-for loan, credit or other services, or thereafter accept such an insurance application until such person has received from such bank or trust company a commitment with respect to the applied-for loan, credit or other services.

(c) The Commissioner shall by regulation promulgated after consultation with the Insurance Commissioner provide for the adequate disclosure of the prohibitions set forth in subsections (a) and (b) of this section.

(d) For purposes of this section, the term "affiliates" shall mean a person that directly or indirectly through 1 or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. "Control" means beneficial ownership, directly or indirectly through 1 or more intermediaries, of 25% or more of the voting securities or partnership interests in any person other than an individual.

(e) The prohibitions contained in this section shall be in addition to, and not in derogation of, those provided for under the laws of the United States, including 12 U.S.C. § 1971 et seq., the laws of this State, including § 2305 of Title 18, and all other applicable statutes, rules and regulations.

(f) The prohibitions of subsection (a) of this section shall not apply to conduct authorized by the Commissioner by regulation, if such conduct is permissible under 12 U.S.C. § 1972 or regulations or orders promulgated thereunder by the Board of Governors of the Federal Reserve System.

(67 Del. Laws, c. 223 § 11; 71 Del. Laws, c. 25 § 34; 75 Del. Laws, c. 60 § 4.)

§ 930 Right of cancellation of certain insurance.

(a) Except as otherwise provided in this section, in the case of any extension of credit by the bank or trust company engaged directly or indirectly in activities first authorized under § 761(a)(14) or § 1661(a)(14) of this title to an individual borrower in connection with which

insurance is obtained from such bank or trust company, or any subsidiary thereof engaged in activities first authorized under § 761(a)(14) or § 1661(a)(14) of this title, the individual borrower shall have the right to cancel the purchase of such insurance until midnight of the 30th calendar day following the consummation of the transaction or the delivery of the information and forms required under this section, whichever is later. Within the first 10 days, the individual borrower shall be entitled to an unconditional refund of the premium upon serving notice of cancellation as provided herein. The individual borrower shall effect such cancellation by notifying the bank or trust company or its subsidiary, in accordance with the regulations of the Commissioner, of an intention to do so. In accordance with the regulations of the Commissioner, the bank or trust company or its subsidiary shall:

(1) Clearly and conspicuously disclose to any individual borrower in a transaction subject to this section the rights of the individual borrower under this section; and

(2) Provide appropriate forms for the exercise by the individual borrower of this right to cancel any insurance subject to this section. Such forms shall contain a clear and specific statement setting forth:

a. The cost of the insurance;

b. That the individual borrower may choose the person through which the insurance is to be obtained;

c. The individual borrower's right to use the cancellation period to obtain price quotations for insurance from other sources;

d. The actions necessary for the individual borrower to cancel the insurance; and

e. The individual borrower's right to receive a credit or the unearned portion of the insurance premium after cancellation.

(b) Within 20 days after the unconditional recision period if no liability for a loss under the insurance has been incurred, the bank or trust company or its subsidiary shall:

(1) Credit the unearned portion of the premium, computed in accordance with applicable law or regulation promulgated by the Insurance Commissioner to enforce the provisions of this section, as of the date of cancellation and, where the premium has been financed, credit the unearned portion of the finance charge, if any, attributable to the insurance, computed as of the date of cancellation in accordance with the terms of the contract documents; or

(2) At the option of the individual borrower, refund the unearned portion of the premium to the borrower.

(c) When the insurance written in connection with an extension of credit is against loss of, or damage to, or against liability arising out of ownership or use of, property used as security for the extension of credit, the bank or trust company or its subsidiary may require evidence that the individual borrower has obtained other adequate insurance before exercising the right of cancellation set forth in this subsection. For reasonable cause, a bank or trust company on its subsidiary may refuse to accept an insurer offered by the individual borrower; provided, however, that a bank or trust company shall accept a policy of insurance issued by an authorized insurer offered by the individual borrower, so long as such insurer is not then impaired, insolvent, the subject of any rehabilitation or liquidation proceeding, or deemed by the Insurance Commissioner to be otherwise disqualified.

(d) Any individual borrower who has the right to cancel insurance under this section in connection with an obligation which has been assigned may cancel the insurance only by delivering to the assignee of the obligation the notice of cancellation required by this section. Delivery shall be considered made when mailed, or if sent by other means, when received by the assignee.

(e) Any individual borrower who exercises the right to cancel the purchase of insurance pursuant to this section shall not be subject to the imposition of any fee, cancellation charge, or other penalty payment.

(f) For purposes of this section, "individual borrower" means a borrower who is a natural person borrowing for personal, household or family purposes, or business or commercial purposes where the natural person employs 500 employees or less, or a borrower who is a corporation, partnership, limited partnership or other business entity which is borrowing for business or commercial purposes and which employs 500 employees or less.

(g) The rights provided under this section shall be in addition to, and not in derogation of, those provided by contract under the laws of the United States, the laws of this State, and all other applicable statutes, rules and regulations.

(67 Del. Laws, c. 223 § 12; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 25 § 34.)

§ 930A Mandatory disclosure in bank insurance policies.

(a) Any bank or trust company issuing policies of insurance either directly or through a division or subsidiary, shall disclose or cause to be disclosed to all applicants for such policies and to all policyholders that such policies, if and when issued, are not direct liabilities of such bank or trust company, and that only the assets of the insurance division or subsidiary issuing such policy are applicable to the payment and satisfaction of such policies or claims made thereunder.

(b) The Commissioner shall by regulation provide for the adequate disclosure of the information set forth in subsection (a) of this section .

(67 Del. Laws, c. 223 § 13.)

§ 931 Employee retirement pensions for savings banks and savings societies.

(a) Savings banks and savings societies, subject to the laws of this State, may, in the discretion of a majority of all the managers or governing board, retire any officer, clerk or other employee, who has served the savings bank or savings society for a period of 30 years or more, or who has served the savings bank or savings society for a period of 10 years or more and shall have become incapacitated, or who has served the savings bank or savings society for a period of 20 years or more and has attained the age of 60 years. Any person retired

from service pursuant to this section may be paid an annual pension, in equal monthly installments. The maximum pension paid shall in no case exceed 60% of the average annual salary for the 3 years preceding retirement. The discretion of the managers or governing board as to the time of payments, the amount of payments, and the duration of payments, within the maximum amounts allowed under this section, shall at all times be absolute and final.

(b) For the purpose of establishing and maintaining a pension plan or a plan for carrying life insurance or providing other after death benefits for any of its officers, clerks or employees, or their estates or beneficiaries, or a plan combining these types of benefits, any such savings bank or savings society may, in the discretion of a majority of its board of managers or governing board, segregate or allocate funds from its income or other assets and pay the same into a trust fund. Any such institution establishing such trust fund may itself act as trustee or may have an independent trustee. Even though the ultimate benefits of the plan are paid out of such trust fund, or even though premiums for the coverage are paid out of such trust fund, rather than directly out of the savings institution's operating funds, unless the terms of the said trust are approved by the State Bank Commissioner as provided in this section, the limitations of years and percentage specified in the preceding paragraph shall remain applicable, and the only benefits payable shall be such as are authorized by the said paragraph. If the State Bank Commissioner shall determine that the said plan is not injurious to the institution or the security of its deposits, then such benefits as may be provided by said plan may be paid to officers, clerks or employees, or their estates or beneficiaries, in accordance with the terms of the plan, even though these terms may not be within the limitations of the preceding paragraph. If the plan has once been approved but is thereafter amended, the amendment shall be approved before any benefits are paid out under the amended plan.

(43 Del. Laws, c. 141 § 1; 5 Del. C. 1953 § 931; 49 Del. Laws, c. 250; 55 Del. Laws, c. 118.)

§ 932 Loans and securities insured by Federal Housing Administrator.

(a) Banks, savings banks, trust companies, building and loan associations and insurance companies, subject to this Code and any other laws of this State, may make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the Federal Housing Administrator, and may obtain such insurance; and may make such loans, secured by real property or leasehold, as the Federal Housing Administrator insures or makes a commitment to insure, and may obtain such insurance.

(b) Banks, savings banks, trust companies, building and loan associations, insurance companies, trustees, guardians and other fiduciaries, may invest their funds and the moneys in their custody or possession, eligible for investment, in notes or bonds secured by mortgage or trust deed insured by the Federal Housing Administrator, provided such notes or bonds or the notes, bonds or debentures into which the same are convertible upon foreclosure of such mortgage or deed of trust shall be guaranteed as to principal and interest by the United States government.

(c) The mortgages, debentures and other securities herein made eligible for investment may be used, wherever securities must be furnished by any depository in the State, as security for the deposit of any funds whatsoever, or wherever securities must be deposited with any official of the State pursuant to this Code and any other statute of this State.

(d) No law of this State requiring security upon which loans or investments may be made, or prescribing the nature, amount or form of such security, or prescribing or limiting interest rates upon loans or investments or limiting investments of capital or deposits, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to this section.

(40 Del. Laws, c. 150 §§ 1, 2; Code 1935 §§ 2405, 2405(a), 2406, 2406(a); 41 Del. Laws, c. 133 §§ 1-4; 5 Del. C. 1953 § 932.)

§ 933 [Reserved.]

§§ 934 , 935. [Reserved.]

§ 936 International banking facilities.

The Commissioner may by rule except from the terms "deposit," "borrowing," and "extension of credit," as they relate to the activities of international banking facilities and as defined in § 101 of this title, any class of transactions if the Commissioner finds that its inclusion would not be in the public interest. Any class of transactions otherwise included within the aforementioned terms "deposit," "borrowing" and "extension of credit" shall be deemed by the Commissioner to be in the public interest if it promotes an environment conducive to the conduct of international banking business in this State, and does not constitute an unsafe, unsound or anticompetitive banking practice.

(64 Del. Laws, c. 43 § 5; 72 Del. Laws, c. 15 § 9; 70 Del. Laws, c. 186 § 1.)

§ 937 Availability of funds.

(a) Financial institutions that delay availability shall review their policies and consider reducing the delay periods to the extent possible, consistent with prudent business practices.

(b) Financial institutions shall disclose to depositors in an effective manner as to their delayed availability policies.

(c) Financial institutions shall refrain from imposing unnecessary delays on all checks, particularly on social security and other government checks, deposited into established accounts beyond the time required to receive credit for the checks.

(64 Del. Laws, c. 478 § 1.)

§ 938 Transfer of fiduciary accounts.

(a) For purposes of this section, "fiduciary" shall mean a banking organization or trust company of a type referred to in this section acting as a trustee, personal representative, guardian or custodian under a Uniform Gifts to Minors Act or any comparable act.

(b) The term "interested person" means any living person who:

(1) Is an income beneficiary or vested remainderman of a trust;

(2) Has a vested interest in a decedent's estate;

(3) Receives benefits as a ward from a guardianship account; or

(4) Is the minor with respect to an account established under a Uniform Gifts to Minors Act or a comparable act.

(c) With the prior written approval of, and in accordance with the terms and conditions of transfer prescribed by, the office of the State Bank Commissioner, and upon completion of the notice procedure of subsection (d) of this section, a banking organization, trust company or a bank holding company having its principal place of business in this State may transfer 1 or more of the fiduciary accounts administrated by such banking organization, trust company, or 1 or more of the banking organizations or trust companies controlled by such bank holding company to another banking organization or trust company controlled by such banking organization or bank holding company. With the prior written approval of, and in accordance with the terms and conditions of transfer prescribed by, the office of the State Bank Commissioner, and upon completion of the notice procedures of subsection (d) of this section, a banking organization or trust company organized under the laws of any jurisdiction (including federal law) that has a place of business in this State but not its principal place of business in this State may transfer 1 or more of the fiduciary accounts administered in this State by such banking organization or trust company, to another banking organization or trust company in this State controlled by such banking organization or trust company or by a bank holding company or a savings and loan holding company that controls such transferring banking organization or trust company.

(d) Prior to effecting a transfer of 1 or more fiduciary accounts under subsection (c) of this section, the fiduciary shall send written notice of such transfer to all interested persons or their legal or natural guardians. If the persons, or their legal or natural guardians in the case of minor children or incompetents, to whom such notice was sent do not make written objections to the fiduciary of the account within 30 days of the date such notice was mailed, then the fiduciary may complete the transfer of the account.

(e) If a fiduciary completes a transfer as described in the preceding subsections, the banking organization or trust company to which such fiduciary accounts have been transferred shall automatically be substituted as a fiduciary of all the accounts so transferred without further action and without any order or decree of any court or public officer, and such transferee banking organization or trust company shall have all the rights, duties, responsibilities, obligations and liabilities, financial or otherwise, of such transferring fiduciary with respect to such accounts. Likewise, a fiduciary which completes a transfer of 1 or more accounts as described in the preceding subsections shall be removed as fiduciary of all such accounts without an accounting and without any order or decree of any court or public officer, and prospectively such fiduciary shall have no continuing duties, responsibilities, obligations or liabilities, financial or otherwise, with respect to the accounts so transferred. Such transfer shall not relieve a fiduciary of any liability it may have incurred for its action or inaction prior to the transfer.

(65 Del. Laws, c. 422 § 1; 80 Del. Laws, c. 90.)

§ 939 Negotiable instruments.

(a) For purposes of this section, "fiduciary" shall have the same meaning as in § 3301(d) of Title 12.

(b) If a negotiable instrument is drawn upon the account of a principal in a bank by a fiduciary who is empowered to draw upon the principal's account, the bank is authorized to pay such instrument without being liable to the principal for the application of the funds.

(c) If any negotiable instrument payable or endorsed to a fiduciary as such is endorsed by a fiduciary, or if any negotiable instrument payable or endorsed to a principal is endorsed by a fiduciary empowered to endorse such instrument on behalf of the principal, the endorsee is not bound to inquire whether the fiduciary is committing a breach of its obligation as fiduciary by endorsing or delivering the instrument, and is not liable for the application of the funds.

(65 Del. Laws, c. 422 § 1.)

§ 940 Self-analysis privilege for depository institutions and affiliates.

(a) Definitions. — For purposes of this section, the following words and phrases shall have the meanings ascribed to them herein:

(1) "Depository institution" means a state-chartered or federally-chartered financial institution that is located in this State and is authorized to maintain deposit or share accounts.

(2) "Depository institution affiliate" means any corporation whose stock is at least 80 percent owned by a depository institution or the holding company of a depository institution.

(3) "Compliance review committee" means a person or persons assigned by a depository institution or a depository institution affiliate to test, review or evaluate its conduct, transactions or potential transactions for the purpose of monitoring and improving or enforcing compliance with:

a. Safe, sound and fair lending practices;

b. Financial reporting to federal or state regulatory agencies;

c. The depository institution's or depository institution affiliate's own policies and procedures; or

d. Federal or state statutory or regulatory requirements.

(4) "Compliance review document" means any document prepared for or created by a compliance review committee for its exclusive

use.

(5) "Person" means an individual, a group of individuals, a board committee or a corporation, partnership, firm, association, trust, pool, syndicate, sole proprietorship, unincorporated association or any other form of entity not specifically listed herein.

(b) Privilege. — Notwithstanding any provisions of Delaware common or statutory law to the contrary, except as provided in subsection (c) of this section:

(1) Compliance review documents shall be confidential and shall not be discoverable or admissible into evidence in any civil action;

(2) Compliance review documents delivered to a federal, state or foreign governmental or regulatory agency shall remain confidential and shall not be discoverable or admissible in any civil action; and

(3) No person serving on a compliance review committee or acting at the request of a compliance review committee shall be required to testify in any civil action:

a. As to the contents or conclusions of any compliance review document; or

b. As to the actions taken by a compliance review committee.

(c) Limitations. —

(1) This section shall not apply to any person serving on or at the request of a compliance review committee in connection with such person's duties pursuant to the depository institution's or depository institution affiliates' by laws or operations manual, management responsibility for the operations, records, employees or activities being examined or evaluated by the compliance review committee.

(2) This section shall not be construed to limit the discovery or admissibility in any civil action of any documents that are not compliance review documents.

(3) This section shall not apply if, after an in camera review by the court consistent with applicable rules of procedure, the court determines that the compliance review was initiated or used to enable persons serving on the compliance review committee or the depository institution or the depository institution affiliate which created such committee to commit or plan to commit what the committee knew or reasonably should have known to be a crime.

(70 Del. Laws, c. 359 § 1.)

Subchapter II

Bank Revolving Credit

§ 941 Definitions.

As used in this subchapter:

(1) "Bank" means any bank or bank and trust company organized under this title or any other law or laws of this State, any depository institution organized under the authority of the United States and having its principal place of business in this State and any foreign bank agency.

(2) "Borrower" means any corporation, partnership, association, government or governmental subdivision or agency, trust, individual or other entity.

(3) "Individual borrower" means a borrower who is a natural person borrowing for personal, household or family purposes.

(4) "Revolving credit plan" or "plan" means a plan contemplating the extension of credit under an account governed by an agreement between a bank and a borrower pursuant to which:

a. The bank permits the borrower and, if the agreement governing the plan so provides, persons acting on behalf of or with authorization from the borrower, from time to time to make purchases and/or to obtain loans by use of a credit device;

b. The amounts of such purchases and loans are charged to the borrower's account under the revolving credit plan;

c. The borrower is required to pay the bank the amounts of all purchases and loans charged to such borrower's account under the plan but has the privilege of paying such amounts outstanding from time to time in full or otherwise in accordance with the agreement governing the plan; and

d. Interest may be charged and collected by the bank from time to time on the outstanding unpaid indebtedness under such plan.

(5) "Purchases" mean payments for property of whatever nature, real or personal, tangible or intangible, and payments for services, licenses, taxes, official fees, fines, private or governmental obligations, or any other thing of value.

(6) "Loans" mean cash advances or loans to be paid to or for the account of the borrower.

(7) "Credit device" means any card, check, identification code or other means of identification contemplated by the agreement governing the plan.

(8) "Outstanding unpaid indebtedness" means on any day an amount not in excess of the total amount of purchases and loans charged to the borrower's account under the plan which is outstanding and unpaid at the end of the day, after adding the aggregate amount of any new purchases and loans charged to the account as of that day and deducting the aggregate amount of any payments and credits applied to that indebtedness as of that day and, if the agreement providing the plan so provides, may include the amount of any periodic interest, interest charges and other charges permitted by this subchapter, including late or delinquency charges, which have accrued in the account and which are unpaid at the end of the day. Purchases and loans may be included in outstanding unpaid indebtedness as of such time as

may be specified in the agreement governing the plan.

(63 Del. Laws, c. 2 § 4; 65 Del. Laws, c. 444 § 3; 66 Del. Laws, c. 283 § 2; 71 Del. Laws, c. 19 § 44; 72 Del. Laws, c. 15 § 10.)

§ 942 Extension of credit.

Any bank may, subject to any limitations on lending authorities contained in its charter or otherwise imposed by law and subject to the other provisions of this subchapter, offer and extend credit under a revolving credit plan to a borrower and in connection therewith may charge and collect periodic interest, interest charges and other charges permitted by this subchapter and may take such security as collateral in connection therewith as may be acceptable to the bank. Without limitation of the foregoing, credit may be extended under a revolving credit plan by a bank's acquisition of obligations arising out of the honoring by a merchant, a bank or other financial institution (whether chartered or organized under the laws of this or any other state, the District of Columbia, the United States or any district, territory or possession of the United States, or any foreign country), or a government or governmental subdivision or agency of a credit device made available to a borrower under a plan, whether directly or indirectly by means of telephone, point of sale terminal, automated teller machine or other electronic or similar device or through the mails.

(63 Del. Laws, c. 2 § 4; 66 Del. Laws, c. 283 § 3.)

§ 943 Periodic interest.

A bank may charge and collect periodic interest under a revolving credit plan on outstanding unpaid indebtedness in the borrower's account under the plan at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing the plan provides or as established in the manner provided in the agreement governing the plan. Periodic interest may be calculated using an average daily balance, 2-cycle average daily balance, adjusted balance or previous balance method or using any other balance computation method provided for in the agreement governing the plan. Periodic billing cycles may be established in such manner and shall have such duration as may be specified in the agreement governing the plan.

(63 Del. Laws, c. 2 § 4; 66 Del. Laws, c. 283 §§ 4, 5; 71 Del. Laws, c. 19 § 45.)

§ 944 Variable rates.

If the agreement governing the revolving credit plan so provides, the periodic percentage rate or rates of interest under such plan may vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of outstanding unpaid indebtedness under the plan on or after the first day of the billing cycle that contains the effective date of such variation including any such indebtedness arising out of purchases made or loans obtained prior to such variation in the periodic percentage rate or rates. Without limitation, a permissible schedule or formula hereunder may include provision in the agreement governing the plan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid indebtedness, whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the plan, which event or circumstance may include the failure of the borrower to perform in accordance with the terms of the plan. Nothing herein precludes a bank from charging or reserving a right to charge, by discretion or otherwise, a rate lower than any maximum rate provided for in any schedule or formula.

(63 Del. Laws, c. 2 § 4; 68 Del. Laws, c. 303 § 21; 71 Del. Laws, c. 19 § 46; 77 Del. Laws, c. 279 § 1.)

§ 945 Interest charges.

(a) In addition to or in lieu of interest at a periodic percentage rate or rates as provided in §§ 943 and 944 of this title, a bank may, if the agreement governing the revolving credit plan so provides, charge and collect, as interest, in such manner or form as the plan may provide, 1 or more of the following:

(1) A daily, weekly, monthly, annual or other periodic charge in such amount or amounts as the agreement may provide for the privileges made available to the borrower under the plan;

(2) A transaction charge or charges in such amount or amounts as the agreement may provide for each separate purchase or loan under the plan;

(3) A minimum charge for each daily, weekly, monthly, annual or other scheduled billing period under the plan during any portion of which there is an outstanding unpaid indebtedness under the plan;

(4) Reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the bank or its agents in connection with the plan, or other reasonable fees incident to the application for and the opening, administration and termination of a plan including, without limitation, commitment, application and processing fees, official fees and taxes, costs incurred by reason of examination of title, inspection, appraisal, recording, mortgage satisfaction or other formal acts necessary or appropriate to the security for the plan, and filing fees;

(5) Returned payment charges or charges imposed for the return of a draft drawn on a revolving credit plan evidencing an extension of credit under such plan;

(6) Documentary evidence charges;

(7) Stop payment fees;

(8) Overlimit charges;

(9) Automated teller machine charges or similar electronic or interchange fees or charges;

(10) Prepayment charges authorized under subsection (b) of this section; and

(11) Subject to any limitations contained in this subchapter, such other fees and charges as are set forth in the agreement governing the plan.

(b) An individual borrower may pay the outstanding unpaid indebtedness charged to the borrower's account under a plan in full at any time. Except for a charge imposed to terminate a plan if the agreement governing the plan so provides, a bank may not impose any prepayment charge in connection with the payment of outstanding unpaid indebtedness in full by an individual borrower. A bank may charge and collect any prepayment penalty or charge specified in the agreement governing the plan in connection with the payoff and termination of a plan that is secured by a real estate mortgage. The terms of prepayment of the outstanding unpaid indebtedness relating to a revolving credit plan involving a borrower other than an individual borrower shall be as the bank and the borrower may agree.

(c) No charges assessed by a bank in accordance with this section shall be deemed void as a penalty or otherwise unenforceable under any statute or the common law.

(63 Del. Laws, c. 2 § 4; 66 Del. Laws, c. 283 §§ 6-8; 70 Del. Laws, c. 327 §§ 25, 26; 71 Del. Laws, c. 19 §§ 47, 48.)

§ 946 Terms for indebtedness.

A bank may, if the agreement governing a revolving credit plan so provides, impose different terms (including, without limitation, the terms governing the periodic percentage rate or rates used to calculate interest, the method of computing the outstanding unpaid indebtedness to which such rate or rates are applied, the amounts of other charges and the applicable installment repayment schedule) in respect to indebtedness arising out of purchases and indebtedness arising out of loans made under the plan.

(63 Del. Laws, c. 2 § 4.)

§ 947 Overdraft accounts.

If credit under a revolving credit plan is offered and extended in connection with a demand deposit account or other transaction account maintained by the borrower with the bank pursuant to an agreement or arrangement whereby the bank agrees to honor checks, drafts or other debits to such account, which if paid would create or increase a negative balance in such account, by making extensions of credit to such borrower under such revolving credit plan, any charges customarily imposed by the bank under the terms governing such demand deposit or other transaction account in the absence of any associated revolving credit plan (including, without limitation, check charges, monthly maintenance charges, checkbook charges, charges for checks drawn on funds in excess of an available line of credit and other similar charges) may continue to be imposed on such account without specific reference thereto or incorporation thereof by reference in the agreement governing the revolving credit plan and the amount of any such charge, to the extent the balance in such demand deposit or other transaction account is insufficient to pay such a charge, may be charged to the borrower's account under the plan as a loan thereunder and may be included in outstanding unpaid indebtedness in accordance with the terms of the agreement governing such revolving credit plan.

(63 Del. Laws, c. 2 § 4.)

§ 948 Omitted installments.

A bank may at any time and from time to time unilaterally extend to a borrower under a revolving credit plan the option of omitting monthly installments.

(63 Del. Laws, c. 2 § 4.)

§ 949 Insurance.

(a) A bank may request but not require an individual borrower to be insured in respect of a revolving credit plan under a life, health, accident, health and accident or other credit or other permissible insurance policy, whether group or individual, and in the event that an individual borrower's outstanding unpaid indebtedness under the plan is secured by an interest in real or personal property, a bank may require the borrower to obtain insurance, from an insurer acceptable to the bank, against loss of or damage to such property, or against the liability arising out of the ownership or use of the property and may finance the premiums for such insurance.

(b) In the case of a borrower borrowing under a revolving credit plan for other than personal, household or family purposes, a bank may require the borrower to obtain insurance, from an insurer acceptable to the bank, under a life, health, accident, health and accident or other credit or other permissible insurance policy, whether group or individual, and in the event that the borrower's outstanding unpaid indebtedness under the plan is secured by an interest in real or personal property, the bank may require the borrower to obtain insurance, from an insurer acceptable to the bank, against loss of or damage to such property, or against the liability arising out of the ownership or use of the property and may finance the premiums for such insurance.

(c) The offer and placement of insurance under this section shall be subject in all respects to the applicable provisions of Title 18.

(63 Del. Laws, c. 2 § 4.)

§ 950 Delinquent installments.

(a) If the agreement governing a revolving credit plan so provides, a bank may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the plan which are in default; provided however, that no more than 1 such late or delinquency charge may be imposed in respect of any single such installment payment or portion thereof, regardless of the

period during which it remains in default; and provided further, however, that for the purpose only of the preceding proviso all payments by the borrower shall be deemed to be applied to satisfaction of installment payments in the order in which they become due. Nothing contained in this section shall limit, restrict or otherwise affect the right of a bank under and pursuant to §§ 943 and 944 of this title to change the periodic percentage rate or rates of interest applicable to the revolving credit plan between the bank and a borrower upon the occurrence of a delinquency or default or other failure of the borrower to perform in accordance with the terms of the plan.

(b) No charges assessed by a bank in accordance with this section shall be deemed void as a penalty or otherwise unenforceable under any statute or the common law.

(63 Del. Laws, c. 2 § 4; 66 Del. Laws, c. 283 § 9; 68 Del. Laws, c. 303 § 22; 70 Del. Laws, c. 327 § 27; 71 Del. Laws, c. 19 § 49.)

§ 951 Attorney's fees; costs.

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

(63 Del. Laws, c. 2 § 4; 66 Del. Laws, c. 283 § 10; 72 Del. Laws, c. 15 § 11.)

§ 952 Amendment of agreement.

(a) Unless the agreement governing a revolving credit plan otherwise provides, a bank may at any time and from time to time amend such agreement in any respect, whether or not the amendment or the subject of the amendment was originally contemplated or addressed by the parties or is integral to the relationship between the parties. Without limiting the foregoing, such amendment may change terms by the addition of new terms or by the deletion or modification of existing terms, whether relating to plan benefits or features, the rate or rates of periodic interest, the manner of calculating periodic interest or outstanding unpaid indebtedness, variable schedules or formulas, interest charges, fees, collateral requirements, methods for obtaining or repaying extensions of credit, attorney's fees, plan termination, the manner for amending the terms of the agreement, arbitration or other alternative dispute resolution mechanisms, or other matters of any kind whatsoever. Unless the agreement governing a revolving credit plan otherwise expressly provides, any amendment may, on and after the date upon which it becomes effective as to a particular borrower, apply to all then outstanding unpaid indebtedness in the borrower's account under the plan, including any such indebtedness that arose prior to the effective date of the amendment. An agreement governing a revolving credit plan may be amended pursuant to this section regardless of whether the plan is active or inactive or whether additional borrowings are available thereunder. Any amendment that does not increase the rate or rates of periodic interest charged by a bank to a borrower under § 943 or § 944 of this title may become effective as determined by the bank, subject to compliance by the bank with any applicable notice requirements under the Truth in Lending Act (15 U.S.C. §§ 1601 et seq.), and the regulations promulgated thereunder, as in effect from time to time. Any notice of an amendment sent by the bank may be included in the same envelope with a periodic statement or as part of the periodic statement or in other materials sent to the borrower.

(b)(1) If an amendment increases the rate or rates of periodic interest charged by a bank to a borrower under § 943 or § 944 of this title, the bank shall mail or deliver to the borrower, at least 15 days before the effective date of the amendment, a clear and conspicuous written notice that shall describe the amendment and shall also set forth the effective date thereof and any applicable information required to be disclosed pursuant to the following provisions of this section.

(2) Any amendment that increases the rate or rates of periodic interest charged by a bank to a borrower under § 943 or § 944 of this title may become effective as to a particular borrower if the borrower does not, within 15 days of the earlier of the mailing or delivery of the written notice of the amendment (or such longer period as may be established by the bank), furnish written notice to the bank that the borrower does not agree to accept such amendment. The notice from the bank shall set forth the address to which a borrower may send notice of the borrower's election not to accept the amendment and shall include a statement that, absent the furnishing of notice to the bank of nonacceptance within the referenced 15 day (or longer) time period, the amendment will become effective and apply to such borrower. As a condition to the effectiveness of any notice that a borrower does not accept such amendment, the bank may require the borrower to return to it all credit devices. If, after 15 days from the mailing or delivery by the bank of a notice of an amendment (or such longer period as may have been established by the bank as referenced above), a borrower uses a plan by making a purchase or obtaining a loan, notwithstanding that the borrower has prior to such use furnished the bank notice that the borrower does not accept an amendment, the amendment may be deemed by the bank to have been accepted and may become effective as to the borrower as of the date that such amendment would have become effective but for the furnishing of notice by the borrower (or as of any later date selected by the bank).

(3) Any amendment that increases the rate or rates of periodic interest charged by a bank to a borrower under § 943 or § 944 of this title may, in lieu of the procedure referenced in paragraph (2) of this subsection, become effective as to a particular borrower if the borrower uses the plan after a date specified in the written notice of the amendment that is at least 15 days after the mailing or delivery of the notice (but that need not be the date the amendment becomes effective) by making a purchase or obtaining a loan; provided, that the notice from the bank includes a statement that the described usage after the referenced date will constitute the borrower's acceptance of the amendment.

(4) Any borrower who furnishes timely notice electing not to accept an amendment in accordance with the procedures referenced in

paragraph (2) of this subsection and who does not subsequently use the plan, or who fails to use such borrower's plan as referenced in paragraph (3) of this subsection, shall be permitted to pay the outstanding unpaid indebtedness in such borrower's account under the plan in accordance with the rate or rates of periodic interest charged by a bank to a borrower under § 943 or § 944 of this title without giving effect to the amendment; provided however, that the bank may convert the borrower's account to a closed end credit account as governed by subchapter III of this chapter, on credit terms substantially similar to those set forth in the then-existing agreement governing the borrower's plan.

(5) Notwithstanding the other provisions of this subsection, no notice required by this subsection of an amendment of an agreement governing a revolving credit plan shall be required, and any amendment may become effective as of any date agreed upon between a bank and a borrower, with respect to any amendment that is agreed upon between the bank and the borrower, either orally or in writing.

(c) For purposes of this section, the following are examples of amendments that shall not be deemed to increase the rate or rates of periodic interest charged by a bank to a borrower under § 943 or § 944 of this title:

(1) A decrease or increase in the required number or amount of periodic installment payments;

(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)a. 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

b. 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;

(5) A change from a daily periodic rate to a periodic rate other than daily or from a periodic rate other than daily to a daily periodic rate; and

(6) A change in the method of determining the outstanding unpaid indebtedness upon which periodic interest is calculated (including, without limitation, a change with respect to the date by which or the time period within which a new balance or any portion thereof must be paid to avoid additional periodic interest).

(d) The procedures for amendment by a bank of the terms of a plan to which a borrower other than an individual borrower is a party may, in lieu of the foregoing provisions of this section, be as the agreement governing the plan may otherwise provide.

(63 Del. Laws, c. 2 § 4; 66 Del. Laws, c. 283 § 11; 66 Del. Laws, c. 403 § 1; 70 Del. Laws, c. 217 § 1; 71 Del. Laws, c. 19 § 50; 72 Del. Laws, c. 15 §§ 12, 13.)

§ 953 Application of other state laws.

Any other law of this State limiting the rate or amount of interest, discount, points, finance charges, service charges or other charges which may be charged, taken, collected, received or reserved shall not apply to extensions of credit under a revolving credit plan operated in accordance with this subchapter.

(63 Del. Laws, c. 2 § 4.)

§ 954 Nonexclusivity; captions.

(a) The provisions of this subchapter are not exclusive and a bank may at its option elect to extend credit either pursuant to this subchapter or as otherwise permitted by applicable law.

(b) Section headings and captions contained in this subchapter are inserted only as a matter of convenience and for reference and do not, and shall not be construed to, define, limit, extend or describe the scope of this subchapter or the meaning or intent of any section hereof.

(63 Del. Laws, c. 2 § 4.)

§ 955 Materiality of terms.

All terms, conditions and other provisions of and relating to a plan as contained in this subchapter or in the agreement governing the plan (other than those which are interest under this subchapter), including, without limitation, provisions relating to the method of determining the outstanding unpaid indebtedness on which interest is applied, time periods within which interest charges may be avoided, reasons for default and the right to cure any default, rights to accelerate, account cancellation, choice of law, change in terms requirements, rights to charge and collect attorney's fees, court and collection costs and the compounding of periodic interest or interest charges, shall be and hereby are deemed to be material to the determination of interest applicable to a plan under Delaware law, under the most favored lender doctrine, and under § 85 of the National Bank Act (12 U.S.C. § 85) or § 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. § 1831d).

(66 Del. Laws, c. 283 § 21.)

§ 956 Governing law.

A revolving credit plan between a bank and an individual borrower shall be governed by the laws of this State.

(66 Del. Laws, c. 283 § 22.)

Subchapter III

Bank Closed End Credit

§ 961 Definitions.

As used in this subchapter:

(1) "Bank," "borrower" and "individual borrower" have the meanings given in subchapter II of this chapter.

(2) "Business day" means, with respect to recission under § 976 of this title, all calendar days except Sundays and legal public holidays.

(3) "Closed end credit" means the extension of credit by a bank to a borrower pursuant to an arrangement or agreement which is not a revolving credit plan as defined in subchapter II of this chapter.

(4) "Conspicuously displayed" means highlighted through the use of capitalization, bold print, underlining or some combination thereof.

(5) "Loan" means any single extension of closed end credit.

(6) "Right of recission" means, with respect to any short-term consumer loan, the right to return any amount borrowed, in full, on or before the close of business of the business day following the day on which such sum has been disbursed or advanced, without the incursion of any fee or other charges.

(7) "Rollover" means, with respect to any short-term consumer loan, the extension of an outstanding and unpaid indebtedness beyond the stated repayment period solely on the basis of the payment of a fee without approval of a new loan application.

(8) "Short-term consumer loan" means a loan of $500 or less made to an individual borrower that charges interest and/or fees for which the stated repayment period is less than 60 days and is not secured by title to a motor vehicle.

(9) "Workout agreement" means an agreement between an individual borrower and a bank, trust company or savings bank for the repayment of an outstanding and unpaid indebtedness which requires a net reduction of not less than 10% of such indebtedness per payment period.

(63 Del. Laws, c. 2 § 5; 73 Del. Laws, c. 398 § 1.)

§ 962 Extension of credit.

Any bank may, subject to any limitations on lending authority contained in its charter or otherwise imposed by law and subject to the other provisions of this subchapter, offer and extend closed end credit to a borrower and in connection therewith, may charge and collect any periodic interest, interest charges and other charges permitted by this subchapter and may take such security as collateral in connection therewith as may be acceptable to the bank.

(63 Del. Laws, c. 2 § 5; 66 Del. Laws, c. 283 § 12.)

§ 963 Periodic interest.

A bank may charge and collect periodic interest in respect of a loan at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing, or the bond, note or other evidence of, the loan provides or as established in the manner provided in such agreement, bond, note or other evidence of the loan and may calculate such periodic interest by way of simple interest or such other method as the agreement governing, or the bond, note or other evidence of, the loan provides. If the interest is precomputed it may be calculated on the assumption that all scheduled payments will be made when due. For purposes hereof, a year may but need not be a calendar year and may be such period of from 360 to 366 days, including or disregarding leap year, as the bank may determine.

(63 Del. Laws, c. 2 § 5; 66 Del. Laws, c. 283 §§ 13, 14.)

§ 964 Variable rates.

If the agreement governing, or the bond, note or other evidence of, the loan so provides, the periodic percentage rate or rates of interest charged and collected in respect of the loan may, if the interest is not precomputed and taken in advance, vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of outstanding unpaid amounts of such loan on and after the effective date of such variation. This section shall not be construed to limit the authority of a bank to charge and collect interest in respect of a loan in the manner and at the rate or rates authorized in any other section of this subchapter. Without limitation, a permissible schedule or formula hereunder may include provision in the agreement governing the loan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid amounts, whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the

happening of any event or circumstance specified in the loan agreement, which event or circumstance may include the failure of the borrower to perform in accordance with the terms of the loan agreement.

(63 Del. Laws, c. 2 § 5; 68 Del. Laws, c. 303 § 23.)

§ 965 Interest charges.

In addition to or in lieu of periodic interest at a periodic percentage rate or rates permitted by §§ 963 and 964 of this title, a bank may charge and collect, as interest, in respect of a loan:

(1) Loan fees, points, finders fees and other front-end and periodic charges; provided, however, that in the case of a loan to an individual borrower, no such front-end or periodic charge may be charged and collected unless the agreement governing, or the bond, note or other evidence of, the loan so provides;

(2) Reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the bank or its agents in connection with such loan, including, without limitation, commitment fees, official fees and taxes, premiums or other charges for any guarantee or insurance protecting the bank against the borrower's default or other credit loss, or costs incurred by reason by examination of title, inspection, recording and other formal acts necessary or appropriate to the security of the loan, filing fees, attorney's fees and travel expenses; provided, however, that in the case of a loan to an individual borrower, no such fee may be charged and collected unless the agreement governing, or the bond, note or other evidence of, the loan so provides;

(3) Returned payment charges;

(4) Documentary evidence charges; and

(5) Subject to any limitations contained in this subchapter, such other fees and charges as are set forth in the agreement governing, or the bond, note or other evidence of, the loan.

(63 Del. Laws, c. 2 § 5; 66 Del. Laws, c. 283 §§ 15, 16; 71 Del. Laws, c. 19 § 51.)

§ 966 Deferred installments.

A bank may at any time or from time to time permit a borrower to defer installment payments of a loan and may, in connection with such deferral, charge and collect, as interest, deferral charges and may also require payment by such borrower, as interest, of the additional cost to the bank of premiums for continuing in force, until the end of such period of deferral, any insurance coverage provided in connection with the loan pursuant to § 967 of this title.

(63 Del. Laws, c. 2 § 5; 66 Del. Laws, c. 283 § 17.)

§ 967 Insurance.

(a) A bank may request but not require an individual borrower to be insured in respect of a loan under a life, health, accident, health and accident or other permissible insurance policy, whether group or individual, and in the event that a loan to an individual borrower is secured by an interest in real or personal property, the bank may require the borrower to obtain insurance, from an insurer acceptable to the bank, against loss of or damage to such property, or against the liability arising out of the ownership or use of the property and may finance the premiums for such insurance.

(b) In the case of a borrower borrowing for other than personal, household or family purposes, a bank may require the borrower to obtain insurance, from an insurer acceptable to the bank, under a life, health, accident, health and accident or other credit or other permissible insurance policy, whether group or individual, and in the event that the borrower's loan is secured by an interest in real or personal property, the bank may require the borrower to obtain insurance, from an insurer acceptable to the bank, against loss of or damage to such property, or against the liability arising out of the ownership or use of the property and may finance the premiums for such insurance.

(c) The offer and placement of insurance under this section shall be subject in all respects to the applicable provisions of Title 18.

(63 Del. Laws, c. 2 § 5.)

§ 968 Delinquent installments.

If the agreement governing a loan so provides, a bank may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the loan agreement which are in default; provided, however, that in the case of a loan to an individual borrower, no such late or delinquency charge may be charged or imposed unless the agreement governing, or the bond, note or other evidence of, the loan so provides and that no more than 1 such late or delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default; and provided further, however, that for the purpose only of the preceding proviso all payments by the borrower shall be deemed to be applied to satisfaction of installment payments in the order in which they become due. Nothing contained in this section shall limit, restrict or otherwise affect the right of a bank under and pursuant to §§ 963 and 964 of this title to change the periodic percentage rate or rates of interest applicable to the loan agreement between the bank and a borrower upon the occurrence of a delinquency or default or other failure of the borrower to perform in accordance with the terms of the loan agreement.

(63 Del. Laws, c. 2 § 5; 66 Del. Laws, c. 283 § 18; 68 Del. Laws, c. 303 § 24; 71 Del. Laws, c. 19 § 52.)

§ 969 Prepayment.

(a) An individual borrower may prepay a loan in full at any time.

(b) If interest charged pursuant to § 963 of this title in respect to a loan to an individual borrower has been precomputed and taken in advance, then, in the event of prepayment of the entire indebtedness, the bank shall refund to such borrower the unearned portion of the precomputed interest charge. This refund shall be in an amount not less than the amount which would be refunded if the unearned precomputed interest charge were calculated in accordance with the actuarial method, except that the borrower shall not be entitled to a refund which is less than $5. The unearned portion of the precomputed interest charge is, at the option of the bank, either:

(1) That portion of the precomputed interest charge which is allocable to all originally scheduled or, if deferred, all deferred payment periods, or portions thereof, ending subsequent to the date of prepayment. The unearned precomputed interest charge is the total of that which would have been earned for each such period, or portion thereof, had the loan not been precomputed, by applying to unpaid balances of principal, according to the actuarial method, an annual percentage rate based on the precomputed interest charges, assuming that all payments were made as scheduled, or as deferred, if deferred. The bank, at its option, may round this annual percentage rate to the nearest one-quarter of 1 percent; or

(2) The total precomputed interest charge less the earned precomputed interest charge. The earned precomputed interest charge shall be determined by applying an annual percentage rate based on the total precomputed interest charge, under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

(c) As used in subsection (b) of this section:

(1) "Actuarial method" means the method of allocating payments made on a loan between the outstanding balance of the loan and interest pursuant to which a payment is applied first to the accumulated interest and any remainder is subtracted from the outstanding balance of the loan.

(2) "Precomputed interest charge" means interest as computed by the add-on, discount or other similar method.

(3) "Payment period" means the time period within which periodic installment payments of a loan are due as provided in the agreement governing, or the bond, note or other evidence of, the loan.

(d) If a charge was made to an individual borrower for premiums for insuring such borrower under an insurance policy pursuant to § 967 of this title, then, in the event of prepayment, the bank shall refund to such borrower the excess of the charge to such borrower therefor over the premiums paid or payable to the bank, if such premiums were paid or payable by the bank periodically, or the refund for such insurance premium received or receivable by the bank, if such premium was paid or payable in a lump sum by the bank, provided that no such refund shall be required if it amounts to less than $5.

(e) In connection with any prepayment of any loan by an individual borrower, the bank may not impose any prepayment charge, except that in the case of a residential mortgage loan, the bank may charge and collect any prepayment penalty or charge specified in the agreement governing, or the bond, note or other evidence of, the loan.

(f) The terms of prepayment of any loan made to a borrower other than an individual borrower shall be as the bank and the borrower may agree.

(63 Del. Laws, c. 2 § 5.)

§ 970 Refinancing.

(a) An individual borrower may, with the consent of the bank, refinance the entire outstanding and unpaid amount of a loan, and the bank may charge and collect, as interest, a refinancing charge in connection with any such refinancing.

(b) For the purposes of this section, the entire outstanding and unpaid amount of a loan shall be deemed to be:

(1) If the interest and charges in respect of the loan were not taken in advance, the total of the unpaid balance and the accrued and unpaid interest and charges on the date of refinancing; or

(2) If the interest and charges on the loan were precomputed and taken in advance, the amount which the borrower would have been required to pay upon prepayment on the date of refinancing pursuant to § 969 of this title governing refund upon prepayment.

(63 Del. Laws, c. 2 § 5; 66 Del. Laws, c. 283 § 19.)

§ 971 Attorney's fees; costs.

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

(63 Del. Laws, c. 2 § 5; 66 Del. Laws, c. 283 § 20; 72 Del. Laws, c. 15 § 14.)

§ 972 Loans to other than individual borrowers.

This subchapter shall not be deemed to prohibit a bank, in connection with a loan to other than an individual borrower, from:

(1) Extending or deferring the scheduled payment of all or any portion of any installment or installments payable under such loan;

(2) Permitting prepayment or refinancing of such loan in whole or in part;

(3) Charging and collecting any charges in connection with the matters referred to in subdivisions (1) and (2) of this section; or

(4) Charging and collecting late or delinquency charges, attorneys' fees or collection charges.

(63 Del. Laws, c. 2 § 5.)

§ 973 Application of other state laws.

Any other law of this State limiting the rate or amount of interest, discount, points, finance charges, service charges or other charges which may be charged, taken, collected, received or reserved shall not apply to extensions of credit made in accordance with this subchapter.

(63 Del. Laws, c. 2 § 5.)

§ 974 Nonexclusivity; captions.

(a) The provisions of this subchapter are not exclusive and a bank may at its option elect to extend credit either pursuant to this subchapter or as otherwise permitted by applicable law.

(b) Section headings and captions contained in this subchapter are inserted only as a matter of convenience and for reference and do not, and shall not be construed to, define, limit, extend or describe the scope of this subchapter or the meaning or intent of any section hereof.

(63 Del. Laws, c. 2 § 5.)

§ 975 Materiality of terms.

All terms, conditions and other provisions of and relating to any extension of closed end credit as contained in this subchapter or in the agreement governing, or the bond, note or other evidence of the loan (other than those which are interest under this subchapter), including, without limitation, provisions relating to the method of calculating interest, reasons for default and the right to cure any default, rights to accelerate, choice of law, rights to charge and collect attorney's fees, court and collection costs, repayment schedule, balloon payments, loan term and the refunding of unearned interest or insurance charges, shall be and hereby are deemed to be material to the determination of interest under Delaware law, under the most favored lender doctrine, and under § 85 (12 U.S.C. § 85) of the National Bank Act or § 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. § 1831d).

(66 Del. Laws, c. 283 § 23.)

§ 976 Governing law.

The agreement governing, or the bond, note or other evidence of a loan between a bank and an individual borrower shall be governed by the laws of this State.

(66 Del. Laws, c. 283 § 24.)

§ 977 Commissioner's regulations.

The State Bank Commissioner may prescribe regulations to carry out the purpose of this chapter.

(66 Del. Laws, c. 403 § 2.)

§ 978 Short-term consumer loans.

(a) In addition to such other limitations and requirements as are imposed pursuant to other provisions of this subchapter, short-term consumer loans shall be subject to the following:

(1) No bank, trust company or savings bank shall make more than 4 rollovers of an existing short-term consumer loan. A bank, trust company or savings bank may, following not more than the maximum allowable number of rollovers, enter into a workout agreement with the borrower or take such other actions as are lawful to collect any outstanding and unpaid indebtedness.

(2) No bank, trust company or savings bank shall make a short-term consumer loan unless such loan is subject to a right of recission on the part of the individual borrower.

(3) No bank, trust company or savings bank shall pursue or threaten to pursue criminal action against an individual borrower in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearinghouse transaction.

(b) In addition to such other disclosure requirements as are imposed pursuant to other provisions of this subchapter, short-term consumer loans shall be subject to the following: No bank, trust company or savings bank shall make a short-term consumer loan unless the application for such loan, which application shall be written in both English and Spanish, contains a written disclosure, conspicuously displayed, that:

(1) The loan is designed as a short-term cash flow solution and not designed as a solution for longer term financial problems;

(2) Additional fees may accrue if the loan is rolled over; and

(3) Credit counseling services are available to consumers experiencing financial problems.

(c) Nothing in this section prohibits a lender from refinancing the principal amount of a short-term consumer loan, subject to the limitations and requirements imposed herein.

(d) The Commissioner is authorized to promulgate rules and regulations to exempt certain loans or classes of loans from the requirements of this section.

(73 Del. Laws, c. 398 § 2.)

Part II
Banks and Trust Companies
Chapter 10
CONSUMER CREDIT BANKS

Subchapter I

General Provisions

§§ 1001 -1005. Definitions; applicability of other laws; taxation; reserved power of State to amend or repeal chapter; corporate name.

(Repealed by 71 Del. Laws, c. 19 § 53, eff Apr 23, 1997.)

Subchapter II

Formation

§§ 1010 -1024. Incorporation by banks and bank holding companies; articles of association; contents and execution; notice of intention to incorporate; publication; application for certificate of public convenience and advantage; determination of public convenience; organization meeting; notice; proceedings; articles of organization — Contents; approval; filing; certificate of incorporation; commencement of corporate existence; certificate authorizing transaction of business; revocation of charter for failure to commence business within 6 months; fees; prohibition against new consumer credit banks on or after September 29, 1995.

(Repealed by 71 Del. Laws, c. 19 § 53, eff Apr 23, 1997.)

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Conduct of Internal Corporate Affairs

§§ 1030 -1040. Bylaws; directors; stockholders' meetings; voting rights of stockholders; minimum capital stock and surplus; par value of capital stock; payment for and issuance thereof; increase and reduction in such stock; stockholders' liability; dividends; amendment of charter or certificate of incorporation; merger and consolidation — Authorized; procedure; acquisition of assets and assumption of liabilities; Commissioner's approval; title to property.

(Repealed by 71 Del. Laws, c. 19 § 53, eff Apr 23, 1997.)

Subchapter IV

Powers, Conditions and Prohibitions

§§ 1051 -1055. Powers and limitations; office in State; business practices; required number of employees within State; revocation of authority to transact business.

(Repealed by 71 Del. Laws, c. 19 § 53, eff Apr 23, 1997.)

§ 1056 Merger with or conversion into national bank.

(Repealed by 70 Del. Laws, c. 112 § 51, eff Sept 29, 1995.)

Part II
Banks and Trust Companies
Chapter 11
TAXATION

§ 1101 Tax on net earnings.

(a) A franchise tax is hereby imposed on the "taxable income" of banking organizations and trust companies (computed on a basis that consolidates with the income of such banking organization or trust company for the tax year involved, the income of all subsidiary corporations of such banking organization or trust company in accordance with generally accepted accounting principles; provided, however, that the income of subsidiary corporations of out-of-state banks that operate resulting branches in this State shall be consolidated with the income of such resulting branches only if such subsidiaries make the election provided for in subsection (f) of this section). For the purposes of this chapter, "out-of-state bank" shall have the same meaning as in § 795 of this title. Also for the purposes of this chapter, "resulting branch" shall have the same meaning as in § 795 of this title and, in addition, shall also mean the branch offices in this State of out-of-state banks. The "taxable income" on which such tax is imposed shall be equal to the product of paragraphs (a)(1) and (2) of this section as follows:

(1) Net operating income before taxes increased by the amount of securities gains before taxes and reduced by:

a. Securities losses before taxes;

b. That portion of net operating income before taxes, verifiable by documentary evidence, from any subsidiary or foreign branch established within the United States pursuant to § 771 of this title or other branch established within the United States but outside of this State pursuant to federal law or other applicable law of this State which is:

1. Otherwise subject to income taxation under Delaware law;

2. Derived from business activities carried on outside the State and subject to income taxation under the laws of another state, and that portion of net operating income before taxes from any such entity other than a Delaware-chartered banking organization or a national bank located in this State (as defined in § 801(5) of this title) which entity is a banking organization and which is subject to income taxation under the laws of another state; provided, however, that in the case of any subsidiary engaged in the sale, distribution or underwriting of, or dealing in, securities, the amount of income excluded pursuant to this paragraph (a)(1)b.2. shall in no event exceed 50 percent of such subsidiary's net operating income before taxes; or

3. Derived from business activities carried on outside the State, which subsidiary, foreign branch or other branch established outside of this State is subject to shares tax under the laws of another state; provided however, that in the case of any subsidiary engaged in the sale, distribution or underwriting of or dealing in securities, the amount of income excluded pursuant to this sub-subparagraph shall in no event exceed 50 percent of such subsidiary's net operating income before taxes;

c. Net operating income before taxes as shown on the books of account of any non-United States branch office established:

1. Pursuant to § 771 of this title in the case of a state banking organization; or

2. Pursuant to federal law in the case of a national bank;

provided that in either case at least 80 percent of the gross income of such non-United States branch office constitutes "income from sources without the United States" as defined under § 862(a) of the Internal Revenue Code of 1986, as amended [26 U.S.C. § 862(a)], or any successor provisions thereto;

d. The gross income derived from international banking transactions (as defined in § 101 of this title) after subtracting therefrom any expenses or other deductions attributable thereto;

e. The gross income of an international banking facility (as defined in § 101 of this title) less any expenses or other deductions attributable thereto;

f. The interest income from obligations of volunteer fire companies; and

g. Any examination fee paid to the Office of the State Bank Commissioner pursuant to § 127(a) of this title.

(2) Multiplied by the factor .56.

For purposes of this subsection, a resulting branch in this State of an out-of-state bank or foreign bank, or a foreign bank branch, foreign bank limited purpose branch, foreign bank agency or a federal branch or agency (all as defined in § 101 of this title) shall be treated as if it were a corporation. The Commissioner shall prescribe such rules and regulations as may be deemed necessary in order that the tax liability of any resulting branch in this State of an out-of-state bank or foreign bank, or any foreign bank branch, foreign bank limited purpose branch, foreign bank agency or federal branch or agency under this subsection may be returned, determined, computed, assessed, collected and adjusted, in such manner as to clearly reflect the tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(b) A franchise tax is hereby imposed on the "taxable income" of federal savings banks not headquartered in this State but maintaining branches in this State, verifiable by documentary evidence. The "taxable income" on which tax is imposed shall be equal to the net operating income of the branch or branches located in Delaware before taxes increased by the amount of securities gains before taxes and

reduced by the amount of securities losses before taxes and by the interest income from obligations of volunteer fire companies.

(c) Whenever the phrase "international banking facility" is incorporated by reference in Title 30, it shall have the meaning of "international banking transaction" provided in § 101 of this title as the same may from time to time be amended.

