

The House Committee on Banks and Banking offers the following substitute to HB 898:

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 provide for requirements
5 for articles of incorporation by merchant acquirer limited purpose banks; to provide for a
6 registered agent requirement; to provide for applicable fees; to provide for a procedure for
7 application approval and denial; to provide for the issuance and effect of certificates of
8 incorporation; to provide for liability for conducting business as a merchant acquirer limited
9 purpose bank without department approval; to provide for minimum requirements to operate
10 as a merchant acquirer limited purpose bank; to provide for permissible activities of a
11 merchant acquirer limited purpose bank; to provide for enforcement of rules and regulations;
12 to provide for related matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 SECTION 1.

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

17 CHAPTER 9

18 7-9-1.

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

21 7-9-2.

22 As used in this chapter, the term:

23 (1) 'Commissioner' means the commissioner of banking and finance.

24 (2) 'Corporation' means a corporation, whether profit or nonprofit, and includes a
25 professional corporation or joint-stock association, organized under the laws of this state,
26 the United States, or any other state, territory, or dependency of the United States or
27 under the laws of a foreign country.

28 (3) 'Department' means the Department of Banking and Finance.

29 (4) 'Eligible organization' means a corporation, limited liability company, partnership,
30 or other entity, including an affiliate of a merchant acquirer limited purpose bank, that at
31 all times maintains an office in the State of Georgia at which it or its parent, affiliates, or
32 subsidiaries employ at least 250 persons residing in this state who are directly or
33 indirectly engaged in merchant acquiring activities or settlement activities, including
34 providing the following services related to merchant acquiring activities or settlement
35 activities, either for the eligible organization or on behalf of other domestic or foreign
36 corporations, limited liability companies, partnerships, or other entities, including, but not
37 limited to, merchant acquirer limited purpose banks:

38 (A) Administrative support;

39 (B) Information technology support;

40 (C) Financial support; and

41 (D) Tax and finance support.

42 (5) 'Holding company' means any company that controls a merchant acquirer limited
43 purpose bank. For purposes of this paragraph, the terms 'company' and 'control' shall
44 have the meanings set forth in Code Section 7-1-605.

45 (6) 'Merchant acquirer limited purpose bank' means a corporation chartered under this
46 chapter and the activities of which are limited to those permitted under Code Section
47 7-9-11.

48 (7) 'Merchant acquiring activities' means the various activities associated with effecting
49 transactions within payment card networks, including obtaining and maintaining
50 membership in one or more payment card networks; signing up and underwriting
51 merchants to accept payment card network branded payment cards; providing the means
52 to authorize valid card transactions at client merchant locations; facilitating the clearing
53 and settlement of the transactions through a payment card network; providing access to
54 one or more payment card networks to merchant acquirer limited purpose bank affiliates,
55 customers, or customers of its affiliates; sponsoring the participation of merchant acquirer
56 limited purpose bank affiliates, customers, or customers of its affiliates in one or more
57 payment card networks; and conducting such other activities as may be necessary,
58 convenient, or incidental to effecting transactions within payment card networks.

59 (8) 'Payment card network' means any organization, group, system, or other collection
60 of individuals or entities that is organized to allow participants to accept or make

61 payments for goods or services using a credit card, debit card, or any other payment
62 device.

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

66 7-9-3.

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

73 (b) In connection with the application to charter, or to own and control a merchant acquirer
74 limited purpose bank, the applicant shall pay applicable fees established by regulation of
75 the department to defray the costs of the investigation and review of the application.

76 (c) The department shall, by regulation, prescribe annual examination fees, charter fees,
77 registration fees, and supervision fees to be paid by each merchant acquirer limited purpose
78 bank. In addition, the department may, by regulation, prescribe reasonable application and
79 related fees, special investigation fees, hearing fees, and fees to provide copies of any book,
80 account, report, or other paper filed in its office or for any certification thereof or for
81 processing any papers as required by this title. The department, in its discretion, may
82 require the payment of such fees in any manner deemed to be efficient, including collection
83 through automated clearing-house arrangements or other electronic means, so that the state
84 receives funds no later than the date the payment is required to be made.

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

97 an affiliate of the merchant acquirer limited purpose bank, the commissioner shall consider
 98 the eligible organization's or its parent's, affiliates', or subsidiaries' employees engaged on
 99 behalf of the merchant acquirer limited purpose bank as employees of the merchant
 100 acquirer limited purpose bank for purposes of complying with this subsection.

101 7-9-4.

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

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

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

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

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

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

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

112 (A) If the shares are to consist of one class only, the par value of each of the shares; or

113 (B) If the shares are to be divided into classes, the number of shares of each class, the
 114 par value of each share of each class, a description of each class, and a statement of the
 115 preferences, redemption provisions, qualifications, limitations, restrictions, and the
 116 special or relative rights granted to or imposed upon the shares of each class;

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

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

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

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

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

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

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

144 7-9-5.

145 An application to the department to charter or to own or control a merchant acquirer limited
 146 purpose bank shall include:

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

149 (2) A certificate of the Secretary of State showing that the proposed name of the
 150 merchant acquirer limited purpose bank has been reserved pursuant to Code Section
 151 7-1-131; and

152 (3) Applicable fees established by regulation of the department to defray the expense of
 153 the investigation required by Code Section 7-9-6.

154 7-9-6.

