

House Bill 898

By: Representatives Ehrhart of the 36th, Morris of the 155th, and Harden of the 28th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance,
2 so as to enact the "Georgia Merchant Acquirer Limited Purpose Bank Act"; to provide for
3 definitions; to provide for organization and control of merchant acquirer limited purpose
4 banks; to provide for the promulgation of rules and regulations; to prohibit certain fees; to
5 provide for requirements for articles of incorporation by merchant acquirer limited purpose
6 banks; to provide for a registered agent requirement; to provide for applicable fees; to
7 provide for a procedure for application approval and denial; to provide for the issuance and
8 effect of certificates of incorporation; to provide for liability for conducting business as a
9 merchant acquirer limited purpose bank without department approval; to provide for
10 minimum requirements to operate as a merchant acquirer limited purpose bank; to provide
11 for permissible activities of a merchant acquirer limited purpose bank; to provide for
12 enforcement of rules and regulations; to provide for related matters; to repeal conflicting
13 laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 **SECTION 1.**

16 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is
17 amended by adding a new Chapter 9 to read as follows:

18 "CHAPTER 9

19 7-9-1.

20 This chapter shall be known and may be cited as the 'Georgia Merchant Acquirer Limited
21 Purpose Bank Act.'

22 7-9-2.

23 As used in this chapter, the term:

- 24 (1) 'Commissioner' means the commissioner of banking and finance.
- 25 (2) 'Corporation' means a corporation, whether profit or nonprofit, and includes a
 26 professional corporation or joint-stock association, organized under the laws of this state,
 27 the United States, or any other state, territory, or dependency of the United States or
 28 under the laws of a foreign country.
- 29 (3) 'Department' means the Department of Banking and Finance.
- 30 (4) 'Eligible organization' means a corporation, limited liability company, partnership,
 31 or other entity, including an affiliate of a merchant acquirer limited purpose bank, that at
 32 all times maintains an office in the State of Georgia at which it or its parent, affiliates, or
 33 subsidiaries employ at least 250 persons residing in this state who are directly or
 34 indirectly engaged in merchant acquiring activities or settlement activities, including
 35 providing the following services related to merchant acquiring activities or settlement
 36 activities, either for the eligible organization or on behalf of other domestic or foreign
 37 corporations, limited liability companies, partnerships, or other entities, including, but not
 38 limited to, merchant acquirer limited purpose banks:
- 39 (A) Administrative support;
- 40 (B) Information technology support;
- 41 (C) Financial support;
- 42 (D) Tax and finance support; and
- 43 (E) Any other product or service that is necessary, convenient, or incidental for the
 44 merchant acquirer limited purpose bank to operate.
- 45 (5) 'Holding company' means any company that controls a merchant acquirer limited
 46 purpose bank. For purposes of this paragraph, the terms 'company' and 'control' shall
 47 have the meanings set forth in Code Section 7-1-605.
- 48 (6) 'Merchant acquirer limited purpose bank' means a corporation or limited liability
 49 company organized under this chapter and the activities of which are limited to those
 50 permitted under Code Section 7-9-13.
- 51 (7) 'Merchant acquiring activities' means the various activities associated with effecting
 52 transactions within payment card networks, including, but not limited to, obtaining and
 53 maintaining membership in one or more payment card networks; signing up and
 54 underwriting merchants to accept payment card network branded payment cards;
 55 providing the means to authorize valid card transactions at client merchant locations;
 56 facilitating the clearing and settlement of the transactions through a payment card
 57 network; providing access to one or more payment card networks to merchant acquirer
 58 limited purpose bank affiliates, customers, or customers of its affiliates; sponsoring the
 59 participation of merchant acquirer limited purpose bank affiliates, customers, or
 60 customers of its affiliates in one or more payment card networks; and conducting such

61 other activities as may be necessary, convenient, or incidental to effecting transactions
62 within payment card networks.

63 (8) 'Payment card network' means any organization, group, system, or other collection
64 of individuals or entities that is organized to allow participants to accept or make
65 payments for goods or services using a credit card, debit card, or any other payment
66 device.