(d) Whenever the phrase "international banking transaction" is incorporated by reference in Title 30, it also shall have the meaning of "international banking transaction" provided in § 101 of this title as the same may from time to time be amended.

(e) Any subsidiary corporation of a banking organization or trust company which subsidiary is not itself a banking organization or trust company may elect, in such manner as the State Bank Commissioner shall prescribe, to be taxed in accordance with Chapter 19 of Title 30. If such election is made, such electing subsidiary corporation shall not be considered a "subsidiary corporation" for purposes of subsection (a) of this section. Such election shall not be available to any corporation which is described in § 1901(2) or § 1902(b)(8) of Title 30 or any corporation engaged in the sale, distribution or underwriting of, or dealing in, securities.

(f) For purposes of subsection (a) of this section, any corporation other than a subsidiary engaged in activities authorized under § 761(a)(14) or § 1661(a)(14) of this title 80 percent of whose total combined voting power of all classes of stock entitled to vote is owned by an out-of-state bank that operates a resulting branch in this State or, directly or indirectly, by a bank holding company that also directly or indirectly owns all the stock of a Delaware chartered banking organization or trust company, a national bank located in this State or an out-of-state bank that operates a resulting branch in this State may elect, in such manner as the State Bank Commissioner shall prescribe, to be treated as a "subsidiary corporation" of a banking organization or trust company. Such election shall not be effective unless the electing corporation, together with its "affiliates" as that term is defined in subchapter V of Chapter 7 of this title, employs by the end of its taxable year following the taxable year in which the election is made at least 200 persons within this State. When applicable, the income of such electing corporation shall be consolidated with the taxable income of the resulting branch in this State of an out-of-state bank in accordance with generally accepted accounting principles.

(g) Notwithstanding any of the foregoing, the tax imposed under this section shall not be imposed upon any "taxable income" derived from acting as an insurer pursuant to § 761(a)(14) or § 1661(a)(14) of this title or from acting as an insurer pursuant to Title 18.

(h) For purposes of this chapter, an Edge Act Corporation as defined in § 101(4)c. of this title which is not "engaged in banking" as defined at 12 C.F.R. § 211.2(f), or any subsidiary thereof, may elect to be taxed in accordance with Chapter 19 of Title 30 in lieu of this chapter.

(i) [Repealed.]

(59 Del. Laws, c. 434 § 1; 63 Del. Laws, c. 2 § 6; 64 Del. Laws, c. 43 § 6; 64 Del. Laws, c. 160 § 1; 64 Del. Laws, c. 328 §§ 1, 2; 64 Del. Laws, c. 442 § 1; 64 Del. Laws, c. 461 §§ 3-5; 65 Del. Laws, c. 444 §§ 4, 5; 66 Del. Laws, c. 23 §§ 1, 2; 66 Del. Laws, c. 27 §§ 10, 11; 67 Del. Laws, c. 223 §§ 14, 15; 68 Del. Laws, c. 303 §§ 25-28; 70 Del. Laws, c. 6 §§ 6, 7; 70 Del. Laws, c. 16 § 3; 70 Del. Laws, c. 112 §§ 52-58; 70 Del. Laws, c. 327 §§ 28-31; 71 Del. Laws, c. 19 §§ 54, 55; 71 Del. Laws, c. 25 § 34; 71 Del. Laws, c. 254 §§ 14-16; 72 Del. Laws, c. 15 § 15; 72 Del. Laws, c. 35 § 6; 76 Del. Laws, c. 234 § 1; 79 Del. Laws, c. 3 § 1.)

§ 1101A Alternative annual franchise tax; rate of taxation.

(a) Any banking organization or trust company required to pay a franchise tax pursuant to § 1101 of this title may annually elect, on its original return or on an amended return filed within 180 days of the due date of its original return, to pay an "alternative franchise tax" pursuant to this section, in lieu of payment of the tax on taxable income provided for by § 1101 of this title.

(b) "Alternative franchise tax" shall be the sum of bank income tax liability provided for in subsection (c) of this section below, plus the location benefit tax liability provided for in subsection (d) of this section below. Alternative franchise tax shall become due and payable pursuant to § 1104 of this title.

(c) Bank income tax liability. — A banking organization or trust company electing to pay the alternative franchise tax shall have a bank income tax liability based upon its elective income tax base, computed as follows:

(1) "Entire net income" shall be the net operating income before taxes of the banking organization or trust company, computed on a basis that consolidates with the income of such banking organization or trust company for the tax year involved, the income of all subsidiary corporations of such banking organization or trust company in accordance with generally accepted accounting principles; provided, however, that the income of subsidiary corporations of out-of-state banks that operate resulting branches in this State shall be consolidated with the income of such resulting branches only if such subsidiaries make the election provided for in paragraph (c)(5) of this section. "Net operating income before taxes" shall be computed in accordance with principles used by the Federal Financial Institutions Examination Council or other appropriate federal authority and reported to the Bank Commissioner pursuant to § 904 of this title, reduced by the following:

a. Net operating income before taxes as shown on the books of account of any non-United States branch office established:

1. Pursuant to § 771 of this title in the case of a state banking organization; or

2. Pursuant to federal law in the case of a national bank;

provided, that in either case at least 80% of the gross income of such non-United States branch office constitutes "income from sources without the United States" as defined under § 862(a) of the Internal Revenue Code of 1986 [26 U.S.C. § 862(a)], as amended, or any successor provisions thereto;

b. The gross income derived from international banking transactions (as defined in § 101 of this title) after subtracting there from any expenses or other deductions attributable thereto;

c. The gross income of an international banking facility (as defined in § 101 of this title) less any expenses or other deductions

attributable thereto;

d. Without limitation of the foregoing, any income earned from business activities conducted outside the United States;

e. The interest income from obligations of volunteer fire companies;

f. Any examination fee paid to the Office of the State Bank Commissioner pursuant to § 127(a) of this title; and

g. Income derived from acting as an insurer pursuant to § 761(a)(14) of this title or § 1661(a)(14) of this title or from acting as an insurer pursuant to Title 18.

(2) Any subsidiary corporation of an electing banking organization or trust company which subsidiary is not itself a banking organization or trust company may elect, in such manner as the State Bank Commissioner shall prescribe, to be taxed in accordance with Chapter 19 of Title 30. If such election is made, such electing corporation shall not be considered a "subsidiary corporation" for purposes of subsection (c) of this section. Such election shall not be available to any corporation which is described in § 1901(2) or § 1902(b)(8) of Title 30 or any corporation engaged in the sale, distribution or underwriting of, or dealing in, securities.

(3) Any corporation, other than a subsidiary engaged in activities authorized under § 761(a)(14) of this title or § 1661(a)(14) of this title (relating to acting as an insurer and transacting the business of insurance), 80% of whose total combined voting power of all classes of stock entitled to vote is owned by an out-of-state bank that operates a resulting branch in this State or, directly or indirectly, by a bank holding company that also directly or indirectly owns all the stock of a Delaware chartered banking organization or trust company, a national bank located in this State or an out-of-state bank that operates a resulting branch in this State, may elect, in such manner as the State Bank Commissioner shall prescribe, to be treated as a "subsidiary corporation" of an electing banking organization or trust company. Such election shall not be effective unless the electing corporation, together with its "affiliates" as that term is defined in subchapter V of Chapter 7 of this title, employs by the end of its taxable year following the taxable year in which the election is made at least 200 persons within this State.

(4) For purposes of this section, an "Edge Act corporation" as defined in § 101(4)c. of this title which is not "engaged in banking" as defined at 12 C.F.R. § 211.2(f), or any subsidiary thereof, may elect to be taxed in accordance with Chapter 19 of Title 30 in lieu of this section.

(5) For purposes of this section, a resulting branch in this State of an out-of-state bank shall be treated as if it were a corporation. The Commissioner shall prescribe such rules and regulations as may be deemed necessary in order that the tax liability of any resulting branch in this State of an out-of-state bank may be returned, determined, computed, assessed, collected and adjusted, in such manner as to clearly reflect the tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(6) "Elective income tax base" shall mean the entire net income of a banking organization or trust company which is apportioned to the State of Delaware in accordance with the following provisions:

a. If the entire business of a banking organization or trust company (and each of its subsidiary corporations the income of which is included in entire net income) is transacted or conducted within this State, 100% of the entire net income shall be apportioned to this State. If the business of a banking organization or trust company (or any of its subsidiary corporations the income of which is included in entire net income) is transacted or conducted in part without this State, the elective income tax base shall be the result of multiplying entire net income by an apportionment percentage determined by adding the banking organization or trust company's property factor, payroll factor, and 2 times the receipts factor together and dividing the sum by 4. If 1 of the factors is missing, the remaining factors are added together and the sum is divided by the number of remaining factors. If 2 of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but a factor is not missing merely because its numerator is zero.

b. A banking organization or trust company's property factor, payroll factor and receipts factor shall be calculated using the combined property, payroll and receipts of the banking organization or trust company and each subsidiary corporation the income of which is included in entire net income.

c. A banking organization or trust company's property factor is a fraction, the numerator of which is the average of the values, at the beginning and end of the tax year (or as of such other dates approved by the Bank Commissioner), of all the real and tangible personal property, owned or rented, in this State by the taxpayer, and the denominator of which is the average of the values at the beginning and end of the tax year (or as of such other dates approved by the Bank Commissioner) of all such property of the taxpayer both within and without this State; provided, that any property which is not used in the taxpayer's business shall be disregarded. For the purposes of this paragraph, property owned by the taxpayer shall be valued at its original cost to the taxpayer, and property rented by the taxpayer shall be valued at eight times the annual rental.

d. A banking organization or trust company's payroll factor is a fraction, the numerator of which is wages, salaries and other compensation paid by the taxpayer to employees within this State during the tax year, and the denominator of which is wages, salaries and other compensation paid within and without this State during the tax year to all employees of the taxpayer. Wages, salaries and other compensation are paid to an employee within this State if:

1. The individual's service is performed entirely within this State;

2. The individual's service is performed within and without this State, but the service performed without this State is incidental to the individual's service within this State;

3. A portion of the service is performed within this State and the base of operations of the individual is in this State;

4. A portion of the service is performed within this State and, if there is no base of operations, the place from which the individual's service is directed or controlled is in this State;

5. A portion of the service is performed within this State and neither the base of operations of the individual nor the place from which the service is directed or controlled is in any state in which some part of the service is performed, but the individual's residence is in this State; or

6. The individual is neither a resident of nor performs services in this State but is directed or controlled from an office in this State and returns to this State periodically for business purposes and the state in which the individual resides does not have jurisdiction to impose income or franchise taxes on the employer.

e. A banking organization or trust company's receipts factor is a fraction, the numerator of which is the total gross receipts of the taxpayer in this State during the tax year, and the denominator of which is the total gross receipts of the taxpayer everywhere during the tax year.

1. Sales of tangible personal property are in this State if the property is physically delivered within this State to the purchaser or the purchaser's agent (but not including delivery to the United States mail or to a common or contract carrier for shipment to a place outside this State).

2. Rents and royalties from tangible property are in this State if the property is physically located in this State.

3. Patent and copyright royalties are in this State to the extent the product or process protected by the patent is manufactured or used in this State or if the publication protected by the copyright is produced or printed in this State.

4. Gains from the sale or other disposition of real property are in this State if the property is physically located in this State.

5. Gains from the sale or other disposition of tangible property for which an allowance for depreciation is permitted for federal income tax purposes are in this State if the property is physically located in this State or is normally used in the taxpayer's business in this State.

6. Interest, fees or penalties in the nature of interest, and loan servicing fees from loans secured by real property, and gains from the sale of loans secured by real property are in this State if the property is located within this State. If the property is located both within this State and one or more other States, the receipts described in this subsection are included in the numerator of the receipts factor if more than 50% of the fair market value of the real property is located within this State. If more than 50% of the fair market value of the real property is not located within any 1 state, the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this State.

7. Interest, fees or penalties in the nature of interest, and loan servicing fees from loans not secured by real property, and gains from the sale of loans not secured by real property, are in this State if the borrower is located in this State.

8. Gross receipts in this State from interest, dividends, gains, and other income from investment assets and activities and from trading assets and activities are determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are attributable to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets. A "regular place of business" means an office at which the taxpayer carries on such business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

9. The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this State by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside the State. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than 1 regular place of business and 1 such regular place of business is in this State and one such regular place of business is outside this State, such asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines shall be presumed to be established at the headquarters of the taxpayer. The "headquarters" of the taxpayer shall be considered located, with respect to a state-chartered bank, in the state under the laws of which the bank was created, and with respect to a national banking association, in the state of the bank's home office as designated in its charter.

10. All other gross receipts not specifically addressed herein shall be considered in this State if the activity which gives rise to the gross receipts is performed within this State.

11. Where an asset originated by the taxpayer is subsequently securitized, reference shall be made to the original transaction which created the asset and the subsequent transfer shall be disregarded for purposes of determining gross receipts attributable to this State under paragraphs (c)(6)e.6., (c)(6)e.7. and (c)(6)e.8. of this section above.

(7) The bank income tax liability of an electing banking organization or trust company shall be computed by applying the following rates of tax to the electing banking organization or trust company's elective income tax base: 7.0% of elective income tax base not in excess of $50,000,000; 5.0% of elective income tax base in excess of $50,000,000 but not in excess of $100,000,000; 3% of elective income tax base in excess of $100,000,000 but not in excess of $500,000,000; 1.0% of elective income tax base in excess of $500,000,000 but not in excess of $1,300,000,000; and 0.5% of elective income tax base in excess of $1,300,000,000.

(d) Location benefit tax liability. — In addition to Bank Income Tax Liability as provided in subsection (c) of this section above, any electing banking organization or trust company paying the alternative franchise tax under this section shall be liable for a location benefit tax liability computed as follows:

(1) The location benefit tax base shall consist of all property, cash, interest bearing balances, securities, loans and leases, trading account assets, securitized assets, computed as of December 31 of the year prior to the year for which alternative franchise tax is paid, but shall not include such property, cash, interest bearing balances, securities, loans and leases, trading account assets, securitized assets as are directly attributable to the operations of a branch operating entirely outside of this State.

(2) The location benefit tax liability shall be $1,600,000, plus 0.012% of the value of assets not in excess of $5,000,000,000; 0.008% of the value of assets in excess of $5,000,000,000 but not in excess of $20,000,000,000; 0.004% of the value of assets in excess of $20,000,000,000 but not in excess of $90,000,000,000.

(75 Del. Laws, c. 223 § 1; 76 Del. Laws, c. 234 § 2; 78 Del. Laws, c. 72 § 1.)

§ 1102 Statement of net income to be filed.

(a) For purposes of assessment, the president, treasurer or other proper officer of every banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State (or out-of-state bank that operates a resulting branch in this State), shall, in each year, file with the December 31 call report, a true statement, verified by oath, setting forth the net income of such banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State as defined in this chapter and such other true statement, in such form as shall be specified by the State Bank Commissioner, verified by oath setting forth the "taxable income" of such banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State as defined in this chapter. In the case of an out-of-state bank that operates more than one resulting branch in this State, the statement setting forth the taxable income of such resulting branches shall set forth the information required by the State Bank Commissioner on a basis that consolidates such information for all resulting branches of such out-of-state bank in this State. Any and all documents relating to the taxation of a banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State shall be true statements, verified by oath, by the president, treasurer or other proper officer of such banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State (or out-of-state bank that operates a resulting branch in this State).

(b) Every banking organization (or out-of-state bank that operates a resulting branch in this State), trust company or federal savings bank not headquartered in this State but maintaining branches in this State failing to comply with subsection (a) of this section shall be subject to a penalty of $25 for each day that it continues in such failure, unless the Commissioner is satisfied that such failure was not wilful. Any penalty that may be imposed by the Commissioner hereunder shall be paid to the State Treasurer for deposit in the General Fund.

(32 Del. Laws, c. 104 § 4; Code 1935 § 2318; 44 Del. Laws, c. 132 § 2; 5 Del. C. 1953 § 1103; 59 Del. Laws, c. 434 § 1; 64 Del. Laws, c. 160 § 2; 65 Del. Laws, c. 444 § 4; 68 Del. Laws, c. 303 § 29; 70 Del. Laws, c. 112 § 59; 70 Del. Laws, c. 327 § 32; 71 Del. Laws, c. 19 § 56.)

§ 1103 Review of tax.

The assessment of tax under this chapter shall be reviewed and corrected by the State Bank Commissioner upon application by any party interested, prior to the first day of May in the year in which the tax is levied, if, upon such application, good cause be shown for correction.

(32 Del. Laws, c. 104 § 6; Code 1935 § 2320; 44 Del. Laws, c. 132 § 3; 5 Del. C. 1953 § 1105; 59 Del. Laws, c. 434 § 1; 61 Del. Laws, c. 82 §§ 2, 3; 64 Del. Laws, c. 160 § 3; 65 Del. Laws, c. 444 § 4; 66 Del. Laws, c. 23 § 3; 66 Del. Laws, c. 378 § 1; 70 Del. Laws, c. 327 § 33.)

§ 1104 Date of payment and collection of tax; estimated tax.

(a) Taxes imposed under this chapter are due and payable on or before March 1 in the year in which they are assessed, and after that date shall be collected by the State Bank Commissioner. Except that with respect to a banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State whose franchise tax liability for the current year is estimated to exceed $10,000, a tentative return covering estimated bank franchise tax liability for the current income year, to be in such form and containing such information as the State Bank Commissioner shall prescribe, shall be filed with the State Bank Commissioner on or before March 1 of the current income year. Every banking organization (or out-of-state bank that operates a resulting branch in this State), trust company or federal savings bank not headquartered in this State but maintaining branches in this State failing to file the tentative return covering estimated bank franchise tax liability required by this subsection shall be subject to a penalty of $25 for each day that it continues in such failure, unless the Commissioner is satisfied that such failure was not wilful. Any penalty that may be imposed by the Commissioner hereunder shall be paid to the State Treasurer for deposit in the General Fund.

(b) The estimated tax liability as calculated per subsection (a) of this section shall be due and payable in installments of 40 percent of the estimated tax liability on June 1, 20 percent on September 1 and 20 percent on December 1 of the current taxable year with the balance to be paid on March 1 of the succeeding year.

(c)(1) In the case of any underpayment of estimated tax or installment of estimated tax required by this chapter, there shall be added to the tax for the taxable year an amount determined at the rate of 0.05 percent per day upon the amount of underpayment for the period of the underpayment.

(2) For purposes of paragraph (1) of this subsection, the amount of the underpayment shall be the excess of:

a. The amount of the estimated tax or installment payment which would be required to be made if the estimated tax were equal to 80 percent of the tax shown on the final return for the taxable year, or if no return was filed, 80 percent of the tax for such year, over

b. The amount, if any, of the estimated tax or the installment paid on or before the last date prescribed for payment.

(3) The period of the underpayment shall run from the date the estimated tax or installment was required to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year.

(4) Notwithstanding paragraphs (1)-(3) of this subsection, the addition to the tax with respect to any underpayment of estimated tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State for the preceding taxable year.

(5) [Repealed.]

(d) In the case of a banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State which has been engaged in banking business of any kind in this State for less than the whole year, the amount of tax due, at the rates provided in this chapter, shall be prorated for that portion of the year during which the banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State was engaged in banking business of any kind within this State. Within 30 days of the cessation of all banking business of any kind within this State, the president, treasurer or other proper officer shall file a true statement, verified by oath, setting forth the net income of such banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State as defined in this chapter, and such other true statements, in such form as shall be specified by the Commissioner, verified by oath, setting forth the "taxable income" of such banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State as defined in this chapter.

(e) If any banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State shall fail to pay any tax due under this chapter on or before the due date, a penalty of 0.05 percent shall be assessed for each day that the same shall remain unpaid after such date.

(32 Del. Laws, c. 104 § 10; Code 1935 § 2324; 5 Del. C. 1953 § 1109; 59 Del. Laws, c. 434 § 1; 61 Del. Laws, c. 82 § 4; 66 Del. Laws, c. 23 §§ 4, 5; 66 Del. Laws, c. 378 §§ 2, 3; 67 Del. Laws, c. 55 § 2; 67 Del. Laws, c. 279 § 1; 68 Del. Laws, c. 303 §§ 30, 31; 70 Del. Laws, c. 112 §§ 60-63; 70 Del. Laws, c. 327 §§ 34-37; 71 Del. Laws, c. 19 §§ 57-59; 71 Del. Laws, c. 217 §§ 11, 12; 72 Del. Laws, c. 15 § 16; 79 Del. Laws, c. 3 § 2.)

§ 1105 Rate of taxation; credits [For application of this section, see 79 Del. Laws, c. 291, §§ 2 and 3]

(a) The rate of tax upon the taxable income of banking organizations, trust companies and federal savings banks not headquartered in this State but maintaining branches in this State, excluding any banking organization or trust company electing to pay alternative franchise tax pursuant to § 1101A of this title, shall be as follows: 8.7% of the amount of taxable income not in excess of $20,000,000; 6.7% of the amount of taxable income in excess of $20,000,000, but not in excess of $25,000,000; 4.7% of the amount of taxable income in excess of $25,000,000, but not in excess of $30,000,000; 2.7% of the amount of taxable income in excess of $30,000,000; 1.7% of the amount of taxable income for years beginning after December 31, 1996, in excess of $650,000,000.

(b) For taxable years beginning after December 31, 1991, and ending before January 1, 1994, there shall be allowed as a credit against the tax imposed under subsection (a) of this section the applicable amounts provided in [former] § 2011(h) or (i) (or both) of Title 30 [now repealed] as if the definition of "taxpayer" in § 2010(13) of Title 30 and the definition of "qualified activity" of § 2010(3) of Title 30 also included, solely for purposes of the credit provided in this subsection, entities subject to tax under this section, provided the taxpayer meets the qualifications set forth in [former] § 2011(h) or (i) of Title 30 [now repealed]. Notwithstanding the provisions of this subsection, credits arising solely by virtue of § 2011(a) of Title 30 shall not be allowed against the tax imposed by this chapter.

(c)(1) The amount of credit allowable under subsection (b) of this section shall not exceed 50% of the amount of tax imposed upon the taxpayer by subsection (a) of this section for such taxable year.

(2) The amount of the credit determined under subsection (b) of this section for any taxable year that is not allowable for such taxable year solely as a result of the limitation contained in paragraph (1) of this subsection shall be a credit carryover to each of the succeeding 9 years in the manner described in § 2011(f) of Title 30.

(d) For taxable years beginning after December 31, 1996, and ending before January 1, 2012, there shall be allowed as a credit against the tax imposed under subsection (a) of this section or § 1101A of this title an amount equal to $400 for each new qualified employee in excess of 50 qualified employees above the number of employees employed by the banking organization in full time employment during the base year. For purposes of this subsection, the base year shall be the period after December 31, 1995, and before January 1, 1997.

(e) The following conditions apply in determining the credit under subsection (d) of this section:

(1) No credit may be claimed until the taxpayer has made new investments of at least $15,000 per qualified employee in excess of the number of employees employed by the banking organization in full time employment during the base year. "New investment," for purposes of this subsection, shall include only the cost of land and improvements to land, machinery and equipment; provided, that such new investment is placed in service within this State after December 1996 and was not used by any person at any time within the 1-year period ending on the date the taxpayer placed such property in service in the conduct of the business of a banking organization. For

purposes of this subsection, if the new investment is leased or subleased by the taxpayer, the amount of new investment shall be deemed to be 8 times the net annual rent paid or incurred by the taxpayer for such investment. The net annual rent shall be the gross rent paid or incurred by the taxpayer during the taxable year, less any gross rental income received by the taxpayer from sublessees of any portion of such facility during such taxable year; and

(2) In determining the number of qualified employees, there shall be considered only employees:

a. Who are employed within this State on a regular and full time basis. "Full time employment" shall have the meaning ascribed to that term in § 2010(14) of Title 30;

b. For whom the banking organization or trust company provides health care benefits as defined in § 2010(15) of Title 30; and

c. Who have been employed in this State by the taxpayer for a continuous period of at least 6 months, verifiable by documentary evidence, and who were not employed at the same facility in substantially the same capacity by a different employer during all or a part of the base year.

(f)(1) The amount of credit allowable or carried forward under subsections (b), (c), (d), (e), (h) and (i) of this section shall together not exceed 50% of the amount of tax imposed upon the taxpayer by subsection (a) for such taxable year.

(2) The amount of credit determined under subsection (d) or (h) of this section for any taxable year that is not allowable for such taxable year solely as a result of the limitation contained in paragraph (f)(1) of this section shall be a credit carryover to each of the succeeding 9 years in the manner described in § 2011(f) of Title 30.

(g) Any entity taxable under this section or § 1101A of this title, is eligible for tax credits in accordance with the Historic Preservation Tax Credit Act (subchapter II, Chapter 18, Title 30), which credits shall be against taxes imposed under this chapter; provided, however, that all claimed credits are accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that such credits have been earned in compliance with that act.

(h) For taxable years beginning after December 31, 2011, and ending before January 1, 2032, there shall be allowed as a credit against the tax imposed under subsection (a) of this section or § 1101A of this title an amount equal to $1,250 for each new qualified employee above the number of employees employed by the banking organization or trust company in full-time employment during the base year; provided, however, that the credit provided pursuant to this subsection shall be available only for taxable years in which the banking organization or trust company has at least 200 new qualified employees above the number of employees employed by the banking organization or trust company in full-time employment during the base year. For purposes of this subsection and subsection (i) of this section, the base year shall be the period after December 31, 2010, and before January 1, 2012, provided, however, that beginning on January 1, 2022, and each January 1 thereafter, the base year shall increase by 1 calendar year until the base year shall have reached the period after December 31, 2020, and before January 1, 2022.

(i) The following conditions apply in determining the credit under subsection (h) of this section:

(1) No credit may be claimed until the taxpayer has made new investments of at least $15,000 per qualified employee in excess of the number of employees employed by the banking organization or trust company in full-time employment during the base year. "New investment," for purposes of this subsection, shall include only the cost of land and improvements to land, machinery and equipment; provided, that such new investment is placed in service within this State after December 2011 and was not used by any person at any time within the 1-year period ending on the date the taxpayer placed such property in service in the conduct of the business of a banking organization or trust company. For purposes of this subsection, if the new investment is leased or subleased by the taxpayer, the amount of new investment shall be deemed to be 8 times the net annual rent paid or incurred by the taxpayer for such investment. The net annual rent shall be the gross rent paid or incurred by the taxpayer during the taxable year, less any gross rental income received by the taxpayer from sublessees of any portion of such facility during such taxable year; and

(2) In determining the number of qualified employees, there shall be considered only employees:

a. Who are employed within this State on a regular and full-time basis. "Full-time employment" shall have the meaning ascribed to that term in § 2010(14) of Title 30;

b. For whom the banking organization or trust company provides health care benefits as defined in § 2010(15) of Title 30; and

c. Who have been employed in this State by the taxpayer for a continuous period of at least 6 months, verifiable by documentary evidence, and who were not employed at the same facility in substantially the same capacity by a different employer during all or a part of the base year.

(32 Del. Laws, c. 104 § 5; Code 1935 § 2319; 5 Del. C. 1953 § 1104; 59 Del. Laws, c. 434 § 1; 61 Del. Laws, c. 77 § 1; 63 Del. Laws, c. 2 § 4; 64 Del. Laws, c. 160 § 4; 65 Del. Laws, c. 444 § 4; 68 Del. Laws, c. 202 § 7; 70 Del. Laws, c. 327 §§ 38, 39; 70 Del. Laws, c. 486 §§ 1, 2; 71 Del. Laws, c. 19 § 60; 72 Del. Laws, c. 331 § 1; 73 Del. Laws, c. 6 § 4; 75 Del. Laws, c. 223 § 2; 75 Del. Laws, c. 335 § 1; 78 Del. Laws, c. 47 § 9; 78 Del. Laws, c. 72 §§ 2-4; 79 Del. Laws, c. 291 §§ 1, 2.)

§ 1106 Disposition of taxes.

All moneys collected or received under this chapter shall be the moneys of the State, and the State Bank Commissioner shall pay all amounts so collected and received into the General Fund of the State Treasury.

(32 Del. Laws, c. 104 § 11; Code 1935 § 2325; 42 Del. Laws, c. 77 §§ 1, 2; 5 Del. C. 1953 § 1110; 59 Del. Laws, c. 434 § 1.)

§ 1107 Duties of Attorney General.

The Attorney General shall act as the legal representative of the State in all actions or proceedings had under this chapter, and shall

render legal assistance to the State Bank Commissioner in executing the provisions hereof.

(32 Del. Laws, c. 104 § 12; Code 1935 § 2326; 5 Del. C. 1953 § 1111; 59 Del. Laws, c. 434 § 1.)

§ 1108 [Reserved.]

§ 1109 State corporation income and other taxes; exemption.

Notwithstanding Title 30, all banking organizations, trust companies and federal savings banks not headquartered in this State but maintaining branches in this State being taxed in accordance with this chapter, shall be exempt from the state corporation income tax as of January 1, 1974, and the taxation of income of banking organizations, trust companies and federal savings banks not headquartered in this State but maintaining branches in this State under this chapter shall be in lieu of occupational taxes or taxes upon the income, capital, and assets of such banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State, except that no real estate owned or acquired by such banking organization, trust company or federal savings bank not headquartered in this State but maintaining branches in this State shall be exempt from taxation. Except for corporations making the election provided in § 1101(e) of this title, for purposes of this section, any subsidiary corporation of a banking organization or trust company, including any corporation treated as a subsidiary corporation by reason of § 1101(f) of this title, shall enjoy the same exemptions as are applicable to banking organizations and trust companies. A subsidiary corporation or a division of a bank or trust company engaged in activities authorized under § 761(a)(14) or § 1661(a)(14) of this title shall be taxed in the same manner as an entity engaged in such activities pursuant to Title 18.

(59 Del. Laws, c. 434 § 1; 64 Del. Laws, c. 461 § 6; 65 Del. Laws, c. 444 § 4; 67 Del. Laws, c. 223 § 16; 68 Del. Laws, c. 303 § 33; 70 Del. Laws, c. 327 §§ 40, 41; 71 Del. Laws, c. 25 § 34.)

§ 1110 Severability.

If any provision of this chapter or the application of any section or part thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application.

(64 Del. Laws, c. 442 § 2; 64 Del. Laws, c. 461 § 8.)

§ 1111 Period of limitation upon assessments.

(a) Except as otherwise provided in this section, the amount of tax imposed by this chapter shall be assessed within 3 years after the last day prescribed for filing the return or, if later, the date the return was filed.

(b) In the case of a false or fraudulent return with intent to evade tax or a failure to file a return, the tax may be assessed at any time.

(c) When, before the expiration of the time prescribed in subsection (a) of this section for the assessment of tax, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the taxpayer may be assessed at any time before the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(70 Del. Laws, c. 112 § 64.)

§ 1112 Period of limitation on credit or refund.

Claim for a credit or refund of an overpayment of any tax imposed by this chapter shall be filed by the taxpayer with the Commissioner not later than 3 years from the last date prescribed for filing the return (including the time permitted in any agreements for the extension of time) or 2 years from the time the tax was paid, whichever of such periods is later, or if no return was filed by the taxpayer, not later than 2 years from the time the tax was paid.

(70 Del. Laws, c. 112 § 64.)

§ 1113 Secrecy of returns and information; penalty.

(a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Commissioner or any person who is an officer or employee in the Office of the Commissioner, or for any other officer or employee of this State who has access to tax returns or information from tax returns under this chapter, to disclose or make known to any person in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter. Notwithstanding the foregoing, the Commissioner may permit the Commissioner of Internal Revenue of the United States, the proper officer of this or any other state, the District of Columbia, or any possession or territory of the United States that imposes a tax, or the authorized representative of any of such officers, to inspect the tax return of any taxpayer under this chapter, and the Commissioner may furnish to any such officer, or such officer's authorized representative, an abstract of the tax return of any taxpayer under this chapter or supply such officer or such officer's authorized representative with information contained in any such tax return or disclosed by the report of examination or investigation of the income or return of such taxpayer, but only for the purpose of, and only to the extent necessary in, the administration of the tax laws of such jurisdiction; provided, however, that no such permission shall be granted, and no such information shall be furnished, to any such officer or the officer's representative unless the statutes of such jurisdiction grant substantially similar privileges to the Commissioner or the Commissioner's legal representative.

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

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

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

(72 Del. Laws, c. 15 § 17; 73 Del. Laws, c. 24 § 2.)

§ 1114 Abatements.

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

(1) Excessive in amount;

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

(3) Erroneously or illegally assessed.

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

(72 Del. Laws, c. 15 § 17.)

§ 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.

(72 Del. Laws, c. 15 § 17.)

Part II
Banks and Trust Companies
Chapter 12
BANK OWNERSHIP AND PARTICIPATION IN EXPORT TRADING COMPANY ACT

§ 1201 Participation by banks located in State in export trading companies.

Notwithstanding any other provision of this chapter, banks regulated hereunder may invest or otherwise participate in the capital and financing of, management, direction and advising of export trade companies as defined and to the extent permitted by federal law 15 U.S.C. § 4001 et seq. Whatever may be done by such banks hereunder may be done directly or indirectly by contractual arrangements or by subsidiary and affiliate companies owned or controlled alone or together with other persons to the extent permitted by law, and may be delegated to their officers, employees or other trustees or persons appointed to such effect.

(65 Del. Laws, c. 160 § 2.)

Part II
Banks and Trust Companies
Chapter 13
BANKING ORGANIZATION'S POWER TO CLOSE OFFICES ON HOLIDAYS AND DURING EMERGENCIES

§ 1301 Definitions.

As used in this chapter, unless the context requires otherwise:

(1) "Officers" means those persons designated by the banking organization's board of directors or trustees to act for the banking organization.

(2) "Emergency" means any condition which interferes with the conduct of normal business operations at 1 or more of a banking organization's offices, or which poses an imminent or existing threat to the safety and security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any 1 or more of the following: Fire, flood, wind, ice, rain or snow, labor dispute, power failure, transportation failure, war, nuclear incident, riot, civil commotion or other acts of lawlessness or violence.

(3) "Office" means any place at which a banking organization transacts business or conducts operations related to the transaction of business, and shall specifically include, without limiting the generality of the foregoing, automatic teller machines.

(65 Del. Laws, c. 298 § 1.)

§ 1302 Closing on legal holidays.

Any banking organization may, at its option, either close or remain open on Saturdays, Sundays and the legal holidays designated in § 501 of Title 1 and holidays observed by the Federal Reserve Bank for the district which includes Delaware. As to any banking organization electing to remain open on any of such holidays, such day or days shall not constitute a holiday within the meaning of the laws of this State, and such banking organization shall incur no liability by reason of remaining open on such holiday. If any banking organization elects to close on any such holidays, any act authorized, required or permitted to be performed at or by such banking organization may be performed on the next succeeding banking day and no liability or loss of rights of any kind shall result from remaining closed, notwithstanding any law of this State to the contrary. This section shall not operate to invalidate or prohibit the doing of any act by any person or banking organization on any of such holidays, and nothing in any laws of this State, in any manner whatsoever, shall affect the validity or render void or voidable the payment, certification or acceptance of a check or any other negotiable instrument or any other transaction by any other person or banking organization, because done or performed during any of such holidays, notwithstanding any other law of this State to the contrary.

(65 Del. Laws, c. 298 § 1.)

§ 1303 Proclamation of emergency.

Whenever the Governor declares a disaster or emergency under Chapter 31 of Title 20, banking organizations may close 1 or more or all of their offices when in the opinion of their officers such offices are directly or indirectly affected by such disaster or emergency.

(65 Del. Laws, c. 298 § 1.)

§ 1304 Powers of officers.

Whenever the officers of a banking organization are of the opinion that an emergency exists which affects 1 or more of the organization's offices, they shall have the authority to close 1 or more or all such offices even though the Governor has not issued and does not issue a proclamation of emergency, and they may, but need not, provide that the business normally transacted at a closed office will be transacted at another office designated by the bank until further notice. The discretion of the officers in acting pursuant to this section, when exercised in good faith, shall not be questioned in any court or place or by any State agency.

(65 Del. Laws, c. 298 § 1.)

§ 1305 Prompt notice required.

A banking organization closing an office or offices pursuant to this chapter shall give as prompt notice to the State Bank Commissioner of its action as conditions will permit.

(65 Del. Laws, c. 298 § 1.)

§ 1306 Immunity from liability.

No banking organization and no director, officer or employee of a bank shall be liable to any person for any direct or indirect loss suffered by such person by reason of the organization's failure or inability to make the organization's premises and facilities available to such person, or by reason of the banking organization's failure to perform, or its delay in performing any contractual, statutory or other duty assumed by or imposed upon it in any capacity, when such failure, inability or delay is caused by an emergency as defined by this chapter.

(65 Del. Laws, c. 298 § 1.)

§ 1307 Construction of chapter.

This chapter shall be construed and applied as being in addition to and not in substitution for any other law of this State or of the United States excusing delays by banking organizations in the performance of duties or obligations, or authorizing the closing of banking organizations because of emergencies or conditions beyond the organization's control or otherwise.

(65 Del. Laws, c. 298 § 1.)

§ 1308 Limited operations authorized.

A bank office closed as authorized by this chapter may nonetheless conduct limited operations and perform banking transactions.

(65 Del. Laws, c. 298 § 1.)

Part II
Banks and Trust Companies
Chapter 14
FOREIGN BANKS
Subchapter I
Foreign Bank Branches, Foreign Bank Limited Purpose Branches and Foreign Bank Agencies

§ 1401 Scope; construction.

This subchapter deals with conditions under which foreign banks may transact business in this State; it shall not be construed to limit the powers granted to any bank in this State to conduct its business.

(65 Del. Laws, c. 444 § 6.)

§ 1402 When foreign banks may transact business in this State.

(a) No foreign banks shall transact a banking business or maintain in this State an office for carrying on such business or any part thereof, except as otherwise provided in subchapter III of this chapter, unless such foreign bank has:

(1) Been authorized by the laws under which it was organized and by its charter to carry on such business;

(2) Furnished to the Commissioner such proof as to the nature and character of its business and as to its financial condition as the Commissioner may require; and

(3) Filed with the Commissioner an application containing the information required by § 1403 of this title and received a certificate of authority duly issued to it by the Commissioner as provided in § 1403 of this title.

(b) This section shall not be construed to prohibit foreign banks which do not maintain an office in this State for the transaction of the business from:

(1) Making loans or issuing letters of credit in this State secured by mortgages on real property, nor from contracting in this State with a banking organization to acquire from or through such banking organization a part interest or the entire interest in a loan or evidence of debt which such banking organization has heretofore or hereafter made, purchased or acquired, for its own account or otherwise, together with a like interest in any security or in any security instrument proposed to be given or heretofore or hereafter given to secure or evidence such loan or evidence of debt;

(2) Enforcing in this State obligations heretofore or hereafter acquired by it in the transaction of business outside of this State, or in the transaction of any business authorized by this section;

(3) Acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise protecting or conveying property in this State heretofore or hereafter assigned, transferred, mortgaged or conveyed to it as security for, or in whole or part, satisfaction of a loan or loans made by it or obligations made by it or obligations acquired by it in the transaction of business outside of this State, or in the transaction of any business authorized by this section; or

(4) Issuing letters of credit or otherwise guaranteeing the obligations of the State or any agency or political subdivision thereof.

(65 Del. Laws, c. 444 § 6; 71 Del. Laws, c. 254 § 17.)

§ 1403 Application; approval by Commissioner.

(a) The application of a foreign bank to procure a certificate of authority to establish and maintain a foreign bank branch, foreign bank limited purpose branch or foreign bank agency shall state:

(1) The name of the foreign bank and the country under the laws of which it was organized.

(2) The date of its incorporation and the period of its duration.

(3) The address of its principal office in the country under the laws of which it was organized.

(4) The names of other states and countries in which it is admitted or qualified to transact business and the nature of the worldwide business conducted by the foreign bank.

(5) The amount of its capital stock actually paid in cash and the amount subscribed for and unpaid.

(6) The actual value of the assets of the foreign bank, which must be at least $1,000,000 in excess of its liabilities; and a complete and detailed statement of its financial condition as of a date within 120 days prior to the date of such application or such other date as the Commissioner may determine.

(7) The location by street and post-office address and county where its business is to be transacted in this State and the name of the person who shall be in charge of the business and affairs of the proposed foreign bank branch, foreign bank limited purpose branch or foreign bank agency.

(8) The address of its proposed registered office in this State, and the name of its proposed registered agent in this State at that address for service of any paper, notice or legal process upon the applicant in connection with matters arising out of this chapter.

(9) Such additional information as shall enable the Commissioner to determine whether such foreign bank is entitled to a certificate of authority.

(b) At the time any such application is submitted to the Commissioner, such foreign bank shall also submit a duly authenticated copy of its charter and bylaws, or an equivalent thereof satisfactory to the Commissioner.

(c) Any application under this section shall be accompanied by a filing fee in the amount of $2,000 for the use of the State.

(d) In determining whether to approve any application under this section and to issue a certificate of authority to such applicant, the Commissioner shall consider:

(1) The financial and managerial resources of the foreign bank;

(2) The future prospects of the foreign bank and its proposed activity in this State;

(3) The financial history of the foreign bank;

(4) Whether the establishment of the proposed foreign bank branch, foreign bank limited purpose branch or foreign bank agency may result in undue concentration of resources or substantial lessening of competition in this State; and

(5) The convenience and needs of the public of this State.

(e) A certificate of authority issued in accordance with this section shall remain in effect until surrendered or revoked.

(65 Del. Laws, c. 444 § 6; 70 Del. Laws, c. 112 §§ 66-70; 71 Del. Laws, c. 254 § 18; 72 Del. Laws, c. 35 §§ 8-10.)

§ 1404 Rights and privileges of foreign bank holding certificate of authority; prohibited acts; deposits.

(a)(1) A foreign bank holding a certificate of authority pursuant to this subchapter that has elected this State as its home state under the International Banking Act of 1978, 12 U.S.C. § 3101 et seq., as amended, may establish and maintain a foreign bank branch in this State at the location stated therein and may engage in a general banking business thereat.

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

(b)(1) A foreign bank holding a certificate of authority pursuant to this subchapter may establish and maintain a foreign bank agency in this State at the location stated therein and may engage in a general banking business thereat; provided, however, that such foreign bank agency shall not:

a. Engage in the business of accepting deposits, provided that such foreign bank may maintain for the account of others credit balances incidental to, or arising out of, the exercise of its lawful powers including, but not limited to, balances arising out of the conduct of a travellers' check business or the exercise of any similar power and may accept deposits from persons or entities which are neither citizens nor residents of the United States; or

b. Have the power to act as a fiduciary of any sort including, but not limited to, an executor, administrator, guardian, trustee by will or other instrument, receiver or attorney-in-fact.

(2) For purposes of this section, the term "credit balances" shall include funds placed in an account which:

a. Are derived from the exercise of other lawful banking powers;

b. Are to serve a specific purpose;

c. Are not solicited from the general public;

d. Are not used to pay operating expenses;

e. Are withdrawn within a reasonable period of time after the specific purpose for which they were placed there has been accomplished; and

f. Are drawn upon in a manner reasonable in relation to the size and nature of the account.

(3) The Commissioner may adopt such rules and regulations as may be deemed necessary governing the extent to which and the conditions, in addition to those set forth in this subchapter and including appropriate reserves, upon which deposits may be established, maintained and paid out by a foreign bank agency. Notwithstanding anything to the contrary in paragraph (1) of this subsection, a foreign bank agency may, if authorized by regulations adopted by the Commissioner, accept any deposit, or exercise any other power, which it could accept or exercise if it were operating in this State as a federal agency pursuant to the International Banking Act of 1978, 12 U.S.C. § 3101 et seq., as amended.

(c) A foreign bank holding a certificate of authority pursuant to this subchapter may establish and maintain a foreign bank limited purpose branch in this State at the location stated therein and may engage in the activities of a foreign bank agency permitted in subsection (b) of this section and, in addition, may accept such deposits as would be permissible for a corporation organized under § 25A of the Federal Reserve Act (12 U.S.C. § 611 et seq.).

(d) No foreign bank holding a certificate of authority pursuant to this subchapter shall concurrently maintain in this State a federal branch or federal agency pursuant to the International Banking Act of 1978, as amended (12 U.S.C. § 3101 et seq.).

(65 Del. Laws, c. 444 § 6; 70 Del. Laws, c. 112 § 71; 71 Del. Laws, c. 254 § 19; 72 Del. Laws, c. 35 § 11; 73 Del. Laws, c. 247 § 6.)

§ 1405 Maintenance of assets in this State; separate assets.

(a) Each foreign bank holding a certificate of authority pursuant to this subchapter shall hold in this State currency, bonds, notes, debentures, drafts, bills of exchange or other evidence of indebtedness, including loan participation agreements or certificates, or other obligations payable in the United States or in United States funds or, with the prior approval of the Commissioner, in funds freely convertible into United States funds, or such other assets as the Commissioner shall by rule or regulation permit, in an amount which shall bear such relationship as the Commissioner shall by regulation prescribe to liabilities of such foreign bank payable at or through its foreign bank branch, foreign bank limited purpose branch or foreign bank agency, including acceptances, but excluding (without duplication) (1) accrued expenses, (2) amounts due and other liabilities to other offices, agencies or branches of, and wholly-owned (except for a nominal number of directors' shares) subsidiaries of, such foreign bank, (3) liabilities maintained on the books of an international banking facility located at such foreign bank branch, foreign bank limited purpose branch or foreign bank agency, and (4) such other liabilities as the Commissioner shall determine. For the purposes of this subsection, the Commissioner shall value marketable securities at principal amount or market value, whichever is lower, shall have the right to determine the value of any nonmarketable bond, note, debenture, draft, bill of exchange, other evidence of indebtedness, including loan participation agreements or certificates, or of any other asset or obligation held by or owed to the foreign bank or its foreign bank branch, foreign bank limited purpose branch or foreign bank agency within this State, and in determining the amount of assets for the purpose of computing the above ratio of assets to liabilities, shall have the power to exclude in whole or in part any particular asset. If, by reason of the existence or the potential occurrence of unusual and extraordinary circumstances, the Commissioner deems it necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors and the public interest, and to maintain public confidence in the business of the foreign bank branch, foreign bank limited purpose branch or foreign bank agency, such foreign bank may be required, subject to such terms and conditions as the Commissioner may prescribe, to deposit the assets required to be held in this State pursuant to this subsection with such banks or trust companies or national banks located in this State as the Commissioner may designate.

(b) In the event that any of the deposits received within this State by a foreign bank are insured by the Federal Deposit Insurance Corporation, the Commissioner shall specify what reasonable percentage of deposit liabilities may be excluded in determining the aggregate amount of liabilities of such foreign bank for deposits received within this State for purposes of subsection (a) of this section by reason of the fact that all or a part of such deposit liabilities are insured by the Federal Deposit Insurance Corporation.

(c) Each foreign bank holding a certificate of authority pursuant to this subchapter shall keep the assets of its business in this State separate and apart from the assets of its business outside this State.

(65 Del. Laws, c. 444 § 6; 70 Del. Laws, c. 112 § 72; 71 Del. Laws, c. 254 § 20; 72 Del. Laws, c. 35 § 12.)

§ 1406 Reports of foreign bank; penalties.

(a) Every foreign bank holding a certificate of authority pursuant to this subchapter shall at such times and in such form as the Commissioner shall prescribe, make written reports to the Commissioner under the oath of 1 of its officers, managers or agents transacting business in this State, showing the amount of its assets and liabilities and containing such other matters as the Commissioner shall prescribe. If any such foreign bank shall fail to make such report as directed by the Commissioner, or if any such report shall contain any false statement knowingly made, the same shall be grounds for revocation of the foreign bank's certificate of authority.

(b) Each foreign bank holding a certificate of authority pursuant to this subchapter shall cause to be kept, at its place of business in this State, correct and complete books and records of account of its business operations transacted by such foreign bank branch, foreign bank limited purpose branch or foreign bank agency, and shall make such records available to the Commissioner, upon request, at any time during regular business hours of the foreign bank branch, foreign bank limited purpose branch or foreign bank agency. Such foreign bank branch, foreign bank limited purpose branch or foreign bank agency shall also make available to the Commissioner, upon request, current copies of the charter and bylaws of the foreign bank, and minutes of the proceedings of its directors or committees relative to the operations of the foreign bank branch, foreign bank limited purpose branch or foreign bank agency. Any failure to keep such records as aforesaid or any refusal to produce such records or other documents upon request by the Commissioner shall be grounds for revocation of the foreign bank's certificate of authority.

(65 Del. Laws, c. 444 § 6; 70 Del. Laws, c. 112 § 73; 72 Del. Laws, c. 35 § 13.)

§ 1407 Rules, regulations and orders.

In addition to any other authority granted under this title, the Commissioner may adopt rules and regulations and issue orders under this subchapter for the following purposes:

(1) To prescribe information or forms required in connection with an application pursuant to § 1403(a) of this title;

(2) To authorize permissible activities of foreign bank branches, foreign bank limited purpose branches or foreign bank agencies pursuant to § 1404 of this title;

(3) To prescribe the nature and amount of assets required to be maintained in this State pursuant to § 1405 of this title and to establish procedures governing the determination thereof;

(4) To establish procedures in connection with approvals pursuant to §§ 1403 and 1408 of this title and the filing of required reports pursuant to § 1406 of this title; and

(5) To issue orders under § 1410 of this title and establish procedures governing such issuances.

(65 Del. Laws, c. 444 § 6; 70 Del. Laws, c. 112 §§ 74, 75; 72 Del. Laws, c. 35 § 14.)

§ 1408 Change of location, name or business; transfer or assignment of certificate of authority.

(a) Any foreign bank holding a certificate of authority pursuant to this subchapter may make a written application to the Commissioner for leave to do 1 or more of the following:

(1) To change its place of business from the place designated in the certificate of authority to another place in this State. An application for such change shall be accompanied by a filing fee of $500.

(2) To change its corporate name or the duration of its corporate existence if such change has been effected under the laws under which it was organized.

(b) No certificate of authority issued by the Commissioner pursuant to this subchapter shall be transferable or assignable without approval by the Commissioner.

(65 Del. Laws, c. 444 § 6; 71 Del. Laws, c. 254 § 21.)

§ 1409 Termination of existence.

In the event a foreign bank holding a certificate of authority pursuant to this subchapter is dissolved or its authority or existence is otherwise terminated or cancelled under the laws under which it was organized, a certificate of the official responsible for maintaining records of banks of the jurisdiction of organization of such foreign bank attesting to the occurrence of any such event, or a certified copy of an order or decree of a court of such jurisdiction directing the dissolution of such foreign bank, the termination of its existence or the cancellation of its authority shall be delivered to the Commissioner. The filing of the certificate, order or decree shall have the same effect as the revocation of its certificate of authority under § 1410 of this title. The Commissioner shall continue as agent of the foreign bank upon whom process against it may be served in connection with matters out of this subchapter prior to the filing of such certificate, order or decree.

(65 Del. Laws, c. 444 § 6.)

§ 1410 Revocation of certificate of authority.

(a) Upon the determination of the Commissioner that any foreign bank holding a certificate of authority pursuant to this subchapter is engaging in any activity not permitted by § 1404 of this title or is not in a safe and satisfactory condition; then, in any such event, the Commissioner may issue an order to such foreign bank requiring it by a date certain to take the steps set forth in such order to cure such violation.

(b) Upon the determination of the Commissioner, after due notice and an opportunity to be heard has been afforded, that any foreign bank holding a certificate of authority pursuant to this subchapter has failed to timely comply with any order issued under subsection (a) of this section, the Commissioner shall, by order effective no earlier than 10 nor later than 30 days after issuance, revoke such foreign bank's certificate of authority. Upon the effective date of such order, and so long as such order has not been suspended or set aside pursuant to subsection (c) of this section or withdrawn by the Commissioner, such foreign bank shall cease all business activity of any kind conducted by such foreign bank branch, foreign bank limited purpose branch or foreign bank agency.

(c) The Court of Chancery of the State shall have exclusive original jurisdiction of any judicial review of an order issued under subsection (b) of this section, any other provision of law notwithstanding. Such review may be sought by the foreign bank affected at any time within 1 year of the date of such order. Review of such an order shall be de novo and such order will be specifically enforced by the Court of Chancery upon a final determination that at the time of its issuance the order was valid in all respects. The Court of Chancery, may, in the exercise of its equitable jurisdiction in appropriate cases, suspend the operation of an order issued under subsection (b) of this section while judicial review of such order proceeds. An order issued under subsection (a) of this section shall not be subject to judicial review.

(65 Del. Laws, c. 444 § 6; 70 Del. Laws, c. 112 § 76; 71 Del. Laws, c. 254 § 22; 72 Del. Laws, c. 35 § 15.)

§ 1411 Applicability of other laws.

Every foreign bank holding a certificate of authority pursuant to this subchapter shall be deemed and held to be subject to this title and any other law or laws of this State making provision for the regulation of banks and trust companies where the same are not inconsistent with the express provisions of this subchapter including, without limitation, §§ 131 and 132 of this title. Notwithstanding the foregoing, every foreign bank holding a certificate of authority pursuant to this subchapter shall be exempt from the requirements of and any prohibitions contained in subchapter XVI of Chapter 1 of Title 8; and the prohibition of § 901 of this title shall not apply to a foreign bank holding a certificate of authority pursuant to this subchapter.

(65 Del. Laws, c. 444 § 6; 79 Del. Laws, c. 122 § 9.)

§ 1412 Actions maintained by foreign bank.

In maintaining any suit, action or proceeding in this State, a foreign bank holding a certificate of authority pursuant to this subchapter shall maintain such suit, action or proceeding in like manner and subject to the same limitations as are applicable in the case of a suit, action or proceeding maintained by a domestic banking organization, except as otherwise prescribed by statute.

(65 Del. Laws, c. 444 § 6.)

§ 1413 Actions maintained against foreign bank.

(a) A suit, action or proceeding against a foreign bank holding a certificate of authority pursuant to this subchapter may be maintained by a resident of this State for any cause of action. For purposes of this subsection, the term "resident of this State" shall include any corporation formed under any law of this State.

(b) Except as otherwise provided in this subchapter, a suit, action or proceeding against a foreign bank holding a certificate of authority pursuant to this subchapter may be maintained by another foreign corporation or foreign bank or by a nonresident in the following cases only:

(1) Where the action is brought to recover damages for the breach of a contract made or to be performed within this State, or relating to property situated within this State at the time of the making of the contract;

(2) Where the subject matter of the litigation is situated within this State;

(3) Where the cause of action arose within this State, except where the object of the action or proceeding is to affect the title of real property situated outside the State;

(4) Where the suit, action or proceeding is based on a liability for acts done within this State by a foreign bank holding a certificate of authority pursuant to this subchapter;

(5) Where the defendant is a foreign bank holding a certificate of authority pursuant to this subchapter doing business in this State.

(c) The limitations contained in subsection (b) of this section do not apply to a corporation formed and existing under the laws of the United States and which maintains an office in this State.

(65 Del. Laws, c. 444 § 6.)

§ 1414 Registered office; registered agent; filing of changes.

(a) A foreign bank holding a certificate of authority pursuant to this subchapter shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its place of business in this State; and

(2) A registered agent, which agent may be either an individual, resident in this State, whose business office is identical with such registered office, or a corporation authorized to transact business in this State having a business office identical with such registered office.

