

The Senate Banking and Financial Institutions Committee offered 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 provide for an effective date; to repeal conflicting laws; and  
13 for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**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

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 organized under the laws of this state, the United  
26 States, or any other state, territory, or dependency of the United States or under the laws  
27 of a foreign country.
- 28 (3) 'Department' means the Department of Banking and Finance.
- 29 (4) 'Eligible organization' means a corporation that at all times maintains an office in the  
30 State of Georgia at which it or its parent, affiliates, or subsidiaries employ at least 250  
31 persons residing in this state who are directly or indirectly engaged in merchant acquiring  
32 activities or settlement activities, including providing the following services related to  
33 merchant acquiring activities or settlement activities, either for the eligible organization  
34 or on behalf of others:
- 35 (A) Administrative support;
- 36 (B) Information technology support;
- 37 (C) Financial support; and
- 38 (D) Tax and finance support.
- 39 (5) 'Holding company' means any company that controls a merchant acquirer limited  
40 purpose bank. For purposes of this paragraph, the terms 'company' and 'control' shall  
41 have the meanings set forth in Code Section 7-1-605.
- 42 (6) 'Merchant' means an individual or entity authorized by a payment card network to  
43 accept payments in exchange for goods or services.
- 44 (7) 'Merchant acquirer limited purpose bank' means a corporation organized under this  
45 chapter and the activities of which are limited to those permitted under Code Section  
46 7-9-11.
- 47 (8) 'Merchant acquiring activities' means the various activities associated with effecting  
48 transactions within payment card networks, including obtaining and maintaining  
49 membership in one or more payment card networks; signing up and underwriting  
50 merchants to accept payment card network branded payment cards; providing the means  
51 to authorize valid card transactions at client merchant locations; facilitating the clearing  
52 and settlement of the transactions through a payment card network; providing access to  
53 one or more payment card networks to merchant acquirer limited purpose bank affiliates,  
54 customers, or customers of its affiliates; sponsoring the participation of merchant acquirer  
55 limited purpose bank affiliates, customers, or customers of its affiliates in one or more  
56 payment card networks; and conducting such other activities as may be necessary,  
57 convenient, or incidental to effecting transactions within payment card networks.
- 58 (9) 'Payment card network' means any organization, group, system, or other collection  
59 of individuals or entities that is organized to allow participants to accept or make

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

62 (10) 'Self-acquiring activities' means the act of a merchant, for itself or through an  
63 affiliated entity, engaging in merchant acquiring or settlement activities on its own behalf  
64 for payments it, or its affiliated entity, receives for goods and services it, or its affiliated  
65 entity, provides to consumers.

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

69 7-9-3.

70 A corporation that performs merchant acquiring activities or settlement activities in this  
71 state may elect to obtain a charter from the department. Those corporations chartered by  
72 the department shall be subject to the provisions of this chapter and any rules and  
73 regulations adopted by the department for purposes of regulating chartered merchant  
74 acquirer limited purpose banks. The department shall have no authority to regulate a  
75 corporation performing merchant acquiring activities or settlement activities that has not  
76 been chartered by the department.

77 7-9-4.

78 (a) A corporation that seeks to be chartered shall file an application with the department  
79 and shall pay applicable fees established by regulation of the department to defray the costs  
80 of the investigation and review of the application.

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

90 (c) The merchant acquirer limited purpose bank shall have, within one year after the date  
91 it receives its charter, no fewer than 50 employees located in this state devoted to merchant  
92 acquiring activities; provided, however, a merchant acquirer limited purpose bank may  
93 contract with an eligible organization for the performance of merchant acquiring activities,  
94 settlement activities, or any of the other services identified in paragraph (4) of Code

95 Section 7-9-2, and when a merchant acquirer limited purpose bank enters into such  
 96 contracts with an eligible organization for merchant acquiring activities, settlement  
 97 activities, or any other services identified in paragraph (4) of Code Section 7-9-2, the  
 98 minimum number of employees in this state shall be determined by the commissioner at  
 99 a level to assure the continued and substantive presence of the merchant acquirer limited  
 100 purpose bank in this state for the purpose of conducting its corporate affairs and operations.  
 101 If a merchant acquirer limited purpose bank contracts with an eligible organization that is  
 102 an affiliate of the merchant acquirer limited purpose bank, the commissioner shall consider  
 103 the eligible organization's or its parent's, affiliates', or subsidiaries' employees engaged on  
 104 behalf of the merchant acquirer limited purpose bank as employees of the merchant  
 105 acquirer limited purpose bank for purposes of complying with this subsection.

106 7-9-5.

107 (a) A merchant acquirer limited purpose bank shall have articles of incorporation signed  
 108 by the incorporator and shall set forth in the English language:

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

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

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

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

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

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

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

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

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

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

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

129 (c) The applicant shall file with the department, in triplicate, the articles of incorporation,  
 130 together with any fee required by the department. Such filing shall constitute an

131 application for a charter and approval to operate as a merchant acquirer limited purpose  
 132 bank. Immediately upon the filing of the articles of incorporation, the department shall  
 133 certify one copy thereof and return it to the applicant, who shall, in conformity with Code  
 134 Section 7-1-7 and on the next business day following the filing of the articles, transmit for  
 135 publication in the newspaper which is the official organ of the county where the merchant  
 136 acquirer limited purpose bank will be located a copy of the articles or, in lieu thereof, a  
 137 statement that reads substantially as follows:

138 'An application for a charter to operate as a merchant acquirer limited purpose bank to be  
 139 known as the \_\_\_\_\_ and to be located at \_\_\_\_\_ in \_\_\_\_\_  
 140 County, Georgia, will be made to the Secretary of State of Georgia in accordance with  
 141 Chapter 9 of Title 7 of the Official Code of Georgia Annotated, known as the "Georgia  
 142 Merchant Acquirer Limited Purpose Bank Act." A copy of the articles of incorporation  
 143 of the proposed merchant acquirer limited purpose bank and the application have been  
 144 filed with the Department of Banking and Finance.'