67 (9) 'Settlement activities' means the processing of payment card transactions to send to
68 a payment card network for processing, to make payments to a merchant, and, ultimately,
69 for cardholder billing.

70 7-9-3.

71 (a) Subject to the provisions of this chapter and to the approval of the commissioner, any
72 domestic or foreign corporation or limited liability company may organize, own, and
73 control a merchant acquirer limited purpose bank. This chapter does not create an
74 obligation for entities performing merchant acquiring services and settlement services to
75 be chartered by the department, and the department shall have no authority to regulate such
76 entities not organized as merchant acquirer limited purpose banks.

77 (b) In connection with the application to organize, or to own and control a merchant
78 acquirer limited purpose bank, the applicant shall pay applicable fees established by
79 regulation of the department to defray the costs of the investigation and review of the
80 application.

81 (c) The merchant acquirer limited purpose bank shall have, within one year after the date
82 it commences operations, no fewer than 50 employees located in this state devoted to
83 merchant acquiring activities; provided, however, a merchant acquirer limited purpose
84 bank may contract with an eligible organization for the performance of merchant acquiring
85 activities, settlement activities, or any of the other services identified in paragraph (4) of
86 Code Section 7-9-2, and when a merchant acquirer limited purpose bank enters into such
87 contracts with an eligible organization for merchant acquiring activities, settlement
88 activities, or any other services identified in paragraph (4) of Code Section 7-9-2, the
89 minimum number of employees in this state shall be determined by the commissioner at
90 a level to assure the continued and substantive presence of the merchant acquirer limited
91 purpose bank in this state for the purpose of conducting its corporate affairs and operations.
92 If a merchant acquirer limited purpose bank contracts with an eligible organization that is
93 an affiliate of the merchant acquirer limited purpose bank, the commissioner shall consider
94 the eligible organization's or its parent's, affiliates', or subsidiaries' employees engaged on
95 behalf of the merchant acquirer limited purpose bank as employees of the merchant
96 acquirer limited purpose bank for purposes of complying with this subsection.

97 7-9-4.

98 (a) Subject to the requirements and restrictions of this chapter, a merchant acquirer limited
99 purpose bank may organize as a limited liability company pursuant to Chapter 11 of Title
100 14.

101 (b) The department shall have the authority to promulgate rules and regulations in
102 accordance with Code Section 7-1-3 specifying the conditions under which a merchant
103 acquirer limited purpose bank may organize as a limited liability company.

104 (c) To the extent the provisions of Chapter 11 of Title 14 are consistent with and not in
105 conflict with the provisions of this chapter and the rules and regulations of the department,
106 the provisions of Chapter 11 of Title 14 shall apply to a merchant acquirer limited purpose
107 bank that has organized as a limited liability company.

108 7-9-5.

109 (a) A merchant acquirer limited purpose bank shall not pay any fee, compensation, or
110 commission for promotion in connection with its organization or apply any money received
111 on account of shares or subscriptions, selling shares, or other services in connection with
112 its organization, except legal fees, commissions, or fees to disinterested third parties for
113 sale of securities to others, and other usual and ordinary expenses necessary for its
114 organization.

115 (b) The applicant shall file with the department at the time of filing of the articles of
116 incorporation an affidavit:

117 (1) Setting forth all expenses incurred or to be incurred in connection with the
118 organization of the merchant acquirer limited purpose bank, subscription for its shares,
119 and sale of its shares; and

120 (2) Stating that no fee, compensation, or commission prohibited by subsection (a) of this
121 Code section has been paid or incurred.

122 (c) In the event of a violation of this Code section, the department may disapprove the
123 articles of incorporation on account of such violation.

124 7-9-6.