(b) A registered agent may at any time vacate its office as registered agent by filing in the office of the Commissioner a statement setting forth its resignation and the effective date thereof, which shall not be less than 60 days after the date of filing. A copy of the statement shall be served on the foreign bank by the registered agent so resigning by registered or certified mail addressed to such foreign bank at its principal office as such is known to such resigning agent and directed to the attention of the secretary or other comparable officer of such corporation at least 30 days prior to the date of filing of said certificate.

(c) A foreign bank may from time to time change the address of its registered office; and shall change its registered agent if the office of the registered agent becomes vacant for any reason or if its registered agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its registered agent. Any such change of registered office or registered agent may be effected by filing in the office of the Commissioner duplicate originals of a statement setting forth the details with respect to such change and the effective date thereof.

(65 Del. Laws, c. 444 § 6.)

§ 1415 Service of process, notice or demand on foreign bank; service on registered agent; service on Commissioner.

(a) Service of process in any suit, action or proceeding or service of any notice or demand required or permitted by law to be served on a foreign corporation may be made on a foreign bank holding a certificate of authority pursuant to this subchapter by service thereof on the registered agent of such foreign bank. Whenever any foreign bank holding a certificate of authority fails to appoint or maintain a registered agent upon whom service of legal process or service of any such notice or demand may be had, or whenever such registered agent cannot with reasonable diligence be found at the registered office of such foreign bank, or whenever the certificate of authority of any such foreign bank is revoked, then in every such case the Commissioner shall be irrevocably authorized as the agent and representative of such foreign bank to accept service of any process or service of any notice or demand required or permitted by law to be served on such foreign bank. Service on the Commissioner of any such process, notice or demand against any such foreign bank shall be made by delivering to and leaving with the Commissioner, or with any official having charge of the banking department of the Commissioner's office, duplicate copies of such process, notice or demand. If any process, notice or demand is served on the Commissioner, a copy thereof shall immediately be forwarded by registered mail addressed to such foreign bank at its principal office as the same appears on the Commissioner's records.

(b) Nothing in this subchapter limits or affects the right to serve any process, notice or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

(c) The Commissioner shall keep a record of all processes, notice and demands served pursuant to this section and shall record therein the time of such service and the action taken with reference thereto.

(65 Del. Laws, c. 444 § 6.)

§ 1416 Examinations, cooperative agreements, fees.

(a) The Commissioner may make such examination of any foreign bank branch, foreign bank limited purpose branch or foreign bank agency in this State as the Commissioner may deem necessary to determine compliance with the laws of this State and operation in a safe

and sound manner. This title shall apply to such examinations.

(b) The Commissioner, as a home state regulatory authority, may enter into cooperative agreements with the appropriate host state regulatory authorities for the periodic examination of and otherwise to facilitate a single point of contact with respect to any foreign bank branch, foreign bank limited purpose branch or foreign bank agency in this State and any such other entities operating in other United States jurisdictions. Additionally, the Commissioner, as a host state regulatory authority, may enter into cooperative agreements with the appropriate home state regulatory authorities for the periodic examination of and otherwise to facilitate a single point of contact with respect to any foreign bank branch, foreign bank limited purpose branch or foreign bank agency operating in this State, and may accept reports of examination and other records from a home state regulatory authority of such entities in lieu of conducting the Commissioner's own examination of such entities operating in this State. The Commissioner, as a home state or host state regulatory authority, may enter into joint actions, including with respect to asset maintenance, pledge of assets, separation of assets and liquidation, with other regulatory authorities with respect to foreign bank branches, foreign bank limited purpose branches or foreign bank agencies in this State, or may take such actions independently with notice to the appropriate home state or host state regulatory authorities to carry out the Commissioner's responsibilities to assure the safety and soundness of any such entity in this State and to assure compliance with applicable banking laws of this State. For purposes of this subsection, the term "home state" in reference to a foreign bank has the meaning set forth in § 5(c) of the International Banking Act of 1978, as amended, at 12 U.S.C. § 3103(c), and the term "host state" means a State other than the home state.

(c) A foreign bank holding a certificate of authority pursuant to this subchapter may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this State and regulations of the Commissioner.

(71 Del. Laws, c. 254 § 23; 72 Del. Laws, c. 35 §§ 16, 17.)

Subchapter II

Foreign Bank Representative Office

§ 1420 Scope.

This subchapter deals with conditions under which foreign banks may operate representative offices in this State.

(65 Del. Laws, c. 444 § 6.)

§ 1421 License required.

No person, copartnership, association, corporation or other entity shall establish or maintain a representative office in this State on behalf of one or more foreign banks unless the foreign bank to be represented has obtained a license from the Commissioner.

(65 Del. Laws, c. 444 § 6.)

§ 1422 Application for license; fee; findings required for issuance.

(a) The application for a license shall contain information and be accompanied by a reasonable fee as determined by the Commissioner.

(b) The Commissioner shall issue a license to a foreign bank to establish and maintain a representative office if the Commissioner finds:

(1) The foreign bank and the proposed management of the representative office are each of good character and sound financial standing;

(2) The management of the foreign bank and the proposed management of the representative office are adequate; and

(3) The convenience and needs of persons to be served by the proposed representative office will be promoted.

(65 Del. Laws, c. 444 § 6; 71 Del. Laws, c. 254 § 24.)

§ 1423 License provisions.

Any foreign bank holding a license pursuant to this subchapter may establish and maintain a representative office at the location stated therein and may engage thereat in representational functions on behalf of the foreign bank, but may not conduct a banking business. A license issued pursuant to this subchapter shall remain in effect until surrendered or revoked.

(65 Del. Laws, c. 444 § 6.)

§ 1424 Records; reports; fee.

(a) Each foreign bank which is licensed to establish and maintain a representative office shall make, keep and preserve at such office or at such other place as determined by the Commissioner, such books, accounts and other records relating to the business of such office as the Commissioner may require.

(b) Each foreign bank which is licensed to establish and maintain a representative office shall file such reports, accompanied by a reasonable fee, as required and determined by the Commissioner.

(65 Del. Laws, c. 444 § 6.)

§ 1425 Revocation of license.

If the Commissioner finds:

(1) The licensee or its representative has violated any provision of this subchapter or any law, rule or regulation of this State; or

(2) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have resulted in the Commissioner refusing to issue such license; then, after notice to the foreign bank and a reasonable opportunity to be heard, the Commissioner may revoke such license.

(65 Del. Laws, c. 444 § 6.)

§ 1426 Applicability of other laws.

Every foreign bank holding a license pursuant to this subchapter shall be deemed and held to be subject to this title and any other law or laws of this State making provision for the regulation of banks and trust companies where the same are not inconsistent with the express provisions of this subchapter including, without limitation, § 131 and § 132 of this title and subchapter I of this chapter for the regulation of foreign banks operating foreign bank branches, foreign bank limited purpose branches and foreign bank agencies in this State.

(71 Del. Laws, c. 254 § 25; 72 Del. Laws, c. 35 § 18.)

Subchapter III

Merger of Delaware Banks and Foreign Banks; Resulting Branch Offices of Foreign Banks

§ 1430 Scope.

This subchapter deals with the conditions under which Delaware banks may merge with or into foreign banks, and under which foreign banks may operate resulting branch offices in this State.

(71 Del. Laws, c. 254 § 26.)

§ 1431 Definitions.

(a) "Branch office," "Delaware bank," "Delaware state bank," "existing Delaware bank," "merger," "merging bank," "out-of-state bank" and "resulting" shall have the meanings ascribed to them in § 795 of this title.

(b) "Home state" in reference to a foreign bank has the meaning set forth in § 5(c) of the International Banking Act of 1978, as amended, at 12 U.S.C. § 3103(c).

(c) "Out-of-state foreign bank" means a foreign bank whose home state is a state other than this State.

(71 Del. Laws, c. 254 § 26.)

§ 1432 Authority for merger.

An existing Delaware bank may merge with or into an out-of-state foreign bank, and an out-of-state foreign bank may merge with or into a Delaware bank, in substantially the same manner and under substantially the same terms and conditions as an existing Delaware bank may merge with or into an out-of-state bank, or an out-of-state bank may merge with or into a Delaware bank, pursuant to subchapter VII of Chapter 7 of this title.

(71 Del. Laws, c. 254 § 26.)

§ 1433 Authority for interstate branch offices of out-of-state foreign banks.

(a) The place of business or main office and all branch offices of a merging existing Delaware bank may continue as resulting branch offices of the out-of-state foreign bank.

(b) An out-of-state foreign bank with resulting branch offices in this State may open additional branch offices in this State in such manner as the Commissioner shall prescribe by regulation.

(c) Nothing in this subchapter shall be deemed to permit interstate branching either through the original establishment of a branch office in this State by an out-of-state foreign bank or through acquisition of a branch office in this State by an out-of-state foreign bank, without merger with a Delaware bank as provided in this subchapter.

(71 Del. Laws, c. 254 § 26.)

§ 1434 Powers.

An out-of-state foreign bank which establishes one or more branch offices in this State in accordance with this subchapter may conduct any activities at such branch office or offices that are authorized under the laws of this State for Delaware state banks or pursuant to the laws of the home state of such out-of-state foreign bank to the extent that such activities are permissible in this State for a branch office of an out-of-state national bank.

(71 Del. Laws, c. 254 § 26.)

§ 1435 Authorized agency activities.

A resulting branch office in this State of an out-of-state foreign bank may exercise agency activities as provided in subchapter VIII of Chapter 7 of this title.

(71 Del. Laws, c. 254 § 26.)

§ 1436 Applicability of other laws.

Every foreign bank operating a resulting branch office in this State pursuant to this subchapter shall be deemed and held to be subject to this title and any other law or laws of this State making provision for the regulation of banks and trust companies where the same are not inconsistent with the express provisions of this subchapter including, without limitation, § 131 and § 132 of this title, subchapter VII of Chapter 7 of this title for the regulation of out-of-state banks operating resulting branch offices in this State, and subchapter I of this chapter for the regulation of foreign banks operating foreign bank branches, foreign bank limited purpose branches and foreign bank agencies in this State.

(71 Del. Laws, c. 254 § 26; 72 Del. Laws, c. 35 § 19.)

Part II
Banks and Trust Companies
Chapter 15
CREDIT CARD INSTITUTIONS

Subchapter I

General Provisions

§ 1501 Scope; construction.

This chapter provides for the creation of credit card institutions, chartered under the laws of this State, including institutions that accept collateral for extensions of credit by holding deposits under $100,000, and by other means that engage only in credit card operations, do not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others, do not accept any savings or time deposit of less than $100,000, maintain only one office that accepts deposits and do not engage in the business of making commercial loans, and are excepted from the definition of "bank" in the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq.

(70 Del. Laws, c. 112 § 77; 72 Del. Laws, c. 15 § 18.)

§ 1502 Applicability of other laws.

A corporation formed under and pursuant to this chapter shall be known as a "credit card institution", shall be subject to regulation by the State Bank Commissioner to the same extent as a bank organized under Chapter 7 of this title and shall be deemed and held to be subject to this title, and to any other general statute of this State making provision for the regulation of banks, where any of the foregoing are not inconsistent with the express provisions of this chapter.

(70 Del. Laws, c. 112 § 77.)

§ 1503 Taxation.

Every corporation created under and pursuant to this chapter, and every corporation whose charter or certificate of incorporation is amended under this chapter, shall be subject to the same taxation which shall be fixed by the laws of this State for banks and trust companies.

(70 Del. Laws, c. 112 § 77.)

§ 1504 Reserved power of State to amend or repeal chapter.

This chapter may be amended or repealed at the pleasure of the General Assembly, but such amendment or repeal shall not take away or repeal any remedy against any corporation established under this chapter, or its officers, for any liability which shall have been previously incurred. This chapter and all amendments thereof shall be part of the charter or certificate of incorporation of every corporation formed under this chapter.

(70 Del. Laws, c. 112 § 77.)

§ 1505 Corporate name.

No corporation formed under this chapter shall use the words "savings" or "trust" in its title or name.

(70 Del. Laws, c. 112 § 77.)

Subchapter II

Formation

§ 1510 Incorporators.

Any person, partnership, association or corporation, singly or jointly with others, and without regard to that entity's residence, domicile or state of incorporation, may, upon the execution of written articles of association and upon compliance with this chapter, form a corporation, with the powers conferred by this chapter.

(70 Del. Laws, c. 112 § 77; 70 Del. Laws, c. 186 § 1.)

§ 1511 Articles of association; contents and execution.

(a) The articles of association of a credit card institution shall be executed by the incorporator(s), shall be acknowledged and shall set forth the intention of forming a corporation under this chapter, and shall specifically state:

(1) The name by which the corporation shall be known;

(2) The purpose for which it is formed;
(3) The city or town where its single place of business in this State open to the public will be located;
(4) The amount of its capital stock, and the number of shares into which it is to be divided;
(5) The number of its directors, which shall not be less than 5;
(6) Whether or not the corporation is to have perpetual existence, and if not, the time when its existence is to cease;
(7) Whether the private property of the stockholders shall be subject to the payment of corporate debts, and if so, to what extent.

(b) The articles of association may also contain other provisions defining, limiting and regulating the powers of the corporation, the powers and duties of the directors and the powers of the stockholders, if such provisions are consonant with the object, purpose and provisions of this chapter and are not in conflict with this Code or any other general statute of this State relating to banks.

(70 Del. Laws, c. 112 § 77.)

§ 1512 Notice of intention to incorporate; publication.

Notice of the intention of the incorporator(s) to form a credit card institution shall be given to the State Bank Commissioner, and a notice in such form as the Commissioner shall approve shall be published at least once a week, for 2 successive weeks, in 1 or more newspapers designated by the Commissioner, at least 1 of which newspapers shall be published in the county where it is proposed to establish the office of the credit card institution. The published notice shall specify the name of the incorporator(s) organizing the credit card institution, the name of the proposed corporation, the city or the town where it is to be located, and the amount of its capital stock.

(70 Del. Laws, c. 112 § 77; 72 Del. Laws, c. 15 § 19.)

§ 1513 Application for certificate of public convenience and advantage.

Within 60 days after the second publication of the notice of intention to incorporate but not before the expiration of 20 days from the date of the second publication, the incorporator(s) shall apply to the State Bank Commissioner for a certificate that public convenience and advantage will be promoted by the establishment of the credit card institution.

(70 Del. Laws, c. 112 § 77; 72 Del. Laws, c. 15 § 20.)

§ 1514 Determination of public convenience.

Upon the application for a certificate that public convenience and advantage will be promoted by the establishment of the credit card institution, the State Bank Commissioner shall consider and determine whether public convenience and advantage would be promoted by the establishment of the credit card institution, and whether the terms and provisions of the articles of association and the proposed corporation's location and plan of operation are in compliance with this chapter, and shall issue or refuse to issue a certificate in accordance with such determination. In making such determination, the State Bank Commissioner shall consider, in addition to such other matters as the Commissioner may deem relevant, the experience of the incorporator(s) in the credit card business and with respect to the acceptance and administration of time deposits, and, if applicable, the quality of management and past financial performance. If the Commissioner refuses to issue a certificate, no further proceedings shall be had, but the application may be renewed after 1 year from the date of the refusal. If the Commissioner issues the certificate, the incorporator(s) shall hold the first meeting and follow the procedure prescribed by § 1515 of this title.

(70 Del. Laws, c. 112 § 77.)

§ 1515 Organizational meeting; notice; proceedings.

At the organizational meeting or at any adjournment thereof, the incorporator(s) shall appoint a temporary secretary, adopt bylaws and elect, in such matter as the bylaws may determine, directors, a president, a secretary and such other officers as the bylaws may prescribe. All the officers so elected shall be sworn to the faithful performance of their duties. The temporary secretary shall make and attest a record of the proceedings until the secretary has been chosen and sworn, including a record of such choice and qualification.

(70 Del. Laws, c. 112 § 77.)

§ 1516 Articles of organization — Contents.

The president and a majority of the directors elected at the organizational meeting shall make, sign and make oath to, a certificate (hereinafter called "articles of organization" setting forth: A true copy of the articles of association; the name of the subscriber(s) thereto; the name, residence and post-office address of each of the officers of the corporation; and the date of the first meeting and the successive adjournments thereof, if any.

(70 Del. Laws, c. 112 § 77.)

§ 1517 Same — Approval.

The articles of organization, together with the records of the proposed corporation, shall be submitted to the State Bank Commissioner. The Commissioner shall examine the same, and may require such amendment thereof or such additional information as the Commissioner may consider proper or necessary. If the Commissioner finds that the provisions of law have been complied with, the Commissioner shall endorse the Commissioner's approval upon the articles of organization.

(70 Del. Laws, c. 112 § 77.)

§ 1518 Same — Filing.

The articles of organization with the endorsement of the State Bank Commissioner shall, within 30 days after the date of the endorsement, be filed in the office of the Secretary of State.

(70 Del. Laws, c. 112 § 77.)

§ 1519 Certificate of incorporation.

(a) Upon the filing of the articles of organization as required by § 1518 of this title, the Secretary of State shall issue a certificate of incorporation in the following form:

STATE OF DELAWARE

Be it known that whereas (the name of the incorporator(s)) has (have) executed articles of association with the intention of forming, pursuant to the provisions of Chapter 15 of this title of the Code, a corporation under the name of (the name of the corporation), for the purpose (the purpose declared in the articles of association), with a capital stock of (the amount fixed in the articles of association), and having its sole place of business in the State of Delaware in (the city or town where its place of business will be located) and has (have) complied with the statutes of this State in such case made and provided, as appears from the articles of organization of the corporation, duly approved by the State Bank Commissioner and on file in this office, now therefore, I (the name of the Secretary of State), Secretary of State of Delaware, do hereby certify that (the name of the incorporator(s)), that entity's successors and assigns, is (are) legally organized and established as, and is (are) hereby made, an existing corporation under the name of (name of the corporation), with the powers, rights and privileges, and subject to the limitations, duties and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed, and the Great Seal of the State of Delaware hereunto affixed, this _____ day of _____ in the year _____ (the date of the filing of the articles of organization).

(b) The Secretary of State shall sign the certificate of incorporation and cause the Great Seal of the State to be thereto affixed and shall deliver the same to the corporation together with a certified copy of the articles of organization and the endorsement of the State Bank Commissioner thereon, upon payment of the costs and charges thereof. A certified copy of the certificate shall be kept on file in the office of the Secretary of State with the articles of organization, and the certificate together with the articles of organization and endorsement thereon of the State Bank Commissioner shall be recorded in the office of the recorder of deeds for the county in which the place of business of the corporation is to be located.

(c) The certificate or a copy thereof duly certified by the Secretary of State, together with a certified copy of the articles of organization and the endorsement thereon of the State Bank Commissioner, accompanied with the certificate of the recorder of deeds for the county wherein the same is recorded under the Commissioner's hand and seal of office, stating that the certificate and articles of organization have been recorded in the office of the recorder, or a copy of the record duly certified by the recorder, shall be evidence in all courts of this State.

(70 Del. Laws, c. 112 § 77; 70 Del. Laws, c. 186 § 1.)

§ 1520 Commencement of corporate existence.

Upon the issuance of the certificate of incorporation by the Secretary of State and the recording of the certificate and articles of organization as provided in § 1519 of this title, the incorporator(s) named in the certificate, any successors, and assigns shall from the date of the certificate be and constitute a body corporate, for the purposes and by the name set forth in the certificate, subject to dissolution or the revocation or forfeiture of the franchise under this chapter or under this Code or any other statute of this State relating to the dissolution of or to the revocation or forfeiture of the charter or franchise of banks or trust companies; but the corporation shall not have the right to do any business until it has secured from the State Bank Commissioner of this State the certificate provided for in § 1521 of this title.

(70 Del. Laws, c. 112 § 77; 70 Del. Laws, c. 186 § 1.)

§ 1521 Certificate authorizing transaction of business.

A certified copy of the certificate of incorporation and of the articles of organization and the endorsement of the approval of the State Bank Commissioner shall be filed with the State Bank Commissioner; and when the whole capital stock has been issued, the president and the cashier or treasurer of the corporation shall certify the names and addresses of the stockholders and the number of shares owned by them. Upon receipt of such certification, the Commissioner shall cause an examination to be made of the method of payment of the capital stock and if, after the examination, it appears that the whole capital stock stated in the articles of association has been paid in cash, and that all requirements of this Code and any other applicable law have been complied with, the Commissioner shall issue a certificate authorizing the corporation to begin the transaction of business. No corporation shall begin the transaction of business until a certificate has been granted authorizing it to do so.

(70 Del. Laws, c. 112 § 77.)

§ 1522 Revocation of charter for failure to commence business within 6 months.

Every corporation created under this chapter shall within 6 months from the date of its incorporation be actively engaged in the business for which it was created or its certificate of incorporation and corporate franchise shall be deemed and held to be revoked.

(70 Del. Laws, c. 112 § 77.)

§ 1523 Fees.

(a) The following fees shall be collected by and paid to the Secretary of State, for the use of the State: For making and issuing the certificate of incorporation, $10; for making the certified copy of the articles of organization, $10; for making the certified copy of the certificate of incorporation to be kept on file in the office of the Secretary of State and for filing and indexing the same and the articles of organization in said office, $5; for supplying any additional certified copy of the certificate of incorporation or articles of organization requested by the corporation, $5.

(b) Before issuing the certificate authorizing the corporation to begin the transaction of business, the State Bank Commissioner shall collect from the corporation, for the use of the State, the sum of $5,750. In addition, the applicant shall pay an investigation fee of $1,150 which shall not be refundable and shall be submitted with the application.

(70 Del. Laws, c. 112 § 77.)

Subchapter III

Conduct of Internal Corporate Affairs

§ 1530 Bylaws.

A corporation established under this chapter may adopt bylaws for the proper management of its affairs, and may establish regulations controlling the assignment and transfer of its shares. The first set of bylaws shall be adopted at the organizational meeting, as provided in § 1515 of this title, but thereafter the power to make, alter or repeal bylaws shall be in the stockholders provided that any corporation may, in the articles of association, confer that power upon the directors.

(70 Del. Laws, c. 112 § 77.)

§ 1531 Directors.

(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 bylaws shall prescribe how many directors shall constitute a quorum for the transaction of business.

(b) The directors elected at the organizational meeting, as provided in § 1515 of this title, shall hold office until the succeeding annual meeting of the stockholders and until their successors have been duly chosen and qualified, and thereafter shall be elected at the annual meeting of the stockholders or at an adjournment of the annual meeting. Vacancies in the board of directors shall be filled by a majority of the remaining directors, though less than a quorum, and the directors so chosen shall hold office until the next annual election and until their successors shall be duly elected and qualified.

(c) Every director shall be sworn to the faithful performance of duties.

(70 Del. Laws, c. 112 § 77; 70 Del. Laws, c. 186 § 1.)

§ 1532 Stockholders' meetings.

(a) Meetings of stockholders (except the meeting of incorporators referred to in § 1515 of this title) shall be held at such place either within or without this State as may be designated by or in the manner provided in the bylaws or if not so designated, at the office of the corporation in this State. The bylaws shall fix the time of the annual meeting and may provide for special or called meetings of stockholders.

(b) Any meeting of the stockholders may be adjourned and at such adjourned meeting, any business may be transacted that could have been acted on at the meeting which was adjourned.

(70 Del. Laws, c. 112 § 77.)

§ 1533 Voting rights of stockholders.

Each stockholder shall at every meeting of the stockholders be entitled to 1 vote in person or by proxy for each share of the capital stock held by such stockholder on all issues on which such stockholder is entitled to vote. No stock shall be voted which shall have been transferred on the books of the corporation within 20 days next preceding the stockholders meeting.

(70 Del. Laws, c. 112 § 77.)

§ 1534 Par value of capital stock; payment for and issuance thereof; increase and reduction in such stock.

The capital stock shall be divided into shares of a stated par value. No business shall be transacted by the corporation until the whole amount of its capital stock is subscribed for and actually paid in cash. No stock shall be issued by any corporation until the par value thereof shall be fully paid in cash. Any corporation may, subject to the approval of the State Bank Commissioner, increase or reduce its capital stock in the manner hereinafter provided.

(70 Del. Laws, c. 112 § 77.)

§ 1535 Stockholders' liability.

The private property of the stockholders shall not be subject to the payment of the corporate debts unless expressly otherwise provided in

the articles of association.

(70 Del. Laws, c. 112 § 77.)

§ 1536 Dividends.

The directors of a credit card institution may declare dividends on common or preferred stock of so much of the net profits of the corporation as they shall judge expedient; but the corporation shall, before the declaration of a dividend from the net profits, carry 50% of its net profits of the preceding period for which the dividend is paid to its surplus fund until the same shall amount to 50% of its capital stock; and thereafter shall carry 25% of its net profits of the preceding period for which the dividend is paid to its surplus fund until the same shall amount to 100% of its capital stock.

(70 Del. Laws, c. 112 § 77.)

§ 1537 Amendment of charter or certificate of incorporation.

(a) Credit card institutions created by or under this Code shall hereafter amend their charters or certificates of incorporation by and under this section.

(b) Any credit card institution created under this chapter may, from time to time, when and as desired, amend its charter or certificate of incorporation by addition to its corporate powers and purposes, or diminution thereof, or both (provided such additional corporate power or purpose be such as is authorized or contemplated under any of the provisions of this chapter); or by increasing or decreasing its authorized capital stock (provided that such increase or decrease be expressly approved by the State Bank Commissioner); by changing the number or par value of its shares of stock; or by changing its corporate title (provided that the words "savings" or "trust" shall not be used in the amended title); and by increasing or decreasing its number of directors (provided that in no case shall the whole number of directors be less than 5). Any or all such changes or alterations may be effected by 1 certificate of amendment. No amendment shall contain a provision which would not have been lawful and proper to insert in an original certificate of incorporation granted or issued under this chapter.

(c) The procedure for amendment and the manner of making and effecting the same shall be as prescribed in Chapter 1 of Title 8 for the amendment of the certificate of incorporation of a corporation having a capital stock. No certificate of amendment shall be received or filed by the Secretary of State or be deemed or held to be effective unless and until the proposed certificate of amendment shall have been submitted to the State Bank Commissioner and shall have been approved both in substance and in form by said Commissioner.

(d) Notwithstanding any of the provisions of this section, a credit card institution created under this chapter may adopt such amendments to its certificate of incorporation as are necessary to permit such credit card institution to comply with the provisions governing the conversion of a credit card institution charter pursuant to § 793 of this title.

(70 Del. Laws, c. 112 § 77; 71 Del. Laws, c. 19 § 61.)

§ 1538 Merger and consolidation — Authorized; procedure.

Subject to § 1539 of this title, no corporation created under this chapter may merge or consolidate with any other corporation or entity except that any 2 or more corporations created under this chapter may merge or consolidate into a single corporation which shall be any 1 of the merging or consolidating credit card institutions. The procedure for the merger or consolidation of such corporations and the legal effect of any such merger or consolidation 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 2 or more corporations organized under that chapter. No agreement of merger or consolidation of corporations created under this chapter shall be received or filed by the Secretary of State or be deemed or held to be effective unless and until the proposed agreement of merger or consolidation shall have been submitted to the State Bank Commissioner and shall have been approved both in substance and in form by the State Bank Commissioner.

(70 Del. Laws, c. 112 § 77.)

§ 1539 Same — Acquisition of assets and assumption of liabilities; Commissioner's approval; title to property.

(a) No corporation organized under this chapter shall merge or consolidate with any other such corporation and no one shall take over any substantial portion of the assets of and/or assume a substantial portion of the liabilities, in whole or in part, of any such corporation (whether such corporation is then doing business or has ceased to do business or has surrendered its charter or has dissolved) unless and until such action shall be approved by the State Bank Commissioner.

(b) The Commissioner may require that the Commissioner be furnished with such information as to the assets and liabilities and as to the condition of the credit card institutions concerned as the Commissioner deems necessary or proper to determine whether to give or withhold the Commissioner's approval.

(c) The State Bank Commissioner shall refuse approval whenever in the Commissioner's opinion the transaction will weaken any credit card institution concerned.

(d) No title to any property shall pass where the transaction is in violation of this section.

(70 Del. Laws, c. 112 § 77.)

Subchapter IV

Powers, Conditions and Prohibitions

§ 1541 Powers and limitations.

(a) Any corporation formed under this chapter may engage only in the business of credit card operations and accepting deposits of money, as described in this section. In engaging in such business, such corporations may exercise only the powers described below:

(1) To sue and be sued, complain and defend in any court of law or equity;

(2) To make, hold, purchase, mortgage or lease such real or personal property as is necessary for the conduct of its business;

(3) To borrow money;

(4) To accept savings or time deposits of money in an amount not less than $100,000, and to accept collateral for extensions of credit by holding deposits under $100,000, and by other means; provided, that such deposits shall be insured by the Federal Deposit Insurance Corporation such that the credit card institution qualifies as an insured depository institution, as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c);

(5) To engage in credit card operations by extending credit to any natural person or persons, the proceeds of which are used primarily for personal, family or household purposes, and to take security interests of any kind in property of any type to secure such loans or credits; provided, however, that a loan or credit card account in the name of not more than 2 natural persons shall be deemed to be primarily for personal, family or household purposes;

(6) To create and, except for directors' qualifying shares, to own all of the capital stock of 1 or more subsidiary corporations that engage only in activities permitted by this chapter; provided, that no subsidiary corporation of a corporation organized under this chapter may accept deposits.

(b) No credit card institution shall possess or exercise any power:

(1) To act as a fiduciary of any sort including, but not limited to, an executor, administrator, guardian, conservator, trustee by will or other instrument, receiver or attorney-in-fact;

(2) To make commercial loans or extend credits to any corporation or to any natural person or persons when the proceeds of such loan or credit is to be used for business purposes of such individuals; provided, however, that a credit card account in the name of not more than 2 natural persons shall be deemed to be primarily for personal, family or household purposes;

(3) To accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;

(4) To do any business prohibited by § 767 of this title or any business not authorized by subsection (a) of this section.

(70 Del. Laws, c. 112 § 77; 72 Del. Laws, c. 15 § 21.)

§ 1542 Office in State.

Every credit card institution shall have a single office in this State that accepts deposits. At such office, the corporation shall maintain such records and books of accounts as the State Bank Commissioner may by regulation require and shall employ such persons as it may require to review and act upon applications for extensions of credit permitted by § 1541 of this title.

(70 Del. Laws, c. 112 § 77.)

§ 1543 Revocation of authority to transact business.

(a) Upon determining that any corporation organized under this chapter is engaging in any activity not permitted by § 1541 of this title or has more than 1 office that accepts deposits, the State Bank Commissioner may issue an order to such corporation requiring it to take such steps by a date certain as the Commissioner determines are necessary to cure such violation.

(b) Upon determining that any corporation organized under this chapter has failed to timely comply with any order issued under subsection (a) of this section, the State Bank Commissioner shall, by order effective no earlier than 10 nor later than 30 days after issuance, revoke such corporation's authority to transact business in this State. Upon the effective date of such order, and so long as such order has not been suspended or set aside pursuant to subsection (c) of this section or withdrawn by the State Bank Commissioner, such corporation shall cease all business activity of any kind in this State, but shall maintain a registered office in this State for the purpose of accepting service of legal process.

(c) The Court of Chancery of the State shall have exclusive original jurisdiction of any judicial review of an order issued under subsection (b) of this section, any other provision of law notwithstanding. Such review may be sought by the corporation affected at any time within 1 year of the date of such order. Review of such order shall be de novo and such order will be specifically enforced by the Court of Chancery upon a final determination that at the time of its issuance the order was valid in all respects. The Court of Chancery may, in the exercise of its equitable jurisdiction in appropriate cases, suspend the operation of an order issued under subsection (b) of this section while judicial review of such order proceeds. An order issued under subsection (a) of this section shall not be subject to judicial review.

(70 Del. Laws, c. 112 § 77.)

§ 1544 Merger with or conversion into national bank.

No corporation established under this chapter may merge with or convert into a national bank, except as otherwise provided pursuant to § 793 of this title.

(70 Del. Laws, c. 112 § 77; 71 Del. Laws, c. 19 § 62.)

Part II
Banks and Trust Companies
Chapter 16
CORPORATION LAW FOR STATE SAVINGS BANKS

Subchapter I

General Provisions

§ 1601 Establishment of savings banks; definition.

Savings banks shall be established or created in this State under and in accordance with this chapter. The term "savings bank," as used in this chapter, refers to a corporation organized under this chapter. The provisions of this chapter specifically relating to capital stock or stockholders of a savings bank shall not apply to a savings bank without capital stock.

(71 Del. Laws, c. 25 § 35.)

§ 1602 Applicability of other laws.

Every corporation created under this chapter shall be deemed to be subject to and entitled to the benefit of this Code, including, but not limited to, provisions in Chapter 7 of this title that apply generally to banks and any other general statutes of this State making provision for the regulation of banks and trust companies or for the regulation and governance of corporations established under Title 8, where the same are not inconsistent with the express provisions of this chapter.

(71 Del. Laws, c. 25 § 35.)

§ 1603 Taxation.

Every corporation created by or under this chapter shall be subject to the same taxation as shall be fixed by the laws of this State for banks and trust companies.

(71 Del. Laws, c. 25 § 35.)

§ 1604 Reserved power of State to amend or repeal this chapter.

This chapter may be amended or repealed, at the pleasure of the General Assembly, but such amendment or repeal shall not take away or repeal any remedy against any corporation established under this chapter, or its officers, for any liability which shall have been previously incurred.

(71 Del. Laws, c. 25 § 35.)

Subchapter II

Formation of a Savings Bank

§ 1621 Incorporators; number and qualifications.

Three or more persons of lawful age, at least 2 of whom must be citizens of this State, who associate themselves by a written agreement, hereinafter called "articles of association," for the purpose of forming a savings bank may, upon compliance with this chapter, become a corporation, with the powers conferred by this chapter and subject to the regulations prescribed by this chapter and subject also to the regulations prescribed for banks and trust companies by any general statute of this State.

(71 Del. Laws, c. 25 § 35.)

§ 1622 Articles of association; contents and execution.

(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:

(1) The name by which the corporation shall be known;

(2) The purpose for which it is formed;

(3) The city or town where its place of business will be located;

(4) If the corporation is to be authorized to issue capital stock, the amount of its capital stock and the number of shares into which it is to be divided. If the corporation is not to have authority to issue capital stock, that fact shall be stated in the certificate of incorporation, together with the conditions of membership in the corporation, or the certificate may provide that the conditions of membership shall be stated in the bylaws;

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

(6) Whether or not the corporation is to have perpetual existence, and, if not, the time when its existence is to cease;

(7) Whether the private property of the stockholders shall be subject to the payment of corporate debts, and if so, to what extent.

(b) The articles of association may also contain other provisions defining, limiting and regulating the powers of the corporation, the powers and duties of the directors and the powers of the stockholders or members, if such provisions are consonant with the object, purpose and provisions of this chapter and are not in conflict with this Code or any other general statute of this State relating to savings banks.

(c) Each incorporator shall subscribe to the articles the incorporator's name, residence, post-office address and the number of shares of stock which the incorporator agrees to take, and shall acknowledge the same to be the incorporator's act and deed before some officer authorized by the laws of this State to take acknowledgments of deeds.

(d) The articles of association may contain an article which provides that any article or provision thereof shall not be amended, modified, repealed or otherwise changed in any manner whatsoever. Such an article, when approved by the Commissioner under § 1628 of this title, shall be valid, binding and enforceable against the corporation and its shareholders or members notwithstanding any other provision of this title.

(71 Del. Laws, c. 25 § 35.)

§ 1623 Notice of intention to incorporate; publication.

Notice of the intention of the incorporators to form a savings bank shall be given to the State Bank Commissioner, and a notice in such form as the Commissioner shall approve shall be published at least once a week, for 2 successive weeks, in 1 or more newspapers designated by the Commissioner, at least 1 of which newspapers shall be published in the county where it is proposed to establish the bank or trust company. The published notice shall specify the names of all the associates, the name of the proposed corporation, the city or town where it is to be located and the amount of its capital stock.

(71 Del. Laws, c. 25 § 35; 72 Del. Laws, c. 15 § 22.)

§ 1624 Application for a certificate of public convenience and advantage.

Within 60 days after the second publication of the notice of intention to incorporate, but not before the expiration of 20 days from the date of the second publication, the incorporators shall apply to the State Bank Commissioner for a certificate that public convenience and advantage will be promoted by the establishment of the savings bank.

(71 Del. Laws, c. 25 § 35; 72 Del. Laws, c. 15 § 23.)

§ 1625 Determination of public convenience.

Upon the application for a certificate that public convenience and advantage will be promoted by the establishment of the savings bank, the State Bank Commissioner shall consider and determine whether public convenience and advantage would be promoted by the establishment of the savings bank, and whether the terms and provisions of the articles of association are in compliance with this chapter and shall issue or refuse to issue a certificate in accordance with such determination. If the Commissioner refuses to issue a certificate, no further proceedings shall be had, but the application may be renewed after 1 year from the date of the refusal. If the Commissioner issues the certificate, the incorporators shall hold the first meeting and follow the procedure prescribed by § 1626 of this title.

(71 Del. Laws, c. 25 § 35.)

§ 1626 Organization meeting of incorporators; notice; proceedings.

(a) The first meeting of the incorporators shall be called by a notice signed either by the incorporator who is designated in the articles of association for the purpose or by a majority of the incorporators. The notice shall state the time, place and purposes of the meeting. A copy of the notice shall, at least 7 days before the day appointed for the meeting, be given to each incorporator, or left at the incorporator's residence or usual place of business or deposited in the post office, postage prepaid, and addressed to the incorporator at the incorporator's residence or usual place of business, and another copy thereof and an affidavit of 1 of the incorporators that the notice has been duly served shall be filed and recorded with the records of the corporation. If all the incorporators shall, in writing, endorsed upon the articles of association, waive such notice and fix the time and place of the meeting, no notice shall be required.

(b) At the first meeting, or at any adjournment thereof, the incorporators shall organize by the choice by ballot of a temporary secretary, by the adoption of bylaws and by the election, in such manner as the bylaws may determine, of directors, a president, a secretary and such other officers as the bylaws may prescribe. All the officers so elected shall be sworn to the faithful performance of their duties. The temporary secretary shall make and attest a record of the proceedings until the secretary has been chosen and sworn, including a record of such choice and qualification.

(71 Del. Laws, c. 25 § 35.)

§ 1627 Articles of organization.

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 of each of the officers of the corporation; and

(4) The date of the first meeting and the successive adjournments thereof, if any.

(71 Del. Laws, c. 25 § 35.)

§ 1628 Approval of articles of organization.

The articles of organization, together with the records of the proposed corporation, shall be submitted to the State Bank Commissioner. The Commissioner shall examine the same, and may require such amendment thereof or such additional information as the Commissioner may consider proper or necessary. If the Commissioner finds that the provisions of law have been complied with, the Commissioner shall endorse the Commissioner's approval upon the articles of organization.

(71 Del. Laws, c. 25 § 35.)

§ 1629 Filing of articles of organization.

The articles of organization with the endorsement of the State Bank Commissioner shall, within 30 days after the date of the endorsement, be filed in the office of the Secretary of State.

(71 Del. Laws, c. 25 § 35.)

§ 1630 Certificate of incorporation; issuance, form, recording and evidence.

(a) Upon the filing of the articles of organization as required by § 1629 of this title, the Secretary of State shall issue a certificate of incorporation in the following form:

STATE OF DELAWARE

Be it known that whereas (the names of the incorporators) have associated themselves with the intention of forming a corporation under the name of (the name of the corporation), for the purpose (the purpose declared in the articles of association), with a capital stock of (the amount fixed in the articles of association or, if the corporation is not to have authority to issue capital stock, that fact shall be stated), and having its place of business in (the city or town where its place of business will be located) and have complied with the statutes of this State in such case made and provided, as appears from the articles of organization of the corporation, duly approved by the State Bank Commissioner and on file in this office; now, therefore, I (the name of the Secretary of State), Secretary of State of the State of Delaware, do hereby certify that (the names of the incorporators), their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of (name of the corporation), with the powers, rights and privileges, and subject to the limitations, duties and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed, and the great Seal of the State of Delaware hereunto affixed, this _____ day of _____ in the year _____ (the date of the filing of the articles of organization).

(b) The Secretary of State shall sign the certificate of incorporation and cause the Great Seal of the State to be thereto affixed and shall deliver the same to the corporation together with a certified copy of the articles of organization and the endorsement of the State Bank Commissioner thereon, upon payment of the costs and charges therefor. A certified copy of the certificate shall be kept on file in the office of the Secretary of State with the articles of organization, and the certificate, together with the articles of organization and the endorsement thereon of the State Bank Commissioner, shall be recorded in the office of the recorder of deeds for the county in which the place of business of the corporation is to be located.

(c) The certificate or a copy thereof duly certified by the Secretary of State, together with a certified copy of the articles of organization and the endorsement thereon of the State Bank Commissioner, accompanied with the certificate of the recorder of deeds for the county wherein the same is recorded under the recorder of deeds' hand and the seal of the recorder of deeds' office, stating that the certificate and articles of organization have been recorded in the office of the recorder, or a copy of the record duly certified by the recorder, shall be evidence in all courts of this State.

(71 Del. Laws, c. 25 § 35.)

§ 1631 Commencement of corporate existence.

Upon the issuance of the certificate of incorporation by the Secretary of State and the recording of the certificate and articles of organization as provided in § 1630 of this title, the persons named in the certificate, their successors and assigns shall, from the date of the certificate, be and constitute a body corporate, for the purposes and by the name set forth in the certificate, subject to dissolution or the revocation or forfeiture of the franchise under this chapter or under this Code or any other statute of this State relating to the dissolution of or to the revocation or forfeiture of the charter or franchise of banks or trust companies; but the corporation shall not have the right to do any business until it has secured from the State Bank Commissioner of this State the certificate provided for in § 1632 of this title.

(71 Del. Laws, c. 25 § 35.)

§ 1632 Commencement of business; certificate authorizing.

(a) A certified copy of the certificate of incorporation and of the articles of organization and the endorsement of the approval of the State Bank Commissioner shall be filed with the State Bank Commissioner.

(b)(1) If the corporation is to be authorized to issue capital stock, when the whole capital stock has been issued, a list of the stockholders, with the name, residence and post-office address of each and the number of shares held by each shall be filed with the State Bank Commissioner, which list shall be certified by the president and the cashier or treasurer of the corporation. Upon receipt of the list, the

Commissioner shall cause an examination to be made of the method of payment of the capital stock and if, after such examination, it appears that the whole capital stock has been paid in cash and that all requirements of this Code and any other law have been complied with, the Commissioner shall issue a certificate authorizing the corporation to begin the transaction of business.

(2) If the corporation is not to have authority to issue capital stock, an aggregate minimum dollar amount and number of savings accounts shall be subscribed for and paid in cash, as determined by the Commissioner, which payment shall be certified by the president and the cashier or treasurer of the corporation. Upon receipt of the foregoing certification of payment, the Commissioner shall cause an examination to be made of the subscription and payment of such savings accounts and if, after such examination, it appears that the requisite dollar amount and number of savings accounts have been subscribed for and paid in cash and that all the requirements of this Code and any other law have been complied with, the Commissioner shall issue a certificate authorizing the corporation to begin the transaction of business.

(c) No corporation shall begin the transaction of business until a certificate has been granted by the Commissioner in accordance with subsection (b) of this section.

(71 Del. Laws, c. 25 § 35.)

§ 1633 Revocation of charter for failure to commence business within reasonable time.

Every corporation created under this chapter shall, after the expiration of a reasonable time from the date of its incorporation, as determined by the State Bank Commissioner, be actively engaged in the business for which it was created or its certificate of incorporation and corporate franchise shall be deemed and held to be revoked. The Commissioner shall by regulations prescribe the criteria to be applied in determining what constitutes a reasonable period of time.

(71 Del. Laws, c. 25 § 35.)

§ 1634 Fees of Secretary of State and Commissioner.

The following fees shall be collected by and paid to the Secretary of State, for the use of the State:

(1) For making and issuing the certificate of incorporation, $11.50;

(2) For making the certified copy of the articles of association, $11.50;

(3) For making the certified copy of the certificate of incorporation to be kept on file in the office of the Secretary of State and for filing and indexing the same and the articles of association in said office, $5.75;

(4) For supplying any additional certified copy of the certificate of incorporation or articles of association requested by the corporation, $5.75.

Before issuing the certificate authorizing the corporation to begin the transaction of business, the State Bank Commissioner shall collect from the corporation, for the use of the State, the sum of $5,750. In addition the applicant shall pay an investigation fee of $1,150, which shall not be refundable and shall be submitted with the application.

(71 Del. Laws, c. 25 § 35.)

Subchapter III

Conduct of Internal Corporate Affairs

§ 1641 Bylaws, adoption, amendment and repeal.

A corporation may adopt bylaws for the proper management of its affairs and may establish regulations controlling the assignment and transfer of its shares. The first set of bylaws shall be adopted at the meeting of the incorporators, as provided in § 1626 of this title, but thereafter the power to make, alter or repeal bylaws shall be in the stockholders or members of the corporation, provided that any corporation may, in the certificate of incorporation, confer that power upon the directors.

(71 Del. Laws, c. 25 § 35.)

§ 1642 Directors; number, quorum, term, vacancies and oath.

(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 bylaws shall prescribe how many directors shall constitute a quorum for the transaction of business.

(b) The directors elected at the organization meeting of the incorporators, as provided in § 1626 of this title, shall hold office until the succeeding annual meeting of the stockholders or members and until their successors have been duly chosen and qualified, and thereafter directors shall be elected at the annual meeting of the stockholders or members or at an adjournment of the annual meeting. Vacancies in the board of directors shall be filled by a majority of the remaining directors, though less than a quorum, and the directors so chosen shall hold office until the next annual election and until their successors shall be duly elected and qualified.

(c) Every director shall be sworn to the faithful performance of the director's duties.

(71 Del. Laws, c. 25 § 35.)

§ 1643 Stockholders' meetings; time, place, adjournment and quorum.

(a) Meetings of stockholders (except the meeting of incorporators referred to in § 1626 of this title) shall be held in this State. The bylaws shall fix the time of the annual meeting and may provide for special or called meetings of stockholders.

(b) Any meeting of the stockholders may be adjourned and at such adjourned meeting, any business may be transacted that could have been acted on at the meeting which was adjourned.

(c) The bylaws may prescribe what number of shares shall be represented at any stockholders' meeting to constitute a quorum, but in the absence of such a provision, any number of shares represented at a stockholders' meeting shall be sufficient for the transaction of business thereat.

(71 Del. Laws, c. 25 § 35.)

§ 1644 Voting rights of stockholders.

Each stockholder shall, at every meeting of the stockholders, be entitled to 1 vote in person or by proxy for each share of the capital stock held by such stockholder on all issues on which such stockholder is entitled to vote. No stock shall be voted which shall have been transferred on the books of the corporation within 20 days next preceding the stockholders' meeting.

(71 Del. Laws, c. 25 § 35.)

§ 1645 Capital stock; minimum required.

The capital stock of a savings bank organized under this chapter shall be as follows: not less than $500,000 if the savings bank is located in a city or town having a population of more than 50,000 persons; not less than $350,000 if the savings bank is located in a city or town of not more than 50,000 nor less than 5,000 persons; and not less than $250,000 if the savings bank is located in a town of not more than 5,000 persons; or such greater amount as the Commissioner may require after review of the charter, business plan and proposed activities of the savings bank. In addition to the capital stock required by the foregoing, every corporation organized under this chapter shall have a paid-in surplus account equal to no less than one-half of the minimum capital stock required by this section. The minimum capital stock and paid-in surplus required to be maintained by such corporation in its savings bank business pursuant to this section may not be utilized to satisfy the capital or reserve requirements to which the corporation may be subject with respect to any activity authorized by § 1661(a)(14) of this title.

(71 Del. Laws, c. 25 § 35.)

§ 1646 Par value of stock; payment for and issuance; increase and reduction.

The capital stock shall be divided into shares of a stated par value. No business shall be transacted by the corporation until the whole amount of its capital stock is subscribed for and actually paid in in cash. No stock shall be issued by any corporation until the par value thereof shall be fully paid in in cash. Any corporation may, subject to the approval of the State Bank Commissioner, increase or reduce its capital stock in the manner hereinafter provided. In the case of a reduction, the capital stock shall not be reduced to less than the amount required by § 1645 of this title.

(71 Del. Laws, c. 25 § 35.)

§ 1647 Stockholders' liability.

The private property of the stockholders shall not be subject to the payment of the corporate debts except as otherwise provided in the articles of association.

(71 Del. Laws, c. 25 § 35.)

§ 1648 Dividends.

The directors of a savings bank may declare dividends on common or preferred stock of so much of the net profits of the corporation as they shall judge expedient; but the corporation shall, before the declaration of a dividend on common stock from the net profits, carry 50% of its net profits of the preceding period for which the dividend is paid to its surplus fund until the same shall amount to 50% of its capital stock, and thereafter shall carry 25% of its net profits of the preceding period for which the dividend is paid to its surplus fund until the same shall amount to 100% of its capital stock.

(71 Del. Laws, c. 25 § 35.)

§ 1649 Meetings of members of nonstock corporations; voting rights; time, place, adjournment and quorum.

(a) Unless otherwise provided in the certificate of incorporation of a nonstock corporation, each member shall be entitled at every meeting of members to 1 vote in person or by proxy.

(b) Meetings of members of nonstock corporations (except the meeting of incorporators referred to in § 1626 of this title) shall be held in this State. The bylaws shall fix the time of the annual meeting and may provide for special or called meetings of members.

(c) Any meeting of the members may be adjourned and at such adjourned meeting, any business may be transacted that could have been acted on at the meeting which was adjourned.

(d) The bylaws may prescribe what number or participation of members shall be represented at any meeting to constitute a quorum, but in the absence of such a provision, any number or participation of members represented at a meeting shall be sufficient for the transaction of business thereat.

(71 Del. Laws, c. 25 § 35.)

§ 1650 Amendment of charter.

(a) Savings banks organized under this chapter shall amend their certificates of incorporation by and under this section.

(b) Any savings bank may, from time to time, when and as desired, amend its certificate of incorporation relating to the regulation and governance of corporations established under Title 8, where the same are not inconsistent with the express provisions of this chapter, including, but not limited to, addition to its corporate powers and purposes or diminution thereof, or both (provided such additional corporate power or purpose to be such as is authorized or contemplated under any of the provisions of this chapter); or, if organized as a stock corporation, by increasing or decreasing its authorized capital stock (provided that such increase or decrease be expressly approved by the State Bank Commissioner, and provided also that the capital stock shall not be reduced below the amount prescribed by § 1645 of this title as capital stock for a corporation organized under this chapter); by changing the number or par value of its shares of stock; or by changing its corporate title; and by increasing or decreasing its number of directors (provided that in no case shall the whole number of directors be less than 5). Any or all such changes or alterations may be effected by 1 certificate of amendment. No amendment shall contain a provision which would not have been lawful and proper to insert in an original certificate of incorporation granted or issued under this chapter. In the case of an increase of capital stock, the amendment may provide that the increased stock may, in whole or in part, be disposed of without being offered to the stockholders, but in no case shall any stock be issued except upon payment in full in cash.

(c) The procedure for amendment and the manner of making and effecting the same shall be as prescribed in Chapter 1 of Title 8 for the amendment of the certificate of incorporation of a corporation. No certificate of amendment shall be received or filed by the Secretary of State or be deemed or held to be effective unless and until the proposed certificate of amendment shall have been submitted to the State Bank Commissioner and shall have been approved both in substance and in form by the Commissioner.

(71 Del. Laws, c. 25 § 35.)

Subchapter IV

Powers and Prohibitions

§ 1661 General powers of corporations organized under this chapter.

(a) A corporation established under and in compliance with this chapter shall have power to:

(1) Sue and be sued, complain and defend in any court of law or equity;

(2) Make and use a common seal and alter the same at pleasure;

(3) Hold, purchase, convey, mortgage or lease real and personal property;

(4) Borrow and lend money;

(5) Discount bills, promissory notes or other evidences of debt;

(6) Receive deposits of money either on time or demand;

(7) Buy and sell gold and silver bullion and foreign money and coin;

(8) Purchase securities for the investment of the funds under its control and sell the same;

(9) Take mortgages and obligations of all kinds for payment of money for the investment of funds under its control and sell the same;

(10) Receive for safekeeping securities and all types of choses in action and all kinds of personal property;

(11) Keep deposit boxes and rent them to customers or patrons;

(12) Engage in the sale, distribution and underwriting of, and deal in, stocks, bonds, debentures, notes or other securities;

(13) Exercise the powers and engage in the activities permissible for such corporations through 1 or more subsidiaries;

(14) Act as an insurer and transact the business of insurance in accordance with the provisions of Title 18; except that no corporation established under and in compliance with this chapter shall have power to act as a title insurer and transact the business of title insurance;

(15) Act as guarantor or surety for the debt or obligation of another, including, specifically but without limitation, the rediscounting with recourse of commercial paper and the issuance of letters of credit as defined in § 5-103(1)(a) of Title 6 and standby letters of credit. As used herein, the term "standby letter of credit" includes every letter of credit (or similar arrangement however named or designated) which represents an obligation to the beneficiary on the part of the issuer to repay money borrowed by or advanced to or for the account of the customer, or to make payment on account of any evidence of indebtedness undertaken by the customer, or to make payment on account of any default by the customer in performance of an obligation. The terms "beneficiary," "issuer" and "customer," as used herein, have the same meaning as in § 5-103(1) of Title 6;

(16) Authorize an affiliated insured depository institution (as those terms are defined in § 796 of this title) to engage in the authorized agency activities provided in § 796A of this title;

(17) Be appointed executor of a will, codicil or writing testamentary, administrator with the will annexed or administrator of the estate of any decedent, receiver, assignee, guardian, conservator or trustee by will or by any written instrument or other act of the parties, or by any court or official, under the same circumstances, in the same manner and subject to the same control by the court having jurisdiction of the same, as a legally qualified individual;

(18) Act as agent for the purpose of issuing, registering or countersigning the certificates of stock, bonds or other evidences of

indebtedness of a corporation, association, municipal corporation, state or national government, on such terms as may be agreed upon, and also act as trustee for the bondholders of a corporation, and for such purpose may receive transfers of real and personal property upon such terms as may be agreed upon; and

(19) Generally, use, exercise and enjoy all of the powers, rights, privileges and franchises incident to a banking corporation or a trust company, and which are necessary or proper for the transaction of the business of the corporation.

(b) All powers conferred by this section are subject to and are to be construed as qualified by the limitations, restrictions and regulations prescribed by the Commissioner or in other sections of this chapter or by this Code or any other statute of this State providing regulations for banks and trust companies.

(71 Del. Laws, c. 25 § 35.)

§ 1662 Limitations on powers and activities of savings banks.

(a)(1) A savings bank shall operate so as to satisfy the Qualified Thrift Lender Test, as provided in § 10(m) of the Home Owners' Loan Act (12 U.S.C. § 1467a(m)), or in accordance with such regulations or orders as may be established or issued by the Commissioner. Such regulations or orders shall be similar in scope and content to the provisions in the Qualified Thrift Lender Test, as provided in § 10(m) of the Home Owners' Loan Act (12 U.S.C. § 1467a(m)), as in effect on January 1, 1997.