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

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

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

165 (C) The capital structure of the merchant acquirer limited purpose bank is adequate
 166 in relation to the amount and character of the anticipated business of the merchant
 167 acquirer limited purpose bank.

168 (2) Within 90 days after receipt of the articles of incorporation and the filings and fees
 169 from the applicant as required by Code Sections 7-9-3 and 7-9-5, the department shall
 170 approve or disapprove the proposed merchant acquirer limited purpose bank. The
 171 department may impose conditions to be satisfied prior to the issuance of its approval of
 172 a merchant acquirer limited purpose bank. If the department, in its discretion, approves
 173 the proposed merchant acquirer limited purpose bank with or without conditions, it shall
 174 deliver its written approval of the articles of incorporation to the Secretary of State and
 175 notify the applicant of its action. If the department, in its discretion, disapproves the
 176 proposed merchant acquirer limited purpose bank, it shall notify the applicant of its
 177 disapproval and state generally the unfavorable factors influencing its decision. The
 178 decision of the department shall be conclusive, except that it may be subject to judicial
 179 review as provided in Code Section 7-1-90.

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

184 7-9-7.

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

187 (1) Written approval of the department with a copy of the articles of incorporation
 188 attached;

189 (2) An affidavit executed by the duly authorized agent or publisher of a newspaper
 190 swearing that the articles of incorporation or a summary statement publication as
 191 provided for in Code Section 7-9-4 have been published; and

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

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

196 7-9-8.

197 (a) The corporate existence of the merchant acquirer limited purpose bank shall begin
 198 upon the issuance of a certificate of incorporation by the Secretary of State. Those persons
 199 who subscribed for shares prior to filing of the articles, or their assignees, shall be

200 shareholders in the merchant acquirer limited purpose bank. The department shall have full
 201 authority to regulate and supervise the activities of promoters, incorporators, subscribers
 202 for shares, and all persons soliciting offers to subscribe for shares in any merchant acquirer
 203 limited purpose bank established under this chapter. Any entity in the process of seeking
 204 approval as a merchant acquirer limited purpose bank shall be classified as a merchant
 205 acquirer limited purpose bank in formation and persons named in the articles of
 206 incorporation or approved by the department as initial directors of such entity shall not be
 207 considered 'agents' or 'broker-dealers' as defined in Code Section 10-5-2.

208 (b) A certificate of incorporation shall be conclusive evidence that a merchant acquirer
 209 limited purpose bank has been incorporated; however, the state may institute proceedings
 210 to dissolve, wind up, and terminate a merchant acquirer limited purpose bank in conformity
 211 with Code Section 7-1-92 and applicable provisions of this chapter.

212 (c) A charter to begin business shall be issued to a merchant acquirer limited purpose bank
 213 by the department when:

214 (1) Capital stock of the merchant acquirer limited purpose bank satisfies the
 215 requirements of Code Section 7-9-10;

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

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

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

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

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

227 7-9-9.

228 The applicant and other persons who charter a merchant acquirer limited purpose bank
 229 which transacts business before its capital stock have been paid in as required by Code
 230 Section 7-9-8 shall be jointly and severally liable to creditors for the amounts not paid in
 231 by subscribers or any other deficiencies. Such liability shall be deemed an asset of the
 232 merchant acquirer limited purpose bank and may be enforced by it, its successors or
 233 assignees, by a shareholder suing derivatively, or by a receiver appointed by the
 234 department.

235 7-9-10.

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

239 7-9-11.

240 (a) A merchant acquirer limited purpose bank may only accept deposits from a
241 corporation, limited liability company, partnership, or other entity that owns a majority of
242 the shares of the merchant acquirer limited purpose bank. A merchant acquirer limited
243 purpose bank shall not operate in a manner that attracts depositors from the general public,
244 and no deposit may be withdrawn by the depositor by check or similar means for payment
245 to third parties or others. A merchant acquirer limited purpose bank may not accept
246 'brokered deposits' as that term is defined in the Federal Deposit Insurance Act as such
247 existed on January 1, 2012, or the regulations adopted by the Federal Deposit Insurance
248 Corporation in force and effect on January 1, 2012.

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

251 (c) A merchant acquirer limited purpose bank may apply to receive deposit insurance from
252 the Federal Deposit Insurance Corporation or its successor agency.

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

255 7-9-12.

256 (a) All merchant acquirer limited purpose banks chartered by the department shall be
257 subject to supervision, regulation, and examination by the department, including, but not
258 limited to, the examination powers as provided in Code Sections 7-1-64 through 7-1-73,
259 and the department shall have all enforcement powers provided in this title.

260 (b) In the event any chartered merchant acquirer limited purpose bank does not conduct
261 its activities within the limitations provided in Code Section 7-9-11, the department may
262 require such merchant acquirer limited purpose bank to cease all unauthorized activities.
263 In the event such chartered merchant acquirer limited purpose bank fails to abide by such
264 order, the department may:

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

268 (2) Require divestiture of such chartered merchant acquirer limited purpose bank by any
269 holding company not qualified to acquire such chartered merchant acquirer limited

270 purpose bank on the date it ceased to operate within the limitations imposed by Code
271 Section 7-9-11 and became a bank for purposes of this title.
272 (c) The department shall have the power to promulgate rules and regulations implementing
273 the provisions of this chapter."

274

SECTION 2.

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