125 (a) The articles of incorporation of a merchant acquirer limited purpose bank shall be
126 signed by the incorporator and shall set forth in the English language:

127 (1) The name of the merchant acquirer limited purpose bank;

128 (2) The street address and county where the main office will be located;

129 (3) The name of the initial registered agent;

130 (4) The street address where its initial registered office will be located;

131 (5) A statement that "This corporation is subject to the "Georgia Merchant Acquirer
 132 Limited Purpose Bank Act";

133 (6) The aggregate number of shares which the merchant acquirer limited purpose bank
 134 shall have authority to issue, and:

135 (A) If the shares are to consist of one class only, the par value of each of the shares; or
 136 (B) If the shares are to be divided into classes, the number of shares of each class, the
 137 par value of each share of each class, a description of each class, and a statement of the
 138 preferences, redemption provisions, qualifications, limitations, restrictions, and the
 139 special or relative rights granted to or imposed upon the shares of each class;

140 (7) The term for which the merchant acquirer limited purpose bank is to exist, which
 141 shall be perpetual unless otherwise limited; and

142 (8) Any provision not inconsistent with law which the incorporators may choose to
 143 include for the regulation of the internal affairs and business of the merchant acquirer
 144 limited purpose bank.

145 (b) It shall not be necessary to set forth in the articles of incorporation any of the corporate
 146 or operational powers set forth in this chapter.

147 (c) The applicant shall file with the department, in triplicate, the articles of incorporation,
 148 together with any fee required by the department. Such filing shall constitute an
 149 application for a certificate of incorporation. Immediately upon the filing of the articles of
 150 incorporation, the department shall certify one copy thereof and return it to the applicant,
 151 who shall, in conformity with Code Section 7-1-7 and on the next business day following
 152 the filing of the articles, transmit for publication in the newspaper which is the official
 153 organ of the county where the merchant acquirer limited purpose bank will be located a
 154 copy of the articles or, in lieu thereof, a statement that reads substantially as follows:

155 'An application for a certificate of incorporation of a merchant acquirer limited purpose
 156 bank to be known as the _____ and to be located at _____
 157 in _____ County, Georgia, will be made to the Secretary of State of Georgia in
 158 accordance with Chapter 9 of Title 7 of the Official Code of Georgia Annotated, known
 159 as the "Georgia Merchant Acquirer Limited Purpose Bank Act." A copy of the articles
 160 of incorporation of the proposed merchant acquirer limited purpose bank and the
 161 application have been filed with the Department of Banking and Finance.'

162 The articles of incorporation or the statement must be published once a week for two
 163 consecutive weeks with the first publication occurring within ten days of receipt by the
 164 newspaper of the articles of incorporation or statement.

165 (d) Each merchant acquirer limited purpose bank shall name a registered agent and inform
 166 the department and the Secretary of State of its current registered agent.

167 7-9-7.

168 An application to the department to organize or to own or control a merchant acquirer
 169 limited purpose bank shall include:

170 (1) Any information desired by the department in order to evaluate the proposed
 171 institution which shall be made available in the form specified by the department;

172 (2) The affidavit required by Code Section 7-9-5;

173 (3) A certificate of the Secretary of State showing that the proposed name of the
 174 merchant acquirer limited purpose bank has been reserved pursuant to Code Section
 175 7-1-131; and

176 (4) Applicable fees established by regulation of the department to defray the expense of
 177 the investigation required by Code Section 7-9-8.

178 7-9-8.

179 (a)(1) Upon receipt of the articles of incorporation and the filings and fees from the
 180 applicant as required under this chapter, the department shall conduct such investigation
 181 as it may deem necessary to ascertain whether it should approve the proposed merchant
 182 acquirer limited purpose bank. The department shall approve the merchant acquirer limited
 183 purpose bank if it determines in its discretion that:

184 (A) The articles of incorporation and supporting items satisfy the requirements of this
 185 chapter;

186 (B) The character and fitness of the applicant, directors, and proposed officers are such
 187 as to warrant the belief that the business of the proposed merchant acquirer limited
 188 purpose bank will be honestly and efficiently conducted;

189 (C) There has not been any material violation of Code Section 7-9-5, so that approving
 190 the articles of incorporation would, in the opinion of the department, impair the policy
 191 manifested by that provision; and

192 (D) The capital structure of the merchant acquirer limited purpose bank is adequate in
 193 relation to the amount and character of the anticipated business of the merchant acquirer
 194 limited purpose bank.