(2) The aggregate amount of secured or unsecured loans for commercial, corporate, business or agricultural purposes made by a savings bank may not exceed 20 percent of the total assets of the savings bank, and amounts in excess of 10 percent of such total assets may be used under this paragraph only for small business loans.

(b)(1) Any savings bank which engages in any activity authorized by § 1661(a)(14) of this title otherwise than through a subsidiary thereof shall engage in each such activity through a department or division which shall maintain financial records separate and distinct from other records of such bank or trust company; provided, that such division may be established and may engage in each such activity only in accordance with the provisions of Title 18.

(2) A savings bank which engages in any activity authorized by § 1661(a)(14) of this title, whether through a department, division or subsidiary, may make loans to and transact other business with such department, division or subsidiary; provided, that such loan or other transaction is made on terms and under circumstances substantially the same as for comparable transactions with or involving other customers or, in the absence of comparable transactions, upon terms and under circumstances that in good faith would be offered to or would apply to other customers.

(3) No department, division or subsidiary of a savings bank which engages in any activity authorized by § 1661(a)(14) of this title shall utilize, in any manner or for any purpose, the information contained in any insurance contract between a nonaffiliated insurer and the insured which such company has obtained from the insured in connection with any request for an extension of credit.

(4) No savings bank which engages in any activity authorized by § 1661(a)(14) of this title shall, in evaluating any request or application for the extension of credit, discriminate against an applicant on the basis that such applicant is a competitor of such savings bank in any such activity.

(5) The offer to sell or the sale of any insurance product authorized to be sold under this section or § 1661(a)(14) shall be made only by those individuals who are validly licensed as insurance agents or brokers in the State or other jurisdiction in which the sale of insurance is offered or consummated. The offer to sell insurance products shall include, but not be limited to, solicitation by mail, telephone, electronic or print media and by personal contact. Violation of this subsection shall subject the violator and the employer of the violator to the penalties prescribed in Title 18 for solicitation or sale of insurance and the receipt or payment of commissions to unauthorized persons, if the violation occurred in this State. The State Bank Commissioner and the Insurance Commissioner shall be charged to advise regulators in other states or jurisdictions when it is discovered that such violations have occurred in such other state or jurisdiction.

(71 Del. Laws, c. 25 § 35; 71 Del. Laws, c. 254 § 27.)

§ 1663 Loans on security of and purchase of its own capital stock.

No corporation established under this chapter shall directly or indirectly make a loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. The stock so purchased or acquired shall, within 6 months after its purchase or acquisition, be sold or disposed of at public or private sale. Notwithstanding the foregoing, the Commissioner may approve the purchase by such a corporation of the shares of its own capital stock, subject to such terms and conditions, if any, as the Commissioner may require.

(71 Del. Laws, c. 25 § 35; 80 Del. Laws, c. 1 § 3.)

§ 1664 Conversion of a nonstock savings bank to a stock savings bank.

Subject to the approval of the Commissioner, a savings bank may convert from a nonstock to a stock form of organization in accordance with such regulations, orders or procedures as may be established or issued by the Commissioner. Such orders and procedures shall be similar in scope and content to, and comply in all material respects with, the mutual-to-stock conversion regulations of the federal insurer of deposits, as currently in effect at the time the nonstock savings bank applies to the Commissioner for approval of the proposed conversion; provided, that conformity with the regulatory requirements imposed by the federal insurer of deposit accounts will not be sufficient for state regulatory purposes if the Commissioner determines that the proposed conversion would pose a risk to the savings bank's safety and soundness, violate any law or regulation, or present a breach of fiduciary duty.

(71 Del. Laws, c. 25 § 35.)

§ 1665 Reorganization as a mutual holding company.

Subject to the approval of the State Bank Commissioner, a nonstock savings bank may reorganize so as to become a mutual holding company and, in connection with such reorganization, form a stock savings bank subsidiary of the holding company in accordance with such regulations, orders or procedures as may be established or issued by the Commissioner. Any regulations, orders and procedures established or issued by the Commissioner pursuant to this section shall be similar in scope and content to, and comply in all material respects with, the mutual holding company regulations for savings associations of the Office of Thrift Supervision (or any successor federal banking agency) as currently in effect at the time the nonstock savings bank applies to the Commissioner for approval of the proposed holding company reorganization; provided, that the Commissioner may exempt the savings bank from any regulatory requirement imposed by such Office of Thrift Supervision regulations, including, but not limited to, any requirement that the mutual holding company formation be approved by the nonstock savings bank's depositors; and provided further, that conformity with the regulatory requirements imposed by the Office of Thrift Supervision will not be sufficient for state regulatory purposes if the Commissioner determines that the proposed formation of the mutual holding company would pose a risk to the savings bank's safety and soundness, violate any law or regulation or present a breach of fiduciary duty. Any issuance of stock in the newly-formed savings bank subsidiary of said mutual holding company to any person or entity other than the mutual holding company shall be conducted in accordance with the requirements and procedures for a mutual-to-stock conversion of a savings bank as prescribed by § 1664 of this title.

(71 Del. Laws, c. 25 § 35.)

Part III
Building and Loan Associations
Chapter 17
REGULATION
Subchapter I
General Provisions

§ 1701 Definitions.

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

(1) "Association" means a building and loan association.

(2) "Borrower" means one who borrows from a building and loan association and may include a stockholder of such association or a nonstockholder.

(3) "Building and loan association" means any corporation, person, firm, partnership, association, trustee or combination of persons whatsoever, within the purview of this chapter and includes savings and loan associations.

(4) "Fines" means a penalty imposed for the nonpayment of dues and interest when due.

(5) "Full paid plan" refers to the provisions in the charter, constitution, bylaws, declaration of trust, contract, agreement, or other device authorizing the issuance of full paid stock in either installments or otherwise, or any other evidence of money paid to or deposited with a building and loan association, and which may or may not have a definite maturity, but may be withdrawn upon required notice served by the member, and upon which the association may declare periodical dividends.

(6) "Guaranteed loan" means a loan that is guaranteed under the Servicemen's Readjustment Act of 1944.

(7) "Insured loan" means a loan that is insured, or as to which the mortgagee is insured, or as to which a commitment for any insurance has been made under either the National Housing Act [12 U.S.C. § 1701 et seq.], or the former Servicemen's Readjustment Act of 1944, as those acts are now, or may hereafter be, amended.

(8) "Membership fee" means a fee to be paid by the stockholder upon subscribing for shares of stock.

(9) "Premiums" means a sum paid by the borrower over and above the legal rate of interest charges for any loan.

(10) "Serial plan" refers to the provisions in the charter, constitution, bylaws, declaration of trust, contract, agreement or other device authorizing the issuance of serial stock in either quarterly, semiannual or annual series and which requires members or customers to pay regular installments to a common fund or series, from which fund or series loans are made to members, customers, or to others, and which contemplates maturity of the series by adding together the amount paid in by members and profits earned.

(32 Del. Laws, c. 107 § 3; 33 Del. Laws, c. 112 § 1; Code 1935 § 2338; 43 Del. Laws, c. 136 § 1; 5 Del. C. 1953 § 1701; 50 Del. Laws, c. 218 § 1; 56 Del. Laws, c. 328 §§ 1, 2.)

§ 1702 Application of chapter; exception.

(a) This chapter shall apply to and be enforceable against all corporations, persons, firms, partnerships, associations, trustees or combinations of persons, which or who transact, or attempt to transact, a building and loan business, or a business of like kind or character, or where, by its or their charter, constitution, bylaws, or by a declaration of trust, or other device, or by a contract or agreement the members or customers are required to pay regular installments to a common fund or series, from which fund or series loans are made to members, customers, or others for the purpose of building homes or buildings, purchasing building sites, paying off liens or debts against real estate, or for other purposes, within the boundaries of this State.

(b) This chapter shall be applicable to all persons, associations, copartnerships or corporations who shall, by violating this chapter, become subject to the penalties provided herein.

(c) This chapter shall not apply or have any relation to building and loan associations incorporated under the general corporation laws of this State which do not transact, or attempt to transact, business within the boundaries of this State.

(d) Nothing in this chapter shall be construed to affect the legality of investments made prior to April 7, 1921, or be deemed to impair the rights, privileges and powers contained in the charter or certificate of incorporation of any corporation organized prior to April 7, 1921; and vested rights acquired under statutes in effect prior to April 7, 1921 and actually existing and enjoyed on that date shall not be divested or disturbed.

(32 Del. Laws, c. 107 §§ 1, 2, 23; Code 1935 §§ 2336, 2337, 2358; 5 Del. C. 1953 § 1702.)

§ 1703 Supervision and examination of association by Commissioner.

(a) Every building and loan association having an office or place of business in this State and transacting business in this State shall be subject to the supervision and examination of the State Bank Commissioner, and shall be examined by the Commissioner as frequently as

deemed necessary or expedient. On the occasion of every examination under this section, the Commissioner shall in company with 1 or more of the officers of the association visited be given access to every part of the office or place of business visited and to the assets, securities, books and papers of the association.

(b) Any examination under this chapter may be made by the Commissioner in person or by the Commissioner's deputy, or the Commissioner's clerk, or by special persons designated by the Commissioner, when so authorized by the Commissioner and acting under the Commissioner's orders. Before proceeding with the examination of any association, the person conducting the examination shall, if required, exhibit to the officers of the association satisfactory evidence of his authority to make the examination.

(c) The examination required by this section shall be a thorough examination into the affairs of the association visited, its resources and liabilities, the investment of its funds, the mode of conducting its business, the safety and prudence of its management, the acts of its officers, directors or trustees, and its compliance or noncompliance with its charter and bylaws and of this Code and any other statutes of the State.

(d) In connection with any examination under this section, the Commissioner may examine, under oath or affirmation, the officers, directors or trustees, and the employees, of the association, relative to its affairs, and, for this purpose, he may administer oaths or affirmations.

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

(32 Del. Laws, c. 107 § 22; Code 1935 § 2357; 46 Del. Laws, c. 252 § 1; 5 Del. C. 1953 § 1703; 68 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 15 § 24.)

§ 1704 Exemption from examination by Commissioner.

A building and loan association which shall be examined by a certified public accountant may be exempted from examination by the Commissioner, and an examination by a certified public accountant may be accepted by the Commissioner as a sufficient compliance with the requirements of this chapter with respect to examinations. In any such case, a certified report of the examination made by the certified public accountant, shall be filed in the office of the Commissioner.

(32 Del. Laws, c. 107 § 22; Code 1935 § 2357; 5 Del. C. 1953 § 1704.)

§ 1705 Annual report to Commissioner.

(a) Every building and loan association existing under this Code or any other law of this State or any other state, and doing business within the boundaries of this State, shall annually, at the end of its fiscal year, furnish to the State Bank Commissioner, a detailed statement of its condition at the close of its last fiscal year, giving a full detailed statement showing the gross amount of dues, interest, premiums, fines, repayments and other funds received and collected by the association for the last fiscal year, and the amount of its earnings, and its aggregate assets and liabilities at the close of the fiscal year and any other information that the Commissioner may request. The statement shall be verified by the oath or affirmation of the president and secretary, duly administered by some person authorized by the laws of the State to administer oaths. The Commissioner may, 1 time within every fiscal year of any building and loan association existing under the laws of this State or any other state, and doing business within the boundaries of this State, require any such association to issue, as a part of the annual statement of the association, a list by book number, of all accounts in arrears or in advance, or in the case of associations of the kind commonly designated and described as being organized under the permanent or Dayton plan, may require the confirmation of the accounts of all members. The confirmation shall set forth the credit balance of each of the members as the same is shown upon the books of the building and loan association upon a day selected by the Commissioner. The expense of issuing the list shall be paid entirely by each individual association.

(b) Every building and loan association doing business in this State, created by the laws or regulations of any other state or federal agency, shall furnish a statement which sets forth the amount of assets held by the association in this State, and the amount of liabilities due shareholders residing in this State and submit a copy of its annual report at the end of each fiscal year.

(32 Del. Laws, c. 107 §§ 11, 12; 37 Del. Laws, c. 133 § 3; Code 1935 §§ 2346, 2347; 5 Del. C. 1953 § 1705; 68 Del. Laws, c. 105 § 4.)

§ 1706 Publication of statement of assets and liabilities.

The State Bank Commissioner may require annually at the end of its fiscal year, the publication of a report by a building and loan association in 1 issue of a newspaper located within the county in which it has its office, showing in detail the assets and liabilities at the close of its fiscal year; and the expense of such publication shall be paid by the association.

(32 Del. Laws, c. 107 § 14; Code 1935 § 2349; 5 Del. C. 1953 § 1706.)

§ 1707 Foreign associations; annual designation of resident agent; wholly-owned subsidiary required; waiver of requirement.

(Repealed by 68 Del. Laws, c. 105 § 5, eff July 3, 1991.)

§ 1708 Exemption from operation of attachment laws.

No building and loan association authorized to do business under this Code or any other law of this State shall be subject to the

operations of the attachment laws of this State, as provided in the case of individuals.

(32 Del. Laws, c. 107 § 3; 33 Del. Laws, c. 112 § 1; Code 1935 § 2338; 43 Del. Laws, c. 136 § 1; 5 Del. C. 1953 § 1708.)

§ 1709 Unsound condition of association or unauthorized conduct of business; receivership and other remedial proceedings.

(a) Proceedings may be instituted against any building and loan association doing business within the boundaries of this State, whenever it appears to the State Bank Commissioner that the affairs of any building and loan association are in an unsound condition because of illegal or unsafe investments, or that its liabilities exceed its assets, or that it is transacting business without authority or in violation of law, or that it is unsafe or inexpedient for the association to continue business.

(b) The Attorney General, on notice by the State Bank Commissioner, shall institute such proceedings against the building and loan association as the nature of the case may require. For any of the reasons mentioned in this section the State Bank Commissioner may forthwith take possession of the building and loan association's property and business and retain such possession until the termination of the action or proceeding instituted by the Attorney General, or until the appointment of a receiver by due process of law.

(c) The receiver to be appointed in a proceeding under this section shall be the State Bank Commissioner or, in his or her absence or disability, the Deputy Bank Commissioner. Neither of those officials shall receive any extra compensation for acting as receiver. The Court may vest the receiver with full power and authority to borrow such sum or sums of money as the Court determines in order the more readily or expeditiously to settle the affairs of the building and loan association and/or to make payments to its creditors, depositors or shareholders. Such borrowing may be from any public or governmental or quasi-public or quasi-governmental corporation, board, commission or other agency or from any source whatsoever, and the Court may authorize the receiver to secure any loan by the pledge of any of the property or assets of the building and loan association, and to give the lender a preference as to the pledged property and assets over the creditors of the building and loan association.

(32 Del. Laws, c. 107 § 16; Code 1935 § 2351; 44 Del. Laws, c. 135 § 1; 5 Del. C. 1953 § 1709; 70 Del. Laws, c. 186 § 1.)

§ 1710 Violations and penalties.

Any building and loan association wilfully violating or failing to observe and comply with this chapter shall be subject to a penalty of not less than $100 for each violation thereof, and for each failure to observe and comply with this chapter. Any building and loan association which neglects or refuses to pay and discharge the amount of the penalty shall have its authority to transact business in this State revoked by the State Bank Commissioner. Such revocation shall continue, and the building and loan association shall not again be authorized or permitted to transact business in this State until the association has paid the amount of the penalty.

(32 Del. Laws, c. 107 § 20; Code 1935 § 2355; 5 Del. C. 1953 § 1710; 68 Del. Laws, c. 105 § 6.)

§ 1711 Penalty; soliciting subscriptions to shares for a commission.

(Repealed by 68 Del. Laws, c. 105 § 7, eff July 3, 1991.)

Subchapter II

License to Do Business

§ 1721 Requirement of license.

No person shall engage in the business of a building and loan association, or a business similar to that of a building and loan association, within the limits of the State until a license has been obtained or the registration requirements fulfilled as provided in this subchapter.

(32 Del. Laws, c. 107 § 9; 37 Del. Laws, c. 133 § 2; Code 1935 § 2344; 5 Del. C. 1953 § 1721; 68 Del. Laws, c. 105 § 8.)

§ 1722 Annual license fees.

Every building and loan association created under this Code or any other law of this State, and doing business in this State, shall pay to the State Bank Commissioner, for the use of the State, at the time of filing its annual report, an annual license fee of $115. Every building and loan association, or a business similar to that of a building and loan association, created under the laws or regulations of any other state or federal agency and doing business within the boundaries of this State shall pay to the State Bank Commissioner, for the use of the State, at the time of filing its annual report, an annual registration fee of $575.

(32 Del. Laws, c. 107 § 10; Code 1935 § 2345; 5 Del. C. 1953 § 1722; 60 Del. Laws, c. 268 §§ 10, 11; 67 Del. Laws, c. 260 § 1; 68 Del. Laws, c. 105 § 9.)

§ 1723 Application for license generally; grounds for refusal; fee upon approval of application; investigation fee; moratorium upon issuance.

(a) Every person, desiring to obtain a license under this chapter, shall file with the Commissioner an application in writing in such form as may be prescribed by the Commissioner, which application must demonstrate public convenience and advantage which will be satisfied by the approval of such application. Before a license shall be issued by the Commissioner, the Commissioner shall make, or cause to be made, an investigation of the condition and affairs of the applicant and its general plan of operation. The Commissioner shall investigate the

moral character and general fitness of the applicant, if an individual, and of the members of a partnership or association, and of the directors, managers, trustees, and other officers of every applicant, to discharge the duties reposed in them, and may examine any or all of them under oath. The Commissioner shall require the applicant to enter into written agreement with him or her for a business plan, describing the management, operations and investments. The business plan shall include financial projections of the proposed licensee for the first 3 years of operation and the plan, as a minimum, shall conform with the requirements of 12 C.F.R. § 571.6(b) as existing on the effective date hereof. Unless the State Bank Commissioner is satisfied as to the character and general fitness of the managing officers of the applicant to honestly and efficiently carry on its business, and that the plan of operation is financially and mathematically sound, and that the contracts or obligations issued or to be issued are practicable and possible of fulfillment, and of such nature as to insure the repayment of the principal amount or amounts actually paid in by the subscriber or purchaser, together with a reasonable profit or accumulation of interest within a reasonable time after notice and demand by the subscriber or purchaser, and is equitable and nonoppressive, the Commissioner shall refuse the license, and forthwith notify the applicant of such refusal, and specify in the notice the cause or causes thereof.

(b) An applicant shall pay to the office of the State Bank Commissioner a fee of $1,150 for use of the State upon approval of the application. In addition, the applicant shall pay an investigation fee of $575 which shall not be refundable and shall be submitted with the application.

(c) No new license required under § 1721 of this title shall be issued after July 15, 1991.

(32 Del. Laws, c. 107 § 18; 33 Del. Laws, c. 112 § 2; Code 1935 § 2353; 5 Del. C. 1953 § 1723; 60 Del. Laws, c. 268 § 12; 65 Del. Laws, c. 13 § 3; 67 Del. Laws, c. 260 § 1; 68 Del. Laws, c. 105 § 10; 70 Del. Laws, c. 186 § 1.)

§ 1724 Issuance of license; term.

If it appears from the annual statement filed with the State Bank Commissioner, that a building and loan association is in a safe or solvent condition, is transacting business in compliance with the law, and payment of the annual renewal license or registration fee as prescribed in § 1722 of this title has been made, then the Commissioner shall issue to the association a license authorizing it to transact its business in this State for 1 year from the date thereof unless the Commissioner deems it necessary, for the protection of the shareholders of the association, or of the public, to sooner revoke the same, which the Commissioner is empowered to do.

(32 Del. Laws, c. 107 § 13; Code 1935 § 2348; 5 Del. C. 1953 § 1724; 68 Del. Laws, c. 105 § 11; 70 Del. Laws, c. 186 § 1.)

§ 1725 Revocation or withholding of license.

If any building and loan association violates this chapter, or any law of the State, the State Bank Commissioner may revoke or withhold its license to do business.

(32 Del. Laws, c. 107 § 17; Code 1935 § 2352; 5 Del. C. 1953 § 1725.)

§ 1726 Penalty for doing business without license.

Whoever, being an agent or officer of any building and loan association which has not obtained authority to do business in this State under this chapter, or the authority of which has been revoked by the State Bank Commissioner, solicits or carries on business for the association in this State, shall be fined not less than $25 per violation.

(32 Del. Laws, c. 107 § 21; Code 1935 § 2356; 5 Del. C. 1953 § 1726; 68 Del. Laws, c. 105 § 12; 72 Del. Laws, c. 15 § 25.)

§ 1727 Insurance required.

No building and loan association whose total assets exceed $7,000,000 or registered office of an association created under the laws of any other state may engage in business within this State unless its shares, savings accounts, savings certificates and other types of share or deposit accounts offered are federally insured. Before an institution which is not federally insured receives funds from a new shareholder, investor, member, subscriber and/or depositor, the institution shall obtain the signature of such person upon a disclosure, on a form approved by the State Bank Commissioner, advising such person that the funds deposited with that institution are not federally insured.

(65 Del. Laws, c. 13 § 1; 67 Del. Laws, c. 55 § 3; 68 Del. Laws, c. 105 § 13; 69 Del. Laws, c. 40 §§ 1, 2; 72 Del. Laws, c. 15 § 26; 74 Del. Laws, c. 4 § 1; 75 Del. Laws, c. 181 § 1.)

Part III
Building and Loan Associations
Chapter 18
TAXATION

§ 1801 Annual franchise tax; rate of taxation.

(a) A franchise tax is hereby imposed on the "taxable income" of building and loan associations (computed on a basis that consolidates with the income of such building and loan association for the tax year involved, the income of all subsidiary corporations of such building and loan organization in accordance with generally accepted accounting principles). The "taxable income" on which such tax is imposed shall be equal to the product of (1) and (2) as follows:

(1) Net operating income before taxes reduced by:

a. That portion of net operating income before taxes verifiable by documentary evidence from any subsidiary or branch which is (i) otherwise subject to income taxation under Delaware law, or (ii) derived from business activities carried on outside the State and subject to income taxation under the laws of another state;

b. The gross income derived from international banking transactions (as defined in § 101 of this title) after subtracting therefrom any expenses or deductions attributable thereto;

c. The gross income of an international banking facility (as defined in § 101 of this title) less any expenses or other deductions attributable thereto;

d. The interest income from obligations of volunteer fire companies; and

e. Any examination fee paid to the Office of the State Bank Commissioner pursuant to § 127(a) of this title.

(2) Multiplied by the factor .56.

(b) A franchise tax is hereby imposed on the "taxable income" of building and loan associations not headquartered in this State but maintaining branches in this State, verifiable by documentary evidence. The "taxable income" on which tax is imposed shall be equal to the net operating income of the branch or branches located in Delaware, reduced by the interest income from obligations of volunteer fire companies.

(c) The rate of tax upon the taxable income of building and loan associations shall be as follows: 8.7% of the amount of net operating income not in excess of $20,000,000; 6.7% of the amount of net operating income in excess of $20,000,000 but not in excess of $25,000,000; 4.7% of the amount of net operating income in excess of $25,000,000 but not in excess of $30,000,000; 2.7% of the amount of net operating income in excess of $30,000,000.

(d) Any entity taxable under this section is eligible for tax credits in accordance with the Historic Preservation Tax Credit Act (subchapter II, Chapter 18, Title 30), which credits shall be against any taxes imposed under this chapter; provided, however, that all claimed credits are accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that such credits have been earned in compliance with that act.

(59 Del. Laws, c. 434 § 2; 61 Del. Laws, c. 78 § 1; 68 Del. Laws, c. 303 § 34; 73 Del. Laws, c. 6 § 5.)

§ 1802 Report of net earnings and payment of tax; penalties.

(a) Within 75 days after the end of its fiscal year the building and loan association, acting through its president, treasurer, or other proper officer, shall report under oath to the State Bank Commissioner, the net earnings of the building and loan association for that next previous taxable period, and at the same time the building and loan association shall pay to the State Bank Commissioner the proper amount of tax for that period as computed under this chapter. Any and all documents relating to the taxation of a building and loan association pursuant to this chapter shall be true statements, verified by oath, by the president, treasurer or other proper officer of the building and loan association.

(b) In the case of a building and loan association which has been engaged in a building and loan business of any kind in this State for less than the whole year, the amount of tax due, at the rates provided in this chapter, shall be prorated for that portion of the year during which the building and loan association was engaged in a building and loan business of any kind within this State. Within 30 days of the cessation of all building and loan business of any kind within this State, the president, treasurer or other proper officer shall file a true statement, verified by oath, setting forth the net income of such building and loan association as defined in this chapter, and such other true statement, in such form as shall be specified by the Commissioner, verified by oath, setting forth the "taxable income" of such building and loan association as defined in this chapter.

(c) If any building and loan association shall fail to pay any tax due under this chapter on or before the due date, a penalty of 11/2 percent shall be assessed for each month or fraction thereof that the same remain unpaid after such date.

(59 Del. Laws, c. 434 § 2; 63 Del. Laws, c. 66 § 1; 68 Del. Laws, c. 303 § 35.)

§ 1803 Tax lien.

If any building and loan association shall fail to pay any tax due under this chapter, on or before the due date, the full amount of all such tax due the State shall be a lien in favor of the State upon all property and all rights to property, real or personal, belonging to such building

and loan association.

(59 Del. Laws, c. 434 § 2; 68 Del. Laws, c. 303 § 36.)

§ 1804 State corporation income tax; exemption.

All building and loan associations being taxed in accordance with this chapter shall be exempt from the state corporation income tax beginning with the fiscal year for each such building and loan association in which this chapter shall become effective.

(59 Del. Laws, c. 434 § 2.)

§ 1805 Rules and regulations.

The State Bank Commissioner may, from time to time, adopt and promulgate rules and regulations for the reporting and collection of the franchise taxes imposed in accordance with this chapter and not inconsistent with this title.

(59 Del. Laws, c. 434 § 2.)

§ 1806 Exemption from other taxes.

The taxation of the income of the building and loan associations under this chapter shall be in lieu of all taxes upon the capital, surplus, property and assets of such organization, except that no real estate owned by any such organization constituting the whole or any part of its capital, surplus or assets shall be exempt from taxation.

(59 Del. Laws, c. 434 § 2.)

§ 1807 Secrecy of returns and information; penalty.

(a) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Commissioner or any person who is an officer or employee in the Office of the Commissioner, or for any other officer or employee of this State who has access to tax returns or information from tax returns under this chapter, to disclose or make known to any person in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter. Notwithstanding the foregoing, the Commissioner may permit the Commissioner of Internal Revenue of the United States, the proper officer of this or any other state, the District of Columbia, or any possession or territory of the United States that imposes a tax, or the authorized representative of any of such officers, to inspect the tax return of any taxpayer under this chapter, and the Commissioner may furnish to any such officer, or such officer's authorized representative, an abstract of the tax return of any taxpayer under this chapter or supply such officer or such officer's authorized representative with information contained in any such tax return or disclosed by the report of examination or investigation of the income or return of such taxpayer, but only for the purpose of, and only to the extent necessary in, the administration of the tax laws of such jurisdiction; provided, however, that no such permission shall be granted, and no such information shall be furnished, to any such officer or the officer's representative unless the statutes of such jurisdiction grant substantially similar privileges to the Commissioner or the Commissioner's legal representative.

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

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

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

(72 Del. Laws, c. 15 § 27; 73 Del. Laws, c. 24 § 3.)

§ 1808 Abatements.

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

(1) Excessive in amount;

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

(3) Erroneously or illegally assessed.

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

(72 Del. Laws, c. 15 § 27.)

§ 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.

(72 Del. Laws, c. 15 § 27.)

Part III
Building and Loan Associations
Chapter 19
POWERS AND CONDUCT OF BUSINESS

§ 1901 Members of association.

All shareholders of record and all borrowers from a building and loan association shall be members thereof. A borrowing member obligated upon a real estate loan shall remain a member of the association, even though the member has transferred the real estate security subject to real estate loan so long as the borrowing member remains obligated upon the real estate loan.

(32 Del. Laws, c. 107 § 3; 33 Del. Laws, c. 112 § 1; Code 1935 § 2338; 43 Del. Laws, c. 136 § 1; 5 Del. C. 1953 § 1901; 70 Del. Laws, c. 186 § 1.)

§ 1902 Special powers of domestic association.

Building and loan associations organized under Title 8 may, in addition to the other powers granted in such title and this chapter, make loans to and among their stockholders and also to and among nonstockholders.

Building and loan associations may also make loans secured by shares of their own capital stock.

Building and loan associations may charge and collect periodic interest in respect to such loans at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing, or the bond, note or other evidence of the loan provides, or as established in the manner provided in such agreement, bond, note or other evidence of the loan, and may calculate such periodic interest by way of simple interest or such the method as the agreement governing, or the bond, note or other evidence of the loan provides. If the interest is precomputed, it may be calculated on the assumption that all scheduled payments will be made when due. For purposes thereof, a year may but need not be a calendar year and may be such period of from 360 days to 366 days, including or disregarding leap year, as the association may determine.

Building and loan associations may engage in revolving credit and closed end credit. Such activities shall be subject to the provisions of subchapters II and III of Chapter 9 of this title.

Building and loan associations may act as trustee of trusts created or organized in the United States under the Self-Employed Individuals Tax Retirement Act of 1962, and amendments thereto, and which qualify for specific tax treatment under § 401(d) or § 408(a) of the United States Internal Revenue Code of 1986 [26 U.S.C. § 401(d) or § 408(a)], if the funds of such trust are invested in savings accounts or deposits in such association or in obligations or securities issued by such association. Individual accounts and records shall be kept by the association for each participant and shall show in proper detail all transactions therein.

(21 Del. Laws, c. 273 § 68; 22 Del. Laws, c. 166 § 7; Code 1915 § 2015; Code 1935 §§ 2158, 2359; 5 Del. C. 1953 § 1902; 56 Del. Laws, c. 328 § 3; 61 Del. Laws, c. 381 § 1; 68 Del. Laws, c. 105 § 14.)

§ 1903 Authorized plans of operation.

Any duly licensed or registered building and loan association doing business in this State, provided its charter permits, may issue serial shares, full paid shares, installment full paid shares, and may also make available to members savings accounts, savings certificates and any other type of share or account which any federally chartered association may issue under the rules and regulations of the Office of Thrift Supervision or any successor federal regulatory authority and under the term of its charter.

(32 Del. Laws, c. 107 § 3; 33 Del. Laws, c. 112 § 1; Code 1935 § 2338; 43 Del. Laws, c. 136 § 1; 5 Del. C. 1953 § 1903; 61 Del. Laws, c. 380 § 1; 68 Del. Laws, c. 105 § 15.)

§ 1904 Dividends.

Every building and loan association duly licensed or registered, provided its charter shall permit, may provide either in its bylaws or by a resolution or resolutions of its board of directors a schedule of varying rates of dividends for different classes of shares of stock, and different types of shares within any class, including any type of share or account available to federally chartered associations operating in this State.

(32 Del. Laws, c. 107 § 3; 33 Del. Laws, c. 112 § 1; Code 1935 § 2338; 43 Del. Laws, c. 136 § 1; 5 Del. C. 1953 § 1904; 50 Del. Laws, c. 218 § 2; 61 Del. Laws, c. 380 § 2; 68 Del. Laws, c. 105 § 16.)

§ 1905 Branch offices.

The establishment of a branch office by a building and loan association shall be governed by § 2011 of this title. Branching of building and loan associations shall be limited to the extent permitted to banks chartered pursuant to Chapter 7 of this title.

(68 Del. Laws, c. 105 § 17.)

§ 1906 Premiums, fines and fees.

(a) The power to collect premiums, fines and membership fees within the limits of this chapter, or as permitted by any other law of this State, is granted to building and loan associations. Fines shall not be imposed against and collected from any serial shareholder for more

than 6 consecutive months at a greater rate than 5 cents per month for each dollar past due, and after the expiration of 6 months, at a greater rate than one half of 1 percent per month for each dollar past due. Any serial shareholder who is 6 months in arrears in the payment of his or her monthly dues may be required to withdraw any balance due the shareholder from the association. If any serial shareholder, who is delinquent 6 months or more in payment of monthly dues, refuses to accept settlement from the association, or if the association is unable to locate the shareholder, then the association may (1) deposit the amount due the shareholder to his or her credit in an account in any state or national bank as defined in § 101 of this title, or (2) invest in a full paid share account or an installment full paid share account or a similar account of the association in the name of the shareholder.

(b) A building and loan association may lend funds of the association either with or without charging the borrower a premium for the privilege of being granted such loan, but an association shall not charge any premium unless the borrower agrees in writing to pay such premium. Any premium charged shall not exceed 3 percent of the original amount of the loan and may be deducted by the association in advance, or paid separately by the borrower at settlement, or if the association consents, may be paid in 3 equal annual installments with the first installment payable at settlement and the other 2 installments on the first and second anniversaries of the date of settlement.

A premium paid, pursuant to this section, by a borrower from an association, shall not be deemed usurious, although when it is added to any interests paid upon such loan, it exceeds the legal or the contract rate of interest.

(32 Del. Laws, c. 107 §§ 4, 5; Code 1935 §§ 2339, 2340; 43 Del. Laws, c. 137 § 1; 5 Del. C. 1953 § 1906; 55 Del. Laws, c. 184; 56 Del. Laws, c. 328 § 4; 63 Del. Laws, c. 142 § 6.)

§ 1907 Withdrawal value of shares.

The withdrawal value paid in any 1 fiscal year to any shareholder of a building and loan association, after having paid all dues, interest, premiums, fines and membership fees due by him for a period of 1 year or more, shall be computed upon a uniform basis in respect to all such withdrawals in the fiscal year.

(32 Del. Laws, c. 107 § 6; Code 1935 § 2341; 5 Del. C. 1953 § 1907.)

§ 1908 Investment of association's funds in corporate stock.

The funds of a building and loan association, existing under this Code or any other law of this State, shall not be invested in any corporation stocks. Nothing herein contained shall prevent a building and loan association from purchasing and acquiring stock in the Federal Home Loan Bank under the provisions of the Act of Congress known as the Federal Home Loan Bank Act [12 U.S.C. § 1421 et seq.], or prevent a building and loan association from acquiring any corporation stock to secure itself against loss of money owing to it by any borrower. The stock so acquired under the last preceding clause shall be sold within 60 days after the State Bank Commissioner shall direct.

(32 Del. Laws, c. 107 § 7; 39 Del. Laws, c. 19 § 1; Code 1935 § 2342; 5 Del. C. 1953 § 1908.)

§ 1909 Membership in Federal Home Loan Bank.

Any building and loan association incorporated under this Code or any other law of this State may become a member of the Federal Home Loan Bank, organized or to be organized in the district in which such building and loan association is located, under the Act of Congress known as the Federal Home Loan Bank Act [12 U.S.C. § 1421 et seq.], and the building and loan association may subscribe for, purchase, hold and surrender, from time to time, such amounts of the capital stock of the Federal Home Loan Bank as the building and loan association deems advisable, or as may be required under the Federal Home Loan Bank Act, or any amendment thereof, in order to obtain and continue such membership, and upon the purchase of the stock to assume the liabilities and become entitled to the benefits recited in the Federal Home Loan Bank Act.

(32 Del. Laws, c. 107 § 7; 39 Del. Laws, c. 19 § 1; Code 1935 § 2342; 5 Del. C. 1953 § 1909.)

§ 1910 Borrowing from Federal Home Loan Bank.

Any building and loan association doing business in this State may borrow from any Federal Home Loan Bank to any amount within the regulations of the Federal Home Loan Bank and may secure advances from the Federal Home Loan Bank by the assignment or pledge of any mortgage, mortgages, or other assets, held by the building and loan association, and the building and loan association is authorized in securing advances to comply with such regulations, restrictions and limitations as the board of the Federal Home Loan Bank prescribes.

(32 Del. Laws, c. 107 § 7; 39 Del. Laws, c. 19 § 1; Code 1935 § 2342; 5 Del. C. 1953 § 1910.)

§ 1911 Power to borrow generally.

Any building and loan association doing business in this State may borrow money from sources other than a Federal Home Loan Bank, and may secure the same by the assignment or pledge of any mortgage, mortgages, or other assets held by the building and loan association, but the amount borrowed from all such other sources shall not at any time exceed in the aggregate 30 percent of the shareholders' invested capital in said association. The amount borrowed from all sources shall at all times, irrespective of whether or not the same are secured, constitute a preferred claim superior to all claims on account of the shares of the building and loan association.

(32 Del. Laws, c. 107 § 7; 39 Del. Laws, c. 19 § 1; Code 1935 § 2342; 45 Del. Laws, c. 165 § 1; 5 Del. C. 1953 § 1911; 56 Del. Laws, c. 328 § 5.)

§ 1912 Limitation on loans not secured by first mortgage on real estate.

Not more than 50 percent of the shareholders' invested capital in any building and loan association doing business in this State shall be loaned on real estate security on other than first liens.

(32 Del. Laws, c. 107 § 7; 39 Del. Laws, c. 19 § 1; Code 1935 § 2342; 5 Del. C. 1953 § 1912; 56 Del. Laws, c. 328 § 6.)

§ 1913 Matured stock.

When, from the distribution of the profits of any building and loan association, the profits accruing to any series of stock show that the series has matured according to the provisions of the bylaws of the association, the association shall not make any further investment of its funds until all of the matured series of stock has been paid the owners thereof. The building and loan association shall allow the owners of matured stock interest at the rate of not less than 5 percent per annum upon the matured value of the series of stock during the time after the first month that the same remains unpaid. In no case shall the retirement of the stock be deferred longer than for a period of 12 months after the stock has matured.

(32 Del. Laws, c. 107 § 8; Code 1935 § 2343; 5 Del. C. 1953 § 1913.)

§ 1914 Contingent fund.

A building and loan association may set aside in its treasury, out of its earnings, a contingent fund which shall be used only for the purpose of paying losses and necessary expenses incurred in the maturing of any of its series of stock, and for the purpose of establishing and making equal, as nearly as may be, the time of maturing of all of the series. The funds so set aside may be invested as other funds of the association.

(32 Del. Laws, c. 107 § 19; 37 Del. Laws, c. 133 § 4; Code 1935 § 2354; 5 Del. C. 1953 § 1914.)

§ 1915 Undivided profits.

Any building and loan association may, at the discretion of its board of directors set aside any surplus net income or other available earnings which remain after reserve and dividend requirements have been met and retain such funds in an undivided profits account, provided that the total undivided profits on hand at any one time shall not exceed 10 percent of the association's paid in capital plus earnings.

(5 Del. C. 1953 § 1915; 50 Del. Laws, c. 218 § 4.)

§ 1916 Fiscal agent.

If and when an association is a member of a Federal Home Loan Bank, it shall have power to act as fiscal agent of the United States, and, when so designated by the Secretary of the Treasury, it shall perform, under such regulations as he may prescribe, all such reasonable duties as fiscal agent of the United States as he may require, and when authorized shall have power to act as fiscal agent for any instrumentality of the United States or of any instrumentality of this State.

(5 Del. C. 1953 § 1916; 50 Del. Laws, c. 218 § 4.)

§ 1917 Investment by minors.

(a) Any building and loan association in this State may receive funds for investment in the shares of the association from or in the name of a minor. When an investment shall be made in the shares of a building and loan association by a minor or in the name of a minor, the funds shall be held for the benefit of the investor in the same way and to the same extent as if the investor were an adult person. A minor may make drafts upon or withdrawals of his or her investment to the same extent as if he or she were an adult person and the funds shall be paid, together with dividends or interest thereon, to the person in whose name the investment shall have been made, or upon his or her written order. The receipt or acquittance of a minor shall be a valid and sufficient release and discharge to the association for the return of any investment, dividends or interest, or any part thereof.

(b) Any building and loan association shall have the right to refuse to receive funds offered for investment by or in the name of a minor.

(c) A minor investing funds in the shares of a building and loan association shall be subject, in all transactions connected therewith, as between himself or herself and the association, to all obligations, equities and defenses to which an adult person would be subject in similar transactions.

(5 Del. C. 1953 § 1917; 50 Del. Laws, c. 218 § 4; 70 Del. Laws, c. 186 § 1.)

§ 1918 Investments standing in the name of decedents.

Building and loan associations may pay out the investment of decedents, together with any dividends or interest thereon, without requiring letters of administration to be issued upon the estates of such decedents, when and as provided by §§ 2306 and 2307 of Title 12.

(5 Del. C. 1953 § 1918; 50 Del. Laws, c. 218 § 4.)

§ 1919 Investments standing in the names of 2 or more persons.

When an investment in the shares of any building and loan association is made in the name of 2 or more persons, deliverable or payable to either, or to the survivor or survivors, the investment, or any part thereof, or the increase thereof, may be delivered or paid to either of the persons, or to the survivor or survivors, in due course of business.

(5 Del. C. 1953 § 1919; 50 Del. Laws, c. 218 § 4.)

§ 1920 Investments in trust.

When an investment is made by any person in the shares of a building and loan association in this State, said investment in trust for another, and no other or further notice of the existence and terms of a legal and valid trust has been given in writing to the association, then, in the event of the death of the trustee, the investment or any part thereof, or the increase thereof, may be paid to the person for whose benefit the investment was made, or his or her legal representative, and the association shall be discharged of any further obligation whatsoever.

(5 Del. C. 1953 § 1920; 50 Del. Laws, c. 218 § 4; 70 Del. Laws, c. 186 § 1.)

§ 1921 Powers similar to federally chartered institutions.

To the extent authorized by the Commissioner pursuant to regulations, a building and loan association shall have the power to engage in any activity which such federally chartered institutions may be authorized to engage in by federal legislation or regulations issued pursuant to such legislation.

(63 Del. Laws, c. 10 § 1.)

Part III
Building and Loan Associations
Chapter 20
MERGER, CONSOLIDATION OR CONVERSION

§ 2001 Merger, consolidation and conversion authorized.

Any 2 or more building and loan associations incorporated under the general corporation laws of this State may, in the manner hereinafter provided, be merged into one such association, hereinafter designated as the surviving association, or consolidated into a new association to be formed under this chapter.

One or more building and loan associations incorporated under the general corporation laws of this State and 1 or more federal savings and loan associations, operating under the laws of the United States, may, in the manner hereinafter provided and pursuant to the laws of the United States, be merged into an association, hereinafter designated as the surviving association, or into a federal savings and loan association, or consolidated into a new association to be formed under this chapter, or into a new federal savings and loan association, and an association may, in the manner hereinafter provided and pursuant to the laws of the United States, be converted into a federal savings and loan association, and any federal savings and loan association may, in the manner hereinafter provided and pursuant to the laws of the United States, be converted into an association hereinafter designated as the converted association. No conversion of an association into a federal savings and loan association, or merger or consolidation of 1 or more associations with 1 or more federal savings and loan associations to form a federal savings and loan association shall be effected pursuant to this chapter, unless at the time of such merger, consolidation or conversion, the laws of the United States shall authorize a federal savings and loan association to merge into, consolidate with, or convert into an association with all the property and rights of such federal savings and loan association, vesting in such association in the same manner as is prescribed by this chapter in the merger, consolidation or conversion of federal savings and loan associations into building and loan associations.

(5 Del. C. 1953 § 2001; 49 Del. Laws, c. 253.)

§ 2002 Approval of joint plan of merger or consolidation, or plan of conversion.

The board of directors of each of the associations or federal savings and loan associations which desire to merge, consolidate or convert shall, by resolution adopted by at least a majority of all the members of each board, approve a joint plan of merger or consolidation or a plan of conversion, as the case may be, setting forth the terms and conditions of the merger, consolidation or conversion and the mode of carrying the same into effect, the manner and basis of converting the shares of each association or federal savings and loan association into shares or other securities or obligations of the surviving, new or converted association or federal savings and loan association, as the case may be, and such other details and provisions as are deemed necessary.

The board of directors of each association or federal savings and loan association, upon approving such plan of merger, consolidation or conversion in accordance with the provisions of this chapter, shall, by resolution, direct that the plan be submitted to a vote of the shareholders of such association or federal savings and loan association entitled to vote thereon, at annual or special meeting of the shareholders. Written notice shall, not less than 15 days before such annual or special meeting, be given respectively to each shareholder of record, unless the plan of merger or consolidation contemplates an increase in the authorized capital of the constituent associations, in which event 60 days' notice of such meeting shall be given to each shareholder. The notice shall state the place, day, hour, and purpose of the meeting, and a copy or a summary of the plan or merger, consolidation or conversion, as the case may be, shall be included in or enclosed with such notice. However, in the case of the surviving association in a merger, if the articles or bylaws specifically so provide, the plan of merger shall not be required to be submitted to the shareholders for approval, but in such case written notice of such contemplated merger shall be given to all shareholders of the surviving association, prior to the date upon which the articles of merger are filed with the Secretary of State; in such event, upon request in writing to the secretary of the association, any shareholder of the surviving association shall be entitled to receive forthwith a copy of the proposed plan of merger.

The plan of merger, consolidation or conversion, to form a surviving, new or converted association, shall be ratified upon receiving the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote thereon of each of the merging or consolidating associations or federal savings and loan associations, except in the case of a surviving association, the articles or bylaws of which, pursuant to this chapter, provide that action by the shareholders shall not be required, in which case no ratification shall be necessary.

The plan of conversion of an association into a federal savings and loan association, or the plan of merger or consolidation of 1 or more associations with 1 or more federal savings and loan associations to form a federal savings and loan association, shall be ratified upon receiving the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote thereon of the association converting, or of each of the merging or consolidating associations.

(5 Del. C. 1953 § 2002; 49 Del. Laws, c. 253.)

§ 2003 Articles of merger, consolidation or conversion.

Upon the approval, pursuant to this chapter, of the plan of merger, consolidation or conversion by the shareholders of the associations or federal savings and loan associations desiring to merge, consolidate or convert, or in the case of a surviving association, the articles or bylaws of which, pursuant to this chapter, provide that action by the shareholders shall not be required upon the giving of written notice to the shareholders of the intention of the board of directors to file articles of merger with the Secretary of State, articles of merger, consolidation or conversion, as the case may be, shall be executed under the seal of each association or federal savings and loan association and verified by 2 duly authorized officers of each association or federal savings and loan association, and shall set forth:

(1) The name of the surviving, new or converted association or federal savings and loan association;

(2) The time and place of the meeting of the directors at which the plan of merger, consolidation or conversion was proposed, and except where, pursuant to this chapter, the plan of merger is not submitted to a vote of the shareholders of the surviving association, the time and place of the meeting of the shareholders of each association or federal savings and loan association at which the plan of merger, consolidation or conversion, as the case may be, was ratified, the kind and period of notice given to the shareholders, and the total vote by which the plan was adopted;

(3) In the case of a merger into a surviving association, any changes desired to be made in the articles of the surviving association, or, in the case of a consolidation into a new association or the conversion of a federal savings and loan association into an association, all of the statements required by law to be set forth in the original articles in the case of the formation of an association;

(4) The number, names, and addresses of the persons to be the first directors of the surviving, new or converted association or federal savings and loan association;

(5) The plan of merger, consolidation or conversion.

(5 Del. C. 1953 § 2003; 49 Del. Laws, c. 253.)

§ 2004 Advertisement.

The association or federal savings and loan association shall advertise its intention to file articles of merger, consolidation or conversion, as the case may be, with the Secretary of State. Advertisements shall appear in a newspaper of the county where the involved association or federal savings and loan association has its principal office at least 3 days prior to the day on which the articles of merger, consolidation or conversion are to be presented to the Secretary of State, and shall set forth briefly:

(1) The name and the location of the principal place of business of each of the associations or federal savings and loan associations intending to merge, consolidate or convert;

(2) The name and the location of the principal place of business of the surviving, new or converted association or federal savings and loan association;

(3) A statement that the articles of merger, consolidation or conversion are to be filed under this chapter;

(4) The purpose or purposes of the surviving, new or converted association;

(5) The time when the articles of merger, consolidation or conversion will be delivered to the Secretary of State.

(5 Del. C. 1953 § 2004; 49 Del. Laws, c. 253.)

§ 2005 Filing of articles of merger, consolidation or conversion; payment of fees; approval by Secretary of State.

The articles of merger, consolidation or conversion, as the case may be, the proof of publication of the advertisement required by this chapter, and a certificate or certificates from the proper department or departments evidencing payment by the corporation of all taxes and charges as required by law, shall be delivered to the Secretary of State.

The Secretary of State shall examine such articles of merger, consolidation or conversion, such proof of publication and such certificate or certificates herein required to be delivered therewith to determine whether they contain all the information and are in the form required by this chapter, and also whether the name of the surviving, new or converted association, as the case may be, conforms with the requirements of law for the name of such an association, or, if the name is not the same as either or any of the merging or consolidating associations, whether it is the same as one already adopted or reserved by another corporation or person or is so similar thereto that it is likely to mislead the public.

After all the fees, taxes, and other charges have been paid as required by law, except for the costs of an examination made by the State Bank Commissioner, pursuant to this chapter, to determine whether to approve the merger, consolidation or conversion, or any other charges made by the State Bank Commissioner, the Secretary of State, if the articles of merger, consolidation or conversion, the certificate or certificates herein required to be delivered therewith and the proof of publication contain the information and are in the form required by this chapter, shall forthwith, but not prior to the day specified in the advertisement of the intention to file the articles, endorse his approval thereon, and shall forthwith transmit them to the State Bank Commissioner.

If the Secretary of State shall disapprove the articles of merger, consolidation or conversion pursuant to this chapter, he shall forthwith give notice thereof to the association or federal savings and loan association, stating in detail his reasons for doing so, and stating how such association or federal savings and loan association can remedy the nonconformance with the provisions of this chapter. Upon remedying the defect, such association or federal savings and loan association may in the same manner file the same or amended articles, whichever the particular case may require.

(5 Del. C. 1953 § 2005; 49 Del. Laws, c. 253.)

§ 2006 Approval of articles of merger, consolidation or conversion by State Bank Commissioner.

The State Bank Commissioner shall, immediately upon the receipt from the Secretary of State of the articles of merger, consolidation or conversion, conduct such examination as the Commissioner may deem necessary to ascertain from the best sources of information at his or her command:

(1) Whether the name of the surviving, new or converted association, or federal savings and loan association is likely to mislead the public;

(2) Whether the consolidation, merger or conversion is made for legitimate purposes;

(3) Whether the interests of the shareholders or creditors are adequately protected;

(4) Whether the surviving, new or converted association meets all the requirements of this chapter and violates none of its prohibitions.

The cost of such examination and any other charges of the State Bank Commissioner, bearing upon the filing of the articles of merger, consolidation or conversion, shall be assessed upon the associations in the manner provided by law for assessments by the State Bank Commissioner of costs of examinations or other charges.

Each federal savings and loan association desiring to merge, consolidate or convert shall pay to the Secretary of State, at the time the articles of merger, consolidation or conversion are filed, such reasonable fees, as shall be established by rule and regulation by the State Bank Commissioner, for the investigation made by the State Bank Commissioner, pursuant to this chapter, to determine whether the articles should be approved. Such fees shall be paid by the Secretary of the State to the State Treasurer, to become a part of the General Fund of the State.

Within 30 days after the receipt of the articles of merger, consolidation or conversion from the Secretary of State, the State Bank Commissioner shall, upon the basis of the facts disclosed by the investigation provided for by this section, either approve or disapprove such articles. The Commissioner shall immediately notify the Secretary of State in writing of the Commissioner's action. If the Commissioner shall approve the articles of merger, consolidation or conversion, the Commissioner shall endorse his or her approval thereon, and shall return them to the Secretary of State.

If the State Bank Commissioner disapproves the articles of merger, consolidation or conversion, the Commissioner shall return them to the Secretary of State, stating in detail the Commissioner's reasons for doing so. The Secretary of State shall immediately give notice to the associations or federal savings and loan associations desiring to merge, consolidate or convert, or to the federal savings and loan association desiring to convert of the action of the State Bank Commissioner, and of the reasons therefor as stated to him by said State Bank Commissioner. Such associations or federal savings and loan association may appeal from such disapproval as provided by law in § 8710 of Title 29.

(5 Del. C. 1953 § 2006; 49 Del. Laws, c. 253; 57 Del. Laws, c. 740 § 21; 70 Del. Laws, c. 186 § 1.)

§ 2007 Issuance of certificate of merger, consolidation or conversion.

Immediately upon receipt of the approved articles of merger, consolidation or conversion from the State Bank Commissioner, and upon receipt by the Secretary of State of the written approval of the Federal Home Loan Bank Board, if such approval is required by law, the Secretary of State shall file the articles, and shall issue to the surviving, new or converted association or federal savings and loan association, or its representative, a certificate of merger, consolidation or conversion. A copy of the approved articles of merger, consolidation or conversion shall be sent by the Secretary of State to the State Bank Commissioner.

(5 Del. C. 1953 § 2007; 49 Del. Laws, c. 253.)

§ 2008 Effect of merger, consolidation or conversion.

(a) Upon the merger or consolidation becoming effective, the several associations, or federal savings and loan associations, parties to the plan of merger or consolidation, shall be a single association or federal savings and loan association, which, in the case of a merger, shall be that association or federal savings and loan association designated in the plan of merger as the surviving association or federal savings and loan association, and, in the case of a consolidation, shall be the new association or federal savings and loan association provided for in the plan of consolidation. The separate existence of all associations, parties to the plan of merger or consolidation, shall cease, except, in the case of a merger, that of the surviving association or federal savings and loan association.

(b) All the property, real, personal, and mixed, of each of the associations or federal savings and loan associations, parties to the plan of merger, consolidation, or conversion, and all debts or obligations due to any of them, including subscriptions to shares, and other choses in action belonging to either or any of them, shall be taken and deemed to be transferred to and vested in the surviving, new or converted association or federal savings and loan association, as the case may be, without further act or deed. The surviving, new or converted association or federal savings and loan association shall thenceforth be responsible for all the liabilities and obligations of each of the associations or federal savings and loan associations so merged, consolidated or converted; but the liabilities of the merging, consolidating or converting associations or federal savings and loan associations, or of their shareholders, directors, or officers, shall not be affected, nor shall the rights of the creditors thereof or of any persons dealing with such associations or federal savings and loan associations, or any liens upon the property of such associations or federal savings and loan associations, be impaired by such merger, consolidation or conversion, and any claim existing or action or proceeding pending by or against any of such associations or federal savings and loan associations may be prosecuted to judgment as if such merger, consolidation or conversion had not taken place, or the surviving, new or converted association may be proceeded against or substituted in its place.

(c) In the case of a merger, the articles of incorporation of the surviving association shall be deemed to be amended to the extent, if any, that changes in its articles are stated in the articles of merger; and in the case of a consolidation or conversion into a converted association, the statements set forth in the articles of consolidation or conversion, and which are required or permitted to be set forth in the articles of incorporation of associations formed under the general corporation laws of this State, shall be deemed to be the articles of incorporation of the new or converted association.

(5 Del. C. 1953 § 2008; 49 Del. Laws, c. 253.)

§ 2009 Rights of dissenting shareholders.