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

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

150 (e) The administration of business and affairs of a merchant acquirer limited purpose bank  
 151 shall be the responsibility of a board of directors consisting of at least three directors, a  
 152 majority of whom shall be residents of this state.

153 7-9-6.

154 (a) An application to the department to charter a merchant acquirer limited purpose bank  
 155 shall include:

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

158 (2) A certificate of the Secretary of State showing that the proposed name of the  
 159 merchant acquirer limited purpose bank has been reserved pursuant to Code Section  
 160 7-1-131; and

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

163 (b) An application to the department to own or control a merchant acquirer limited purpose  
 164 bank shall include:

165 (1) Any information desired by the department in order to evaluate the proposed  
 166 transaction which shall be made available in the form specified by the department; and

167 (2) Applicable fees established by regulation of the department to defray the expense of  
168 the investigation.

169 7-9-7.

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

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

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

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

183 (2) Within 90 days after receipt of the articles of incorporation and the filings and fees  
184 from the applicant as required by this chapter, the department shall approve or disapprove  
185 the charter of the proposed merchant acquirer limited purpose bank. The department may  
186 impose conditions to be satisfied prior to the issuance of its approval of the charter of a  
187 merchant acquirer limited purpose bank. If the department, in its discretion, approves the  
188 charter of the proposed merchant acquirer limited purpose bank with or without  
189 conditions, it shall deliver its written approval of the articles of incorporation and charter  
190 to the Secretary of State and notify the applicant of its action. If the department, in its  
191 discretion, disapproves the charter of the proposed merchant acquirer limited purpose  
192 bank, it shall notify the applicant of its disapproval of the charter and state generally the  
193 unfavorable factors influencing its decision. The decision of the department shall be  
194 conclusive, except that it may be subject to judicial review as provided in Code Section  
195 7-1-90.

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

200 7-9-8.

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

203 (1) Written approval of the articles of incorporation by the department with a copy  
 204 attached;

205 (2) An affidavit executed by the duly authorized agent or publisher of a newspaper  
 206 swearing that the articles of incorporation or a summary statement publication as  
 207 provided for in Code Section 7-9-5 have been published; and

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

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

213 7-9-9.

214 (a) The corporate existence of the merchant acquirer limited purpose bank shall begin  
 215 upon the issuance of a certificate of incorporation by the Secretary of State. Those persons  
 216 who subscribed for shares prior to filing of the articles, or their assignees, shall be  
 217 shareholders in the merchant acquirer limited purpose bank. The department shall have full  
 218 authority to regulate and supervise the activities of promoters, incorporators, subscribers  
 219 for shares, and all persons soliciting offers to subscribe for shares in any merchant acquirer  
 220 limited purpose bank established under this chapter. Any corporation in the process of  
 221 seeking approval of a charter as a merchant acquirer limited purpose bank shall be  
 222 classified as a merchant acquirer limited purpose bank in formation and persons named in  
 223 the articles of incorporation or approved by the department as initial directors of such entity  
 224 shall not be considered 'agents' or 'broker-dealers' as defined in Code Section 10-5-2.

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

229 (c) A merchant acquirer limited purpose bank may begin business when:

230 (1) Capital stock of the merchant acquirer limited purpose bank satisfies the  
 231 requirements of Code Section 7-9-11;

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

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

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

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

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

244 7-9-10.

245 The applicant who charters a merchant acquirer limited purpose bank which transacts  
246 business before its capital stock have been paid in as required under this chapter shall be  
247 jointly and severally liable to creditors for the amounts not paid in by subscribers or any  
248 other deficiencies. Such liability shall be deemed an asset of the merchant acquirer limited  
249 purpose bank and may be enforced by it, its successors or assignees, by a shareholder suing  
250 derivatively, or by a receiver appointed by the department.

251 7-9-11.

252 A merchant acquirer limited purpose bank shall at all times maintain capital stock and  
253 paid-in surplus as required by policies of the department but in no event less than \$3  
254 million.

255 7-9-12.

256 (a) A merchant acquirer limited purpose bank shall only accept deposits from a  
257 corporation that owns a majority of the shares of the merchant acquirer limited purpose  
258 bank. A merchant acquirer limited purpose bank shall not operate in any manner that  
259 attracts depositors from the general public, and no deposit shall be withdrawn by the  
260 depositor by check or similar means for payment to third parties or others. A merchant  
261 acquirer limited purpose bank shall not accept 'brokered deposits' as that term is defined  
262 in the Federal Deposit Insurance Act as such existed on January 1, 2012, or the regulations  
263 adopted by the Federal Deposit Insurance Corporation in force and effect on January 1,  
264 2012.

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

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

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

271 (e) A merchant acquirer limited purpose bank shall not engage in self-acquiring activities.

272 7-9-13.

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

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

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

285 (2) Require divestiture of such chartered merchant acquirer limited purpose bank by any  
 286 holding company not qualified to acquire such chartered merchant acquirer limited  
 287 purpose bank on the date it ceased to operate within the limitations imposed by Code  
 288 Section 7-9-11 and became a bank for purposes of this title.

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

291 **SECTION 2.**

292 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 293 without such approval.

294 **SECTION 3.**

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