195 (2) Within 90 days after receipt of the articles of incorporation and the filings and fees
 196 from the applicant as required by Code Sections 7-9-3 and 7-9-7, the department shall
 197 approve or disapprove the proposed merchant acquirer limited purpose bank. The
 198 department may impose conditions to be satisfied prior to the issuance of its approval of
 199 a merchant acquirer limited purpose bank. If the department, in its discretion, approves
 200 the proposed merchant acquirer limited purpose bank with or without conditions, it shall
 201 deliver its written approval of the articles of incorporation to the Secretary of State and
 202 notify the applicant of its action. If the department, in its discretion, disapproves the

203 proposed merchant acquirer limited purpose bank, it shall notify the applicant of its
 204 disapproval and state generally the unfavorable factors influencing its decision. The
 205 decision of the department shall be conclusive, except that it may be subject to judicial
 206 review as provided in Code Section 7-1-90.

207 (b) In the event the department denies an application to organize or to own or control a
 208 merchant acquirer limited purpose bank, the applicant may submit a new application at any
 209 time following notice of final denial. The applicant shall not be prejudiced by any prior
 210 denials by the department.

211 7-9-9.

212 The Secretary of State shall immediately issue a certificate of incorporation to a proposed
 213 merchant acquirer limited purpose bank upon submission of:

214 (1) Written approval of the department with a copy of the articles of incorporation
 215 attached;

216 (2) An affidavit executed by the duly authorized agent or publisher of a newspaper
 217 swearing that the articles of incorporation or a summary statement publication as
 218 provided for in Code Section 7-9-6 have been published; and

219 (3) All required fees and charges required by law

220 so long as name of the proposed merchant acquirer limited purpose bank continues to be
 221 reserved or is available. The Secretary of State shall retain on file a copy of the certificate,
 222 the articles of incorporation, the department's approval, and the publisher's certificate.

223 7-9-10.

224 (a) The corporate existence of the merchant acquirer limited purpose bank shall begin
 225 upon the issuance of a certificate of incorporation by the Secretary of State. Those persons
 226 who subscribed for shares prior to filing of the articles, or their assignees, shall be
 227 shareholders in the merchant acquirer limited purpose bank. The department shall have full
 228 authority to regulate and supervise the activities of promoters, incorporators, subscribers
 229 for shares, and all persons soliciting offers to subscribe for shares in any merchant acquirer
 230 limited purpose bank established under this chapter. Any entity in the process of seeking
 231 approval as a merchant acquirer limited purpose bank shall be classified as a merchant
 232 acquirer limited purpose bank in formation and persons named in the articles of
 233 incorporation or approved by the department as initial directors of such entity shall not be
 234 considered 'agents' or 'broker-dealers' as defined in Code Section 10-5-2.

235 (b) A certificate of incorporation shall be conclusive evidence that a merchant acquirer
 236 limited purpose bank has been incorporated; however, the state may institute proceedings

237 to dissolve, wind up, and terminate a merchant acquirer limited purpose bank in conformity
238 with Code Section 7-1-92 and applicable provisions of this chapter.

239 (c) A license to begin business shall be issued to a merchant acquirer limited purpose bank
240 by the department when:

241 (1) Capital stock of the merchant acquirer limited purpose bank satisfies the
242 requirements of Code Section 7-9-12;

243 (2) Bylaws of the merchant acquirer limited purpose bank have been filed with the
244 department;

245 (3) A registered agent and registered office for the merchant acquirer limited purpose
246 bank has been designated in conformity with Code Section 7-1-132;

247 (4) The merchant acquirer limited purpose bank has been organized and is ready to begin
248 the business for which it was incorporated;

249 (5) All conditions imposed by the department in giving its approval of the proposed
250 merchant acquirer limited purpose bank under this chapter have been satisfied; and

251 (6) The department has received an affidavit attesting that the requirements of this
252 subsection have been satisfied signed by the president or secretary and at least a majority
253 of the directors of the merchant acquirer limited purpose bank.