If any shareholder of an association or federal savings and loan association which becomes a party to a plan of merger, consolidation or conversion shall file with such association or federal savings and loan association, prior to or at the meeting of shareholders at which the plan of merger, consolidation or conversion is submitted to a vote, or in the case of a shareholder of a surviving association which, pursuant to this chapter, becomes a party to a plan of merger without action by its shareholders, shall file, within 20 days after the written notice of such merger has been given as required by this chapter, a written objection to such plan of merger, consolidation or conversion, and shall not vote in favor thereof, and such shareholder, within 20 days after the merger, consolidation or conversion was effected, shall make written demand on the surviving, new or converted association or federal savings and loan association for the payment of the fair value of the shareholder's shares as of the day prior to the date on which the vote was taken approving the merger, consolidation or conversion, or in the case of a surviving association which, pursuant to this chapter, became a party to the merger without action of its shareholders the day prior to the date on which the articles of merger were filed with the Secretary of State, without regard to any depreciation or appreciation thereof in consequence of the merger, consolidation or conversion, the surviving, new or converted association or federal savings and loan association shall pay to such shareholder the fair value of the shareholder's shares upon surrender of the share certificate or other evidence of the shareholder's shares. The demand of the shareholder shall state the number and kind of the shares owned by the shareholder. Any shareholder who fails to file such written objection, or any shareholder who files such written objection and fails to make demand within the 20-day period, shall be conclusively presumed to have consented to the merger, consolidation or conversion, and shall be bound by the terms thereof. If within 30 days after the date on which such merger, consolidation or conversion was affected the value of such shares shall be agreed upon by the dissenting shareholder and the surviving, new or converted association or federal savings and loan association, payment thereof shall be made in cash, within 90 days after the date on which such merger, consolidation or conversion was affected, upon the surrender of the share certificate or other evidence of his shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the association or federal savings and loan association.

If within such period of 30 days the shareholder and the surviving, new or converted association or federal savings and loan association do not so agree, then the dissenting shareholder may, within 60 days after the expiration of the 30-day period, apply, by petition to the Court of Chancery of this State, within the county in which the place of business of the surviving, new or converted association or federal savings and loan association is situated for the appointment by the court of 3 disinterested persons to appraise the fair market value of his shares without regard to any depreciation or appreciation thereof in consequence of the merger, consolidation or conversion. The award of the appraisers, or of a majority of them, when confirmed by the court, shall be final and conclusive. The costs of such appraisal, including a reasonable fee to the appraisers, shall be fixed by the court, and shall be assessed either upon the new, surviving or converted association or federal savings and loan association, or upon the dissenting shareholder, or upon both, in the discretion of the court. The award shall be payable only upon, and simultaneously with, the surrender to the surviving, new or converted association or federal savings and loan association of the share certificate or certificates representing the shares of the dissenting shareholder. If the award shall not be paid by the surviving, new or converted association or federal savings and loan association within 30 days after the award was made by the appraisers, the amount of the award shall be a judgment against the surviving, new or converted association or federal savings and loan association, as the case may be, and may be collected as other judgments in such court are by law collectible. Upon the payment of the award or judgment, the dissenting shareholder shall cease to have any interest in such shares or in the surviving, new or converted association or federal savings and loan association. Unless the dissenting shareholder shall file a petition within the time herein limited, such shareholder, and all persons claiming under him, shall be conclusively presumed to have approved and ratified the merger, consolidation or conversion and shall be bound by the terms thereof. The right of the dissenting shareholder to be paid the fair value of his shares, as herein provided, shall cease if and when the association shall abandon the merger, consolidation or conversion.

(5 Del. C. 1953 § 2009; 49 Del. Laws, c. 253; 70 Del. Laws, c. 186 § 1.)

§ 2010 Effective date of merger, consolidation or conversion.

Upon the issuance of the certificate of merger, consolidation or conversion by the Secretary of State, the merger, consolidation or conversion shall be effective. The certificate of merger, consolidation or conversion shall be conclusive evidence of the performance of all conditions precedent to such consolidation, merger or conversion and the creation or existence of a new, surviving or converted association, except as against the State.

(5 Del. C. 1953 § 2010; 49 Del. Laws, c. 253.)

§ 2011 Branch offices.

(a) Any building and loan association incorporated under the laws of this State may open and maintain a branch office or place of business, or branch offices or places of business in this State, upon application submitted to and approved by the State Bank Commissioner,

and upon the issuance of a certificate of authority by said Commissioner. The application shall state the exact location of the intended branch office and the necessity for its opening. The Commissioner shall inquire into the matter and if the Commissioner deems that the public convenience will be served thereby and that there is good and sufficient reason that the association shall have the branch office, the Commissioner shall issue the certificate of authority. Any certificate of authority issued by the Commissioner shall be void and of no effect at the expiration of 6 months after date of issue, unless the branch is actually opened for business. Unavoidable delay in opening the branch, due to construction problems or controls, or other matters beyond the control of the parent company, may be taken into consideration, and the Commissioner may extend the certificate for periods of 30 days in the event of such circumstances.

A fee of $575 for every such certificate shall be required by the Commissioner before issuing the same. In addition, the applicant shall pay an investigation fee of $575 which shall not be refundable and shall be submitted with the application.

(b) In the event of a merger or consolidation of associations under this chapter, the merging or consolidating associations may in their plan of merger or consolidation, and in their articles of merger or consolidation, provide for the continuance of the office or offices of the associations to be merged or consolidated as a branch office or branch offices of the surviving or new association, and if said articles are approved as required under this chapter relating to merger and consolidation, said office or offices may be continued after merger or consolidation as branch offices of the surviving or new association, without the necessity of filing separate applications under subsection (a) of this section.

(c) Nothing in this section shall deny any building and loan association the right to continue a branch office or offices if such branch office or offices shall have been actually established prior to June 28, 1963.

(5 Del. C. 1953 § 2011; 54 Del. Laws, c. 86; 60 Del. Laws, c. 268 §§ 13, 14; 67 Del. Laws, c. 260 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2012 Fees for merger, consolidation or conversion.

The resulting association shall pay to the office of State Bank Commissioner a fee of $1,150 upon approval of a merger, consolidation or conversion. In addition, the resulting association shall pay an investigation fee of $575 which shall not be refundable and shall be submitted with the application.

(60 Del. Laws, c. 268 § 15; 67 Del. Laws, c. 260 § 1.)

Part IV
Other Businesses Under Jurisdiction of State Banking Department
Chapter 21
MORTGAGE LOAN BROKERS

§ 2101 Definitions.

In this chapter, unless the context otherwise requires:

(1) "Borrower" means a person obtaining or desiring to obtain a mortgage loan.

(2) "Commissioner" means the State Bank Commissioner.

(3) "Licensee," "licensed mortgage loan broker," or "person licensed" means any person duly licensed or regulated by the Commissioner pursuant to this chapter.

(4) "Mortgage loan" means an extension of credit secured by a first or secondary mortgage on any 1-to-4 family residential owner-occupied property intended for personal, family or household purposes, which is:

a. Negotiated, offered or otherwise transacted within this State, in whole or in part;

b. Made or extended within this State; or

c. Secured by real property located in this State.

(5) "Mortgage loan broker" means a person who (i) in the ordinary course of business, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, negotiates or offers to negotiate, or arranges or solicits, or offers to arrange or solicit, a mortgage loan on behalf of a borrower, or (ii) holds himself out as being able to serve as an agent for any person in an attempt to obtain a mortgage loan; or (iii) holds himself or herself out as being able to serve as an agent or independent contractor to negotiate the terms or conditions of a mortgage loan on behalf of a lender (but who is not a person employed as an employee or agent of the lender).

(6) "Person" means an individual, corporation, partnership or any other group of individuals however organized.

(68 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2102 License required.

(a) Subject to the provisions of subsection (b) of this section, every person desiring to transact the business of a mortgage loan broker shall be required to obtain a license under this chapter; provided however, that a person who acts as a mortgage loan broker with respect to 5 or fewer mortgage loans within any 12-month period shall be deemed not to be transacting the business of a mortgage loan broker. The licensing requirements of this chapter shall not apply to:

(1) Any banking organization, out-of-state state or national bank, state or federal savings bank or savings and loan association, credit union, licensed lender or insurance company; provided, that such person is licensed (or exempt from licensing) by, and is subject to regulation or supervision of, any agency of the United States or this State;

(2) Any person licensed to practice law in this State, not actively and principally engaged in the mortgage loan brokerage business, when such person renders services in the course of such person's practice as an attorney at law;

(3) Any person licensed in this State as a real estate broker or a real estate salesperson, not actively and principally engaged in the mortgage loan brokerage business, when such person renders services in the course of the person's business as a real estate broker or salesperson; or

(4) Any person employed as an employee or agent for a single licensed or exempt mortgage loan broker; provided, that any fees paid by borrowers are paid to the licensed or exempt mortgage loan broker and not to the employee or agent.

Any person conducting a mortgage loan brokerage business but exempted from the licensing requirements of this section shall nevertheless be subject to the provisions of § 2114 of this title in the conduct of such business.

(b) The Commissioner shall be authorized to exempt such persons or classes of persons, or such activities, from the licensing or other provisions of this chapter as the Commissioner shall find inappropriate to include within the coverage of this chapter in order to effectuate its purposes.

(68 Del. Laws, c. 326 § 1; 71 Del. Laws, c. 254 § 28.)

§ 2103 Application and fees.

(a) Every application for a license shall be in writing, in the form prescribed by the Commissioner and shall contain the name and complete address or addresses where the business of the applicant is to be conducted and, if the applicant is a partnership, association, corporation or other form of business organization, the names and complete addresses of each member, director and principal officer thereof. Such application shall also include a description of the activities of the applicant, in such detail and for such periods as the Commissioner may require, as well as such other further information as the Commissioner may require. Such applicant, at the time of making such application, shall pay to the Commissioner, as an investigation fee, the sum of $250 which shall not be refundable.

(b) Upon approval, the applicant shall pay an annual license fee of $500, which shall be payable annually thereafter. Two hundred and fifty dollars of the aforementioned license fee shall be allocated to and for the assistance of the Delaware Emergency Mortgage Assistance

Program. No abatement in the amount of said license fee shall be made if the license is issued for less than 1 year or if the license is surrendered, canceled or revoked prior to the expiration of the period for which such license was issued. Every license issued hereunder shall expire on December 31 of each year.

(68 Del. Laws, c. 326 § 1; 76 Del. Laws, c. 420 §§ 1, 2.)

§ 2104 Issuance of license.

Upon the filing of an application for a license, if the Commissioner shall find that the financial responsibility, experience, character and general fitness of the applicant and of the members thereof (if the applicant is a partnership or association) and of the officers and directors thereof (if the applicant is a corporation) are such as to warrant belief that its business will be operated honestly, fairly and efficiently within the purpose of this chapter, he shall thereupon issue a license to transact business in accordance with this chapter. If the Commissioner shall not so find, he shall not issue such license and he shall notify the applicant of its denial, give notice of the grounds for refusal and notify the applicant of the right to request a hearing. If the applicant requests a hearing, the Commissioner shall hold such hearing under Chapter 101 of Title 29. The Commissioner shall approve or deny every application for license hereunder within 90 days from the date the Commissioner determines that the application as filed with him is complete.

(68 Del. Laws, c. 326 § 1.)

§ 2105 Changes in officers or directors of licensee.

In the event that there shall be any change among the officers, partners or directors of any licensee, the licensee shall forthwith notify the Commissioner of the name, address and occupation of each new officer, partner or director and provide such other information as the Commissioner may require.

(68 Del. Laws, c. 326 § 1.)

§ 2106 License requirements.

A licensee shall obtain a license for each office or other place of business from which its mortgage loan brokerage business is conducted upon payment of the required fees for each office and compliance with all applicable provisions of law. In the event the location of a licensed office is changed during the term of the license, the Commissioner shall issue without charge an amended license for the new location. If there is a change of name but no change in corporate or other business structure, the Commissioner shall issue without charge an amended license for the new name. Such license shall not otherwise be transferrable or assignable. The Commissioner may issue more than 1 license to the same applicant upon payment of the required fees and compliance with all applicable provisions of law.

(68 Del. Laws, c. 326 § 1; 69 Del. Laws, c. 165 § 25; 72 Del. Laws, c. 15 § 28; 80 Del. Laws, c. 225 § 3.)

§ 2107 Renewal of license.

Every holder of a license or a renewal thereof, as provided for in this section, desiring to continue the transaction of business as provided for in this chapter, shall, at least 30 days prior to the expiration of such license or renewal thereof, make application to the Commissioner, on forms to be provided by the Commissioner, for a license renewal. The Commissioner may mandate that applications for renewal shall be treated as new applications if said renewal applications are not on file with the office of the State Bank Commissioner at least 30 days prior to the expiration of such license or renewal thereof. Licensees who have not complied with supervisory letters or who have not paid any supervisory assessment or examination fees when due may be refused license renewal.

(68 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 327 § 42.)

§ 2108 Surety bonds and irrevocable letters of credit.

(a) Surety bonds. —

(1) Every licensee shall file with the Commissioner, in a form satisfactory to the Commissioner, an original corporate surety bond, with surety provided by a corporation authorized to transact business in this State, in the principal sum of $25,000.

(2) No bond shall be accepted unless the following requirements are satisfied:

a. The term of the bond shall be commensurate with the license period or continuous;

b. The expiration date of the bond shall not be earlier than midnight of the date on which the license expires; and

c. The bond shall run to the State for the benefit of the office of the State Bank Commissioner and for the benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the bond shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. Surety claims shall be paid to the office of the State Bank Commissioner by the insurer not later than 90 days after receipt of a claim. Claims paid after 90 days shall be subject to daily interest at the legal rate. The aggregate liability of the surety on the bond, exclusive of any interest which accrues for payments made after 90 days, shall in no event exceed the amount of such bond.

(3) If the licensee changes its surety company or the bond is otherwise amended, the licensee shall immediately provide the Commissioner with the amended original copy of the surety bond. No cancellation of an existing bond by a surety shall be effective unless written notice of its intention to cancel is filed with the Commissioner at least 30 days before the date upon which cancellation shall take effect.

(4) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner shall determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

(5) When a surety company receives a claim against the bond of a licensee, it shall immediately notify the Commissioner and shall not pay any claim unless and until it receives notice to do so from the Commissioner.

(6) The Commissioner shall have a period of 2 calendar years after the effective date of cancellation or termination of the surety bond by the insurer to submit claims to the insurer.

(b) Irrevocable letters of credit. — In lieu of requiring the filing of a surety bond, the Commissioner may, at the Commissioner's discretion, accept from a licensee an irrevocable letter of credit.

(1) Such irrevocable letters of credit shall be provided by an insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c)) acceptable to the Commissioner, in a form satisfactory to the Commissioner in the principal sum of $25,000.

(2) No irrevocable letter of credit shall be accepted unless the following requirements are satisfied:

a. The irrevocable letter of credit shall run to the State for the benefit of the office of the State Bank Commissioner and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the irrevocable letter of credit shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. The aggregate liability of the insured depository institution issuing the irrevocable letter of credit shall in no event exceed the amount of such irrevocable letter of credit; and

b. Draws upon such irrevocable letters of credit shall be available by sight drafts thereunder, in amounts determined by the Commissioner, up to the aggregate amount of the irrevocable letter of credit. Such drafts shall be paid in accordance with § 5-112(1) of Title 6.

(3) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner shall determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

(4) The Commissioner may refuse release of an irrevocable letter of credit, following the surrender of a license, up to 2 years after the effective date of such termination of licensure.

(68 Del. Laws, c. 326 § 1; 69 Del. Laws, c. 165 § 26; 70 Del. Laws, c. 356 § 1.)

§ 2109 Suspension, revocation or surrender of license.

(a) The Commissioner may revoke any license issued hereunder if the Commissioner shall find that:

(1) The licensee has violated any provision of this chapter or any rule, regulation or order made by the Commissioner under and within the authority of this chapter or of any other law, rule or regulation of this State or the United States;

(2) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted a refusal to originally issue such license on the part of the Commissioner; or

(3) The licensee has engaged in business activities or practices inconsistent with its responsibilities as set forth in § 2114 of this title.

(b) The Commissioner may temporarily suspend any license pending the issuance of a final order as provided in Chapter 101 of Title 29.

(c) Except as provided in subsection (b) of this section, no license shall be revoked or suspended except after notice and an opportunity for the licensee to request a hearing in accordance with Chapter 101 of Title 29.

(d) Any licensee may surrender any license by delivering to the Commissioner such license together with written notice that it thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

(e) No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any person.

(f) Every license issued hereunder shall remain in force and effect until the same shall have expired or shall have been surrendered, revoked or suspended in accordance with this chapter, but the Commissioner shall have the authority to reinstate a suspended license or to issue a new license to a licensee whose license shall have been revoked if no fact or condition then exists which would have warranted the Commissioner in refusing originally to issue such license under this chapter.

(g) Whenever the Commissioner shall revoke or suspend a license issued pursuant to this chapter, the Commissioner shall forthwith execute a written order to that effect. The Commissioner shall forthwith serve the written order upon the licensee. Any such order may be reviewed in the manner provided by Chapter 101 of Title 29.

(68 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 24 §§ 4, 5, 6; 77 Del. Laws, c. 126 § 2.)

§ 2110 Supervision and examination of business by Commissioner.

(a) Each licensee shall be subject to the supervision of the Commissioner, and the Commissioner shall visit and examine each licensee as frequently as the Commissioner deems it necessary or expedient. On the occasion of each such visit and examination, the Commissioner shall (in the company of one or more of the officers of such licensee, if requested by such licensee) be given free access to every part of the office or place or places of business and to the assets, securities, books, papers and records of such licensee.

(b) If, in the Commissioner's opinion, it is necessary or convenient for a proper examination of a licensee, the Commissioner may retain 1 or more accountants, attorneys, appraisers or other 3rd parties to assist the Commissioner in such examination. Within 10 days after receipt of a statement from the Commissioner, such licensee shall pay or reimburse the fees, costs and expenses of any 3rd parties retained by the Commissioner under this subsection.

(c) Any examination under this section may be made by any person or persons designated by the Commissioner, and in such case all the powers vested in the Commissioner by this section shall be possessed by such person or persons so designated. When any such examination is made without the presence of the Commissioner, the Commissioner shall give written authority to the person or persons conducting such examination, which shall be exhibited, on request, to any person contacted in the course of the investigation.

(68 Del. Laws, c. 326 § 1.)

§ 2111 Maintenance of books and records by licensee.

(a) Every licensee shall maintain such books, accounts and records relating to its business as will enable the Commissioner to enforce full compliance with this chapter, which books, accounts and records shall be in such form, shall contain such information and shall be kept in such manner as the Commissioner may require. Such records shall be kept at such place and shall be preserved for such length of time as the Commissioner may specify.

(b) A licensee shall file with the Commissioner such reports at such times as the Commissioner may require, which reports shall be in such form and shall contain such information as the Commissioner may specify.

(c) Each licensee shall submit to the Nationwide Mortgage Licensing System and Registry developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

(68 Del. Laws, c. 326 § 1; 77 Del. Laws, c. 96 § 3.)

§ 2112 Regulations.

The Commissioner may adopt such regulations, not inconsistent herewith, as the Commissioner may deem necessary or appropriate in the administration, interpretation and enforcement of this chapter.

(68 Del. Laws, c. 326 § 1.)

§ 2113 Mortgage or loan broker disclosures.

A licensee may not receive a fee for acting as a mortgage loan broker except pursuant to a written agreement between the mortgage loan broker and the borrower. Such written agreement shall be entered into prior to the time that the mortgage loan broker undertakes to perform mortgage loan brokerage services on behalf of a borrower. A copy of the fully completed written agreement shall be provided to the borrower at the time the borrower signs the agreement. The agreement:

(1) Must describe the services to be provided by the mortgage loan broker and the time period within which such services are to be provided;

(2) Must specify the amount and terms of the fees that the mortgage loan broker is to receive; and

(3) Shall otherwise contain such information and disclosures, in such format, as the Commissioner by regulation may provide.

(68 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2114 Responsibilities of mortgage loan brokers.

A mortgage loan broker shall diligently and in good faith attempt to obtain a mortgage loan for the account of a borrower in accordance with the terms of the agreement for mortgage loan brokerage services. No mortgage loan broker shall make or use any false or misleading representations or omit any material fact in the offer, sale or performance of the services of a mortgage loan broker or engage directly or indirectly in any act that operates as fraud or deception upon any person in connection with the offer, sale or performance of the services of a mortgage loan broker, notwithstanding the absence of reliance by a borrower.

(68 Del. Laws, c. 326 § 1.)

§ 2115 Mortgage loan broker fees.

A licensee may not accept any fee in connection with a mortgage loan, other than an application fee or any credit report fee, property appraisal fee, title examination fee or other bona fide 3rd-party fee actually and reasonably paid or incurred by the licensee on behalf of the borrower, prior to obtaining a written commitment from a qualified lender (setting forth the terms and conditions upon which the lender is willing to make a mortgage loan to the borrower). The amount of fees that may be collected or received by a mortgage loan broker, whether constituting an application fee, a fee payable to a 3rd party, fee payable at the time of written commitment or upon consummation of a mortgage loan or otherwise, shall be subject to such limitations as may be provided by regulation of the Commissioner. A licensee shall be obligated to refund all fees collected by it from a borrower, other than those fees paid by the licensee to a 3rd party, if a written commitment for a mortgage loan from a qualified mortgage lender is not produced within the time specified by the mortgage loan broker and otherwise at the rate, terms and overall costs agreed upon by the borrower or the mortgage loan does not close; provided however, that a licensee shall not be required to refund fees when the failure to obtain a written commitment for a mortgage loan or the failure of a closing thereunder to occur is due to the substantial fault of the borrower. For purposes of this section, substantial fault of the borrower

means that the borrower has:

(1) Failed to provide information or documentation required by the lender or mortgage loan broker in a timely manner;

(2) Provided information, in the application or subsequently, which upon verification proves to be significantly inaccurate, causing the need for review or further investigation by the lender or mortgage loan broker;

(3) Failed to produce, no later than the date specified by the lender, all documentation specified in its mortgage loan commitment or closing instructions as being required for closing; or

(4) Failed to be ready, willing or able to close the mortgage loan no later than the date specified by the lender.

The Commissioner, by regulation, may provide further definition of the circumstances constituting substantial fault of a borrower, including, without limitation, reasonable time periods for the provision by a borrower of information or documentation or when information will be considered significantly inaccurate.

(68 Del. Laws, c. 326 § 1.)

§ 2116 Penalty.

Any person who violates any provision of this chapter shall be fined not less than $50 nor more than $200 or imprisoned for not more than 3 months or both for each such offense.

(73 Del. Laws, c. 247 § 7.)

§ 2117 Multi-state automated licensing system.

(a) The Commissioner is authorized to participate in any automated system involving 1 or more other states that will facilitate any aspect of the application and licensing processes of this chapter.

(b) Upon joining any such system, the Commissioner may by regulation establish:

(1) Any additional requirements for a license under this chapter that the Commissioner determines are necessary for participation in the system;

(2) Prelicensing education and testing, and postlicensing continuing education of individuals employed by the applicants or licensees subject to the system; and

(3) Any additional investigation fees, any fees paid directly to the administrator of the system, or any other fee required by the system to process an application or maintain a license, in such amount as the Commissioner determines is necessary to participate in the system.

(c) The administrator of any such system in which the Commissioner participates is authorized to act on behalf of the Commissioner to collect from the applicants and licensees subject to the system any payments due the Commissioner under this chapter, to collect information and maintain records in electronic or other format relating to those applicants and licensees, and to submit fingerprints and any other information required for a criminal history background check to the Federal Bureau of Investigation or other law-enforcement agency.

(d) Information maintained on any such system in which the Commissioner participates regarding the applicants and licensees subject to the system may be shared with any other state participating in that system for the purpose of licensing, regulating, or supervising that same applicant or licensee under a statute similar to this chapter, if that state could have obtained that same information directly from the applicant or licensee under its own law. The Commissioner shall ensure that the system maintains appropriate confidentiality, privacy, data security, and security breach notification policies that are in full compliance with Delaware law.

(76 Del. Laws, c. 264 § 1.)

§ 2118 Reverse mortgages.

(a) For purposes of this section, unless the context requires otherwise:

(1) "Independent housing counselor" means a housing counseling agency approved by the United States Department of Housing and Urban Development, or any government agency or nonprofit organization that is not affiliated with either the reverse mortgage lender or any other person receiving a fee from the transaction and provides mortgage loan counseling to the public of this State regarding the advisability of entering into a reverse mortgage transaction.

(2) "Reverse mortgage loan" means a mortgage loan the proceeds of which are disbursed to the mortgagor in 1 or more lump sums, or in equal or unequal installments, either directly by the lender or the lender's agent, and which requires no repayment until a future time, upon the earliest occurrence of 1 or more events specified in the reverse mortgage loan contract.

(b) A licensee may not accept any fee in connection with a reverse mortgage loan, other than an application fee or a credit report fee, property appraisal fee, title examination fee or other bona fide third-party fee actually and reasonably paid or incurred by the licensee on behalf of the borrower, prior to receiving a written certification from an independent housing counselor attesting that the prospective borrower has received counseling on reverse mortgage loans that includes the information specified in 12 U.S.C. § 1715z-20(f) and such other information as the Commissioner may designate by regulation.

(76 Del. Laws, c. 335 § 1.)

§ 2119 Mortgage loan modification services; compensation.

(a) As used in this section, unless the context requires otherwise, "mortgage loan modification services" means services as an intermediary between an individual and 1 or more mortgage loan creditors for the purpose of obtaining:

(1) Assent to the repayment of a mortgage loan on terms more favorable to the individual than the terms of the original mortgage loan;

or

(2) An arrangement to delay, prevent, remedy, eliminate or discharge any default on the terms of a mortgage loan, or the sale of any property incident to a foreclosure or other judicial proceeding based on a mortgage loan.

(b) A licensee may not receive any compensation for mortgage loan modification services prior to the execution of a written contract that describes in detail all such services that the licensee will perform and all compensation that the licensee will receive for those services. Any compensation received by a licensee in advance of the completion of all such services may not exceed $250.

(c) The total compensation that a licensee receives for mortgage loan modification services must be limited to an amount that is customary and reasonable for those services in this State.

(77 Del. Laws, c. 138 § 1.)

Part IV
Other Businesses Under Jurisdiction of State Banking Department
Chapter 22
LICENSED LENDERS
Subchapter I
Licensing

§ 2201 Definitions.

In this chapter, unless the context otherwise requires:

(1) "Person" means an individual, corporation, partnership or any other business entity or group or combination of individuals however organized.

(2) "Licensee," "licensed lender," "person licensed" or "lender" means any person duly licensed or regulated by the Commissioner pursuant to this chapter 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.

(3) "Commissioner" means the State Bank Commissioner.

(4) "Payment period" means the period of time scheduled by the terms of a loan to elapse between the days upon which installment payment are required to be made on such loan.

(66 Del. Laws, c. 22 § 1; 68 Del. Laws, c. 105 § 18; 72 Del. Laws, c. 15 § 29.)

§ 2202 License required.

(a) Every person desiring to transact the business of lending money in this State shall be required to obtain a license under this chapter; provided, however, that a person that makes not more than 5 loans within any 12-month period shall be deemed not to be transacting the business of lending money. Except as otherwise provided by law, loans made by any such unlicensed lender shall fall under Chapter 23 of Title 6. This chapter shall not apply:

(1) To any banking organization, federal credit union or insurance company; or

(2) To any other person, if and to the extent that such person is lending money in accordance with and as authorized by any other applicable law of this State or the United States, including but not limited to the registration requirements in Chapter 17 of this title.

(b) The Commissioner shall be authorized to exempt from any or all of the provisions of this chapter such persons or classes of persons, or loans or classes of loans, as the Commissioner shall find inappropriate to include within the coverage of this chapter in order to effectuate the purposes of this chapter. The Commissioner may by regulation establish procedures for application, fees and other requirements for an exemption pursuant to this subsection.

(c) A person shall not be deemed to be transacting the business of lending money within the meaning of this section solely by reason of the circumstance that such person is a participating merchant, as such term is used in this chapter.

(66 Del. Laws, c. 22 § 1; 68 Del. Laws, c. 105 § 19; 70 Del. Laws, c. 327 § 43; 72 Del. Laws, c. 15 § 30.)

§ 2203 Application and fees.

(a) Every application for a license shall be in writing in the form prescribed by the Commissioner and shall contain the name and complete address or addresses where the business of the applicant is to be conducted and, if the applicant be a partnership, association, corporation or other form of business organization, the names and complete addresses of each member, director and principal officer thereof. Such application shall also include a description of the activities of the applicant, in such detail and for such periods as the Commissioner may require, as well as such further information as the Commissioner may require. Such applicant, at the time of making such application, shall pay to the Commissioner as an investigation fee the sum of $250 which shall not be refundable.

(b) Upon approval, the applicant shall pay an annual license fee of $250 which shall be payable annually thereafter. No abatement in the amount of said license fee shall be made if the license is issued for less than 1 year or if the license is surrendered, canceled or revoked prior to the expiration of the period for which such license was issued. Every license shall expire on December 31 of each year.

(c) In addition to the annual license fee required by subsection (b) of this section, each licensee making short-term consumer loans, as defined in § 2227 of this title, and/or title loans, as defined in § 2250 of this title, shall pay an annual high-cost loan license fee surcharge of $1,500 for each licensed office. There is hereby created within the State Treasury a special fund to be designated as the Financial Literacy Education Fund which shall be used to fund grants to or contracts with schools or other organizations that provide financial and economic literacy skills to adults and youth in accordance with guidelines and/or regulations to be established by the Commissioner and the Delaware Secretary of Education. All fees which are by law payable under this subsection shall be paid into the State Treasury and to the credit of the Financial Literacy Education Fund.

(66 Del. Laws, c. 22 § 1; 68 Del. Laws, c. 105 § 20; 77 Del. Laws, c. 164 § 2.)

§ 2204 Issuance of license.

Upon the filing of an application for a license, if the Commissioner shall find that the financial responsibility, experience, character and general fitness of the applicant and of the members thereof (if the applicant be a copartnership or association) and of the officers and directors thereof (if the applicant be a corporation) are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the purpose of this chapter, the Commissioner shall thereupon issue a license to transact business in accordance with this chapter. If the Commissioner shall not so find, the Commissioner shall not issue such license and the Commissioner shall notify the applicant of the denial, give notice of the grounds for refusal and notify the applicant of the right to request a hearing. If the applicant requests a hearing the Commissioner shall hold such hearing under Chapter 101 of Title 29. The Commissioner shall approve or deny every application for license hereunder within 90 days from the date the Commissioner determines that the application as filed with the Commissioner is complete.

(66 Del. Laws, c. 22 § 1; 68 Del. Laws, c. 105 § 21; 70 Del. Laws, c. 186 § 1.)

§ 2205 Changes in officers or directors of licensee.

In the event that there shall be any change among the officers, partners or directors of any licensee, the licensee shall forthwith notify the Commissioner of the name, address and occupation of each new officer, partner or director and provide such other information as the Commissioner may require.

(66 Del. Laws, c. 22 § 1.)

§ 2206 License requirements; acquisition.

(a) A licensee shall obtain a license for each office or other place of business from which its licensed business is conducted upon payment of the required fees for each office and compliance with all applicable provisions of law. In the event the location of a licensed office is changed during the term of the license, the Commissioner shall issue without charge an amended license for the new location. In case there is a change of name but no change in corporate structure, the Commissioner shall issue without charge an amended license for the new name. Such license shall not be otherwise transferable or assignable. The Commissioner may issue more than 1 license to the same applicant upon payment of the required fees and compliance with all applicable provisions of law.

(b) Upon written request, the Commissioner may in the Commissioner's discretion grant conditional approval for the acquired licensee to conduct its business under its existing license for a period not to exceed 60 days in cases where the control of the licensee changes and where a new application for licensure has been filed in accordance with § 2203 of this title.

(66 Del. Laws, c. 22 § 1; 70 Del. Laws, c. 6 §§ 8, 9; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 15 § 31; 80 Del. Laws, c. 225 § 4.)

§ 2207 Renewal of license.

Every holder of a license or a renewal thereof, as provided for in this section, desiring to continue the transaction of the business as provided for in this chapter, shall at least 30 days prior to the expiration of such license or renewal thereof make application to the Commissioner on forms to be provided by the Commissioner for a license renewal. The Commissioner may mandate that applications for renewal shall be treated as new applications if said renewal applications are not on file with the office of the State Bank Commissioner at least 30 days prior to the expiration of such license or renewal thereof. Licensees who have not complied with supervisory letters or who have not paid the supervisory assessment or examination fees may be refused license renewal.

(66 Del. Laws, c. 22 § 1; 70 Del. Laws, c. 327 § 42.)

§ 2208 Surety bonds and irrevocable letters of credit.

(a) Surety bonds. —

(1) Every licensee shall file with the Commissioner, in a form satisfactory to the Commissioner, an original corporate surety bond, with surety provided by a corporation authorized to transact business in this State, in the principal sum to be determined by the Commissioner, except that the bond amount shall not be less than $50,000 nor more than $200,000. In determining the amount of the bond required for a licensee, the Commissioner shall consider, among other things:

a. The dollar value of the lender's Delaware business;

b. The dollar value of advance fees collected by the lender;

c. The periods for which such fees are held before a loan is funded; and

d. Such other and further criteria as the Commissioner may deem necessary and appropriate.

(2) No bond shall be accepted unless the following requirements are satisfied:

a. The aggregate value of the bond shall be equal to or greater than the amount determined in accordance with subsection (a)(1) of this section;

b. The term of the bond shall be commensurate with the license period or continuous;

c. The expiration date of the bond shall not be earlier than midnight of the date on which the license expires; and

d. The bond shall run to the State for the benefit of the office of the State Bank Commissioner and for the benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the bond shall be for amounts which represent actual losses and shall not be payable for claims made by

business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. Surety claims shall be paid to the office of the State Bank Commissioner by the insurer not later than 90 days after receipt of a claim. Claims paid after 90 days shall be subject to daily interest at the legal rate. The aggregate liability of the surety on the bond, exclusive of any interest which accrues for payments made after 90 days, shall in no event exceed the amount of such bond.

(3) If the licensee changes its surety company or the bond is otherwise amended, the licensee shall immediately provide the Commissioner with the amended original copy of the surety bond. No cancellation of an existing bond by a surety shall be effective unless written notice of its intention to cancel is filed with the Commissioner at least 30 days before the date upon which cancellation shall take effect.

(4) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner may determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

(5) When a surety company receives a claim against the bond of a licensee, it shall immediately notify the Commissioner and shall not pay any claim unless and until it receives notice to do so from the Commissioner.

(6) The Commissioner shall have a period of 2 calendar years after the effective date of cancellation or termination of the surety bond by the insurer to submit claims to the insurer.

(b) Irrevocable letters of credit. — In lieu of requiring the filing of a surety bond, the Commissioner may, at the Commissioner's discretion, accept from a licensee an irrevocable letter of credit.

(1) Such irrevocable letters of credit shall be provided by an insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c)) acceptable to the Commissioner, in a form satisfactory to the Commissioner in the principal sum to be determined by the Commissioner, except that the irrevocable letter of credit amount shall not be less than $50,000 nor more than $200,000. In determining the amount of the irrevocable letter of credit required for a licensee, the Commissioner shall consider, among other things:

a. The dollar value of the lender's Delaware business;

b. The dollar value of advance fees collected by the lender;

c. The periods for which such fees are held before a loan is funded; and

d. Such other and further criteria as the Commissioner may deem necessary and appropriate.

(2) No irrevocable letter of credit shall be accepted unless the following requirements are satisfied:

a. The aggregate value of the irrevocable letter of credit shall be equal to or greater than the amount determined by subsection (b)(1) of this section;

b. The irrevocable letter of credit shall run to the State for the benefit of the office of the State Bank Commissioner and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the irrevocable letter of credit shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. The aggregate liability of the insured depository institution issuing the irrevocable letter of credit shall in no event exceed the amount of such irrevocable letter of credit; and

c. Draws upon such irrevocable letters of credit shall be available by sight drafts thereunder, in amounts determined by the Commissioner, up to the aggregate amount of the irrevocable letter of credit. Such drafts shall be honored in accordance with § 5-112(1) of Title 6.

(3) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner may determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

(4) The Commissioner may refuse release of an irrevocable letter of credit, following the surrender of a license, up to 2 years after the effective date of such termination of licensure.

(66 Del. Laws, c. 22 § 1; 68 Del. Laws, c. 105 § 22; 70 Del. Laws, c. 356 § 2.)

§ 2209 Suspension, revocation or surrender of license.

(a) The Commissioner may revoke any license issued hereunder if the Commissioner shall find that:

(1) The licensee has violated any provision of this chapter or any rule or regulation made by the Commissioner under and within the authority of this chapter or of any other law, rule or regulation of this State or the United States.

(2) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Commissioner in refusing originally to issue such license.

(3) The licensee has engaged in business activities or practices in connection with extensions of credit to consumers, which could be deemed unfair or deceptive by nature of intent. Such activities and practices include, but are not limited to, the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof or otherwise create false expectations on the part of the consumer.

(b) The Commissioner may temporarily suspend any license pending the issuance of a final order as provided in Chapter 101 of Title 29.

(c) Except as provided in subsection (b) of this section, no license shall be revoked or suspended except after notice and an opportunity

for the licensee to request a hearing in accordance with Chapter 101 of Title 29.

(d) Any licensee may surrender any license by delivering to the Commissioner such license together with written notice that it thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

(e) No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any person.

(f) Every license issued hereunder shall remain in force and effect until the same shall have expired or shall have been surrendered, revoked or suspended in accordance with this chapter, but the Commissioner shall have authority to reinstate a suspended license or to issue a new license to a licensee whose license shall have been revoked if no fact or condition then exists which would have warranted the Commissioner in refusing originally to issue such license under this chapter.

(g) Whenever the Commissioner shall revoke or suspend a license issued pursuant to this chapter, he shall forthwith execute a written order to that effect. The Commissioner shall forthwith serve the written order upon the licensee. Any such order may be reviewed in the manner provided by Chapter 101 of Title 29.

(66 Del. Laws, c. 22 § 1; 68 Del. Laws, c. 105 § 23; 68 Del. Laws, c. 303 § 37; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 24 §§ 7, 8, 9; 77 Del. Laws, c. 126 § 3.)

§ 2210 Supervision and examination of business by Commissioner.

(a) Every person or combination of persons licensed to transact business as provided in this chapter in the State shall be subject to the supervision and examination of the State Bank Commissioner and shall be examined by the Commissioner or his authorized representative annually or at such intervals as the Commissioner deems necessary.

(b) On the occasion of every examination, the Commissioner or the Commissioner's authorized representative shall be given access to every part of the office or place of business visited and to the assets, securities, books and papers of the business.

(c) The examination made by the Commissioner or the Commissioner's authorized representative shall be a thorough examination into the affairs of the business visited, the resources and liabilities, the investment of the funds, the mode of conducting the business and the compliance or noncompliance with this Code or any regulations promulgated thereunder, and any other statutes or regulations of this State or the United States; and in connection with such examination the Commissioner or the Commissioner's authorized representative may examine, under oath or affirmation, any and all persons connected with or associated with the licensee.

(d) If, in the Commissioner's opinion, it is necessary for a thorough examination of a licensee, the Commissioner may retain 1 or more accountants, attorneys, appraisers or other third parties to assist the Commissioner in such examination. Within 10 days after receipt of a statement from the Commissioner, such licensee shall pay or reimburse the fees, costs and expenses of any third parties retained by the Commissioner under this subsection.

(e) The Commissioner may prescribe regulations to carry out the purposes of this chapter.

(66 Del. Laws, c. 22 § 1; 68 Del. Laws, c. 303 § 38; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 126 § 4.)

§ 2211 Maintenance of books and records by licensee.

(a) Every licensee shall maintain such books, accounts and records relating to all transactions within this chapter as will enable the Commissioner to enforce full compliance with this chapter.

(b) Each licensee that engages in the business of making mortgage loans, as defined by § 2403(13) of this title, shall submit to the Nationwide Mortgage Licensing System and Registry developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

(66 Del. Laws, c. 22 § 1; 77 Del. Laws, c. 96 § 4.)

§ 2212 Retention of books and records by licensee.

All books, accounts and records of the licensee shall be preserved and kept available as provided in this chapter for such period of time as the Commissioner may by regulation require.

(66 Del. Laws, c. 22 § 1.)

§ 2213 Contents of books and records.

The Commissioner may prescribe the minimum information to be shown in such books, accounts and records of the licensee so that such records will enable the Commissioner to determine compliance with this chapter.

(66 Del. Laws, c. 22 § 1.)

§ 2213A Multi-state automated licensing system.

(a) The Commissioner is authorized to participate in any automated system involving 1 or more other states that will facilitate any aspect of the application and licensing processes of this chapter.

(b) Upon joining any such system, the Commissioner may by regulation establish:

(1) Any additional requirements for a license under this chapter that the Commissioner determines are necessary for participation in the

system;

(2) Prelicensing education and testing, and postlicensing continuing education of individuals employed by the applicants or licensees subject to the system; and

(3) Any additional investigation fees, any fees paid directly to the administrator of the system, or any other fee required by the system to process an application or maintain a license, in such amount as the Commissioner determines is necessary to participate in the system.

(c) The administrator of any such system in which the Commissioner participates is authorized to act on behalf of the Commissioner to collect from the applicants and licensees subject to the system any payments due the Commissioner under this chapter, to collect information and maintain records in electronic or other format relating to those applicants and licensees, and to submit fingerprints and any other information required for a criminal history background check to the Federal Bureau of Investigation or other law-enforcement agency.

(d) Information maintained on any such system in which the Commissioner participates regarding the applicants and licensees subject to the system may be shared with any other state participating in that system for the purpose of licensing, regulating, or supervising that same applicant or licensee under a statute similar to this chapter, if that state could have obtained that same information directly from the applicant or licensee under its own law. The Commissioner shall ensure that the system maintains appropriate confidentiality, privacy, data security, and security breach notification policies that are in full compliance with Delaware law.

(76 Del. Laws, c. 264 § 2.)

Subchapter II

Revolving Credit

§ 2214 Definitions.

As used in this subchapter:

(1) "Revolving credit plan" or "plan" means a plan contemplating the extension of credit under an account governed by an agreement between a licensee and a borrower pursuant to which:

a. The licensee permits the borrower and, if the agreement governing the plan so provides, persons acting on behalf of or with authorization from the borrower, from time to time to make purchases from participating merchants and/or to obtain loans by use of a credit device;

b. The amounts of such purchases from participating merchants and loans are charged to the borrower's account under the revolving credit plan;

c. The borrower is required to pay the licensee the amounts of all purchases and loans charged to such borrower's account under the plan but has the privilege of paying such amounts outstanding from time to time in full or otherwise in accordance with the agreement governing the plan; and

d. Interest may be charged and collected by the licensee from time to time on the outstanding unpaid indebtedness under such plan.

(2) "Purchases" mean payments for property of whatever nature, real or personal, tangible or intangible, and payments for services, licenses, taxes, official fees, fines, private or governmental obligations or any other thing of value.

(3) "Loan" means cash advances or loans to be paid to or for the account of the borrower.

(4) "Credit device" means any card, check, identification code or other means of identification contemplated by the agreement governing the plan.

(5) "Outstanding unpaid indebtedness" means on any day an amount not in excess of the total amount of purchases from participating merchants and loans charged to the borrower's account under the plan which is outstanding and unpaid at the end of the day, after adding the aggregate amount of any new purchases from participating merchants and loans charged to the account as of that day and deducting the aggregate amount of any payments and credits applied to that indebtedness as of any day and, if the agreement providing the plan so provides, may include the amount of any interest and additional charges, including late or delinquency charges, which have accrued to the account and which are unpaid at the end of the day. Purchases and loans may be included in outstanding unpaid indebtedness as of such time as may be specified in the agreement governing the plan.

(66 Del. Laws, c. 22 § 1; 71 Del. Laws, c. 19 § 63; 72 Del. Laws, c. 15 § 32.)

§ 2215 Extension of credit.

Any licensee may offer and extend credit under a revolving credit plan to a borrower and in connection therewith may charge and collect the interest and other charges permitted by this subchapter and may take such security as collateral in connection therewith as may be acceptable to the licensee. Without limitation of the foregoing, credit may be extended under a revolving credit plan by a licensee's acquisition of obligations arising out of the honoring by a merchant, a bank or other financial institution (whether chartered or organized under the laws of this or any other state, the District of Columbia, the United States or any district, territory or possession of the United States, or any foreign country) or a government or governmental subdivision or agency of a credit device made available to a borrower under a plan, whether directly or indirectly by means of telephone, point of sale terminal or other electronic or similar device or through the

mail.

(66 Del. Laws, c. 22 § 1.)

§ 2216 Interest.

A licensee may charge and collect interest under a revolving credit plan on outstanding unpaid indebtedness in the borrower's account under the plan at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing the plan provides or as established in the manner provided in the agreement governing the plan. Periodic interest may be calculated using an average daily balance, 2-cycle average daily balance, adjusted balance or previous balance method or using any other balance computation method provided for in the agreement governing the plan. Periodic billing cycles may be established in such manner and shall have such duration as may be specified in the agreement governing the plan.

(66 Del. Laws, c. 22 § 1; 71 Del. Laws, c. 19 § 64.)

§ 2217 Variable rates.

If the agreement governing the revolving credit plan so provides, the periodic percentage rate or rates of interest under such plan may vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of outstanding unpaid indebtedness under the plan on or after the first day of the billing cycle that contains the effective date of such variation including any such indebtedness arising out of purchases made from a participating merchant or loans obtained prior to such variation in the periodic percentage rate or rates. Without limitation, a permissible schedule or formula hereunder may include provision in the agreement governing the plan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid indebtedness, whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the plan, which event or circumstance may include the failure of the borrower to perform in accordance with the terms of the plan. Nothing herein precludes a licensee from charging or reserving a right to charge, by discretion or otherwise, a rate lower than any maximum rate provided for in any schedule or formula.

(66 Del. Laws, c. 22 § 1; 68 Del. Laws, c. 303 § 39; 71 Del. Laws, c. 19 § 65; 77 Del. Laws, c. 279 § 2.)

§ 2218 Additional charges.

(a) In addition to or in lieu of interest at a periodic percentage rate or rates as provided in §§ 2216 and 2217 of this title, a licensee may, if the agreement governing the revolving credit plan so provides, charge and collect 1 or more of the following:

(1) A daily, weekly, monthly, annual or other periodic charge in such amount or amounts as the agreement may provide for the privileges made available to the borrower under the plan;

(2) A transaction charge or charges in such amount or amounts as the agreement may provide for each separate purchase or loan under the plan;

(3) A minimum charge for each daily, weekly, monthly, annual or other scheduled billing period under the plan during any portion of which there is an outstanding unpaid indebtedness under the plan;

(4) Reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the licensee or its agents in connection with such loan, including, without limitation, commitment fees, official fees and taxes, premiums or other charges for any guarantee or insurance protecting the licensee against the borrower's default or other credit loss, or costs incurred by reason of examination of title, inspection, recording and other formal acts necessary or appropriate to the security of the loan, filing fees, attorney's fees and travel expenses;

(5) Prepayment charges authorized by subsection (b) of this section; and

(6) Such other charges as the Commissioner shall include in an itemized schedule of the maximum amounts which may be charged to an applicant for an extension of credit for costs, fees, services, points, premiums and all other reasonable expenses which may be incurred by such applicant in connection with the extension of credit. The maximum amounts permitted by said schedule may vary with the amount of the extension of credit and shall bear a reasonable relationship to such extensions of credit, the services required and the complexity of the transaction. No licensee or any other person shall demand, collect or receive from any borrower, directly or indirectly, any other charges, or any greater amounts for any authorized charges than those permitted by said schedule or otherwise under this chapter.

(b) A borrower may pay the outstanding unpaid indebtedness charged to the borrower's account under a plan in full at any time. Except for a charge imposed to terminate a plan if the agreement governing the plan so provides, a licensee may not impose any prepayment charges in connection with the payment of outstanding unpaid indebtedness in full by a borrower. A licensee may charge and collect any prepayment penalty or other charge specified in the agreement governing the plan in connection with the payoff and termination of a plan that is secured by a real estate mortgage.

(c) No charges assessed by a licensee in accordance with this section shall be deemed void as a penalty or otherwise unenforceable under any statute or the common law.

(66 Del. Laws, c. 22 § 1; 70 Del. Laws, c. 327 § 44; 71 Del. Laws, c. 19 §§ 66, 67.)

§ 2219 Terms for indebtedness.

A licensee may, if the agreement governing a revolving credit plan so provides, impose different terms (including, without limitation, the terms governing the periodic percentage rate or rates used to calculate interest, the method of computing the outstanding unpaid indebtedness to which such rate or rates are applied, the amounts of other charges and the applicable installment repayment schedule) in respect to indebtedness arising out of purchases and indebtedness arising out of loans made under the plan.

(66 Del. Laws, c. 22 § 1.)

§ 2220 Omitted installments.

A licensee may at any time and from time to time unilaterally extend to a borrower under a revolving credit plan the option of omitting monthly installments.

(66 Del. Laws, c. 22 § 1.)

§ 2221 Insurance.

(a) A licensee may request but not require an individual borrower to be insured in respect of a revolving credit plan under a life, health, accident, health and accident or other credit or other permissible insurance policy, whether group or individual, and in the event that an individual borrower's outstanding unpaid indebtedness under the plan is secured by an interest in real or personal property, a licensee may require the borrower to obtain insurance, from an insurer acceptable to the licensee, against loss of or damage to such property or against the liability arising out of the ownership or use of the property and may finance the premiums for such insurance.

(b) The offer and placement of insurance under this section shall be subject in all respects to the applicable provisions of Title 18.

(66 Del. Laws, c. 22 § 1.)

§ 2222 Delinquent installments.

(a) If the agreement governing a revolving credit plan so provides, a licensee may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the plan which are in default; provided, however, that no more than 1 such late or delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default; and provided further, however, that for the purpose only of the preceding provision all payments by the borrower shall be deemed to be applied to satisfaction of installment payments in the order in which they become due. Nothing contained in this section shall limit, restrict or otherwise affect the right of a licensee under and pursuant to §§ 2216 and 2217 of this title to change the periodic percentage rate or rates of interest applicable to the revolving credit plan between the licensee and a borrower upon the occurrence of a delinquency or default or other failure of the borrower to perform in accordance with the terms of the plan.

(b) No charges assessed by a licensee in accordance with this section shall be deemed void as a penalty or otherwise unenforceable under any statute or the common law.

(66 Del. Laws, c. 22 § 1; 68 Del. Laws, c. 303 § 40; 70 Del. Laws, c. 327 § 45; 71 Del. Laws, c. 19 § 68.)

§ 2223 Attorney's fees; costs.

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

(66 Del. Laws, c. 22 § 1; 72 Del. Laws, c. 15 § 33.)

§ 2224 Amendment of agreement.

(a) Unless the agreement governing a revolving credit plan otherwise provides, a licensee may at any time and from time to time amend such agreement in any respect, whether or not the amendment or the subject of the amendment was originally contemplated or addressed by the parties or is integral to the relationship between the parties. Without limiting the foregoing, such amendment may change terms by the addition of new terms or by the deletion or modification of existing terms, whether relating to plan benefits or features, the rate or rates of periodic interest, the manner of calculating periodic interest or outstanding unpaid indebtedness, variable schedules or formulas, interest charges, fees, collateral requirements, methods for obtaining or repaying extensions of credit, attorney's fees, plan termination, the manner for amending the terms of the agreement, arbitration or other alternative dispute resolution mechanisms, or other matters of any kind whatsoever. Unless the agreement governing a revolving credit plan otherwise expressly provides, any amendment may, on and after the date upon which it becomes effective as to a particular borrower, apply to all then outstanding unpaid indebtedness in the borrower's account under the plan, including any such indebtedness that arose prior to the effective date of the amendment. An agreement governing a revolving credit plan may be amended pursuant to this section regardless of whether the plan is active or inactive or whether additional borrowings are available thereunder. Any amendment that does not increase the rate or rates of periodic interest charged by a licensee to a borrower under § 2216 or § 2217 of this title shall become effective as determined by the licensee, subject to compliance by the licensee with any applicable notice requirements under the Truth in Lending Act (15 U.S.C. §§ 1601 et seq.), and the regulations promulgated thereunder, as in effect from time to time. Any notice of an amendment sent by the licensee may be included in the same envelope with a periodic statement or as part of the periodic statement or in other materials sent to the borrower.

(b)(1) If an amendment increases the rate or rates of periodic interest charged by a licensee to a borrower under § 2216 or § 2217 of this title, the licensee shall mail or deliver to the borrower, at least 15 days before the effective date of the amendment, a clear and conspicuous written notice that shall describe the amendment and shall also set forth the effective date thereof and any applicable information required to be disclosed pursuant to the following provisions of this section.

(2) Any amendment that increases the rate or rates of periodic interest charged by a licensee to a borrower under § 2216 or § 2217 of this title shall become effective as to a particular borrower if the borrower does not, within 15 days of the earlier of the mailing or delivery of the written notice of the amendment (or such longer period as may be established by the licensee), furnish written notice to the licensee that the borrower does not agree to accept such amendment. The notice from the licensee shall set forth the address to which a borrower may send notice of the borrower's election not to accept the amendment and shall include a statement that, absent the furnishing of notice to the licensee of nonacceptance within the referenced 15 day (or longer) time period, the amendment will become effective and apply to such borrower. As a condition to the effectiveness of any notice that a borrower does not accept such amendment, the licensee may require the borrower to return to it all credit devices. If, after 15 days from the mailing or delivery by the licensee of a notice of an amendment (or such longer period as may have been established by the licensee as referenced above), a borrower uses a plan by making a purchase or obtaining a loan, notwithstanding that the borrower has prior to such use furnished the licensee notice that the borrower does not accept an amendment, the amendment may be deemed by the licensee to have been accepted and may become effective as to the borrower as of the date that such amendment would have become effective but for the furnishing of notice by the borrower (or as of any later date selected by the licensee).

(3) Any amendment that increases the rate or rates of periodic interest charged by a licensee to a borrower under § 2216 or § 2217 of this title may, in lieu of the procedure referenced in paragraph (2) of this subsection, become effective as to a particular borrower if the borrower uses the plan after a date specified in the written notice of the amendment that is at least 15 days after the mailing or delivery of the notice (but that need not be the date the amendment becomes effective) by making a purchase or obtaining a loan; provided, that the notice from the licensee includes a statement that the described usage after the referenced date will constitute the borrower's acceptance of the amendment.

(4) Any borrower who furnishes timely notice electing not to accept an amendment in accordance with the procedures referenced in paragraph (2) of this subsection and who does not subsequently use the plan, or who fails to use such borrower's plan as referenced in paragraph (3) of this subsection, shall be permitted to pay the outstanding unpaid indebtedness in such borrower's account under the plan in accordance with the rate or rates of periodic interest charged by a licensee to a borrower under § 2216 or § 2217 of this title without giving effect to the amendment; provided however, that the licensee may convert the borrower's account to a closed end credit account as governed by subchapter III of this chapter, on credit terms substantially similar to those set forth in the then-existing agreement governing the borrower's plan.

(5) Notwithstanding the other provisions of this subsection, no notice required by this subsection of an amendment of an agreement governing a revolving credit plan shall be required, and any amendment may become effective as of any date agreed upon between a licensee and a borrower, with respect to any amendment that is agreed upon between the licensee and the borrower, either orally or in writing.

(c) For purposes of this section, the following are examples of amendments that shall not be deemed to increase the rate or rates of periodic interest charged by a licensee to a borrower under § 2216 or § 2217 of this title:

(1) A decrease or increase in the required number or amount of periodic installment payments;

(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 licensee may not make more than 1 such change in reliance on this paragraph with respect to a plan within any 12-month period;

(3)a. A change in the schedule or formula used under a variable rate plan under § 2217 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

b. Any other change in the schedule or formula used under a variable rate plan under § 2217 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;

(5) A change from a daily periodic rate to a periodic rate other than daily or from a periodic rate other than daily to a daily periodic rate; and

(6) A change in the method of determining the outstanding unpaid indebtedness upon which periodic interest is calculated (including, without limitation, a change with respect to the date by which or the time period within which a new balance or any portion thereof must be paid to avoid additional periodic interest).

(66 Del. Laws, c. 22 § 1; 66 Del. Laws, c. 403 § 3; 70 Del. Laws, c. 217 § 2; 71 Del. Laws, c. 19 § 69; 72 Del. Laws, c. 15 §§ 34, 35.)

§ 2225 Application of other State laws.

Any other law of this State limiting the rate or amount of interest, discount, points, finance charges, service charges or other charges which may be charged, taken, collected, received or reserved shall not apply to extensions of credit under a revolving credit plan operated in accordance with this subchapter.

(66 Del. Laws, c. 22 § 1.)

§ 2226 Nonexclusivity; captions.

(a) The provisions of this subchapter are not exclusive and a licensee may at its option elect to extend credit either pursuant to this subchapter or as otherwise permitted by applicable law.

(b) Section headings and captions contained in this subchapter are inserted only as a matter of convenience and for reference and do not and shall not be construed to define, limit, extend or describe the scope of this subchapter or the meaning or intent of any section hereof.

(66 Del. Laws, c. 22 § 1.)

Subchapter III

Closed End Credit

§ 2227 Definitions.

As used in this subchapter:

(1) "Business day" means, with respect to recission under § 2235A of this title, all calendar days except Sundays and legal public holidays.

(2) "Closed end credit" means the extension of credit by a licensee to a borrower pursuant to an arrangement or agreement which is not a revolving credit plan as defined in subchapter II of this chapter.

(3) "Conspicuously displayed" means highlighted through the use of capitalization, bold print, underlining or some combination thereof.

(4) "Loan" means any single extension of closed end credit.

(5) "Right of recission" means, with respect to any short-term consumer loan, the right to return any amount borrowed, in full, on or before the close of business of the business day following the day on which such sum has been disbursed or advanced without the incursion of any fee or other charges.

(6) "Rollover" means, with respect to any short-term consumer loan, the extension of an outstanding and unpaid indebtedness beyond the stated repayment period solely on the basis of the payment of a fee without approval of a new loan application.

(7) "Short-term consumer loan" means a loan of $1,000 or less made to an individual borrower that charges interest and/or fees for which the stated repayment period is less than 60 days and is not secured by title to a motor vehicle.

(8) "Workout agreement" means an agreement between an individual borrower and a licensee for the repayment of an outstanding and unpaid indebtedness. The workout agreement must provide for payments in equal installments over a period of at least 90 days and the licensee may not assess any other fee, interest charge, or other charge on the borrower as a result of converting the loan into a workout agreement.

(66 Del. Laws, c. 22 § 1; 73 Del. Laws, c. 398 § 3; 78 Del. Laws, c. 278 § 1.)

§ 2228 Extension of credit.

(a) Any licensee may, subject to any limitations on lending authority contained in its charter or otherwise imposed by law and subject to the other provisions of this subchapter, offer and extend closed end credit to a borrower and, in connection therewith, may charge and collect the interest and other charges permitted by this subchapter and may take such security as collateral in connection therewith as may be acceptable to the licensee. Loans to any 1 borrower may not exceed 20% of the paid-in capital stock and surplus of such lender.

(b) All licensees will maintain records or other comparable evidence of their activity taken to reach a decision on a loan. If a commitment between a licensee and an applicant is not met (regardless of whether a similar loan at a higher rate is closed or not) and the delay is the licensee's fault, or the licensee cannot demonstrate through its records or other comparable evidence that it took reasonably diligent steps to meet its deadline, such action or inaction taken by the licensee may be deemed to be an unsafe and unsound operating practice. In such a case, the Commissioner shall take appropriate action which may include, but is not limited to, an order to refund certain fees paid by the applicant to the licensee.

(66 Del. Laws, c. 22 § 1; 68 Del. Laws, c. 105 § 24.)

§ 2229 Interest.

A licensee may charge and collect interest in respect of a loan at such daily, weekly, monthly, annual or other periodic percentage rate or rates as the agreement governing the loan provides or as established in the manner provided in such agreement and may calculate such interest by way of simple interest or such other method as the agreement governing the loan provides. If the interest is precomputed it may

be calculated on the assumption that all scheduled payments will be made when due. For purposes hereof, a year may but need not be a calendar year and may be such period of from 360 to 366 days, including or disregarding leap year, as the licensee may determine.

(66 Del. Laws, c. 22 § 1.)

§ 2230 Variable rates.

If the agreement governing the loan so provides, the periodic percentage rate or rates of interest charged and collected in respect of the loan may, if the interest is not precomputed and taken in advance, vary in accordance with a schedule or formula. Such periodic percentage rate or rates may vary from time to time as the rate determined in accordance with such schedule or formula varies and such periodic percentage rate or rates, as so varied, may be made applicable to all or any part of outstanding unpaid amounts of such loan on and after the effective date of such variation. This section shall not be construed to limit the authority of a licensee to charge and collect interest in respect of a loan in the manner and at the rate or rates authorized in any other section of this subchapter. Without limitation, a permissible schedule or formula hereunder may include provisions in the agreement governing the loan for a change in the periodic percentage rate or rates of interest applicable to all or any part of outstanding unpaid amounts whether by variation of the then applicable periodic percentage rate or rates of interest, variation of an index or margin or otherwise, contingent upon the happening of any event or circumstance specified in the loan agreement, which event or circumstance may include the failure of the borrower to perform in accordance with the terms of the loan agreement.

(66 Del. Laws, c. 22 § 1; 68 Del. Laws, c. 303 § 41.)

§ 2231 Additional charges.

In addition to or in lieu of interest at a periodic percentage rate or rates permitted by §§ 2229 and 2230 of this title, the licensee may charge and collect, in respect of a loan:

(1) Reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the licensee or its agents in connection with such loan, including, without limitation, commitment fees, official fees and taxes, premiums or other charges for any guarantee or insurance protecting the licensee against the borrower's default or other credit loss, or costs incurred by reason of examination of title, inspection, recording and other formal acts necessary or appropriate to the security of the loan, filing fees, attorney's fees and travel expenses;

(2) If the agreement governing a loan so provides, a licensee may impose, as interest, a late or delinquency charge upon any outstanding unpaid installment payments or portions thereof under the loan agreement which are in default; provided, however, that no more than 1 such delinquency charge may be imposed in respect of any single such installment payment or portion thereof regardless of the period during which it remains in default; and provided further that no such delinquency charge may exceed 5% of the amount of any such installment or portion thereof in default. Nothing contained in this subdivision shall limit, restrict or otherwise affect the right of a licensee under and pursuant to § 2230 of this title to change the periodic percentage rate or rates of interest applicable to the loan agreement between the licensee and a borrower upon the occurrence of a delinquency or default or other failure of the borrower to perform in accordance with the terms of the loan agreement;

(3) Such other charges as the Commissioner shall include in an itemized schedule of the maximum amounts which may be charged to an applicant for a loan for costs, fees, services, points, premiums and all other reasonable expenses which may be incurred by such applicant in connection with a loan. The maximum amounts permitted by said schedule may vary with the amount of the loan and shall bear a reasonable relationship to such loan, the services required and the complexity of the transaction. No licensee shall demand, collect or receive from any applicant for a loan, directly or indirectly, any other charges, or any greater amounts for any authorized charges than those permitted by said schedule or this subchapter. Every licensee shall furnish to every applicant for a loan a copy of said schedule at the time when such application is made.

(66 Del. Laws, c. 22 § 1; 68 Del. Laws, c. 303 § 42; 70 Del. Laws, c. 327 § 46.)

§ 2232 Deferred installments.

A licensee may at any time or from time to time permit a borrower to defer installment payments of a loan and may, in connection with such deferral, charge and collect deferral charges and may also require payment by such borrower of the additional cost to the licensee of premiums for continuing in force, until the end of such period of deferral, any insurance coverage provided in connection with the loan pursuant to § 2231 of this title.

(66 Del. Laws, c. 22 § 1.)

§ 2233 Insurance.

(a) A licensee may request but not require a borrower to be insured in respect of a loan under a life, health, accident, health and accident or other permissible insurance policy, whether group or individual, and in the event that a loan to a borrower is secured by an interest in real or personal property, the licensee may require the borrower to obtain insurance, from an insurer acceptable to the licensee, against loss of or damage to such property or against the liability arising out of the ownership or use of the property and may finance the premiums for such insurance.

(b) The offer and placement of insurance under this section shall be subject in all respects to the applicable provisions of Title 18.

(66 Del. Laws, c. 22 § 1.)

§ 2234 Prepayment.

(a) A borrower may prepay a loan in full at any time.

(b) If interest charged pursuant to § 2229 of this title in respect to a loan has been precomputed and taken in advance, then, in the event of prepayment of the entire indebtedness, the licensee shall refund to such borrower the unearned portion of the precomputed interest charge. This refund shall be in an amount not less than the amount which would be refunded if the unearned precomputed interest charge were calculated in accordance with the actuarial method, except that the borrower shall not be entitled to a refund which is less than $5. The unearned portion of the precomputed interest charge is, at the option of the licensee, either:

(1) That portion of the precomputed interest charge which is allocable to all originally scheduled or, if deferred, all deferred payment periods, or portions thereof, ending subsequent to the date of prepayment. The unearned precomputed interest charge is the total of that which would have been earned for each such period, or portion thereof, had the loan not been precomputed, by applying to unpaid balances of principal, according to the actuarial method, an annual percentage rate based on the precomputed interest charges, assuming that all payments were made as scheduled, or as deferred, if deferred. The licensee, at its option, may round this annual percentage rate to the nearest one quarter of 1 percent; or

(2) The total precomputed interest charge less the earned precomputed interest charge. The earned precomputed interest charge shall be determined by applying an annual percentage rate based on the total precomputed interest charge, under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

(c) As used in subsection (b) of this section:

(1) "Actuarial method" means the method of allocating payments made on a loan between the outstanding balance of the loan and interest pursuant to which a payment is applied first to the accumulated interest and any remainder is subtracted from the outstanding balance of the loan.

(2) "Precomputed interest charge" means interest as computed by the add-on, discount or other similar method.

(3) "Payment period" means the time period within which periodic installment payments of a loan are due as provided in the agreement governing the loan.

(d) If a charge was made for premiums for insuring such borrower under an insurance policy pursuant to § 2233 of this title, then, in the event of prepayment, the licensee shall refund to such borrower the excess of the charge to such borrower therefor over the premiums paid or payable to the licensee, if such premiums were paid or payable to the licensee periodically, or the refund for such insurance premium received or receivable by the licensee, if such premium was paid or payable in a lump sum by the licensee, provided that no such refund shall be required if it amounts to less than $5.

(e) In connection with any prepayment of any loan by an individual borrower, the licensee may not impose any prepayment charge, except that in the case of a residential mortgage loan, the lender may charge and collect any prepayment penalty or charge specified in the agreement governing, or the bond, note or other evidence of, the loan.

(66 Del. Laws, c. 22 § 1.)

§ 2235 Refinancing.

(a) A borrower may, with the consent of the licensee, refinance the entire outstanding and unpaid amount of a loan, and the licensee may charge and collect a refinancing charge in connection with any such refinancing.

(b) For the purposes of this section, the entire outstanding and unpaid amount of a loan shall be deemed to be:

(1) If the interest and charges in respect of the loan were not taken in advance, the total of the unpaid balance and the accrued and unpaid interest and charges on the date of refinancing; or

(2) If the interest and charges on the loan were precomputed and taken in advance, the amount which the borrower would have been required to pay upon the prepayment on the date of refinancing pursuant to § 2234 of this title governing refund upon prepayment.

(66 Del. Laws, c. 22 § 1.)

§ 2235A Short-term consumer loans.

(a) In addition to such other limitations and requirements as are imposed pursuant to other provisions of this subchapter, short-term consumer loans shall be subject to the following:

(1) Notwithstanding any other provision of law, no licensee shall make, and no borrower shall receive, a short-term consumer loan that would cause the borrower to have more than 5 short-term consumer loans from all licensees in any 12-month period. For the purposes of this section a rollover or a refinancing shall be considered a short-term consumer loan. Any loan made or collected in violation of this paragraph is void, and the licensee does not have the right to collect, receive, or retain any principal, interest, fees or other charges. A violation of this section is a violation of Chapter 25 of Title 6.

(2) No licensee shall make more than 4 rollovers of an existing short-term consumer loan. A licensee may, following not more than the maximum allowable number of rollovers, enter into a workout agreement with the borrower or take such other actions as are lawful to collect any outstanding and unpaid indebtedness.

(3) No licensee shall make a short-term consumer loan unless such loan is subject to a right of recission on the part of the individual borrower.

(4) No licensee shall pursue or threaten to pursue criminal action against an individual borrower in connection with the nonpayment of any amount due, including the unpaid return of any check or automated clearing house transaction.

(b) In addition to such other disclosure requirements as are imposed pursuant to other provisions of this subchapter, short-term consumer loans shall be subject to the following: No licensee shall make a short-term consumer loan unless the application for such loan, which application shall be written in both English and Spanish, contains a written disclosure, conspicuously displayed, that:

(1) The loan is designed as a short-term cash flow solution and not designed as a solution for longer term financial problems;

(2) Additional fees may accrue if the loan is rolled over; and

(3) Credit counseling services are available to consumers who are experiencing financial problems.

(c) Nothing in this section prohibits a licensee from refinancing the principal amount of a short-term consumer loan, subject to the limitations and requirements imposed herein.

(d) The Commissioner is authorized to promulgate rules and regulations to exempt certain loans or classes of loans from the requirements of this section.

(e) Every short-term consumer loan provider must post in plain view, in an area easily accessible to their customers at the entrance to the office and on any website, a schedule of fees and rates applicable to their loans, and a prominent statement that: "A payday loan is not intended to meet long-term financial needs."

(f) A licensee or licensee's agent shall not engage in any device or subterfuge intended to evade the requirements of this chapter through any method including, but not limited to, mail, telephone, Internet or any electronic means, including:

(1) Offering, making, or assisting a borrower to obtain a loan in violation of subsection (a) of this section, or brokering or acting as an agent for a third party in such a transaction, regardless of whether approval, acceptance or ratification is necessary to create a legal obligation for the third party.

(2) Disguising a short-term consumer loan as a revolving line of credit, or making or assisting a borrower to obtain a revolving line of credit for the purpose of avoiding the requirements of subsection (a) of this section.

(73 Del. Laws, c. 398 § 4; 77 Del. Laws, c. 164 § 5; 78 Del. Laws, c. 278 § 2.)

§ 2235B Database.

(a) The Commissioner shall, by contract with a third-party provider or otherwise, develop and implement a common database with real-time access through an Internet connection by means of which a licensee may determine:

(1) Whether a borrower has an outstanding short-term consumer loan;

(2) The number of short-term consumer loans the borrower has outstanding;

(3) Whether the borrower is eligible for a loan under § 2235A(a) of this title; and

(4) Any other information necessary to comply with this chapter.

(b) The Commissioner shall ensure that the provider of the database referred to in this section is responsible to:

(1) Establish and maintain a process for responding to transaction verification requests from a licensee in the event the database is inaccessible due to technical difficulties;

(2) Take reasonable measures to prevent identity theft;

(3) Provide accurate and secure receipt, transmission and storage of borrower data; and

(4) Provide the Commissioner or his or her designee complete access to the database.

(c) Licensees shall:

(1) When entering into a short-term consumer loan, accurately and immediately submit to the database any data in the format that the Commissioner may require, including the borrower's name, address, social security or employment authorization number, gross monthly income, amount of transaction, interest rate, date of transaction, anticipated date loan will be paid off;

(2) Promptly correct any incorrect data entered into the database that was previously submitted; and

(3) Promptly record the date a short-term consumer loan is paid in full.

(d) A licensee must continue to enter and update all required information for any short-term consumer loans subject to this section that are outstanding or have not yet expired after the date on which the licensee no longer has the license required by this chapter. Within 10 business days after ceasing to make loans subject to this section, the licensee must submit a plan for continuing compliance with this subsection to the Commissioner for approval. The Commissioner must promptly approve or disapprove the plan and may require the licensee to submit a new or modified plan that ensures compliance with this section.

(e) The Commissioner shall adopt rules or regulations for the administration and enforcement of this section. Such regulations shall include:

(1) A requirement that identifying borrower information is deleted from the database on a regular and routine basis, 12 months after the loan is paid off;

(2) Standards for the retention, archiving, and deletion of information entered or stored in the database;

(3) A requirement that data collected pursuant to this section be used only as prescribed in this chapter or for research and reporting as authorized by the Banking Commissioner;

(4) A rule authorizing a fee per transaction for data required to be submitted. The fee shall be payable by the licensee to the Commissioner. The fee must reasonably reflect the costs necessary to defray the expenses associated with administering the provisions of

this section. A customer shall not be charged all or part of the fee.

(f) The database established under this section shall not be considered a public record for purposes of the Freedom of Information Act in Chapter 100 of Title 29.

(78 Del. Laws, c. 278 § 3; 70 Del.Laws c. 186 § 1.)

§ 2235C Report by Commissioner.

(a) The Commissioner shall collect and submit the following information to the Banking Committee of the Senate and the Economic Development/Banking/Insurance/Commerce Committee of the House of Representatives on or before March 15 of each year:

(1) The total number and dollar amount of short-term consumer loan transactions;

(2) The total number of individual borrowers who entered into short-term consumer loan transactions along with their gross monthly income;

(3) The minimum, maximum, and average amount of short-term consumer loan transactions;

(4) The minimum, maximum, and average annual percentage rate of short-term consumer loans;

(5) The average number of days a short-term consumer loan is outstanding;

(6) The number of borrowers entering into each permissible number of short-term consumer loans, 1 transaction to 5 transactions;

(7) The default rate on short-term consumer loans;

(8) Any other information that the commissioner believes is relevant or useful; and

(9) Any other information requested by the banking committees at least 60 days before the Commissioner's report is due.

(b) The Commissioner shall require the database operator and licensees to submit any and all information necessary for the Commissioner to prepare the report referenced in subsection (a) of this section.

(78 Del. Laws, c. 278 § 4; 70 Del. Laws, c. 186 § 1.)

§ 2236 Attorneys' fees; costs.

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

(66 Del. Laws, c. 22 § 1; 72 Del. Laws, c. 15 § 36.)

§ 2237 Application of other State laws.

Any other law of this State limiting the rate or amount of interest, discount, points, finance charges, service charges or other charges which may be charged, taken, collected, received or reserved shall not apply to extensions of credit made in accordance with this subchapter.

(66 Del. Laws, c. 22 § 1.)

§ 2238 Nonexclusivity; captions.

(a) The provisions of this subchapter are not exclusive and a licensee may at its option elect to extend credit either pursuant to this subchapter or as otherwise permitted by applicable law.

(b) Section headings and captions contained in this subchapter are inserted only as a matter of convenience and for reference and do not and shall not be construed to define, limit, extend or describe the scope of this subchapter or the meaning or intent of any section hereof.

(66 Del. Laws, c. 22 § 1.)

Subchapter IV

Prohibitions and Penalties

§ 2239 Penalty for failure to give copy of obligation to borrower.

Every lender shall give to the borrower, on request, a correct copy of the obligation evidencing the loan, and on failure or refusal on such request to furnish the borrower with such copy shall be fined, for each offense, not less than $20 nor more than $100, or imprisoned for not more than 1 month, or both.

(66 Del. Laws, c. 22 § 1.)

§ 2240 Penalty for making loans without license; exception.

(a) Loans as authorized by this chapter shall not be made unless a license of registration has first been obtained from the State Bank Commissioner. Whoever violates this subsection shall be fined not less than $50 nor more than $200 for each offense, or imprisoned not more than 3 months, or both.

(b) Subsection (a) of this section shall not apply to any person transacting the business of lending money in accordance with the provisions of § 2202 of this title.

(66 Del. Laws, c. 22 § 1; 68 Del. Laws, c. 105 § 25.)

§ 2241 Responsibility of agents.

For every violation of this chapter by any association, firm, partnership, trustee system or combination of persons not incorporated, or by any corporation, any member of the association, firm, partnership, trustee system or combination of persons not incorporated, and the president, secretary or treasurer, or any person acting as agent of the association, firm, partnership, trustee system or combination of persons not incorporated, or corporation, may be proceeded against as a principal, and if found guilty of violating this chapter, shall be punished as provided in this chapter.

(66 Del. Laws, c. 22 § 1.)

§ 2242 Salary orders, warrants or assignments as security for loans, confessions of judgment, acceleration; penalties for violations.

(a) No order, warrant or claim of any kind, from any employee upon his or her employer, for any salary or part thereof due or to become due to such employee from such employer, shall be taken, accepted or agreed to be taken or accepted, as security for money loaned or to be loaned.

(b) No instrument evidencing a loan under this chapter shall contain any acceleration clause under which any part, or all of the unpaid balance, of the obligation not yet matured, may be declared due and payable because the holder deems himself or herself to be insecure or any power of attorney to confess judgment or any other power of attorney.

(c) Whoever violates this section shall be fined not less than $100 nor more than $500, or imprisoned not more than 6 months, or both.

(66 Del. Laws, c. 22 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2243 False or misleading advertising prohibited.

It shall be unlawful for any person to cause to be placed before the public in this State, directly or indirectly, any false or misleading advertising matter pertaining to loans under this chapter or the availability thereof; provided, however, that this section shall not apply to the owner, publisher, operator or employees of any publication or radio or television station which disseminates such advertising matter without knowledge of the false or misleading character thereof.

(66 Del. Laws, c. 22 § 1.)

§ 2244 Reverse mortgages.

(a) For purposes of this section, unless the context requires otherwise:

(1) "Independent housing counselor" means a housing counseling agency approved by the United States Department of Housing and Urban Development, or any government agency or nonprofit organization that is not affiliated with either the reverse mortgage lender or any other person receiving a fee from the transaction and provides mortgage loan counseling to the public of this State regarding the advisability of entering into a reverse mortgage transaction.

(2) "Reverse mortgage loan" means a mortgage loan, as defined by § 2101(4) of this title, the proceeds of which are disbursed to the mortgagor in 1 or more lump sums, or in equal or unequal installments, either directly by the lender or the lender's agent, and which requires no repayment until a future time, upon the earliest occurrence of 1 or more events specified in the reverse mortgage loan contract.

(b) A licensee shall not finalize a reverse mortgage loan until it has received a written certification from an independent housing counselor attesting that the prospective borrower has received counseling on reverse mortgage loans that includes the information specified in 12 U.S.C. § 1715z-20(f) and such other information as the Commissioner may designate by regulation.

(76 Del. Laws, c. 335 § 2.)

§ 2245 Mortgage loan modification services; compensation.

(a) As used in this section, unless the context requires otherwise, "mortgage loan" has the meaning set forth in § 2101 of this title.

(b) As used in this section, unless the context requires otherwise, "mortgage loan modification services" means services as an intermediary between an individual and 1 or more mortgage loan creditors for the purpose of obtaining:

(1) Assent to the repayment of a mortgage loan on terms more favorable to the individual than the terms of the original mortgage loan; or

(2) An arrangement to delay, prevent, remedy, eliminate or discharge any default on the terms of a mortgage loan, or the sale of any property incident to a foreclosure or other judicial proceeding based on a mortgage loan.

(c) A licensee may not receive any compensation for mortgage loan modification services prior to the execution of a written contract that describes in detail all such services that the licensee will perform and all compensation that the licensee will receive for those services. Any compensation received by a licensee in advance of the completion of all such services may not exceed $250.

(d) The total compensation that a licensee receives for mortgage loan modification services must be limited to an amount that is customary and reasonable for those services in this State.

(77 Del. Laws, c. 138 § 2.)

Subchapter V

Title Loans

§ 2250 Definitions.

As used in this subchapter:

(1) "Business day" means all calendar days except Saturdays, Sundays and legal holidays (as that term is defined in Chapter 5 of Title 1).

(2) "Conspicuous" has the meaning set forth in § 1-201 of Title 6.

(3) "Rollover" means the extension of an outstanding and unpaid indebtedness beyond the originally stated repayment period.

(4) "Title loan" means a loan made to one or more natural persons by a licensee and secured by the title to a motor vehicle, which loan is not used for the purpose of purchasing the vehicle that is used as security and which loan has an originally stated repayment period of 180 days or less.

(5) "Workout agreement" means an agreement for repayment of the outstanding and unpaid indebtedness on a title loan.

(77 Del. Laws, c. 164 § 1.)

§ 2251 Deceptive advertising prohibited.

No licensee shall advertise, market the availability of, or otherwise seek to induce any natural person to apply for, or enter into an obligation concerning, a title loan in any manner that violates either subchapter II (Consumer Fraud) or subchapter III (Deceptive Trade Practices) of Chapter 25 of Title 6. Further, no licensee shall advertise a title loan interest rate that is lower for an initial period, if that interest rate increases during any rollover.

(77 Del. Laws, c. 164 § 1.)

§ 2252 Disclosures.

No licensee shall make a title loan without providing to the borrower, before the borrower signs the loan agreement, all of the following written disclosures in a conspicuous format:

(1) "The loan you are considering entering into is strictly for short-term cash, and is not a solution for long-term financial problems."

(2) "You, as borrower, are not compelled to complete the loan agreement merely because you have received any disclosures."

(3) "If you sign the title loan agreement, the title loan lender will obtain a security interest in your motor vehicle, and if you fail to meet the obligations of the title loan agreement, the lender can take possession of your motor vehicle and sell it."

(4) "If the lender takes possession of your motor vehicle, you may lose equity in that vehicle."

(5) "You have a right to rescind the title loan agreement for any reason, at no cost to you, at any time up to the end of the business day following the day in which the loan proceeds of the title loan were disbursed to you by returning the full amount of the loan proceeds to the title lender."

(6) "You have the right to receive information about credit counseling services from the Office of the State Bank Commissioner."

(7) "You may file a complaint with the Office of the State Bank Commissioner if you believe your lender has violated any law regarding your title loan."

(77 Del. Laws, c. 164 § 1.)

§ 2253 Right of rescission.

(a) A title loan borrower may rescind a title loan for any reason up to the end of the business day following the day on which proceeds of the loan were disbursed to the borrower.

(b) If a licensee fails to make any disclosure required by § 2252 of this title, a title loan borrower may elect, in lieu of any other available remedy, to rescind the loan at any time up to 1 year from the date scheduled for the final payment on the loan as specified in the original loan agreement, any rollover of the loan, or any workout agreement on the loan, whatever occurs last.

(c) A title loan borrower shall not incur any fee, interest, or other charge by exercising a right of rescission, except any fee or charge incurred by the licensee in the normal course of business in connection with the making of the title loan.

(d) A title loan borrower may rescind a title loan by delivering within the appropriate time specified in this section a notice of rescission to the licensee that issued the loan.

(1) If the rescission is pursuant to subsection (a) of this section, the borrower shall at the same time also return to the licensee all loan proceeds that the borrower received.

(2) If the rescission is pursuant to subsection (b) of this section, the borrower shall at the same time also return to the licensee any unpaid balance of the loan proceeds that the borrower received less any fees, interest or other charges that the borrower paid the licensee on the loan. If such fees, interest, or other charges exceed the unpaid loan proceeds, the licensee shall promptly refund that excess to the borrower.

(e) Upon rescission of a title loan, the licensee that issued the loan shall promptly take all actions necessary or appropriate to terminate

any security interest in the motor vehicle that is used as security for that loan if the borrower still owns that vehicle.

(77 Del. Laws, c. 164 § 1.)

§ 2254 Rollover limit.

No licensee shall make a title loan rollover that would extend the repayment period for the loan beyond 180 days from the date on which the loan proceeds were disbursed to the borrower.

(77 Del. Laws, c. 164 § 1.)

§ 2255 Workout agreement.

(a) If a title loan borrower fails to repay the loan in accordance with the original provisions of the loan or any rollover of the loan, a licensee shall not take possession of the motor vehicle that is used as security for that loan or file suit on the loan until the licensee offers the borrower a workout agreement. Every workout agreement shall require a net reduction of at least 10% of the outstanding and unpaid indebtedness on the loan every month. A borrower shall have at least 10 business days to accept a workout agreement before the licensee takes possession of the motor vehicle.

(b) A title loan borrower who enters into a workout agreement with a licensee shall not be considered in default of the loan, and a licensee shall not take possession of a motor vehicle that is used as security for that loan or file suit against the borrower, unless the borrower defaults under the workout agreement.

(77 Del. Laws, c. 164 § 1.)

§ 2256 Federal Fair Debt Collection Practices Act.

No licensee who employs a debt collector, as defined in the Federal Fair Debt Collection Practices Act, as amended (Pub. L. 95-109, 91 Stat. 874) [15 U.S.C. § 1692 et seq.], to collect any outstanding and unpaid indebtedness under a title loan shall knowingly cause or permit such debt collector to act in a manner which violates that act.

(77 Del. Laws, c. 164 § 1.)

§ 2257 Threat of criminal prosecution prohibited.

No licensee shall seek or threaten to seek the criminal prosecution of a title loan borrower in connection with the nonpayment of any amount due under the loan, including the unpaid return of any check or automated clearing house transaction.

(77 Del. Laws, c. 164 § 1.)

§ 2258 Interest after default or repossession.

If a title loan borrower defaults on the loan, interest shall accrue on that loan at the rate specified in the original loan agreement for the original title loan period, any rollover period, and the period of any workout agreement. If the borrower remains in default at the expiration of the last of those periods, interest shall accrue from that point forward at no more than the legal rate specified in § 2301 of Title 6 as of that time. In all such cases, interest shall cease to accrue at the time a licensee takes possession of the motor vehicle that is used as security for that loan. Interest following a judgment that is rendered by a court of competent jurisdiction in favor of the licensee in any suit for breach of the loan agreement shall accrue at a rate determined by the court.

(77 Del. Laws, c. 164 § 1.)

§ 2259 Possession of motor vehicle after default.

A licensee may take possession of the motor vehicle that is used as security for a title loan only in accordance with procedures specified in part 6 (Default) of Article 9 (Uniform Commercial Code — Secured Transactions) of Title 6.

(77 Del. Laws, c. 164 § 1.)

§ 2260 Sale of motor vehicle.

Notwithstanding any other provision of law, the proceeds of a licensee's sale of a motor vehicle that is used as security for a title loan shall satisfy all outstanding and unpaid indebtedness under that loan, and the borrower on that loan shall not be liable for any deficiency resulting from that sale. The licensee shall nevertheless still be required to pay the borrower any surplus arising from the sale of that motor vehicle as required by part 6 (Default) of Article 9 (Uniform Commercial Code — Secured Transactions) of Title 6.

(77 Del. Laws, c. 164 § 1.)

§ 2261 Notice to borrower.

In addition to any other requirement of law, a licensee shall provide to the borrower, within 30 days of the date of the sale of any motor vehicle that is used as security for a title loan, a written explanation of the disposition of the proceeds of that sale. The explanation shall include all of the information required for an explanation under § 9-616 of Title 6, and shall be provided whether or not the sale resulted in a surplus or deficiency with respect to the amount owed by the borrower. The explanation shall include a notice that the sale has satisfied all outstanding and unpaid indebtedness under the title loan.

(77 Del. Laws, c. 164 § 1.)

Part IV
Other Businesses Under Jurisdiction of State Banking Department
Chapter 23
SALE OF CHECKS AND TRANSMISSION OF MONEY

§ 2301 Citation.

This chapter may be cited as "The Sale of Checks Act."

(5 Del. C. 1953 § 2301; 58 Del. Laws, c. 421.)

§ 2302 Definitions.

For the purposes of this chapter:

(1) "Person" means any individual, partnership, association, joint stock association or corporation, but does not include the United States government or the government of this State.

(2) "Licensee" means a person duly licensed by the State Bank Commissioner pursuant to this chapter.

(3) "Check" means any check, draft, money order, personal money order or other instrument for the transmission or payment of money.

(4) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission or handling of money, whether such instrument be signed by the seller or by the purchaser or remitter or some other person.

(5) "Sell" means to sell, to issue, or to deliver a check.

(6) "Deliver" means to deliver a check to the first person who in payment for same makes or purports to make a remittance of or against the face amount thereof, whether or not the deliverer also charges a fee in addition to the face amount, and whether or not the deliverer signs the check.

(7) "Commissioner" means the State Bank Commissioner.

(8) "Accelerated mortgage payment provider" means any person who, in accordance with a written contract, receives funds from a mortgagor to transmit, on behalf of such mortgagor, to a lender or servicer in order to exceed regularly scheduled minimum payment obligations under the terms of the indebtedness.

(5 Del. C. 1953 § 2302; 58 Del. Laws, c. 421; 71 Del. Laws, c. 19 § 71.)

§ 2303 License required.

No person, except those specified in § 2304 or agents of a licensee as provided in § 2311 shall engage in the business of selling checks, or issuing checks or engage in the business of receiving money for transmission or transmitting the same without having first obtained a license hereunder.

(5 Del. C. 1953 § 2303; 58 Del. Laws, c. 421.)

§ 2304 Exemption from licensing.

(a) No license shall be required hereunder of banks, trust companies, credit unions, building and loan associations and savings and loan associations, organized under the laws of any state in the United States of America or the United States of America, which either are authorized to do business in this State, or which act through a contractor or agent authorized to do business in this State.

(b) Nothing contained in this section or any other section of this chapter shall be construed to enlarge or limit the rights which any of the above-named organizations have under any existing law.

(c) The Commissioner shall be authorized to exempt from any or all of the provisions of this chapter such persons or classes of persons, or checks or transmissions or classes of checks or transmissions, as the Commissioner shall find inappropriate to include within the coverage of this chapter in order to effectuate the purposes of this chapter. The Commissioner may by regulation establish procedures for application, fees and other requirements for an exemption pursuant to this subsection.

(5 Del. C. 1953 § 2304; 58 Del. Laws, c. 421; 69 Del. Laws, c. 58 § 1; 70 Del. Laws, c. 327 § 47; 71 Del. Laws, c. 19 § 72; 76 Del. Laws, c. 86 § 1.)

§ 2305 Qualifications.

To qualify for a license hereunder an applicant shall meet the following requirements:

(1) The applicant shall have a net worth of at least $100,000 computed according to generally accepted accounting principles;

(2) The financial responsibility, financial condition, financial and business experience, character and general fitness of the applicant shall be such as reasonably to warrant the belief that applicant's business will be conducted honestly, carefully and efficiently. To the extent deemed advisable by the Commissioner, the Commissioner may investigate and consider the qualifications of the applicant including principals, officers and directors of an applicant in determining whether this qualification has been met.

(5 Del. C. 1953 § 2305; 58 Del. Laws, c. 421.)

§ 2306 Applications.

Each application for a license shall be made in writing and under oath to the Commissioner in such form and containing such information as he may prescribe including the name and business and residence address:

(1) Of the proprietor, if the applicant is an individual;

(2) Of every member, if the applicant is a partnership or unincorporated association;

(3) Of the corporation and each officer and director thereof, if the applicant is a corporation, stating the date and the state of incorporation.

(5 Del. C. 1953 § 2306; 58 Del. Laws, c. 421.)

§ 2307 Accompanying fees and statements.

Each application for a license shall be accompanied by:

(1) An investigation fee of $172.50 which shall not be subject to refund.

(2) The annual license fee as specified in § 2310.

(3) Financial statements reasonably satisfactory to the Commissioner.

(5 Del. C. 1953 § 2307; 58 Del. Laws, c. 421; 67 Del. Laws, c. 260 § 1.)

§ 2308 Action by Commissioner; conditional approval; license requirements; acquisition.

(a) Upon the filing of the application and the payment of the investigation fee and the annual license fee, the Commissioner shall, to the extent the Commissioner deems advisable, investigate the financial responsibility, financial condition, financial and business experience, character and general fitness of the applicant, and if the Commissioner finds these qualities are such as to warrant the belief that the applicant's business will be conducted honestly, fairly, equitably, carefully and efficiently within the purposes of the intent of this chapter and in the manner commanding the confidence and trust of the community, the Commissioner shall advise the applicant in writing of the Commissioner's conditional approval of the application, and thereafter, upon compliance by the applicant with § 2309 of this title, shall issue to the applicant a license to engage in the business of selling and issuing checks, subject to this chapter. If the Commissioner determines on the basis of the Commissioner's investigation that the applicant does not comply with the purposes of this chapter as set forth in the preceding sentence of this section he shall notify the applicant of the denial of the conditional approval of the license stating the reasons therefor in writing.

(b) A licensee shall obtain a license for each office or other place of business from which its licensed business is conducted upon payment of the required fees for each office and compliance with all applicable provisions of law. In the event the location of a licensed office is changed during the term of the license, the Commissioner shall issue without charge an amended license for the new location. In case there is a change of name but no change in corporate structure, the Commissioner shall issue without charge an amended license for the new name. Such license shall not be otherwise transferable or assignable. The Commissioner may issue more than 1 license to the same applicant upon payment of the required fees and compliance with all applicable provisions of law.

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

(5 Del. C. 1953 § 2308; 58 Del. Laws, c. 421; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 15 § 37; 80 Del. Laws, c. 225 § 5.)

§ 2309 Surety bonds and irrevocable letters of credit.

(a) Surety bonds. —

(1) Every licensee shall file with the Commissioner, in a form satisfactory to the Commissioner, an original corporate surety bond, with surety provided by a corporation authorized to transact business in this State, in the principal sum of $25,000 and in an additional principal sum of $5,000 for each location in excess of 1 at which the applicant proposes to conduct a business licensed by this chapter, but in no event shall the bond be required to be in excess of $250,000.

(2) No bond shall be accepted unless the following requirements are satisfied:

a. The term of the bond shall be commensurate with the license period or continuous;

b. The expiration date of the bond shall not be earlier than midnight of the date on which the license expires; and

c. The bond shall run to the State, for the benefit of the office of the State Bank Commissioner and for the benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the bond shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. Surety claims shall be paid to the office of the State Bank Commissioner by the insurer not later than 90 days after receipt of a claim. Claims paid after 90 days shall be subject to daily interest at the legal rate. The aggregate liability of the surety on the bond, exclusive of any interest which accrues for payments made after 90 days, shall in no event exceed the amount of such bond.

(3) If the licensee changes its surety company or the bond is otherwise amended, the licensee shall immediately provide the Commissioner with the amended original copy of the surety bond. No cancellation of an existing bond by a surety shall be effective

unless written notice of its intention to cancel is filed with the Commissioner at least 30 days before the date upon which cancellation shall take effect.

(4) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner shall determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

(5) When a surety company receives a claim against the bond of a licensee, it shall immediately notify the Commissioner and shall not pay any claim unless and until it receives notice to do so from the Commissioner.

(6) The Commissioner shall have a period of 2 calendar years after the effective date of cancellation or termination of the surety bond by the insurer to submit claims to the insurer.

(b) Irrevocable letters of credit. — In lieu of requiring the filing of a surety bond, the Commissioner may, at the Commissioner's discretion, accept from a licensee an irrevocable letter of credit.

(1) Such irrevocable letter of credit shall be provided by an insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c)) acceptable to the Commissioner, in a form satisfactory to the Commissioner in the principal sum of $25,000 and in an additional principal sum of $5,000 for each location in excess of 1 at which the applicant proposes to conduct a business licensed by this chapter, but in no event shall such irrevocable letter of credit be required to be in excess of $250,000.

(2) No irrevocable letter of credit shall be accepted unless the following requirements are satisfied:

a. The irrevocable letter of credit shall run to the State, for the benefit of the office of the State Bank Commissioner and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the irrevocable letter of credit shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. The aggregate liability of the insured depository institution issuing the irrevocable letter of credit shall in no event exceed the amount of such irrevocable letter of credit; and

b. Draws upon such irrevocable letter of credit shall be available by sight drafts thereunder, in amounts determined by the Commissioner, up to the aggregate amount of the irrevocable letter of credit. Such drafts shall be paid in accordance with § 5-112(1) of Title 6.

(3) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner shall determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

(4) The Commissioner may refuse release of an irrevocable letter of credit, following the surrender of a license, up to 2 years after the effective date of such termination of licensure.

(5 Del. C. 1953 § 2309; 58 Del. Laws, c. 421; 71 Del. Laws, c. 19 § 73.)

§ 2310 Annual license fee.

After applicant receives notice of conditional approval by the Commissioner of the application for an original license and annually thereafter at least 30 days prior to the expiration of such license, applicant shall file with the Commissioner a renewal application together with a statement listing the locations in the State of the offices of the applicant and the names and locations of the applicant's agents. The licensee shall pay to the Commissioner with such list a license fee of $4.60 for each such location in excess of 1. The fee shall cover the remainder of the calendar year in which license is granted. Thereafter each licensee shall submit a current list together with a renewal application not less than 30 days prior to the expiration of such license and pay a license fee of $230 plus $4.60 for each location on the list submitted. The requirements of this section shall not apply to any agent of a licensee who is exempt from this chapter pursuant to § 2304(a) of this title. The Commissioner may mandate that applications for renewal shall be treated as new applications if said renewal applications are not on file with the office of the State Bank Commissioner at least 30 days prior to the expiration of such license or renewal thereof. Licensees which have not complied with supervisory letters may be refused license renewal.

(5 Del. C. 1953 § 2310; 58 Del. Laws, c. 421; 67 Del. Laws, c. 260 § 1; 68 Del. Laws, c. 9 § 6; 70 Del. Laws, c. 6 §§ 10-12; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 327 § 42.)

§ 2311 Agents.

A licensee may conduct the licensee's business at 1 or more locations within the State and through or by means of such agents as the licensee may from time to time designate or appoint. No license under this chapter shall be required of any agent of a licensee. In order for an agent to be authorized to act for the licensee in this State, the licensee shall have on file with the Commissioner the name and address of the agent, and the licensee shall notify the Commissioner within 30 days of the change of name or address of an agent or of the termination of any such agent. If the bond deposited by the licensee under § 2309 of this title is less than the maximum provided thereunder, the licensee shall submit and deposit a supplementary bond in the amount required by § 2309 of this title for the additional location or locations that are added. In the event that the licensee shall have filed an irrevocable letter of credit in lieu of a surety bond under § 2309(b) of this title the amount of such letter of credit shall be increased accordingly. The requirements of this section shall not apply to any agent of a person who is exempt from this chapter pursuant to § 2304 of this title.

(5 Del. C. 1953 § 2311; 58 Del. Laws, c. 421; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 86 § 2.)

§ 2312 Liability of licensees.

(a) Each licensee shall be liable for the payment of all checks which the licensee sells in this State, in whatever form and whether directly or through an agent, as the maker or drawer thereof according to the negotiable instruments law of this State; and a licensee who sells a check, whether directly or through an agent, upon which the licensee is not designated as maker or drawer shall nevertheless have the same liabilities with respect thereto as if the licensee had signed the same as the maker or drawer thereof.

(b) Each licensee engaged in the business of receiving money for transmission shall be liable for payment of all amounts received for transmission.

(5 Del. C. 1953 § 2312; 58 Del. Laws, c. 421; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 19 § 74.)

§ 2313 Disclosure of responsibility and evidence of receipt.

(a) Every check sold by a licensee, directly or through an agent, shall bear the name of the licensee clearly imprinted thereon.

(b) Every licensee shall furnish a customer with a receipt or other acknowledgment upon receiving funds from such customer. Such receipt or other acknowledgment shall be numbered serially and shall bear the name and address of the licensee. Each licensee who receives money for transmission abroad shall forward such money to the person or bank designated to receive the same within 5 days after receipt thereof, and shall immediately give the person delivering the money for transmission a receipt and his name with the name and address of the licensee printed thereon. The receipt shall state the date when such money was received, the amount thereof, its equivalent in the currency of the country to which it is to be forwarded, and the name and address of the payee.

(c) In lieu of the provisions of subsection (b) of this section, every accelerated mortgage payment provider may furnish an annual statement to a mortgagor of the transmittals. Each such statement shall identify the dates money was received for transmission and the amounts thereof, the dates transmittals were made to the lender on behalf of the mortgagor and the amounts thereof and the name and address of the lender or recipient of such transmittals.

(5 Del. C. 1953 § 2313; 58 Del. Laws, c. 421; 71 Del. Laws, c. 19 § 75.)

§ 2314 Examination.

The Commissioner may examine the business, books and records of the licensee at any time, the reasonable cost of such examination to be paid by licensee.

(5 Del. C. 1953 § 2314; 58 Del. Laws, c. 421; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 19 § 76; 73 Del. Laws, c. 24 § 10.)

§ 2315 Suspension, revocation or surrender of license.

(a) The Commissioner may revoke any license issued hereunder upon finding that:

(1) The licensee has violated any provision of this chapter or any rule or regulation made by the Commissioner under and within the authority of this chapter or of any other law, rule or regulation of this State or the United States;

(2) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Commissioner in refusing originally to issue such license; or

(3) The licensee has engaged in business activities or practices, in connection with any business for which a license is required under this chapter, which could be deemed unfair or deceptive by nature of intent. Such activities and practices include, but are not limited to, the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof, or otherwise create false expectations on the part of the consumer.

(b) The Commissioner may temporarily suspend any license pending the issuance of a final order as provided in Chapter 101 of Title 29.

(c) Except as provided in subsection (b) of this section, no license shall be revoked or suspended except after notice and an opportunity for the licensee to request a hearing in accordance with Chapter 101 of Title 29.

(d) Any licensee may surrender any license by delivering to the Commissioner such license together with written notice that it thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

(e) No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any person.

(f) Every license issued hereunder shall remain in force and effect until the same shall have expired or shall have been surrendered, revoked or suspended in accordance with this chapter, but the Commissioner shall have authority to reinstate a suspended license or to issue a new license to a licensee whose license shall have been revoked if no fact or condition then exists which would have warranted the Commissioner in refusing originally to issue such license under this chapter.

(g) Whenever the Commissioner shall revoke or suspend a license issued pursuant to this chapter, the Commissioner shall forthwith execute a written order to that effect. The Commissioner shall forthwith serve the written order upon the licensee. Any such order may be reviewed in the manner provided by Chapter 101 of Title 29.

(5 Del. C. 1953 § 2315; 58 Del. Laws, c. 421; 73 Del. Laws, c. 24 § 11; 77 Del. Laws, c. 126 § 5.)

§ 2316 Appeal from Commissioner.

(Repealed by 73 Del. Laws, c. 24 § 12, eff April 17, 2001 For present law see 2315 of this title.)

§ 2317 Penalties.

Any person who violates any provision of this chapter shall be fined not less than $100 nor more than $500 or imprisoned for not more than 90 days, or both for each such offense.

(5 Del. C. 1953 § 2317; 58 Del. Laws, c. 421.)

§ 2318 Rules and regulations.

The Commissioner may adopt rules and regulations necessary for the administration of this chapter.

(5 Del. C. 1953 § 2318; 58 Del. Laws, c. 421.)

Part IV
Other Businesses Under Jurisdiction of State Banking Department
Chapter 24
MORTGAGE LOAN ORIGINATORS

§ 2401 Title.

This chapter may be cited as the "Delaware Secure and Fair Enforcement for Mortgage Licensing Act of 2009" or "Delaware S.A.F.E. Mortgage Licensing Act of 2009."

(77 Del. Laws, c. 96 § 1.)

§ 2402 Purpose.

(a) The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon Delaware's consumers, Delaware's economy, the neighborhoods and communities of Delaware, and the housing and real estate industry. The General Assembly finds that accessibility to mortgage credit is vital to this State's citizens. The General Assembly also finds that it is essential for the protection of the citizens of Delaware and the stability of Delaware's economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The General Assembly further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process. The purpose of this chapter is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators.

(b) Therefore, the General Assembly establishes within this chapter an effective system of supervision and enforcement of the mortgage lending industry, including:

(1) The authority to issue licenses to conduct business under this chapter, including the authority to write rules or regulations or adopt procedures necessary to the licensing of persons covered under this chapter;

(2) The authority to deny, suspend, condition or revoke licenses issued under this chapter; and

(3) The authority to examine, investigate and conduct enforcement actions as necessary to carry out the intended purposes of this chapter, including the authority to subpoena witnesses and documents, enter orders, including cease and desist orders, order restitution and monetary penalties and order the removal and ban of individuals from office or employment.

(77 Del. Laws, c. 96 § 1.)

§ 2403 Definitions.

In this chapter, unless the context otherwise requires:

(1) "Commissioner" means the State Bank Commissioner.

(2) "Depository institution" has the same meaning as in § 3 of the United States Federal Deposit Insurance Act [12 U.S.C. § 1813], and includes any credit union.

(3) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(4) "Immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(5) "Individual" means a natural person.

(6) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing under Chapter 21 or 22 of this title.

a. For purposes of this paragraph (6), "clerical or support duties" may include subsequent to the receipt of an application:

1. The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

2. Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

b. An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

(7) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

a. Takes a residential mortgage loan application; or

b. Offers or negotiates terms of a residential mortgage loan;

c. But does not include:

1. An individual engaged solely as a loan processor or underwriter, except as otherwise provided in § 2404(d) of this title;

2. A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with Delaware law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

3. A person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D).

(8) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(9) "Nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate mortgage.

(10) "Person" means a natural person, corporation, company, limited liability company, partnership, association, or other entity.

(11) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

a. Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

b. Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

c. Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

d. Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

e. Offering to engage in any activity, or act in any capacity, described in paragraph (11)a., b., c., or d. of this section.

(12) "Registered mortgage loan originator" means any individual who:

a. Meets the definition of mortgage loan originator and is an employee of:

1. A depository institution;

2. A subsidiary that is:

A. Owned and controlled by a depository institution; and

B. Regulated by a federal banking agency; or

3. An institution regulated by the Farm Credit Administration; and

b. Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(13) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in § 103(v) of the United States Truth in Lending Act [15 U.S.C. § 1602]) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(14) "Residential real estate" means any real property located in Delaware, upon which is constructed, or intended to be constructed, a dwelling.

(15) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

(76 Del. Laws, c. 421 § 1; 77 Del. Laws, c. 96 § 1.)

§ 2404 License and registration required.

(a) An individual, unless specifically exempted from this chapter under subsection (c) of this section, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this State without first obtaining and then annually maintaining a license issued by the Commissioner under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry. Every person licensed under this chapter shall be a financial institution for purposes of Part I of this title.

(b) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (a) of this section shall be July 31, 2010, or such later date approved by the Secretary of the United States Department of Housing and Urban Development [Dec. 31, 2010], pursuant to the authority granted under United States Public Law 110-289, § 1508(a) [12 U.S.C. § 5107(a)].

(c) The following are exempt from this chapter:

(1) Registered mortgage loan originators, when acting for an entity described in of § 2403(12)a.1., 2., or 3. of this title;

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence; and

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

(d) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter

unless such independent contractor loan processor or underwriter obtains and maintains a license under subsection (a) of this section. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(e) For the purposes of implementing an orderly and efficient licensing process, the Commissioner may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the Commissioner may establish expedited review and licensing procedures.

(76 Del. Laws, c. 421 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 96 § 1.)

§ 2405 License application.

(a) Applicants for a license shall apply in a form as prescribed by the Commissioner. Each such form shall request such information as the Commissioner may designate and may be changed or updated as necessary by the Commissioner in order to carry out the purposes of this chapter.

(b) In order to fulfill the purposes of this chapter, the Commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(c) For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the Commissioner is authorized to waive or modify, in whole or in part, by rule, regulation or order, any or all of the requirements of this chapter and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.

(d) In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain:

a. An independent credit report obtained from a consumer reporting agency described in § 603(p) of the United States Fair Credit Reporting Act [15 U.S.C. § 1681a(p)]; and

b. Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(e) For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of paragraphs (d)(1) and (d)(2)b. of this section, the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice or any governmental agency, notwithstanding the provisions of § 8527 of Title 11.

(f) For the purposes of this section and in order to reduce the points of contact which the Commissioner may have to maintain for purposes of paragraph (d)(2) of this section, the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner, notwithstanding the provisions of § 8527 of Title 11.

(g) As part of an application, the applicant shall pay to the Commissioner as an investigation fee the sum of $250 which shall not be refundable. The applicant shall also pay a license fee of $250, which shall be payable annually thereafter, and that sum shall be allocated to and for the assistance of the Delaware Emergency Mortgage Assistance Program. No abatement in the amount of the license fee shall be made if the license is issued for less than 1 year or if the license is surrendered, suspended, canceled or revoked prior to the expiration of the period for which such license was issued.

(76 Del. Laws, c. 421 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 96 § 1.)

§ 2406 Issuance of license; expiration and surrender.

(a) The Commissioner shall not issue a mortgage loan originator license unless the Commissioner makes at a minimum the following findings:

(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacating of such revocation shall not be deemed a revocation.

(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:

a. During the 7-year period preceding the date of the application for licensing and registration; or

b. At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

c. Provided that any pardon of a conviction shall not be a conviction for the purposes of this subsection.

(3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this chapter. For purposes of this paragraph (a)(3), applicants have shown that they are not financially responsible when they have shown a disregard in the management of their own financial condition. A determination that an applicant has not shown financial

responsibility may include, but not be limited to:

a. Current outstanding judgments, except judgments solely as a result of medical expenses;

b. Current outstanding tax liens or other government liens and filings;

c. Foreclosures within the past three years; or

d. A pattern of seriously delinquent accounts within the past three years.

(4) The applicant has completed the prelicensing education requirement described in § 2407 of this title;

(5) The applicant has passed a written test that meets the test requirement described in § 2408 of this title; and

(6) The applicant has met the surety bond requirement described in § 2415 of this title.

(b)(1) If the Commissioner refuses to issue a license, the Commissioner shall notify the applicant in writing of that refusal, of the reasons for the refusal, and of the applicant's right to request a hearing; provided, however, the Commissioner shall retain any investigation or other fee charged for the expense of processing an initial application, notwithstanding that the application was rejected.

(2) The Commissioner shall send a copy of the notice to the applicant at that person's last known mailing address by certified mail, return receipt requested. If the applicant sends the Commissioner a written request for a hearing within 10 days of the notice's mailing date, the Commissioner shall then hold that hearing in accordance with Chapter 101 of Title 29.

(c) Every license issued under this chapter shall expire on December 31 of each year.

(d) A licensee may surrender a license by delivering to the Commissioner a written notice of license surrender.