254 7-9-11.

255 The applicant and other persons who organize a merchant acquirer limited purpose bank
256 which transacts business before its capital stock have been paid in as required by Code
257 Section 7-9-10 shall be jointly and severally liable to creditors for the amounts not paid in
258 by subscribers or any other deficiencies. Such liability shall be deemed an asset of the
259 merchant acquirer limited purpose bank and may be enforced by it, its successors or
260 assignees, by a shareholder suing derivatively, or by a receiver appointed by the
261 department.

262 7-9-12.

263 A merchant acquirer limited purpose bank shall at all times maintain capital stock and
264 paid-in surplus as required by regulatory policies of the department but in no event less
265 than \$2 million.

266 7-9-13.

267 (a) A merchant acquirer limited purpose bank may accept savings or time deposits of not
268 less than \$500,000.00; provided, however, that a merchant acquirer limited purpose bank
269 shall not operate in a manner that is likely to attract depositors from the general public, and

270 no deposit may be withdrawn by the depositor by check or similar means for payment to
271 third parties or others.

272 (b) A merchant acquirer limited purpose bank shall conduct its deposit-taking activities
273 only from a single location within this state.

274 (c) A merchant acquirer limited purpose bank may apply to receive deposit insurance from
275 the Federal Deposit Insurance Corporation or its successor agency. If a merchant acquirer
276 limited purpose bank does not obtain deposit insurance, it shall:

277 (1) Display a conspicuous sign at each place where deposits are accepted that clearly
278 states that deposits are not insured by the Federal Deposit Insurance Corporation, the
279 department, or their successor agencies;

280 (2) Include in boldface, conspicuous type on each signature card, passbook, and
281 instrument evidencing a deposit the following statement:

282 'This deposit is not insured by the Federal Deposit Insurance Corporation or the Georgia
283 Department of Banking and Finance';

284 (3) Require each depositor to execute a statement that acknowledges the initial deposit
285 and all future deposits are not insured by the Federal Deposit Insurance Corporation or
286 its successor agency. The merchant acquirer limited purpose bank shall retain such
287 acknowledgment so long as the depositor maintains any deposit with the merchant
288 acquirer limited purpose bank; and

289 (4) Include on all of its deposit-related materials a conspicuous statement that deposits
290 are not insured by the Federal Deposit Insurance Corporation, the department, or their
291 successor agencies.

292 (d) Notwithstanding subsection (a) of this Code section, the business conducted by a
293 merchant acquirer limited purpose bank shall be merchant acquiring activities.

294 7-9-14.

295 (a) All merchant acquirer limited purpose banks organized and licensed by the department
296 shall be subject to supervision, regulation, and examination by the department, including,
297 but not limited to, the examination powers as provided in Code Section 7-1-64, and the
298 department shall have all enforcement powers provided in this title. The licensed merchant
299 acquirer limited purpose bank shall reimburse the department to defray the costs incurred
300 by the department in conducting its examination of the merchant acquirer limited purpose
301 bank.

302 (b) In the event any licensed merchant acquirer limited purpose bank does not conduct its
303 activities within the limitations provided in Code Section 7-9-13, the department may
304 require such merchant acquirer limited purpose bank to cease all unauthorized activities.

305 In the event such licensed merchant acquirer limited purpose bank fails to abide by such
306 order, the department may:

307 (1) Impose upon the licensed merchant acquirer limited purpose bank or its parent
308 holding company a penalty of up to \$10,000.00 per day for each day such order is
309 violated; and

310 (2) Require divestiture of such licensed merchant acquirer limited purpose bank by any
311 holding company not qualified to acquire such licensed merchant acquirer limited
312 purpose bank on the date it ceased to operate within the limitations imposed by Code
313 Section 7-9-13 and became a bank for purposes of this title.

314 (c) The department shall have the power to promulgate rules and regulations implementing
315 the provisions of this chapter."

316 **SECTION 2.**

317 All laws and parts of laws in conflict with this Act are repealed.