(e) An expiration or surrender of a license shall not affect civil or criminal liability for acts committed prior to that event, and if the expiration or surrender occurs after the Commissioner issues a written order under § 2413(b) of this title, the Commissioner may proceed as if the expiration or surrender had not taken place.

(f) Every license issued pursuant to this chapter shall remain in effect until the license shall have expired, or been surrendered, revoked or suspended, and upon any of those events, the Commissioner shall notify the mortgage loan originator and any affected licensee under this title of that fact and that the mortgage loan originator may not engage in the business of a mortgage loan originator with respect to any dwelling located in this State.

(76 Del. Laws, c. 421 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 96 § 1.)

§ 2407 Prelicensing education.

(a) In order to meet the prelicensing education requirement referred to in § 2406(a)(4) of this title, a person shall complete at least 20 hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a) of this section, prelicensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any prelicensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Prelicensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The prelicensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsection (b) of this section for any other state shall be accepted as credit towards completion of the prelicensing education requirements in this State.

(f) A person previously licensed under this chapter subsequent to July 30, 2009, applying to be licensed again must prove that they have completed all of the continuing education requirements for the year in which the license was last held.

(76 Del. Laws, c. 421 § 1; 77 Del. Laws, c. 96 § 1.)

§ 2408 Testing.

(a) In order to meet the written test requirement referred to in § 2406(a)(5) of this title, an individual shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(b) A written test shall not be treated as a qualified written test for purposes of subsection (a) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(1) Ethics;

(2) Federal law and regulation pertaining to mortgage origination;

(3) State law and regulation pertaining to mortgage origination; and

(4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from

providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d)(1) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(2) An individual may retake a test 3 consecutive times with each consecutive taking occurring at least 30 days after the preceding test.

(3) After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.

(4) A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

(77 Del. Laws, c. 96 § 1.)

§ 2409 Standards for license renewal.

(a) Every licensee who desires to continue to engage in the business of a mortgage loan originator with respect to any dwelling located in this State shall, at least 30 days prior to the expiration of a license, apply to the Commissioner for a license renewal in a form as prescribed by the Commissioner. Each such form shall request such information as the Commissioner may designate and may be changed or updated as necessary by the Commissioner in order to carry out the purposes of this chapter.

(b) The minimum standards for license renewal for mortgage loan originators shall include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under § 2406(a)(1)-(6) of this title;

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in § 2410 of this title; and

(3) The mortgage loan originator has paid all required fees for renewal of the license.

(c) The Commissioner may mandate that an application for a license renewal shall be treated as a new application if the renewal application is not on file with the office of the Commissioner at least 30 days prior to the expiration of the license.

(76 Del. Laws, c. 421 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 96 § 1.)

§ 2410 Continuing education.

(a) In order to meet the annual continuing education requirements referred to in § 2409(b)(2) of this title, a licensed mortgage loan originator shall complete at least 8 hours of education approved in accordance with subsection (b) of this section, which shall include at least:

(1) Three hours of federal law and regulations;

(2) Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subsection (a) of this section, continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(d) Continuing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) A licensed mortgage loan originator:

(1) Except as provided in subsection (h) of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

(g) The continuing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsection (a) of this section for any other state shall be accepted as credit towards completion of the continuing education requirements in this State.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) A person meeting the requirements of § 2409(b)(1) and (3) of this title may make up any deficiency in continuing education as established by rule or regulation of the Commissioner.

(76 Del. Laws, c. 421 § 1; 77 Del. Laws, c. 96 § 1.)

§ 2411 Authority to require license.

(a) In addition to any other duties imposed upon the Commissioner by law, the Commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry.

(b) In order to carry out this requirement, the Commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. Notwithstanding any other statute to the contrary, the Commissioner may, for this purpose, establish by rule, regulation or order requirements as necessary, including but not limited to:

(1) Background checks for:

a. Criminal history through fingerprint or other databases;

b. Civil or administrative records;

c. Credit history; or

d. Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry;

(2) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;

(3) The setting or resetting as necessary of renewal or reporting dates; and

(4) Requirements for amending or surrendering a license or any other such activities as the Commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

(76 Del. Laws, c. 421 § 1; 77 Del. Laws, c. 96 § 1.)

§ 2412 Nationwide mortgage licensing system and registry information challenge process.

The Commissioner shall establish a process whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the Commissioner.

(77 Del. Laws, c. 96 § 1.)

§ 2413 License revocation or suspension.

(a) The Commissioner may revoke, suspend, condition, or refuse to renew any license, or publicly reprimand a licensee under this chapter upon finding that the licensee:

(1) Has violated or failed to comply with any provision of this chapter; any rule, regulation, order, or supervisory letter promulgated by the Commissioner under the authority of this title; or any other law, rule or regulation of this State or the federal government;

(2) Has failed at any time to meet the requirements of § 2406 or § 2409 of this title; or

(3) Has withheld information or made a material misstatement in an initial or renewal application for a license.

(b) Whenever the Commissioner determines to take any action under this section, the Commissioner shall issue a written order that shall include a statement of the facts upon which the action is based and a notice that the licensee may request a hearing in accordance with Chapter 101 of Title 29.

(c)(1) Except as provided in paragraph (c)(2) of this section, an order under this section shall not become effective less than 10 days after its mailing date.

(2) The Commissioner may issue an order under this section which shall become effective immediately upon issuance whenever in the opinion of the Commissioner, the public health, safety or welfare clearly requires emergency action and the Commissioner's order so states.

(d)(1) Upon its issuance, the Commissioner shall send a copy of the order to the licensee at that person's last known mailing address by certified mail, return receipt requested.

(2) If the licensee sends the Commissioner a written request for a hearing within 10 days of the order's mailing date, the Commissioner shall then hold a hearing in accordance with Chapter 101 of Title 29, and except as provided in paragraph (c)(2) of this section, the order then shall not become effective until the conclusion of the hearing.

(3) At the conclusion of the hearing, the Commissioner may affirm the order as originally issued, or modify, amend or rescind the order.

(e) No action taken under this section shall impair or affect the obligation of any preexisting lawful contract between any licensee and any person.

(76 Del. Laws, c. 421 § 1; 77 Del. Laws, c. 96 § 1.)

§ 2414 Enforcement authorities, violations and penalties.

(a) Upon finding that a person subject to this chapter has violated or failed to comply with any provision of this chapter; any rule, regulation, order or supervisory letter promulgated by the Commissioner under the authority of this title; or any other law, rule or regulation of this State or the federal government, the Commissioner may:

(1) Order that person to cease and desist from that violation or failure, from conducting any business subject to this chapter, or from engaging in any harmful activities;

(2) Impose a civil money penalty on that person pursuant to subsection (b) of this section;

(3) Order restitution against that person for that violation or failure;

(4) Remove or ban that person from any employment by, or affiliation with, any financial institution; and

(5) Order such other affirmative action as the Commissioner deems necessary.

(b)(1) The maximum civil money penalty for each violation or failure to comply described in subsection (a) of this section shall be $25,000.

(2) Any civil money penalty under this section may be in addition to any other action or remedy available to the Commissioner or any order, judgment, penalty, fine or sentence imposed by a court or other governmental agency in any administrative, civil or criminal proceeding.

(3) Any civil money penalty under this section shall be paid to the State Treasurer for deposit in the General Fund.

(c) An order issued under this section shall include a statement of the facts upon which it is based; a specification of the activities prohibited, civil money penalty imposed, restitution to be paid, employment or affiliation prohibited, or other affirmative action required; and a notice that the person against whom the order was issued may request a hearing in accordance with Chapter 101 of Title 29.

(d)(1) Except as provided in paragraph (d)(2) of this section, an order issued under this section shall not become effective less than 10 days after issuance.

(2) The Commissioner may issue an order under this section which shall become effective immediately upon issuance whenever in the opinion of the Commissioner, the violation or failure to comply specified in subsection (a) of this section represents an immediate danger or substantial harm to the public.

(e)(1) Upon issuance of an order under this section, the Commissioner shall send a copy of the order to the person against whom it is issued at that person's last known mailing address by certified mail, return receipt requested.

(2) If the person against whom the order was issued sends the Commissioner a written request for a hearing within 10 days of the order's mailing date, the Commissioner shall then hold that hearing in accordance with Chapter 101 of Title 29, and except as provided in paragraph (d)(2) of this section, the order shall not become effective until the conclusion of the hearing.

(3) At the conclusion of the hearing, the Commissioner may affirm the order as originally issued, or modify, amend or rescind the order.

(f) The authority granted by this section shall be in addition to the authority granted by Part I of this title.

(76 Del. Laws, c. 421 § 1; 77 Del. Laws, c. 96 § 1.)

§ 2415 Surety bond required.

(a) Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event that the mortgage loan originator is an employee or exclusive agent of a licensee under Chapter 21 or 22 of this title, the surety bond of the licensee under those chapters can be used in lieu of the mortgage loan originator's surety bond requirement, and in that event, the amount of the bond prescribed in this section, if greater, shall apply instead of the limits specified in those chapters.

(1) The surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection (b) of this section.

(2) The surety bond shall be in a form as prescribed by the Commissioner.

(3) The Commissioner may promulgate rules or regulations with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this chapter.

(b) The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the Commissioner.

(c) When an action is commenced on a licensee's bond the Commissioner may require the filing of a new bond.

(d) Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

(77 Del. Laws, c. 96 § 1.)

§ 2416 Confidentiality.

In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing:

(1) Except as otherwise provided in United States Public Law 110-289, § 1512 [12 U.S.C. § 5111], the requirements under any federal or state law regarding the privacy or confidentiality of any information or material obtained by or provided to the Nationwide Mortgage Licensing System and Registry pursuant to this chapter, and any privilege arising under federal or state law (including the rules of any federal or state court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

(2) For these purposes, the Commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other associations representing governmental agencies.

(3) Information or material that is subject to a privilege or confidentiality under paragraph (1) of this section shall not be subject to:

a. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

b. Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(4) Any state law relating to the disclosure or confidentiality of any information or material described in this section, including § 8527 of Title 11, that is inconsistent with this section shall be superseded.

(5) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage

Licensing System and Registry for access by the public.

(77 Del. Laws, c. 96 § 1.)

§ 2417 Investigation and examination authority.

(a) In addition to any other authority allowed under this title, the Commissioner shall have the authority to conduct investigations and examinations as follows:

(1) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, public reprimand, or general or specific inquiry or investigation to determine compliance with this chapter, the Commissioner shall have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence including but not limited to:

a. Criminal, civil and administrative history information, including nonconviction data as specified in Title 11; and

b. Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in § 603(p) of the United States Fair Credit Reporting Act [15 U.S.C. § 1681a(p)]; and

c. Any other documents, information or evidence the Commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence.

(2) For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the Commissioner may review, investigate, or examine any person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter. The Commissioner may also direct, subpoena, or order the attendance of and examine under oath, all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry.

(3) Each person subject to this chapter shall make available to the Commissioner upon request all books and records relating to such person's business operations.

(4) The Commissioner shall have access to all books and records of any licensee under Chapter 21 or 22 of this title and may interview such licensee's officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers concerning the business operations of any person subject to this chapter.

(5) Each person subject to this chapter shall make or compile reports or prepare other information as directed by the Commissioner in order to carry out the purposes of this section including but not limited to:

a. Accounting compilations;

b. Information lists and data concerning loan transactions in a format prescribed by the Commissioner; or

c. Such other information deemed necessary to carry out the purposes of this chapter.

(6) In making any examination or investigation authorized by this chapter, the Commissioner may control access to any documents and records of the person under examination or investigation. The Commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents or records of the person subject to this chapter have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the person subject to this chapter or the owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(b) In order to carry out the purposes of this section, the Commissioner may:

(1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section;

(3) Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the person subject to this chapter;

(4) Accept and rely on examination or investigation reports made by other government officials, within or without this State;

(5) Accept audit reports made by an independent certified public accountant for the person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the Commissioner; and

(6) Assess persons who are subject to investigation or examination under this section the cost of the services described in this subsection (b) and all other costs or expenses incurred as part of that investigation or examination.

(c) The authority of this section shall remain in effect, whether a person subject to this chapter acts or claims to act under any licensing or registration law of this State, or claims to act without such authority.

(d) No person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(77 Del. Laws, c. 96 § 1.)

§ 2418 Prohibited acts and practices.

It is a violation of this chapter for a person subject to this chapter to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the person subject to this chapter may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;

(7) Fail to make disclosures as required by this chapter and any other applicable federal or state law including regulations thereunder;

(8) Fail to comply with this chapter or rules or regulations promulgated under this chapter, or fail to comply with any other federal or state law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this chapter;

(9) Make, in any manner, any false or deceptive statement or representation, or engage in "bait and switch" advertising;

(10) Negligently make any false statement or knowingly and wilfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation or examination conducted by the Commissioner or another governmental agency;

(11) Make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter;

(13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer; or

(14) Fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

(77 Del. Laws, c. 96 § 1.)

§ 2419 Report to nationwide mortgage licensing system and registry.

Notwithstanding any state privacy law, the Commissioner is required to report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in § 2416 of this title.

(77 Del. Laws, c. 96 § 1.)

§ 2420 Unique identifier shown.

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or websites, and any other documents as established by rule, regulation or order of the Commissioner.

(77 Del. Laws, c. 96 § 1.)

§ 2421 Recordkeeping.

Every licensee shall maintain such books, accounts and records as will enable the Commissioner to enforce full compliance with this chapter, which books, accounts and records shall be in such form, shall contain such information and shall be kept in such manner as the Commissioner may require. Such records shall be kept at such place and shall be preserved for such length of time as the Commissioner may specify.

(76 Del. Laws, c. 421 § 1; 77 Del. Laws, c. 96 § 1.)

§ 2422 Broad administrative authority.

The Commissioner shall have the broad administrative authority to administer, interpret and enforce this chapter, and to promulgate rules or regulations implementing this chapter, in order to carry out the intentions of the General Assembly.

(77 Del. Laws, c. 96 § 1.)

§ 2423 Penalty.

Violation of § 2404 of this title is a class A misdemeanor.

(77 Del. Laws, c. 96 § 1.)

Part IV

Other Businesses Under Jurisdiction of State Banking Department

Chapter 25

SOLICITING DEPOSITS OR PAYMENTS ON INCOME OR ANNUITY CONTRACTS

§§ 2501 -2510. License requirement; application of chapter; investigation of applicant by Commissioner; deposit required by applicant for license; revocation or suspension of license; registration of agents; fees and charges; annual report of licensee; annual examination of licensees by Bank Commissioner; violations and penalties.

(Repealed by 68 Del. Laws, c. 303 § 43, eff July 2, 1992.)

Part IV
Other Businesses Under Jurisdiction of State Banking Department
Chapter 27
CASHING OF CHECKS, DRAFTS OR MONEY ORDERS
Subchapter I
General Provisions

§ 2701 Definitions.

As used in this chapter, unless otherwise specifically defined, or unless another intention clearly appears, or the context requires a different meaning:

(1) "Commissioner" means the State Bank Commissioner.

(2) "Licensed casher of checks" means any individual, partnership, unincorporated association or corporation duly licensed by the State Bank Commissioner to engage in business pursuant to this chapter.

(3) "Licensee" means a licensed casher of checks, drafts or money orders.

(4) "Limited station" means that the licensee is authorized to carry on the licensee's business of cashing checks for the employees of a single and particular business or office, and at a single location at or near such particular business or office site.

(5) "Mobile unit" means any vehicle or other movable means from which the business of cashing checks, drafts or money orders is to be conducted.

(Code 1935 § 2408A; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2701; 70 Del. Laws, c. 186 § 1.)

§ 2702 Application of chapter.

The provisions of this chapter shall not apply:

(1) When checks, drafts or money orders are cashed without a consideration or charge;

(2) When checks, drafts or money orders are cashed by any person as an incident to the conduct of any other lawful business where not more than 10 cents is charged for cashing each check, draft or money order;

(3) To any national bank, federal reserve bank, federal savings bank, federal credit union or other person authorized by the laws of the United States to engage in the business of cashing checks, drafts or money orders in this State, or to any person doing business under or pursuant to the banking laws of this State, except a licensee under this chapter.

(Code 1935 § 2408I; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2702; 72 Del. Laws, c. 286 § 3.)

Subchapter II
License Provisions

§ 2711 Requirement of license.

No person shall engage in the business of cashing checks, drafts or money orders for a consideration without first obtaining a license from the State Bank Commissioner.

(Code 1935 § 2408B; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2711.)

§ 2712 Form and contents of application for license.

Application for a license required by § 2711 of this title shall be in writing, and in the form prescribed by the State Bank Commissioner, and shall state the name and the address (both of the residence and place of business) of the applicant, and if the applicant is a copartnership or association, of every member thereof, and if a corporation, of each officer and director thereof. If the business is to be conducted at a specific address, the application shall state the address at which the business is to be conducted, and if the business is to be conducted from a mobile unit, the Delaware State registration number or other identification of the mobile unit, and the area in which the applicant proposes to operate the mobile unit. The application shall also contain such further information as the Commissioner requires.

(Code 1935 § 2408B; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2712; 80 Del. Laws, c. 225 § 6.)

§ 2713 Fees to be paid at time of application for license.

The applicant, at the time of making the application under § 2712 of this title, shall pay to the State Bank Commissioner the nonrefundable sum of $150 as a fee for investigating the application and the additional sum of $200 as a license fee for a period terminating on the last day of the current calendar year, if the business is not to be conducted from a mobile unit; but if the business is to be conducted from a mobile unit, the fee for investigating the application shall be $200, and the license fee shall be $250. If the application is filed after

June 30th in any year the payment shall be one-half of the stated license fee in addition to the above stated fee for investigation.

(Code 1935 § 2408B; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2713; 67 Del. Laws, c. 88 §§ 2, 3.)

§ 2714 Surety bonds and irrevocable letters of credit.

(a) Surety bonds. —

(1) Every licensee shall file with the Commissioner, in a form satisfactory to the Commissioner, an original corporate surety bond, with surety provided by a corporation authorized to transact business in this State, in the principal sum of $5,000.

(2) No bond shall be accepted unless the following requirements are satisfied:

a. The term of the bond shall be commensurate with the license period or continuous;

b. The expiration date of the bond shall not be earlier than midnight of the date on which the license expires; and

c. The bond shall run to the State, for the benefit of the office of the State Bank Commissioner and for the benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the bond shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. Surety claims shall be paid to the office of the State Bank Commissioner by the insurer not later than 90 days after receipt of a claim. Claims paid after 90 days shall be subject to daily interest at the legal rate. The aggregate liability of the surety on the bond, exclusive of any interest which accrues for payments made after 90 days, shall in no event exceed the amount of such bond.

(3) If the licensee changes its surety company or the bond is otherwise amended, the licensee shall immediately provide the Commissioner with the amended original copy of the surety bond. No cancellation of an existing bond by a surety shall be effective unless written notice of its intention to cancel is filed with the Commissioner at least 30 days before the date upon which cancellation shall take effect.

(4) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner shall determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

(5) When a surety company receives a claim against the bond of a licensee, it shall immediately notify the Commissioner and shall not pay any claim unless and until it receives notice to do so from the Commissioner.

(6) The Commissioner shall have a period of 2 calendar years after the effective date of cancellation or termination of the surety bond by the insurer to submit claims to the insurer.

(b) Irrevocable letters of credit. — In lieu of requiring the filing of a surety bond, the Commissioner may, at the Commissioner's discretion, accept from a licensee an irrevocable letter of credit.

(1) Such irrevocable letter of credit shall be provided by an insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c)) acceptable to the Commissioner, in a form satisfactory to the Commissioner in the principal sum of $5,000.

(2) No irrevocable letter of credit shall be accepted unless the following requirements are satisfied:

a. The irrevocable letter of credit shall run to the State, for the benefit of the office of the State Bank Commissioner and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the irrevocable letter of credit shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. The aggregate liability of the insured depository institution issuing the irrevocable letter of credit shall in no event exceed the amount of such irrevocable letter of credit; and

b. Draws upon such irrevocable letter of credit shall be available by sight drafts thereunder, in amounts determined by the Commissioner, up to the aggregate amount of the irrevocable letter of credit. Such drafts shall be paid in accordance with § 5-112(1) of Title 6.

(3) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner shall determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

(4) The Commissioner may refuse release of an irrevocable letter of credit, following the surrender of a license, up to 2 years after the effective date of such termination of licensure.

(Code 1935 § 2408C; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2714; 71 Del. Laws, c. 19 § 77.)

§ 2715 Minimum requirement of liquid assets.

Each applicant for a license shall prove, in form satisfactory to the State Bank Commissioner, that the applicant has available for the operation of the business, for each location and for each mobile unit specified in the application, liquid assets of at least $5,000, and every licensee shall continuously maintain for the operation of the business for each location and for each mobile unit liquid assets of at least $5,000.

(Code 1935 § 2408B; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2715; 70 Del. Laws, c. 186 § 1.)

§ 2716 Issuance of license; conditions precedent.

If the State Bank Commissioner finds that the financial responsibility, experience, character and general fitness of the applicant, and of

the members thereof if the applicant is a copartnership or association, and of the officers and directors thereof if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently within the purposes of this chapter, and if the Commissioner finds that the granting of the application will promote the convenience and advantage of the area in which such business is to be conducted, and if the Commissioner finds that the applicant has available for the operation of the business for each location and for each mobile unit specified in the application liquid assets of at least $5,000, the Commissioner shall thereupon issue a license to permit the cashing of checks, drafts and money orders in accordance with this chapter at the location or in the area specified in the application.

(Code 1935 § 2408D; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2716; 70 Del. Laws, c. 186 § 1; 80 Del. Laws, c. 225 § 7.)

§ 2717 Refusal of license; disposition of fees.

If the State Bank Commissioner finds that the applicant fails to meet any of the conditions set forth in § 2716 of this title, the Commissioner shall not issue the license, and the Commissioner shall notify the applicant of the denial. If an application is denied or withdrawn, the Commissioner shall, except where the application is for renewal of a license in force as provided in § 2720 of this title, retain the investigation fee to cover the costs of investigating the application and return the license fee to the applicant.

(Code 1935 § 2408D; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2717; 70 Del. Laws, c. 186 § 1.)

§ 2718 Form of license.

(Code 1935 § 2408D; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2718; 72 Del. Laws, c. 15 § 38; Del. Laws, c. 225 § 8, eff May 9, 2016.)

§ 2719 Display of license.

(Code 1935 § 2408D; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2719; Del. Laws, c. 225 § 10, eff May 9, 2016.)

§ 2720 Term and renewal of licenses.

A license issued pursuant to this chapter shall be for a term expiring on the 31st day of December following the date of its issuance, and may be renewed for the ensuing calendar year upon the filing of an application in conformity with §§ 2711-2715 of this title; except that no fee shall be charged by the State Bank Commissioner for investigating such application. Every holder of a license or a renewal thereof, as provided for in this section, desiring to continue the transaction of business as provided for in this chapter, shall at least 30 days prior to the expiration of such license or renewal thereof make application to the Commissioner on forms to be provided by the Commissioner for a license renewal. The Commissioner may mandate that applications for renewal shall be treated as new applications if said renewal applications are not on file with the office of the State Bank Commissioner at least 30 days prior to the expiration of such license or renewal thereof. Licensees who have not complied with supervisory letters or who have not paid examination fees when due may be refused license renewal.

(Code 1935 § 2408D; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2720; 70 Del. Laws, c. 6 § 13; 70 Del. Laws, c. 327 § 42.)

§ 2721 Transferability of license.

The license shall not be transferable or assignable.

(Code 1935 § 2408D; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2721.)

§ 2722 Limitation of license.

Not more than 1 place of business or 1 mobile unit shall be maintained under the same license. More than 1 license may be issued to the same licensee upon compliance with this chapter for each new license.

(Code 1935 § 2408E; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2722.)

§ 2723 License for limited station.

Any licensed casher of checks may open and maintain, within this State, 1 or more limited stations for the purpose of cashing checks, drafts or money orders for the particular group or groups specified in the license authorizing each limited station. The stations shall be licensed pursuant to and be subject to all the provisions of this chapter applicable to licensed cashers of checks, except that no bond shall be required for such a station. The fee for investigating the application for a station shall be $10 and the annual license fee for each limited station shall be $20.

(Code 1935 § 2408E; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2723.)

§ 2724 Change of place of business or area; change of name.

(a) A licensee may make a written application to the State Bank Commissioner for leave to change the licensee's place of business, or in the case of a mobile unit, the area in which the unit is authorized to be operated, stating the reasons for the proposed change. If the Commissioner approves the application the Commissioner shall issue a new license in accordance with § 2716 of this title, for the new location of the licensee or, in the case of a mobile unit, the new area in which the mobile unit may be operated.

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

(Code 1935 § 2408E; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2724; 72 Del. Laws, c. 15 § 39; 70 Del. Laws, c. 186 § 1; 80 Del. Laws, c. 225 § 9.)

§ 2725 Suspension, revocation or surrender of license.

(a) The Commissioner may revoke any license issued hereunder upon finding that:

(1) The licensee has violated any provision of this chapter or any rule or regulation made by the Commissioner under and within the authority of this chapter or of any other law, rule or regulation of this State or the United States;

(2) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Commissioner in refusing originally to issue such license; or

(3) The licensee has engaged in business activities or practices, in connection with any business for which a license is required under this chapter, which could be deemed unfair or deceptive by nature of intent. Such activities and practices include, but are not limited to, the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof, or otherwise create false expectations on the part of the consumer.

(b) The Commissioner may temporarily suspend any license pending the issuance of a final order as provided in Chapter 101 of Title 29.

(c) Except as provided in subsection (b) of this section, no license shall be revoked or suspended except after notice and an opportunity for the licensee to request a hearing in accordance with Chapter 101 of Title 29.

(d) Any licensee may surrender any license by delivering to the Commissioner such license together with written notice that it thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

(e) No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any person.

(f) Every license issued hereunder shall remain in force and effect until the same shall have expired or shall have been surrendered, revoked or suspended in accordance with this chapter, but the Commissioner shall have authority to reinstate a suspended license or to issue a new license to a licensee whose license shall have been revoked if no fact or condition then exists which would have warranted the Commissioner in refusing originally to issue such license under this chapter.

(g) Whenever the Commissioner shall revoke or suspend a license issued pursuant to this chapter, the Commissioner shall forthwith execute a written order to that effect. The Commissioner shall forthwith serve the written order upon the licensee. Any such order may be reviewed in the manner provided by Chapter 101 of Title 29.

(Code 1935 § 2408H; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2725; 57 Del. Laws, c. 740 § 24; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 24 § 13; 77 Del. Laws, c. 126 § 6.)

Subchapter III

Regulatory Provisions

§ 2741 Rules and regulations of Commissioner.

The State Bank Commissioner may make such rules and regulations, and such specific rulings, demands and findings as he deems necessary for the proper conduct of the business authorized and licensed under and for the enforcement of this chapter. The rules and regulations and the specific rulings, demands and findings shall be in addition to, and not inconsistent with, this chapter.

(Code 1935 § 2408F; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2741.)

§ 2742 Limitation on fees and charges for cashing checks or money orders.

The licensee shall not charge or collect in fees or charges for cashing a check, draft or money order a sum to exceed 2 percent thereof, or $4, whichever is greater. In every location and upon every mobile unit licensed under this chapter, there shall be conspicuously posted and at all times displayed, a schedule of fees and charges permitted under this chapter.

(Code 1935 § 2408G; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2742; 67 Del. Laws, c. 88 § 1; 69 Del. Laws, c. 165 § 27.)

§ 2743 Books, accounts and records of licensee.

Each licensee under this chapter shall keep and use in the business such books, accounts, and records as the State Bank Commissioner requires to carry into effect this chapter and the rules and regulations made by the Commissioner under this chapter. Every licensee shall preserve such books, accounts and records for at least 2 years.

(Code 1935 § 2408G; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2743.)

§ 2744 Limitations on business.

(Code 1935 § 2408H; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2744; 72 Del. Laws, c. 15 § 40; Del. Laws, c. 225 § 11, eff May 9, 2016.)

§ 2745 Violations and penalties.

(a) Whoever violates this chapter shall be fined not more than $500 or imprisoned not more than 1 year, or both.

(b) Any person who suffers a loss due to a violation of this chapter by another shall have a private cause of action against such person. If damages are awarded to an aggrieved party as a result of a violation of this chapter, such damages awarded shall be treble the amount of the actual damages proved.

(c) If a court of competent jurisdiction finds that any person has wilfully violated this chapter, the person shall forfeit and pay to the State or the aggrieved party, as the case may be, a civil penalty of not less than $250 nor more than $500 for the first violation, and not less than $500 nor more than $1,000 for each subsequent violation. For purposes of this subsection, a wilful violation occurs when the person committing the violation knew or should have known that the conduct was of the nature prohibited by this chapter.

(Code 1935 § 2408H; 46 Del. Laws, c. 287 § 1; 5 Del. C. 1953 § 2745; 73 Del. Laws, c. 405 § 1.)

Part IV
Other Businesses Under Jurisdiction of State Banking Department
Chapter 29
FINANCING THE SALE OF MOTOR VEHICLES

§ 2901 Definition of terms.

As used in this chapter, unless the context or subject matter otherwise requires:

(1) "Motor vehicle" means any device propelled or drawn by any power other than muscular power, in, upon, or by which any person or property is, or may be transported or drawn upon a highway.

(2) "Retail buyer" or "buyer" means a person who buys a motor vehicle from a retail seller and who executed a retail installment contract in connection therewith.

(3) "Retail seller" or "seller" means a person who sells a motor vehicle to a retail buyer under or subject to a retail installment contract.

(4) "Retail installment transaction" means any transaction evidenced by a retail installment contract entered into between a retail buyer and a retail seller wherein the retail buyer buys a motor vehicle from the retail seller at a time price payable in one or more deferred installments. The cash sale price of the motor vehicle, the amount included for insurance and other benefits if a separate charge is made therefor, official fees and the finance charge shall together constitute the time price. A transaction is not a retail installment transaction if no interest is charged by the retail seller.

(5) "Retail installment contract" or "contract" means an agreement, entered into in this State, pursuant to which the title to, the property in or a lien upon the motor vehicle, which is the subject matter of a retail installment transaction, is retained or taken by a retail seller from a retail buyer as security, in whole or in part, for the buyer's obligation. The term includes a chattel mortgage, a conditional sales contract and a contract for the bailment or leasing of a motor vehicle by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of the motor vehicle upon full compliance with the provisions of the contract.

(6) "Cash sale price" means the price stated in a retail installment contract for which the seller would have sold to the buyer, and the buyer would have bought from the seller, the motor vehicle which is the subject matter of the retail installment contract, if such sale has been a sale for cash instead of a retail installment transaction. The cash sale price may include any taxes, registration, certificate of title, license and other fees and charges for accessories and their installation and for delivery, servicing, repairing or improving the motor vehicle.

(7) "Official fees" mean the fees prescribed by law for filing, recording or otherwise perfecting and releasing or satisfying a retained title or a lien created by a retail installment contract.

(8) "Finance charge" means the amount agreed upon between the buyer and the seller, as limited by this chapter, to be added to the aggregate of the cash sale price, the amount, if any, included for insurance and other benefits and official fees, in determining the time price.

(9) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more retail sellers. The term includes but is not limited to a bank, trust company, private banker, industrial bank or investment company, if so engaged. The term also includes a retail seller engaged, in whole or in part, in the business of creating and holding retail installment contracts. The term does not include the pledge of an aggregate number of such contracts to secure a bona fide loan thereon.

(10) The "holder" of a retail installment contract means the retail seller of the motor vehicle under or subject to the contract or, if the contract is purchased by a sales finance company or other assignee, the sales finance company or other assignee.

(11) "Person" means an individual, partnership, corporation, association, and any other group however organized.

(12) "Commissioner" means State Bank Commissioner.

(13) "Licensee" means a holder of a license issued by the State Bank Commissioner pursuant to this chapter.

(14) Words in the singular include the plural and vice versa.

(5 Del. C. 1953 § 2901; 52 Del. Laws, c. 335 § 1; 71 Del. Laws, c. 254 §§ 29, 30; 72 Del. Laws, c. 218 § 1.)

§ 2902 Licensing of sales finance companies required.

(a) No person shall engage in the business of a sales finance company in this State without a license therefor as provided in this chapter; provided, however, that the licensing requirements of this chapter shall not apply to any banking organization, federal credit union or insurance company, or any other person, if and to the extent that such person is engaging in the business of a sales finance company in this State in accordance with and as authorized by any other applicable law of this State or the United States.

(b) The application for such license shall be in writing, and in the form prescribed by the Commissioner. The application shall contain the name of the applicant; the address, or addresses, where the business is or is to be conducted; the name and resident address, or addresses, of the owner or partners or, if a corporation or association, of the directors, trustees and principal officers; and such other pertinent information

as the Commissioner may require.

(c) The license fee for each calendar year or part thereof shall be the sum of $287.50 for the principal place of business of the licensee and the sum of $287.50 for each additional office of the licensee.

In addition, the original application for the initial license shall be accompanied by an investigation fee in the amount of $287.50 which shall not be refundable.

(d) A licensee shall obtain a license for each office or other place of business from which its licensed business is conducted upon payment of the required fees for each office and compliance with all applicable provisions of law. In the event the location of a licensed office is changed during the term of the license, the Commissioner shall issue without charge an amended license for the new location. The Commissioner may issue more than 1 license to the same applicant upon payment of the required fees and compliance with all applicable provisions of law.

(e) Upon the filing of such application, and the payment of said fee, the Commissioner shall issue a license to the applicant to engage in the business of sales finance company under and in accordance with the provisions of this chapter for a period which shall expire the last day of December next following the date of its issuance. In case there is a change of name but no change in corporate structure, the Commissioner shall issue without charge an amended license for the new name. Such license shall not be otherwise transferable or assignable. No licensee shall transact any business provided for by this chapter under any other name.

(f) For just cause the Commissioner may refuse to issue a license or renewal thereof.

(g) Upon written request, the Commissioner may in the Commissioner's discretion grant conditional approval for an acquired licensee to conduct its business under its existing license for a period not to exceed 60 days in cases where the control of the licensee changes and where a new application for licensure has been filed in accordance with this section.

(h) The Commissioner shall be authorized to exempt from any or all of the provisions of this chapter such persons or classes of persons as the Commissioner shall find inappropriate to include within the coverage of this chapter in order to effectuate the purposes of this chapter. The Commissioner may by regulation establish procedures for application, fees and other requirements for an exemption pursuant to this subsection.

(5 Del. C. 1953 § 2902; 52 Del. Laws, c. 335 § 1; 57 Del. Laws, c. 740 § 25A; 60 Del. Laws, c. 268 § 18; 67 Del. Laws, c. 260 § 1; 71 Del. Laws, c. 19 § 78; 71 Del. Laws, c. 254 § 31; 72 Del. Laws, c. 15 § 41; 72 Del. Laws, c. 286 §§ 4, 5; 73 Del. Laws, c. 24 § 14; 73 Del. Laws, c. 247 § 8; 80 Del. Laws, c. 225 § 12.)

§ 2903 Renewal of license.

Every holder of a license or a renewal thereof, as provided for in this section, desiring to continue the transaction of business as provided for in this chapter, shall at least 30 days prior to the expiration of such license or renewal thereof make application to the Commissioner on forms to be provided by the Commissioner for a license renewal. The Commissioner may mandate that applications for renewal shall be treated as new applications if said renewal applications are not on file with the office of the State Bank Commissioner at least 30 days prior to the expiration of such license or renewal thereof. Licensees who have not complied with supervisory letters or who have not paid any supervisory assessment or examination fees when due may be refused license renewal.

(70 Del. Laws, c. 6 § 14; 70 Del. Laws, c. 327 § 42.)

§ 2904 Suspension, revocation or surrender of license.

(a) The Commissioner may revoke any license issued hereunder upon finding that:

(1) The licensee has violated any provision of this chapter or any rule or regulation made by the Commissioner under and within the authority of this chapter or of any other law, rule or regulation of this State or the United States;

(2) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Commissioner in refusing originally to issue such license; or

(3) The licensee has engaged in business activities or practices, in connection with any business for which a license is required under this chapter, which could be deemed unfair or deceptive by nature of intent. Such activities and practices include, but are not limited to, the use of tactics which mislead the consumer, misrepresent the consumer transaction or any part thereof, or otherwise create false expectations on the part of the consumer.

(b) The Commissioner may temporarily suspend any license pending the issuance of a final order as provided in Chapter 101 of Title 29.

(c) Except as provided in subsection (b) of this section, no license shall be revoked or suspended except after notice and an opportunity for the licensee to request a hearing in accordance with Chapter 101 of Title 29.

(d) Any licensee may surrender any license by delivering to the Commissioner such license together with written notice that it thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

(e) No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any person.

(f) Every license issued hereunder shall remain in force and effect until the same shall have expired or shall have been surrendered, revoked or suspended in accordance with this chapter, but the Commissioner shall have authority to reinstate a suspended license or to issue a new license to a licensee whose license shall have been revoked if no fact or condition then exists which would have warranted the Commissioner in refusing originally to issue such license under this chapter.

(g) Whenever the Commissioner shall revoke or suspend a license issued pursuant to this chapter, the Commissioner shall forthwith execute a written order to that effect. The Commissioner shall forthwith serve the written order upon the licensee. Any such order may be reviewed in the manner provided by Chapter 101 of Title 29.

(5 Del. C. 1953 § 2903; 52 Del. Laws, c. 335 § 1; 57 Del. Laws, c. 740 § 25B; 70 Del. Laws, c. 6 § 14; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 24 § 15; 77 Del. Laws, c. 126 § 7.)

§ 2905 Filing of complaints.

Any retail buyer having reason to believe that this chapter relating to the retail buyer's retail installment contract has been violated, may file with the Commissioner a written complaint setting forth the details of such alleged violation and the Commissioner, upon receipt of such complaint, may inspect the pertinent books, records, letters and contracts of the licensee and of the retail seller involved, relating to such specific written complaint.

(5 Del. C. 1953 § 2904; 52 Del. Laws, c. 335 § 1; 70 Del. Laws, c. 6 § 14; 70 Del. Laws, c. 186 § 1.)

§ 2906 Powers of Commissioner.

(a) For the purpose of administering this chapter, determining whether any business contemplated by this chapter is being operated in accordance with the provisions thereof or making investigation of any complaint or alleged violation, the Commissioner and the Commissioner's duly authorized representatives shall have power to investigate, at any time, the business and affairs and examine the books, accounts, contracts, papers, records, documents and files of every licensee and of every person who shall be engaged in business contemplated by this chapter, whether such person shall act, or claim to act, as principal or agent or under or without the authority of this chapter. For this purpose the Commissioner, or the Commissioner's duly authorized representatives, shall have free access to the offices and places of business, books, accounts, contracts, papers, records, documents and files of all such persons.

(b) The Commissioner shall have power to issue subpoenas to compel the attendance of witnesses and the production of books, accounts, contracts, papers, records, documents and other evidence before the Commissioner in any matter over which the Commissioner has jurisdiction, control or supervision pertaining to this chapter. The Commissioner shall have the power to administer oaths and affirmations to any persons whose testimony is required.

(c) If any person shall refuse to obey any such subpoena, or to give testimony, or to produce evidence as required thereby, any judge of the Superior Court may, upon application and proof of such refusal, make an order awarding process of subpoena, or subpoena duces tecum, out of the Superior Court, for such witness to appear before the Commissioner and to give testimony and to produce evidence as required thereby. Upon filing such order in the office of the Prothonotary, the Prothonotary shall issue process of subpoena, as directed, under the seal of said Court, requiring the person to whom it is directed, to appear at the time and place therein designated.

(d) If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the Commissioner may apply to any judge of the Superior Court for an attachment against such person, as for a contempt. The Court, upon satisfactory proof of such refusal, shall issue an attachment directed to any constable or police officer, for the arrest of such person, and upon the person being brought before the Court, proceed to a hearing of the case. The Court shall have power to enforce obedience to such subpoena, and the answering of any question, and the production of any evidence, that may be proper, by a fine not exceeding $100, or by imprisonment for not more than 30 days, or by both fine and imprisonment, and to compel such witness to pay the costs of such proceeding as taxed by the Court.

(e) The Commissioner may make such rules and regulations, and such specific rulings, demands and findings as the Commissioner deems necessary for the enforcement of this chapter and the proper conduct of the business authorized and required to be licensed thereunder. Such rules and regulations, specific rulings, demands and findings shall be in addition to, and not inconsistent with, this chapter.

(f) If, in the Commissioner's opinion, it is necessary for a thorough examination of a licensee, the Commissioner may retain 1 or more accountants, attorneys, appraisers or other third parties to assist the Commissioner in such examination. Within 10 days after receipt of a statement from the Commissioner, such licensee shall pay or reimburse the fees, costs and expenses of any third parties retained by the Commissioner under this subsection.

(5 Del. C. 1953 § 2905; 52 Del. Laws, c. 335 § 1; 68 Del. Laws, c. 303 § 44; 70 Del. Laws, c. 6 § 14; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 266 § 10.)

§ 2907 Requirements and prohibitions as to retail installment contracts.

(a) A retail installment contract shall be in writing, shall be signed by both the buyer and the seller and shall be completed as to all essential provisions prior to the signing of the contract by the buyer.

(b) The printed portion of the contract, other than instructions for completion, shall be in at least 8 point type. The contract shall contain in a size equal to at least 10 point bold type:

(1) A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case; and

(2) The following notice: "Notice to the Buyer: 1. Do not sign this contract before you read it or if it contains any blank spaces. 2. You are entitled to an exact copy of the contract you sign."

(c) The seller shall deliver to the buyer, or mail to the buyer at the buyer's address shown on the contract, a copy of the contract signed by the seller. Until the seller does so, a buyer who has not received delivery of the motor vehicle shall have the right to rescind the agreement

and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least 10 point bold type and, if contained in the contract, shall appear directly above the buyer's signature.

(d) The contract shall contain the names of the seller and the buyer, the place of business of the seller as specified by the buyer and a description of the motor vehicle including its make, year model, model and identification numbers or marks.

(e) The contract shall contain the following items:

(1) The cash sale price of the motor vehicle;

(2) The amount of the buyer's down payment, and whether made in money or goods, or partly in money and partly in goods;

(3) The difference between items (1) and (2);

(4) The amount, if any, included for insurance and other benefits, specifying the types of coverage and benefits including any amounts actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest, lien or lease interest on property traded in;

(5) The amount of official fees;

(6) The principal balance, which is the sum of item (3), item (4), and item (5);

(7) The amount of the finance charge;

(8) The time balance, which is the sum of items (6) and (7), payable in installments by the buyer to the seller, the number of installments, the amount of each installment and the due date or period thereof.

The above items need not be stated in the sequence or order set forth; additional items may be included to explain the calculations involved in determining the stated time balance to be paid by the buyer.

(f) The amount, if any, included for insurance, which may be purchased by the holder of the retail installment contract, shall not exceed the applicable premiums chargeable in accordance with the rates filed with the Insurance Commissioner of the State. If dual interest insurance on the motor vehicle is purchased by the holder it shall, within 30 days after execution of the retail installment contract, send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this State, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverages and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance. The buyer shall have the privilege of purchasing such insurance from an agent or broker of the buyer's own selection and of selecting an insurance company acceptable to the holder, but in such case the inclusion of the insurance premium in the retail installment contract shall be optional with the seller.

(g) If any insurance is cancelled, unearned insurance premium refunds received by the holder shall be credited to the final maturing installments of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them.

(h) The holder may, if the contract so provides, collect a delinquency and collection charge on each installment in default for a period not less than 10 days in an amount not in excess of 5% of each installment or $15, whichever is less. In addition to such delinquency and collection charge, the contract may provide for the payment of attorneys' fees not exceeding 15% of the amount due and payable under such contract when such contract is referred for collection to an attorney not a salaried employee of the holder of the contract plus the court costs.

(i) No retail installment contract shall be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the motor vehicle is not made at the time of the execution of the contract, the identifying numbers or marks of the motor vehicle or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of subsection (c) of this section, of delivery of a copy of a contract shall be conclusive proof of such delivery, that the contract when signed did not contain any blank spaces except as provided in this subsection, and of compliance with this section in any action or proceeding by or against the holder of the contract.

(j) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under such contract. A buyer shall be given a written receipt for any payment when made in cash.

(k) No provision in a retail installment contract relieving the seller from liability for any legal remedies which the buyer may have against the seller under the contract, or in any separate instrument executed in connection therewith, whether before or at the time of the making of the contract, shall be enforceable.

(5 Del. C. 1953 § 2906; 52 Del. Laws, c. 335 § 1; 63 Del. Laws, c. 2 § 11; 70 Del. Laws, c. 6 § 14; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 127 § 1.)

§ 2908 Finance charge.

(a) A retail seller or the holder of a retail installment contract may charge and collect a finance charge in respect of a retail installment transaction and may calculate such finance charge in the manner and at the rate or rates specified in the contract governing the retail installment transaction.

(b) Any sales finance company may purchase or acquire or agree to purchase or acquire from any seller any contract on such terms and conditions as may be agreed upon between them. Filing of the assignment, notice to the buyer of the assignment, and any requirement that the holder maintain dominion over the payments or the motor vehicle if repossessed shall not be necessary to the validity of a written

assignment of a contract as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller. Unless the buyer has notice of the assignment of the contract, payment thereunder made by the buyer to the last-known holder of such contract shall be binding upon all subsequent holders.

(5 Del. C. 1953 § 2907; 52 Del. Laws, c. 335 § 1; 60 Del. Laws, c. 53 § 1; 61 Del. Laws, c. 83 § 1; 62 Del. Laws, c. 228 §§ 3, 4; 63 Del. Laws, c. 2 § 12; 70 Del. Laws, c. 6 § 14; 70 Del. Laws, c. 186 § 1.)

§ 2908A Prepayment.

Transferred.

§ 2909 Prepayment.

(a) A buyer may prepay the debt due under a retail installment contract in full at any time.

(b) If the finance charge imposed pursuant to § 2908 of this title in respect of a retail installment transaction has been precomputed and taken in advance, then, in the event of prepayment of the entire indebtedness, the holder shall refund to the buyer the unearned portion of the precomputed finance charge. This refund shall be in an amount not less than the amount which would be refunded if the unearned precomputed finance charge were calculated in accordance with the actuarial method, provided that the buyer shall not be entitled to a refund which results in a net minimum finance charge of less than $25, and provided further that the holder shall not be required to refund the unearned portion of the finance charge if such amount is less than $1. The unearned portion of the precomputed finance charge is, at the option of the holder, either:

(1) That portion of the precomputed finance charge which is allocable to all originally scheduled or, if deferred, all deferred payment periods, or portions thereof, ending subsequent to the date of prepayment. The unearned precomputed finance charge is the total of that which would have been earned for each such period, or portion thereof, had the debt due under the contract not been precomputed, by applying to unpaid balances of principal, according to the actuarial method, an annual percentage rate based on the precomputed finance charge, assuming that all payments were made as scheduled, or as deferred, if deferred. The holder, at its option, may round this annual percentage rate to the nearest one-quarter of 1 percent; or

(2) The total precomputed finance charge less the earned precomputed finance charge. The earned precomputed finance charge shall be determined by applying an annual percentage rate based on the total precomputed finance charge, under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

(c) As used in subsection (b) of this section:

(1) "Actuarial method" means the method of allocating payments made on a debt due under a retail installment contract between the outstanding balance of the indebtedness and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from the outstanding balance of the indebtedness.

(2) "Payment period" means the time period within which periodic installment payments of the indebtedness are due under the terms of a retail installment contract.

(d) If a charge was made to buyer for premiums for insurance in respect of a retail installment transaction, then, in the event of prepayment, the holder shall refund to such buyer the excess of the charge to such buyer therefor over the premiums paid or payable to the holder, if such premiums were paid or payable by the holder periodically, or the refund for such insurance premium received or receivable by the holder, if such premium was paid or payable in a lump sum by the holder, provided that no such refund shall be required if it amounts to less than $1.

(e) In connection with any prepayment of a debt due under a retail installment contract by a buyer, the holder may not impose any prepayment charge.

(63 Del. Laws, c. 2 § 13; 70 Del. Laws, c. 6 § 14; 71 Del. Laws, c. 19 § 79.)

§ 2910 Deferred installments.

A holder may at any time or from time to time permit a buyer to defer installment payments due under the terms of a retail installment contract and may, in connection with such deferral, charge and collect deferral charges and may also require payment by such buyer of the additional cost to the holder of premiums for continuing in force, until the end of such period of deferral, any insurance coverage provided in connection with the contract.

(5 Del. C. 1953 § 2909; 52 Del. Laws, c. 335 § 1; 63 Del. Laws, c. 2 § 13; 70 Del. Laws, c. 6 § 14.)

§ 2911 Penalties.

(a) Any person who shall wilfully and intentionally violate this chapter or engage in the business of a sales finance company in this State without a license therefor as provided in this chapter shall be fined not more than $500.

(b) A wilful violation of §§ 2907, 2908 or 2909 of this title by the seller or holder shall bar recovery of any finance charge, delinquency or collection charge on the contract.

(5 Del. C. 1953 § 2910; 52 Del. Laws, c. 335 § 1; 70 Del. Laws, c. 6 § 14; 71 Del. Laws, c. 254 § 32.)

§ 2912 Waiver unenforceable and void.

Any waiver of this chapter shall be unenforceable and void.

(5 Del. C. 1953 § 2911; 52 Del. Laws, c. 335 § 1; 70 Del. Laws, c. 6 § 14.)

§ 2913 Disclosure requirements.

Notwithstanding any other provision of this chapter to the contrary, disclosures made in the terminology of the Truth in Lending Act [15 U.S.C. § 1601 et seq.], as amended, and regulations prescribed thereunder, shall be deemed to comply with comparable, but literally inconsistent disclosure requirements of this chapter; provided, however, that any charges otherwise authorized under this chapter may be contracted for and collected in amounts and at rates consistent with this chapter without regard to any inconsistent terminology of said Truth in Lending Act and this chapter.

(5 Del. C. 1953 § 2912; 57 Del. Laws, c. 156; 70 Del. Laws, c. 6 § 14.)

§ 2914 Surety bonds and irrevocable letters of credit.

(a) Surety bonds. —

(1) Every licensee shall file with the Commissioner, in a form satisfactory to the Commissioner, an original corporate surety bond, with surety provided by a corporation authorized to transact business in this State, in the principal sum of $25,000.

(2) No bond shall be accepted unless the following requirements are satisfied:

a. The term of the bond shall be commensurate with the license period or continuous;

b. The expiration date of the bond shall not be earlier than midnight of the date on which the license expires; and

c. The bond shall run to the State, for the benefit of the Office of the State Bank Commissioner and for the benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the bond shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. Surety claims shall be paid to the Office of the State Bank Commissioner by the insurer not later than 90 days after receipt of a claim. Claims paid after 90 days shall be subject to daily interest at the legal rate. The aggregate liability of the surety on the bond, exclusive of any interest which accrues for payments made after 90 days, shall in no event exceed the amount of such bond.

(3) If the licensee changes its surety company or the bond is otherwise amended, the licensee shall immediately provide the Commissioner with the amended original copy of the surety bond. No cancellation of an existing bond by a surety shall be effective unless written notice of its intention to cancel is filed with the Commissioner at least 30 days before the date upon which cancellation shall take effect.

(4) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner shall determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

(5) When a surety company receives a claim against the bond of a licensee, it shall immediately notify the Commissioner and shall not pay any claim unless and until it receives notice to do so from the Commissioner.

(6) The Commissioner shall have a period of 2 calendar years after the effective date of cancellation or termination of the surety bond by the insurer to submit claims to the insurer.

(b) Irrevocable letters of credit. — In lieu of requiring the filing of a surety bond, the Commissioner may, at the Commissioner's discretion, accept from a licensee an irrevocable letter of credit.

(1) Such irrevocable letter of credit shall be provided by an insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c)) acceptable to the Commissioner, in a form satisfactory to the Commissioner in the principal sum of $25,000.

(2) No irrevocable letter of credit shall be accepted unless the following requirements are satisfied:

a. The irrevocable letter of credit shall run to the State, for the benefit of the Office of the State Bank Commissioner and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation by a licensee in the course of its activity as a licensee. Compensation under the irrevocable letter of credit shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensee. The aggregate liability of the insured depository institution issuing the irrevocable letter of credit shall in no event exceed the amount of such irrevocable letter of credit; and

b. Draws upon such irrevocable letter of credit shall be available by sight drafts thereunder, in amounts determined by the Commissioner, up to the aggregate amount of the irrevocable letter of credit. Such drafts shall be paid in accordance with § 5-112(1) of Title 6.

(3) The Commissioner may require potential claimants to provide such documentation and affirmations as the Commissioner shall determine to be necessary and appropriate. In the event the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

(4) The Commissioner may refuse release of an irrevocable letter of credit, following the surrender of a license, up to 2 years after the effective date of such termination of licensure.

(71 Del. Laws, c. 254 § 33.)

Part IV

Other Businesses Under Jurisdiction of State Banking Department

Chapter 30

MORTGAGE BANKING

§§ 3001 -3009. Doing business without license prohibited; application for license; fees; issuance of license; license requirements; changes in officers or directors of licensee; suspension or revocation of license; surrender of license; procedure; Commissioner authorized to examine records; licensee's records required to be kept; reports; exclusion of certain institutions from operation of chapter.

(Repealed by 66 Del. Laws, c. 22 § 1, eff July 1, 1987.)

Part IV

Other Businesses Under Jurisdiction of State Banking Department

Chapter 31

SECONDARY MORTGAGE LOANS

§§ 3101 -3131. Definitions; license to make secondary mortgage loan; qualifications of licensee; application for license; issuance or refusal of license; procedure on refusal of license; license; contents; fee for application, investigation and license; licensee bond; abatement of license fee; suspension; revocation; refusal of license; procedure; grounds; surrender of license; term of license; reinstatement; investigation by Commissioner; issuance of subpoena by Commissioner; enforcement of Commissioner's subpoena in Superior Court; maintenance of books and records by licensee; period of retention of records by licensee; prescription of information to be shown in licensee books; prohibition of secondary mortgage not made or offered in accordance with this chapter; interest; maximum service charges; instrument evidencing loan; contents; statement of account; supplied to borrower; prepayment; requirement that prior mortgage holders refuse to make loan; false or misleading advertising prohibited; penalties for violation of chapter; enforceability of loan not made in compliance with this chapter; rules and regulations; power of Commissioner to make; exclusion of certain institutions from operation of chapter.

(Repealed by 66 Del. Laws, c. 22 § 1, eff July 1, 1987.)

Part IV
Other Businesses Under Jurisdiction of State Banking Department
Chapter 32
TRANSPORTATION OF MONEY AND VALUABLES

§ 3201 Citation.

This chapter may be cited as the "Transportation of Money and Valuables Act."

(5 Del. C. 1953 § 3201; 58 Del. Laws, c. 423.)

§ 3202 Definitions.

For purposes of this chapter:

(1) "Person" means any individual, partnership, association, joint stock association or corporation, or other entity, but does not include the United States government or the government of this State.

(2) "Licensee" means a person duly licensed by the State Bank Commissioner pursuant to this chapter.

(3) "Money" includes cash, legal tender or currency of the United States or of any other state or nation.

(4) "Transporter" means any person engaged in the business of transporting for hire, money or other valuables.

(5) "Valuables" includes bullion, securities, stocks, bonds, any negotiable or nonnegotiable documents, jewels or other property or documents of substantial monetary value.

(6) "Commissioner" means the State Bank Commissioner.

(5 Del. C. 1953 § 3202; 58 Del. Laws, c. 423; 68 Del. Laws, c. 113 § 1.)

§ 3203 License required.

No person requiring a license by this chapter shall engage in this State in the business of a transporter until such person's application for a license to so engage in business is finally approved by the State Bank Commissioner.

(5 Del. C. 1953 § 3203; 58 Del. Laws, c. 423; 70 Del. Laws, c. 186 § 1.)

§ 3204 Exempt from licensing.

(a) No license as a transporter shall be required of any of the following:

(1) Banks, trust companies, building and loan associations, organized under the laws of this State or authorized to do business in this State while transporting their own property;

(2) Incorporated telegraph companies insofar as they receive money at any of their respective offices or agencies for immediate transmission by telegraph.

(b) Nothing contained in this section or in any other section of this chapter shall be construed to enlarge or limit the rights which any of the above-named organizations have under any existing law.

(5 Del. C. 1953 § 3204; 58 Del. Laws, c. 423.)

§ 3205 Qualifications.

To qualify for a license hereunder an applicant shall meet the following requirements:

(1) The applicant shall have a net worth of at least $50,000, computed according to generally accepted accounting principles.

(2) The financial responsibility, financial condition, and business experience, and character and general fitness of the applicant shall be such as reasonably to warrant the belief that applicant's business will be conducted honestly, carefully and efficiently. To the extent deemed advisable by the Commissioner, the Commissioner may investigate and consider the qualifications of the applicant including officers and directors of an applicant in determining whether this qualification has been met.

(5 Del. C. 1953 § 3205; 58 Del. Laws, c. 423.)

§ 3206 Applications.

Each application for a license shall be made in writing and under oath to the Commissioner in such form and containing such information as the Commissioner may prescribe including the name and business and residence address:

(1) Of the proprietor, if the applicant is an individual;

(2) Of every member, if the applicant is a partnership or unincorporated association;

(3) Of the corporation and each officer and director thereof, if the applicant is a corporation, stating the date and the state of incorporation.

(5 Del. C. 1953 § 3206; 58 Del. Laws, c. 423; 70 Del. Laws, c. 186 § 1.)

§ 3207 Accompanying fees and statements.

Each application for a license shall be accompanied by:

(1) An investigation fee of $250, which shall not be subject to refund;
(2) The annual license fee as specified in § 3210 of this title;
(3) Financial statements reasonably satisfactory to the Commissioner.
(5 Del. C. 1953 § 3207; 58 Del. Laws, c. 423; 67 Del. Laws, c. 126 § 1.)

§ 3208 Action by the Commissioner; conditional approval.

Upon the filing of the application and the payment of the investigation fee and the annual license fee, the Commissioner shall, to the extent the Commissioner deems advisable, investigate the financial responsibility, financial condition, financial and business experience, character and general fitness of the applicant, and if the Commissioner finds these qualities are such as to warrant the belief that the applicant's business will be conducted honestly, fairly, equitably, carefully and efficiently within the purposes of the intent of this chapter, and in the manner commanding the confidence and trust of the community, the Commissioner shall advise the applicant in writing of the Commissioner's conditional approval of the application, and thereafter, upon compliance by the applicant with § 3209 of this title, shall issue to the applicant a license to engage in the business of a transporter. If the Commissioner determines on the basis of the Commissioner's investigation that the applicant does not comply with the purposes of this chapter as set forth in the preceding sentence of this section, the Commissioner shall notify the applicant of the denial of the conditional approval of the license stating the reasons therefor in writing.

(5 Del. C. 1953 § 3208; 58 Del. Laws, c. 423; 70 Del. Laws, c. 186 § 1.)

§ 3209 License; bond; insurance.

(a) Within 30 days after the applicant receives written notice of the conditional approval by the Commissioner of an application for original license as provided in § 3208 hereof, or within such longer period as the Commissioner may authorize, the applicant shall file with the Commissioner a corporate surety bond in the principal sum of $10,000. Such bond shall be in a form satisfactory to the Commissioner and shall be issued by a surety company authorized by the laws of this State to conduct business in this State. The bond shall run to the State and shall be conditioned that the licensee will pay any and all moneys that may become due and owing any claimant or creditor of or against the licensee arising out of the licensee's business within the State as transporter. The aggregate liability of the surety bond shall, in no event, exceed the amount of the bond. The surety on the bond shall have the right to cancel such bond upon giving 30 days' written notice to the Commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation. In any event, the bonds shall continue to be in effect as a condition for the continuance or renewal of the license issued hereunder.

(b) In lieu of such corporate surety bond the applicant may keep on deposit with any federally insured banking institution or savings and loan association in this State as such applicant shall designate and the Commissioner shall approve, securities, interest-bearing stocks and bonds, notes, debentures, or other obligations of the United States or agency or instrumentality thereof, or guaranteed by the United States or of this State or any subdivision thereof, or dollar deposits, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond. The securities shall be deposited as aforesaid and held to secure the same obligations as would the corporate surety bond, but the depositor shall be entitled to receive all interest and dividends thereon and shall have the right, with the approval of the Commissioner, to substitute other securities for those deposited.

(c) In addition to the bond required in subsection (a) of this section, within 30 days after the applicant receives written notice of the conditional approval by the Commissioner of an application for original license as provided in § 3208 hereof or within such longer period as the Commissioner may authorize, the applicant shall file with the State Bank Commissioner true copies of its insurance contracts, including all documents not attached physically to such contracts but which are incorporated into and made a part of such contracts by reference or otherwise, establishing that it has in full force and effect a contract of insurance with a good and reputable insurance company, licensed to do business in this State, an underlying all risk (except for customary war risk and nuclear exclusions) policy in an amount not less than $5,000,000 insuring licensee and/or any persons doing business with, or having a claim against, said licensee arising from any loss through any risk assumed by the licensee in any contract for the transportation, handling or storage of moneys, including lawful currency and coin, negotiable and nonnegotiable securities, stocks, bonds, coupons and things of unusual value. True copies of such insurance contracts and such nonattached documents shall be furnished annually, prior to renewal of the license. The Commissioner may, in the Commissioner's discretion, upon a showing of good cause, issue a license to an applicant whose insurance contracts (including the nonattached documents incorporated into and made a part of such contracts) show that it has less than $5 million of such all risk coverage if it is established to the Commissioner's satisfaction that the amount of such applicant's all risk coverage is adequate, taking into consideration the aggregate value of such money and/or valuables as are being transported or as may be transported by the applicant for all of its customers pursuant to such contracts for transportation, handling or storage; provided, however, that under no circumstances shall a license be issued to any applicant where the amount of its all risk insurance coverage under this subsection is less than $2 million. Each such contract for such transportation, handling or storage shall contain in bold print a verbatim quotation of (i) all conditions precedent to any recovery under, and (ii) all warranties of the licensee relating to coverage under, the licensee's all risk insurance policies. If the insurance contracts required by this subsection shall lapse or be cancelled, then the State Bank Commissioner, in the Commissioner's discretion, may, upon 10 days' notice to the licensee, cancel the license provided for in this chapter, until such time as the required insurance contracts have gone into effect. Insurance companies issuing contracts pursuant to this section shall, within 3 days after giving

notice to the licensee that the effect of the contracts have been altered or are no longer in effect, give similar notice to the State Bank Commissioner of such notice to the licensee.

(d) A license issued under this chapter shall remain in full force and effect until surrendered, suspended or revoked pursuant to this chapter. In case there is a change in name, but no change in identity or control of the licensee, the Commissioner shall issue without charge an amended license showing the new name. Such license shall not be otherwise transferable or assignable.

(e) If the Commissioner shall at any time reasonably determine that the bond or securities of the aforesaid are insecure, deficient in amount, or exhausted in whole or in part, or if the surety on the bond shall have notified the Commissioner of its intention to cancel the bond, he shall by written order require the filing of a new or supplemental bond or the depositing of a new or additional securities in order to secure compliance with this chapter, such order to be complied with within 20 days following service thereof upon the licensee.

(5 Del. C. 1953 § 3209; 58 Del. Laws, c. 423; 67 Del. Laws, c. 126 §§ 2-5; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 126 § 8.)

§ 3210 Renewal of license; annual license fee.

Every holder of a license or a renewal thereof, as provided for in this section, desiring to continue the transaction of business as provided for in this chapter, shall at least 30 days prior to the expiration of such license or renewal thereof make application to the Commissioner on forms to be provided by the Commissioner for a license renewal. Each licensee shall pay to the Commissioner annually, together with its application for license renewal, a license fee of $200 for the ensuing calendar year. The Commissioner may mandate that applications for renewal shall be treated as new applications if said renewal applications are not on file with the office of the State Bank Commissioner at least 30 days prior to the expiration of such license or renewal thereof. Licensees who have not complied with supervisory letters or who have not paid examination fees when due may be refused license renewal.

(5 Del. C. 1953 § 3210; 58 Del. Laws, c. 423; 70 Del. Laws, c. 6 § 15; 70 Del. Laws, c. 327 § 42.)

§ 3211 Agents.

A licensee may conduct the licensee's business at one or more locations within the State and through or by means of such agents as the licensee may from time to time designate or appoint. No license under this chapter shall be required of any agent of a licensee. In order for an agent to be authorized to act for the licensee in this State, the licensee shall have on file with the Commissioner the name and address of the agent and the licensee shall notify the Commissioner within 30 days of the change of name and/or address of an agent or of the termination of any such agent. The requirements of this section shall not apply to any agent of a licensee who is exempt from this chapter pursuant to § 3204(a) of this title.

(5 Del. C. 1953 § 3211; 58 Del. Laws, c. 423; 70 Del. Laws, c. 186 § 1.)

§ 3212 Liability of licensee.

(a) Each licensee shall be absolutely liable for any loss, damage, destruction or impairment of the money or valuables placed in the licensee's possession in addition to whatever additional liability shall be imposed upon the licensee by reason of contractual obligations or the laws of this State or any other applicable law.

(b) In any action to recover money or valuables delivered to a transporter, the burden of proving the delivery to and the receipt of such money or valuables by the person to whom it was directed to be paid or delivered shall be upon the transporter.

(5 Del. C. 1953 § 3212; 58 Del. Laws, c. 423; 70 Del. Laws, c. 186 § 1.)

§ 3213 Suspension, revocation or surrender of license.

(a) The Commissioner may revoke any license issued hereunder upon finding that:

(1) The licensee has violated any provision of this chapter or any rule or regulation made by the Commissioner under and within the authority of this chapter or of any other law, rule or regulation of this State or the United States;

(2) Any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Commissioner in refusing originally to issue such license; or

(3) The licensee has engaged in business activities or practices inconsistent with its responsibilities under this chapter.

(b) The Commissioner may temporarily suspend any license pending the issuance of a final order as provided in Chapter 101 of Title 29.

(c) Except as provided in subsection (b) of this section, no license shall be revoked or suspended except after notice and an opportunity for the licensee to request a hearing in accordance with Chapter 101 of Title 29.

(d) Any licensee may surrender any license by delivering to the Commissioner such license together with written notice that it thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

(e) No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any person.

(f) Every license issued hereunder shall remain in full force and effect until the same shall have expired or shall have been surrendered, revoked or suspended in accordance with this chapter, but the Commissioner shall have authority to reinstate a suspended license or issue a new license to a licensee whose license shall have been revoked if no fact or condition then exists which would have warranted the Commissioner in refusing originally to issue such license under this chapter.

(g) Whenever the Commissioner shall revoke or suspend a license issued pursuant to this chapter, the Commissioner shall forthwith

execute a written order to that effect. The Commissioner shall forthwith serve the written order upon the licensee. Any such order may be reviewed in the manner provided by Chapter 101 of Title 29.

(5 Del. C. 1953 § 3213; 58 Del. Laws, c. 423; 68 Del. Laws, c. 303 § 45; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 24 § 16; 77 Del. Laws, c. 126 § 9.)

§§ 3214 , 3215. Hearings; appeal from Commissioner.

(Repealed by 73 Del. Laws, c. 24 § 17, 18, eff April 17, 2001 For present law see 3213 of this title.)

§ 3216 Penalties.

Any person who violates this chapter shall be fined not less than $100 nor more than $1,000, imprisoned for not more than 5 years, or both, for each such offense.

(5 Del. C. 1953 § 3216; 58 Del. Laws, c. 423.)

§ 3217 Rules and regulations.

The Commissioner may adopt such rules and regulations as are necessary for the proper administration of this chapter.

(5 Del. C. 1953 § 3217; 58 Del. Laws, c. 423.)

§ 3218 Limitation on construction of chapter.

This chapter shall not be construed as permitting any corporation, domestic or foreign, to transact in this State the business of a state bank and trust company, savings bank, industrial bank, private bank or building or savings and loan association.

(5 Del. C. 1953 § 3218; 58 Del. Laws, c. 423.)

§ 3219 State government contracts.

No contract shall be awarded by the State for the transportation, handling or storage of moneys, including lawful currency and coin, negotiable and nonnegotiable securities, stocks, bonds, coupons and things of unusual value, in the absence of a certificate that (i) the provider was licensed under this chapter at the time its bid for the contract was submitted or that at such time the provider had an application for such a license filed with the Commissioner with all fees required by § 3207 of this title paid and awaiting action by the Commissioner, and (ii) also that at the time of the award of such contract the provider was fully licensed under this chapter. All bids for such contracts shall include a statement that the bidder is licensed under this chapter, or that the bidder has an application filed with the Commissioner for such a license with all fees required by § 3207 of this title paid and awaiting action by the Commissioner. Officials responsible for awarding and administering such contract shall establish that the provider is fully licensed under this chapter and is in good standing with the Commissioner as of the date of the award of the contract and for each year of the contract thereafter.

(67 Del. Laws, c. 126 § 6.)

§ 3220 Supervision and examination of business by the Commissioner.

(a) Every person or combination of persons licensed as a transporter under this chapter shall be subject to the supervision and examination of the State Bank Commissioner and shall be examined by the Commissioner or the Commissioner's authorized representative annually or at such intervals as the Commissioner deems necessary.

(b) On the occasion of every examination, the Commissioner or the Commissioner's authorized representative shall be given free access to the licensee's books and records.

(c) The examination made by the Commissioner, or the Commissioner's authorized representatives, shall be a thorough examination into the compliance or noncompliance with this Code or any regulations promulgated thereunder, and any other statutes or regulations of this State or the United States; in addition, such examination shall include a review of the licensee's business practices and such other matters, as in the judgment of the Commissioner, may have relation to the security of property of the licensee's customers. In connection with such examination, the Commissioner may examine, under oath or affirmation, any and all persons connected with the licensee.

(d) Each licensee shall submit to the Commissioner on or before January 1 of each year financial statements for the licensee's most recently available completed fiscal year which have been audited by a certified public accountant, including the report of the certified public accountant thereon.

(68 Del. Laws, c. 113 § 2; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 126 § 10.)

§ 3221 Cease and desist orders.

(a) The Commissioner shall have the power and authority to issue and serve an order upon a person to cease and desist from any violation or practice if, in the opinion of the Commissioner, a transporter subject to this chapter is engaging in, or has engaged in, or, if the Commissioner has reasonable cause to believe that such institution or company is about to engage, in any of the following:

(1) A violation of a law, rule or regulation relating to the supervision of such transporter;

(2) A violation of any written agreement entered into with the Commissioner; or

(3) A violation of warranties, terms or conditions of the insurance contract(s) which may, in the judgment of the Commissioner, lead to an inability to recover.

(b) Such order may require the officers or directors of the institution or company to take affirmative action to correct any violation or

practice.

(c) A cease and desist order issued pursuant to this section shall include a statement of the facts upon which the order is based, specific activities which the financial institution must cease, the affirmative acts required of the financial institution and the effective date of the order. A cease and desist order may be served by any member of the State Bank Commissioner's Office who is designated by the Commissioner. Service may be effected by hand delivering the order to the transporter at its principal place of business during normal working hours.

(d) Except as provided in subsection (e) of this section, a cease and desist order shall not become effective in less than 10 days after the order is served. After an order is served, but before its effective date, upon petition of any interested party, the Commissioner shall conduct a hearing. At the conclusion of such hearing, the Commissioner may affirm the cease and desist order as originally issued, or he may modify, amend or rescind such order.

(e) Whenever, in the opinion of the Commissioner, the violation or practice set forth in subsection (a) of this section represents an immediate danger or substantial harm to the interests of the public, the Commissioner may issue a cease and desist order pursuant to subsection (a) of this section, which shall become effective upon service thereof, without prior notice or hearing. Upon the application of an interested party, the Commissioner shall afford an opportunity for a hearing to consider rescission of any order issued pursuant to this subsection, and any action taken promptly thereafter.

(68 Del. Laws, c. 113 § 2.)

Part IV
Other Businesses Under Jurisdiction of State Banking Department
Chapter 33
BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS
Subchapter I
General Provisions

§ 3301 Short title.

This chapter shall be known and may be cited as the "Delaware Bidco Act."
(66 Del. Laws, c. 344 § 1.)

§ 3302 Findings; declaration of purposes.

(a) It is determined and declared as a matter of legislative finding that:

(1) The availability of financial and management assistance are important resources to small businesses to locate, remain and expand in the State, which, in time, will result in increased employment opportunities in the State.

(2) There is need for financial and management resource alternatives to small businesses in the State due to lack of bank financing in situations, including, but not limited to, start-ups, under-collateralization, management problems and above-average risk projects.

(3) Many small businesses, although in a growth mode, do not meet the investment criteria of venture capital firms.

(4) In order to increase employment opportunities and commercial transactions in the State, there is a need to encourage the development of resources directed at small businesses, which will help such businesses locate, remain and expand in the State.

(b) It is further determined and declared that the purposes of this chapter shall be to:

(1) Promote economic development by encouraging the formation of private financial institutions known as Bidcos to help meet the financing assistance and management assistance needs of growth-oriented small businesses in the State; and

(2) Provide for the licensing and regulation of Bidcos to prevent fraud, conflict of interest and mismanagement, in order to encourage:

a. Private equity investments in Bidcos; and

b. Pension funds, insurance companies, foundations, utilities and other institutions to lend funds to Bidcos.

(66 Del. Laws, c. 344 § 1.)

§ 3303 Definitions.

For the purposes of this chapter, unless otherwise specifically defined, or unless another intention clearly appears or unless the context requires a different meaning:

(1) "Affiliate" means, if used with respect to a specified person other than a natural person, a person controlling or controlled by such specified person, or a person controlled by a person who also controls such specified person.

(2) "Applicant" means a Delaware corporation that has submitted an application for a license under this chapter.

(3) "Bidco" means a business and industrial development corporation licensed under this chapter.

(4) "Business firm" means a person that transacts business on a regular and continual basis, or that proposes to transact business on a regular and continual basis.

(5) "Commissioner" means the Bank Commissioner of the State.

(6) "Control" means, if used with respect to a specified person, the power to direct or cause the direction of, directly or indirectly through 1 or more intermediaries, the management and policies of such specified person, whether through the ownership of voting securities, by contract, other than a commercial contract for goods or nonmanagement services or otherwise. A natural person shall not be considered to control another person solely on account of being a director, officer or employee of such other person.

(7) "Controlling person" means, if used with respect to a specified person, a person who controls such specified person, directly or indirectly through 1 or more intermediaries.

(8) "Corporate name" means the name of a corporation as set forth in the certificate of incorporation of such corporation.

(9) "Delaware corporation" means a corporation, whether for profit or nonprofit, incorporated under the General Corporation Law of Delaware.

(10) "Insolvent" means a licensee that ceases to pay its debts in the ordinary course of business, that cannot pay its debts as they become due or whose liabilities exceed its assets.

(11) "Interests of a licensee" includes the interests of shareholders of the licensee.

(12) "License" means a license issued under this chapter authorizing a Delaware corporation to transact business as a Bidco.

(13) "Licensee" means a Delaware corporation which is licensed under this chapter.

(14) "Officer" means:

a. If used with respect to a corporation, a person appointed or designated as an officer of such corporation by or pursuant to applicable law or the certificate of incorporation or bylaws of such corporation, or a person who performs with respect to such corporation functions usually performed by an officer of a corporation; and

b. If used with respect to a specified person other than a natural person or a corporation, a person who performs with respect to such specified person functions usually performed by an officer of a corporation with respect to such corporation.

(15) "Order" includes an approval, authorization, consent, exemption, denial, prohibition or other official act taken by the Commissioner.

(16) "Person" includes an individual, proprietorship, joint venture, partnership, statutory trust, trust, business trust, syndicate, association, joint stock company, corporation, cooperative, government, agency of a government or any other entity or organization. If used with respect to acquiring control of or controlling a specified person, "person" includes a combination of 2 or more persons acting in concert.

(17) "Principal shareholder" means a person that owns, directly or indirectly, of record or beneficially, securities representing 10 percent or more of the outstanding voting securities of a corporation.

(18) "State" means the State of Delaware.

(19) "State Administrative Procedures Act" refers to Chapter 101 of Title 29.

(20) "Subject person" means a controlling person, subsidiary or affiliate of a licensee, a director, officer or employee of a licensee or of a controlling person, subsidiary or affiliate of a licensee or any other person who participates in the conduct of the business of a licensee.

(21) "Subsidiary" means, if used with respect to a licensee, a company or business firm which the licensee holds control of as permitted by § 3323(a)(2), (3), (4) or (5) of this title.

(22) "This chapter" includes any order issued or rule promulgated under this chapter.

(66 Del. Laws, c. 344 § 1; 73 Del. Laws, c. 329 § 4.)

§ 3304 Applicability of other laws.

A corporation licensed under and pursuant to this chapter shall be known as a Bidco, shall be subject to regulation by the Commissioner and shall be deemed subject to the General Corporation Law of Delaware to the extent that such law is not inconsistent with the express provisions of this chapter.

(66 Del. Laws, c. 344 § 1.)

§ 3305 Corporate name.

Each corporation licensed under this chapter shall use the word "Bidco" in its corporate name.

(66 Del. Laws, c. 344 § 1.)

§ 3306 Supervision of Bidcos.

(a) The Commissioner shall administer this chapter and shall have supervision responsibility for all Bidcos incorporated under the laws of this State, and shall secure the execution of all laws relative to Bidcos.

(b) The Commissioner shall issue orders and promulgate rules and regulations that are deemed necessary or appropriate to execute, enforce and effectuate the purposes of this chapter.

(c) Whenever the Commissioner issues an order or license under this chapter, the Commissioner may impose conditions that are deemed necessary or appropriate to effectuate the purposes of this chapter.

(d) Every final order, decision or license action of the Commissioner under this chapter is subject to administrative and judicial review in accordance with law.

(66 Del. Laws, c. 344 § 1.)

§ 3307 Fees.

The Commissioner shall establish a schedule of fees, which the Commissioner determines to be reasonable and necessary to effectuate the purposes of this chapter, in connection with the licensing, administration and supervision of Bidcos, and such schedule shall be subject to amendment by the Commissioner from time to time.

(66 Del. Laws, c. 344 § 1.)

§ 3308 Liberal construction.

This chapter shall be liberally construed to accomplish its purposes.

(66 Del. Laws, c. 344 § 1.)

Subchapter II

Licensing

§ 3311 Applications; review by Commissioner.

(a) A Delaware corporation may apply to the Commissioner for a license to form and conduct business as a Bidco. A person other than a Delaware corporation may not apply for such a license.

(b) An application filed with the Commissioner under this chapter shall be in such form and contain such information as the Commissioner may require, but shall contain, at a minimum, the following:

(1) A detailed business plan setting forth the services to be provided by the proposed Bidco to business firms located within or outside of the State;

(2) A summary of the geographical business markets of the proposed Bidco;

(3) Information concerning the experience of the management of the proposed Bidco and how such experience relates to the execution of the business plan referred to in paragraph (1) of this subsection;

(4) Location of the proposed main office of the Bidco and any branch offices, or the vicinity thereof;

(5) A detailed summary of how the management of the proposed Bidco intends to implement a reasonable and prudent policy for conserving and investing the capital of such Bidco;

(6) A summary of the types of business firms to be assisted by the proposed Bidco; and

(7) Three years of detailed financial projections.

(c) After a review of an application and receipt and review of any additional or supplemental information requested by the Commissioner, the Commissioner shall approve the application for a license under this chapter if the Commissioner determines that:

(1) The applicant has, or has firm financing commitments from equity investors or debt sources for, cash or similar liquid assets sufficient to demonstrate that prior to the time such applicant is authorized to transact business as a Bidco, such applicant will have liquid assets available to provide financing assistance to business firms in an amount adequate for such applicant to transact business as a Bidco;

(2) Each director, officer and controlling person of the applicant is of good character and sound financial standing; each director and officer of such applicant is competent to perform his functions with respect to such applicant; and the directors and officers of such applicant are collectively able to manage the business of such applicant as a Bidco;

(3) It is reasonable to believe that the applicant, if licensed, will comply with this chapter; and

(4) The applicant has reasonable prospects of being a viable, ongoing Bidco and of satisfying the basic objectives of its business plan.

(d) The Commissioner shall require a Bidco to have at the time it is authorized to transact business as a Bidco a minimum net worth of not less than $1,000,000.

(e) If an application for a license under this chapter is approved and all conditions precedent to the issuance of such license are fulfilled, the Commissioner shall issue a license to the applicant. A licensee shall post the license, or a copy thereof, in a conspicuous place in each of the main and branch offices of the licensee. A license shall not be transferable or assignable. Each license shall expire on December 31 of each year and be subject to an annual renewal.

(f) If the Commissioner denies an application, the Commissioner shall provide the applicant with a written statement explaining the basis for the denial. The formation, acquisition or control of a Bidco pursuant to this chapter shall not be deemed to be a violation of any condition imposed by law upon an out-of-state bank holding company or any subsidiary thereof which acquires and holds all or substantially all of the voting shares of a bank or banks in the State, and such condition shall not, of itself, be the basis for denial of an application.

(66 Del. Laws, c. 344 § 1.)

§ 3312 Voluntary surrender of Bidco license.

(a) Upon approval of a two-thirds vote of its board of directors and after complying with subsection (b) of this section, a licensee may apply to the Commissioner to have the Commissioner accept the surrender of the license of such licensee. If the Commissioner determines that the requirements of this section have been satisfied, the Commissioner shall approve the application, unless in the opinion of the Commissioner the purpose of the application is to evade a current or prospective action by the Commissioner under subchapter VI of this chapter.

(b) Not less than 60 days before filing an application with the Commissioner under subsection (a) of this section, a licensee shall notify each of its shareholders of its intention to file such application. Each such shareholder shall be notified of the right to file with the licensee an objection to the proposed surrender of the license within the 60-day period and shall be advised that, if such shareholder files such an objection, such shareholder should send a copy of such objection to the Commissioner. If shareholders holding 20 percent or more of the outstanding voting securities of the licensee file such objections, the licensee shall not proceed with the application under subsection (a) of this section unless the application is approved by a vote of shareholders holding two thirds of the outstanding voting securities of such licensee.

(66 Del. Laws, c. 344 § 1.)

Subchapter III

Conduct of Bidco Business

§ 3321 Office.

(a) A licensee shall maintain not less than 1 office in the State.

(b) Each office of a licensee, whether within or outside of the State, shall be located in a place which is reasonably accessible to the public.

(c) A licensee shall maintain at each of its offices personnel who are competent to conduct the business of such office.

(d) Upon written notice to the Commissioner, a licensee may establish, relocate or close an office.

(66 Del. Laws, c. 344 § 1.)

§ 3322 Business of a Bidco.

(a) The business of a licensee shall be the business of providing financing assistance and management assistance to business firms.

(b) A licensee may determine the structure and the terms and conditions for financing assistance provided by that licensee to a business firm including, but not limited to, structures such as straight loans, purchase of debt instruments, straight equity investments (e.g., purchase of common stock or preferred stock), debt with equity features (e.g., warrants to purchase stock, convertible debentures or receipt of a percentage of gross or net income or sales), royalty-based financing, guaranteeing of debt or leasing of property.

(c) Management assistance provided by a licensee to a business firm may encompass management and technical advice and services.

(d) A licensee may exercise the incidental powers that are necessary or convenient to carry on the business of, or that are reasonably related to the business of, providing financing assistance and management assistance to business firms.

(e) In connection with an extension of credit by a licensee to a business firm, the licensee and such business firms may, notwithstanding any other provisions of the laws of the State, agree to any rate of interest and any schedule of fees.

(66 Del. Laws, c. 344 § 1.)

§ 3323 Control of business firm prohibited; exceptions.

(a) Either by itself or in concert with 1 or more of its directors, officers, principal shareholders or affiliates, 1 or more other licensees or 1 or more directors, officers, principal shareholders or affiliates of another licensee or licensees, a licensee shall not hold control of a business firm, except as follows:

(1) If and to the extent necessary to protect the interests of a licensee as a creditor of, or investor in, a business firm, a licensee that has provided financing assistance to a business firm may acquire and hold control of such business firm. Unless the Commissioner approves a longer period, a licensee holding control of a business firm under this paragraph shall divest itself of the interest which constitutes holding control as soon as practicable or within 3 years after acquiring such interest, whichever is earlier.

(2) With the approval of the Commissioner, a licensee may acquire and hold control of a corporation which is licensed as a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. § 661 et seq.], as amended.

(3) With the approval of the Commissioner, a licensee may acquire and hold control of a company which is a development company, whether or not such development company has been or may become certified by the United States Small Business Administration pursuant to the Small Business Investment Act of 1958 [15 U.S.C. § 661 et seq.], as amended.

(4) With the approval of the Commissioner, a licensee may acquire and hold control of another business firm which is engaged in no business other than the business of providing financing assistance or management assistance to business firms.

(5) With the approval of the Commissioner, a licensee may acquire and hold control of a business firm not referred to in paragraphs (1)-(4) of this subsection. The Commissioner shall not approve an application under this paragraph unless the Commissioner determines that such an acquisition will promote the purposes of this chapter.

(b) If a licensee anticipates acquiring and holding control of a business firm under subsection (a)(1) of this section, the licensee shall file with the Commissioner a plan for acquiring and holding control of such business firm that shall include, at minimum, the following:

(1) The reasons it is necessary for the licensee to acquire and hold control of such business firm;

(2) The percentage of outstanding voting securities of such business firm that the licensee anticipates acquiring and holding;

(3) The licensee's proposed course of action upon obtaining control of such business firm; and

(4) The length of time the licensee anticipates it will be necessary to hold control of such business firm.

(c) The Commissioner may require a licensee to demonstrate the necessity for such licensee to hold control of a business firm under subsection (a)(1) of this section.

(d) For the purposes of this section, "hold control" means ownership, directly or indirectly, of record or beneficially, of voting securities greater than:

(1) For a business firm with outstanding voting securities held by fewer than 50 shareholders, 40 percent of such outstanding voting securities.

(2) For a business firm with outstanding voting securities held by 50 or more shareholders, 25 percent of the outstanding voting securities.

(66 Del. Laws, c. 344 § 1.)

§ 3324 Business of Bidco to be conducted in prudent business manner.

(a) A licensee shall transact its business in a prudent business manner and shall maintain itself in a viable condition.

(b) In determining whether a licensee is transacting business in a prudent business manner, the Commissioner shall not consider the risk of the financing assistance provided by such licensee to a business firm, unless the Commissioner determines that the risk is so great compared with the realistically expected return as to demonstrate mismanagement of the licensee.

(c) Subsection (b) of this section shall not limit the authority of the Commissioner to do any of the following:

(1) Determine that a licensee's financing assistance to a single business firm or a group of affiliated business firms is in violation of subsection (a) of this section if the amount of such financing assistance is unduly large in relation to the total assets or the total shareholder's equity of such licensee.

(2) Require that a licensee maintain a reserve in the amount of anticipated losses.

(3) Require that a licensee have in effect a written financing assistance policy, approved by its board of directors, including credit evaluation criteria and other matters. The Commissioner shall not require that a licensee adopt a financing assistance policy that contains standards which prevent such licensee from exercising needed flexibility in evaluating and structuring financing assistance to business firms on a deal-by-deal basis.

(66 Del. Laws, c. 344 § 1.)

§ 3325 Avoidance of conflict of interest.

(a) A licensee shall avoid any transaction or act which involves, or has the potential to involve, a conflict of interest, unless such transaction or act and the circumstances underlying the conflict or potential conflict of interest are fully and adequately disclosed to appropriate persons.

(b) Notwithstanding subsection (a) of this section, a licensee shall provide the Commissioner with a separate notice, setting forth the specific facts concerning an actual or potential conflict of interest, prior to the consummation of any transaction or act referred to in subsection (a) of this section.

(c) Nothing in this section shall limit the authority of the Commissioner to determine that a transaction or act involves a conflict of interest, including, but not limited to, disapproval of any proposed transaction, or to take such steps that the Commissioner deems necessary or appropriate to resolve such conflict of interest.

(66 Del. Laws, c. 344 § 1.)

Subchapter IV

Mergers, Acquisitions and Sale of Business Assets

§ 3331 General rules.

(a) Without the prior approval of the Commissioner, a licensee shall not consummate a transaction involving a merger, acquisition of control or a sale of all or substantially all of its business assets, where the licensee is a principal party to such transaction.

(b) The Commissioner shall not approve the merger of a licensee with another corporation unless:

(1) The licensee is the surviving corporation; or

(2) If the licensee is the disappearing corporation, the surviving corporation is also a licensee.

(c) The Commissioner shall approve an application by a licensee for approval of a proposed transaction involving a merger, acquisition of control or a sale of all or substantially all of such licensee's business assets, only upon a finding by the Commissioner that:

(1) Such merger, acquisition or sale will be on a sound financial basis with respect to the acquiring licensee;

(2) Upon consummation of such merger, acquisition or sale, it is reasonable to believe that the acquiring licensee will comply with this chapter; and

(3) Such merger, acquisition or sale will not have a major detrimental impact upon competition in the providing of financing assistance or management assistance to business firms, or if there will be such a major detrimental impact, such merger, acquisition or sale is necessary in the interests of the financial soundness of any of the parties to such merger, acquisition or sale, or is otherwise, on balance, in the public interest.

(66 Del. Laws, c. 344 § 1.)

Subchapter V

Operating Rules Governing Business of Bidcos

§ 3341 Form and maintenance of Bidco records; annual audited report.

(a) A licensee shall make and keep books, accounts and other records in such form and manner as the Commissioner may require. Such records shall be kept at such place and shall be preserved for such length of time as the Commissioner may specify.

(b) Not more than 90 days after the close of each fiscal year of a licensee or a longer period if specified by the Commissioner, a licensee

shall file with the Commissioner an audited report containing the following:

(1) Financial statements, including balance sheet, statement of income or loss, statement of changes in capital accounts and statement of changes in financial position;

(2) A report, certificate or opinion of the independent certified public accountant or independent public accountant who performs the audit, stating that the financial statements were prepared in accordance with generally accepted accounting principles; and

(3) Such other information as the Commissioner may require.

(66 Del. Laws, c. 344 § 1.)

§ 3342 Periodic report requirements.

In addition to the audited report required by § 3341(b) of this title, a licensee shall file with the Commissioner such other reports and at such times as the Commissioner may require. Any report required by the Commissioner under this section shall be in such form and shall contain such information as the Commissioner may specify.

(66 Del. Laws, c. 344 § 1.)

§ 3343 Examination of Bidcos.

(a) The Commissioner shall visit and examine each licensee as frequently as the Commissioner deems it necessary or expedient of such licensee. On the occasion of every such visit and examination, the Commissioner shall (in company with 1 or more of the officers of such licensee, if requested by such licensee) be given free access to every part of the office or place of business and to the assets, securities, books, papers and records of such licensee.

(b) If in the Commissioner's opinion it is necessary for a thorough examination of a licensee, the Commissioner may retain 1 or more accountants, attorneys, appraisers or other 3rd parties to assist the Commissioner in such examination. Within 10 days after receipt of a statement from the Commissioner, such licensee shall pay or reimburse the fees, costs and expenses of any 3rd parties retained by the Commissioner under this subsection.

(c) Any examination under this section may be made by any person or persons designated by the Commissioner, and in such case all the powers vested in the Commissioner by this section shall be possessed by such person or persons so designated. When any such examination is made without the presence of the Commissioner, the Commissioner shall give written authority to the person or persons conducting such examination, which shall be exhibited to any person contacted in the course of the investigation.

(66 Del. Laws, c. 344 § 1.)

Subchapter VI

Enforcement Powers of Commissioner

§ 3351 Investigations.

(a) The Commissioner may make such investigations within or without the State as the Commissioner may consider necessary or appropriate for determining whether to approve an application filed with the Commissioner under this chapter or for determining whether a licensee or other person has violated or is about to violate this chapter, to aid in the enforcement of this chapter or to aid in issuing an order or promulgating a rule or regulation pursuant to this chapter.

(b) Any investigation under this section may be made by any person or persons designated by the Commissioner, and in such case all the powers vested in the Commissioner by this section shall be possessed by such person or persons so designated. When any such investigation is made without the presence of the Commissioner, the Commissioner shall give written authority to the person or persons conducting such investigation, which shall be exhibited to any person contacted in the course of such investigation.

(c) For purposes of an investigation under this section, the Commissioner may administer oaths and affirmations, subpoena witnesses, including but not limited to the officers, directors, trustees, partners, managers and employees of any entity being examined, compel the attendance of witnesses, take evidence and require the production of books, papers, correspondence, memoranda, agreement or other documents or records which the Commissioner considers relevant to such investigation.

(d) If any person fails to comply with a subpoena or subpoena duces tecum issued by the Commissioner under this section or fails to testify with respect to a matter concerning which the person may be lawfully questioned, the Court of Chancery, upon application of the Commissioner, may issue an order requiring the attendance of such person and the giving of testimony or production of evidence.

(66 Del. Laws, c. 344 § 1.)

§ 3352 False statements, entries or reports; penalty.

Every director, officer, agent, clerk or employee of any entity affected by § 3343 or § 3351 of this title, who wilfully or knowingly subscribes or exhibits any false paper, with intent to deceive any person authorized to investigate or examine as to the condition of such entity, or who wilfully or knowingly subscribes to or makes any false report, shall be fined not less than $500 nor more than $1,000.

(66 Del. Laws, c. 344 § 1.)

§ 3353 Violations; remedies.

(a) Subject to the State Administrative Procedures Act, the Commissioner may issue an order, setting forth an appropriate remedy, including, without limitation, a cease-and-desist order, an order removing any person from office with a licensee or prohibiting any person from further participating in any manner in the conduct of the business of such licensee, upon a finding by the Commissioner that such licensee, subject person or other person:

(1) Has violated, is violating or is about to violate any provision of this chapter or other applicable law, rule or regulation;

(2) Has engaged or participated, or is engaging or participating or is about to engage or participate detrimentally with respect to the business of such licensee;

(3) Has been indicted or convicted for a crime involving dishonesty or breach of trust; or

(4) Is conducting acts that threaten the interests of such licensee or may threaten to impair public confidence in such licensee.

(b) The licensee, subject person or other person to whom an order is issued under subsection (a) of this section, is entitled to judicial review of such order as set forth in the State Administrative Procedures Act.

(66 Del. Laws, c. 344 § 1.)

§ 3354 Receivership.

(a) If the Commissioner finds that a licensee is insolvent, or such licensee is transacting business without authority or in violation of this chapter or any other law or it is contrary to the purposes of this chapter for such licensee to continue business, the Commissioner shall communicate the facts to the Attorney General of the State who shall file in the Court of Chancery, in any county where such licensee is doing business, a complaint setting forth the facts and applying for an order requiring such licensee to show cause why its business should not be closed.

(b) In a proper case made, the Court of Chancery shall have the power to appoint a receiver to take charge of, settle and wind up the affairs of a licensee under the direction of the Court, to enjoin such licensee from doing business or to make such other order or decree as the circumstances shall warrant and the Court shall deem proper.

(66 Del. Laws, c. 344 § 1.)

§ 3355 Penalties.

(a) Subject to the State Administrative Procedures Act, should the Commissioner find that any person has violated this chapter, other than that prohibited under § 3352 of this title, the Commissioner may order such person to pay to the State a civil penalty in such amount as the Commissioner may specify. However, the amount of any such civil penalty shall not exceed $10,000 for each violation, or in the case of a continuing violation, $10,000 for each day for which the violation continues.

(b) This section shall not apply to any act committed or omitted in good faith in conformity with an order, rule, declaratory ruling or written interpretative opinion of the Commissioner, notwithstanding that such order, rule, declaratory ruling or written interpretative opinion may be later amended, rescinded or repealed, or determined by judicial or other authority to be invalid for any reason.

(c) The provisions of subsection (a) of this section are in addition to, and not an alternative to, other provisions of this chapter which authorize the Commissioner to issue orders or to take other action on account of a violation of this chapter.

(d) The provisions of subsection (a) of this section are in addition to, and not an alternative to, any criminal penalties that may be available under state and federal law.

(66 Del. Laws, c. 344 § 1.)

Part IV
Other Businesses Under Jurisdiction of State Banking Department
Chapter 34
PRENEED FUNERAL CONTRACTS

§ 3401 Definitions.

As used in this chapter, unless the context requires otherwise:

(1) "Commissioner" means the State Bank Commissioner.

(2) "Insured institution" means an insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c)(2)) or an insured credit union (as defined in the Federal Credit Union Act at 12 U.S.C. § 1752(7)) authorized by law to do business in this State.

(3) "Preneed burial contract" means a contract which has for a purpose the furnishing or performance of funeral services or the furnishing or delivery of personal property, merchandise or services of any nature in connection with the final disposition of a dead human body for future use at a time determinable by the death of the person whose body is to be disposed of, but does not mean the furnishing of a cemetery lot, mausoleum or memorial.

(24 Del. C. 1953 § 3120; 58 Del. Laws, c. 415 § 2; 63 Del. Laws, c. 145 § 1; 71 Del. Laws, c. 19 §§ 10, 11.)

§ 3402 Preneed payments and increment as trust funds; disbursement of funds; exceptions.

(a) All payments of money made to any person, partnership, association or corporation upon any agreement or contract, or any series or combination of agreements or contract, but not including the furnishing of cemetery lots or mausoleums, which has for a purpose the furnishing or performance of funeral services or the furnishing or delivery of personal property, merchandise or services of any nature in connection with the final disposition of a dead human body for future use at a time determinable by the death of the person whose body is to be disposed of, are held to be trust funds. The person, partnership, association or corporation receiving the payments is declared to be a trustee thereof and shall deposit all payments in a trust account with an insured institution. All of the interest, dividends, increases or accretions of whatever nature earned by the funds deposited in a trust account shall remain with the principal of such account and become a part thereof, subject to all of the regulations concerning the principal of said fund herein contained.

(b) Except where payment is made pursuant to § 3403 of this title or the trust is established in accordance with § 3404 of this title, all payments made under the agreement, contract or plan are and shall remain trust funds with the insured institution until the death of the person for whose service the funds were paid and until the delivery of all merchandise and full performance of all services called for by the agreement, contract or plan.

(c) Except as provided in § 3404 of this title, the funds shall not be paid by the insured institution until a certified statement is furnished to the insured institution setting forth that all of the terms and conditions of the agreement have been fully performed by the person, association, partnership, firm or corporation. Any balance remaining in the fund after payment for the merchandise and services as set forth in the agreement, contract or plan shall be paid to the estate of the beneficiary of the agreement, contract or plan.

(d) Subsection (a) of this section does not apply to contracts for funeral service or merchandise sold as burial insurance policies which are regulated by the Insurance Department of this State.

(24 Del. C. 1953 § 3121; 58 Del. Laws, c. 415 § 2; 63 Del. Laws, c. 145 § 1; 68 Del. Laws, c. 389 §§ 1, 2; 69 Del. Laws, c. 165 §§ 12, 13; 71 Del. Laws, c. 19 §§ 10, 12, 13.)

§ 3403 Revocable trust accounts; refund to persons making payments.

(a) Except as provided in § 3404 of this title, upon the giving of 15 days' written notice, any person, partnership or corporation who has paid funds for a preneed funeral service may demand a refund of the entire amount actually paid, together with all interest, dividends, increases or accretions of any kind whatsoever which have been earned on such funds.

(b) The insured institution shall be relieved from further liability, after making payment to the person making payment of said funds, to the trustee upon receipt of the foregoing written notice. Notice of payment of funds under this section shall be given by the insured institution to the trustee.

(24 Del. C. 1953 § 3122; 58 Del. Laws, c. 415 § 2; 63 Del. Laws, c. 145 § 1; 68 Del. Laws, c. 389 §§ 3, 4; 71 Del. Laws, c. 19 §§ 10, 14, 15.)

§ 3404 Irrevocable trust accounts.

(a) Any person, partnership or corporation who enters into a preneed funeral contract has the option, at any time, to establish an irrevocable trust for all funds or any portion of payments made or to be made under the agreement, contract or plan. At no time shall such funds exceed $15,000.

(b) The trust document establishing an irrevocable trust shall contain such specific provisions as the Commissioner may by regulation require.

(68 Del. Laws, c. 389 § 5; 70 Del. Laws, c. 310 § 1; 71 Del. Laws, c. 19 § 10; 76 Del. Laws, c. 36 § 2.)

§ 3405 Trust funds; how kept and deposited.

All trust funds mentioned in this chapter shall be deposited in the name of the trustee, as trustee, within 30 days after receipt thereof, with an insured institution and shall be held together with the interest, dividends or accretions thereon in trust subject to this chapter. The trustee at the time of making deposit or investment shall furnish to the insured institution the name of each payor and the amount of payment on each account for which the deposit or investment is being made.

(24 Del. C. 1953 § 3123; 58 Del. Laws, c. 415 § 2; 63 Del. Laws, c. 145 § 1; 68 Del. Laws, c. 389 § 5; 69 Del. Laws, c. 165 § 14; 71 Del. Laws, c. 19 §§ 10, 16.)

§ 3406 License to accept preneed contract required; fees.

(a) No person, firm, partnership, association or corporation may, without first securing from the Commissioner a license, accept or hold payments made on preneed burial contracts, except insured institutions as defined in § 3401 of this title. Application for a license shall be in writing, signed by the applicant and duly verified on forms furnished by the Commissioner. Each application shall contain at least the following:

The full name and address (both residence and place of business) of the applicant and every member, officer and director thereof if the applicant is a firm, partnership, association or corporation. Any license issued pursuant to the application shall be valid only at the address stated in the application for the applicant or at a new address approved by the Commissioner.

(b) Upon receipt of the application and payment of a license fee of $25, the Commissioner shall issue a license, unless the Commissioner determines that the applicant has made false statements or representations in the application, or is insolvent, or has conducted or is about to conduct business in a fraudulent manner, or is not duly authorized to transact business in this State.

(24 Del. C. 1953 § 3124; 58 Del. Laws, c. 415 § 2; 63 Del. Laws, c. 145 § 1; 68 Del. Laws, c. 389 § 5; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 19 §§ 10, 17.)

§ 3407 Records of licensee; requirements; inspection.

The licensee shall keep accurate accounts, books and records in this State of all transactions, copies of all agreements, dates and amounts of payments made and accepted thereon, the names and addresses of the contracting parties, the persons for whose benefit funds are accepted, and the names of the insured institutions in which the funds are deposited or invested. The licensee shall make all books and records pertaining to the trust funds available to the Commissioner for examination. The Commissioner may at any time investigate the books, records and accounts of the licensee with respect to its trust funds, and for that purpose may require the attendance of and examine under oath all persons whose testimony the Commissioner may require.

(24 Del. C. 1953 § 3125; 58 Del. Laws, c. 415 § 2; 63 Del. Laws, c. 145 § 1; 68 Del. Laws, c. 389 § 5; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 19 §§ 10, 18.)

§ 3408 Periodic report requirements.

A licensee shall file with the Commissioner such reports at such time as the Commissioner may require. Any reports required by the Commissioner under this section shall be in such form and shall contain such information as the Commissioner may specify.

(68 Del. Laws, c. 303 § 10; 71 Del. Laws, c. 19 § 10.)

§ 3409 State Bank Commissioner to enforce law and establish rules and regulations.

The Commissioner shall enforce this chapter and has the power to make investigations, subpoena witnesses, require audits and reports and conduct hearings as to violations of any provision, and to establish such rules and regulations as are necessary to carry out this chapter.

(24 Del. C. 1953 § 3127; 58 Del. Laws, c. 415 § 2; 63 Del. Laws, c. 145 § 1; 68 Del. Laws, c. 303 § 10; 68 Del. Laws, c. 389 § 5; 71 Del. Laws, c. 19 § 10.)

§ 3410 Penalty.

Any person wilfully violating this chapter shall be fined not less than $500 nor more than $1,000.

(24 Del. C. 1953 § 3126; 58 Del. Laws, c. 415 § 2; 63 Del. Laws, c. 145 § 1; 68 Del. Laws, c. 303 § 10; 68 Del. Laws, c. 389 § 5; 71 Del. Laws, c. 19 § 10.)

§ 3411 Surety bonds and irrevocable letters of credit.

(a) Surety bonds. —

(1) Every person licensed under this chapter shall file with the Commissioner, in a form satisfactory to the Commissioner, an original corporate surety bond with surety provided by a corporation authorized to transact business in this State, in the principal sum to be determined by the Commissioner. However, the bond amount may not be less than $50,000 nor more than $200,000. In determining the amount of the bond required for a licensee, the Commissioner shall consider, among other things:

a. The dollar value of the trust funds held by a licensee as a trustee under this chapter; and

b. Such other and further criteria as the Commissioner considers necessary and appropriate.

(2) A bond may not be accepted by the Commissioner unless all of the following requirements are satisfied:

a. The aggregate value of the bond must be equal to or greater than the amount determined by paragraph (a)(1) of this section.

b. The term of the bond must be commensurate with the license period or continuous.

c. The expiration date of the bond may not be earlier than midnight of the date on which the license issued under this chapter expires.

d. The bond must run to the State for the benefit of the Office of the State Bank Commissioner and for the benefit of all consumers injured by any wrongful act, omission, default, fraud, or misrepresentation by the licensee in the course of its activity as a licensee. Compensation under the bond must be for amounts which represent actual losses and may not be paid for claims made by business creditors, third-party service providers, agents, or persons otherwise in the employ of the licensee. Surety claims must be paid to the Office of the State Bank Commissioner by the insurer not later than 90 days after receipt of a claim. A claim paid after 90 days is subject to daily interest at the legal rate. The aggregate liability of the surety on the bond, exclusive of any interest which accrues for payments made after 90 days, may not exceed the amount of the bond.

(3) If a licensee changes its surety company or if its surety bond is otherwise amended, the licensee shall immediately provide the Commissioner with the amended original copy of the surety bond. Cancellation of an existing bond by a surety is not effective unless written notice of its intention to cancel is filed with the Commissioner at least 30 days before the date on which cancellation is scheduled to take effect.

(4) The Commissioner may require potential claimants to provide documentation and affirmations that the Commissioner determines are necessary and appropriate. If the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

(5) When a surety company receives a claim against the bond of a licensee, the surety company shall immediately notify the Commissioner and may not pay any claim until it receives notice to do so from the Commissioner.

(6) The Commissioner has 2 calendar years after the effective date of cancellation or termination of a surety bond by an insurer to submit claims to the insurer.

(b) In lieu of requiring the filing of a surety bond pursuant to subsection (a) of this section, the Commissioner may, at the Commissioner's discretion, accept an irrevocable letter of credit from a licensee.

(1) An irrevocable letter of credit must be provided by an insured depository institution as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c) and acceptable to the Commissioner, in a form satisfactory to the Commissioner, in the principal sum to be determined by the Commissioner. However, the irrevocable letter of credit amount may not be less than $50,000 nor more than $200,000. In determining the amount of the irrevocable letter of credit required for a licensee, the Commissioner shall consider, among other things:

a. The dollar value of the trust funds held by a licensee as a trustee under this chapter; and

b. Such other and further criteria as the Commissioner considers necessary and appropriate.

(2) An irrevocable letter of credit may not be accepted by the Commissioner unless all of the following requirements are satisfied:

a. The aggregate value of the irrevocable letter of credit must be equal to or greater than the amount determined by paragraph (b)(1) of this section.

b. The irrevocable letter of credit must run to the State for the benefit of the Office of the State Bank Commissioner and for the benefit of all consumers injured by any wrongful act, omission, default, fraud, or misrepresentation by the licensee in the course of its activity as a licensee. Compensation under the irrevocable letter of credit must be for amounts which represent actual losses and may not be paid for claims made by business creditors, third-party service providers, agents, or persons otherwise in the employ of the licensee. The aggregate liability of the insured depository institution issuing the irrevocable letter of credit may not exceed the amount of the irrevocable letter of credit.

c. Draws upon irrevocable letters of credit must be available by sight drafts thereunder, in amounts determined by the Commissioner, up to the aggregate amount of the irrevocable letter of credit. Sight drafts must be honored in accordance with § 5-108 of Title 6 (issuer's rights and obligations).

(3) The Commissioner may require potential claimants to provide documentation and affirmations that the Commissioner determines are necessary and appropriate. If the Commissioner determines that multiple consumers have been injured by a licensee, the Commissioner shall cause a notice to be published for the purpose of identifying all relevant claims.

(4) The Commissioner may refuse release of an irrevocable letter of credit following the surrender of a license, up to 2 years after the effective date of licensure termination.

(76 Del. Laws, c. 36 § 1; 70 Del. Laws, c. 186 § 1.)

Part V
Miscellaneous Provisions
Chapter 50
PAYMENT NETWORKS

§ 5001 "Payment network" defined.

The term "payment network" as used in this chapter means a nonstock member corporation incorporated under Title 8 which has 50 percent or more of its members organized as:

(1) Banks, thrifts, credit unions or other financial institutions, under the laws of this State, any other state, the laws of a foreign country, the United States of America, a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands; or

(2) Organizations whose direct or indirect owners or members are financial institutions described in paragraph (1) of this section above, and which has as its principal business the provision of payment network services.

(75 Del. Laws, c. 233 § 1.)

§ 5002 Voting rights of members and selection of governing body.

Notwithstanding any other provision of the laws of this State contained in Title 8 or elsewhere:

(1) Unless otherwise provided in the certificate of incorporation of a payment network, or, if the certificate of incorporation so provides, in its bylaws, each member shall be entitled at every meeting of members to 1 vote in person or by proxy;

(2) The election, appointment or designation of the members of the governing body of a payment network, including the voting rights of members and rights of persons other than members with respect to election, appointment or designation of the members of the governing body, shall be as provided in its bylaws, its certificate of incorporation, or both; and

(3) Any member action or corporate action with respect to the election, appointment or designation of the members of the governing body of a payment network from and after its date of incorporation taken pursuant to the provisions of its bylaws, its certificate of incorporation, or both, shall be deemed as having been taken under and shall be governed by this section.

(75 Del. Laws, c. 233 § 1.)

§ 5003 Regulatory authority not created.

This chapter shall not subject a payment network not otherwise regulated by the State Bank Commissioner to any regulation by the State Bank Commissioner.

(75 Del. Laws, c. 233 § 1.)