DRAFT ONLY
NOT APPROVED FOR INTRODUCTION

HOUSE BILL NO.

Special purpose depository institutions-amendments.

Sponsored by: HDraft Committee

A BILL

for

AN ACT relating to banking; expanding the authority of special purpose depository institutions to engage in incidental activities with the public as specified; specifying the types of security that can be pledged by a special purpose depository institution in lieu of a surety bond; repealing a provision requiring depositor services and the issuance of special purpose depository accounts; specifying applicability; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 13-12-103(b)(vii) and (f), 13-12-104(a)(intro), (c) and by creating a new subsection (d) and 13-12-118(b), (c) and (f) through (h) are amended to read:

****

STAFF COMMENT

All provisions of the amended statutory provisions are included in this draft for the Task Force's convenience. The final bill draft will not include provisions that are not amended.

****

13-12-103. Special purpose depository institutions created as corporations; operating authority; powers; prohibition on lending.

(a) Consistent with this chapter, special purpose depository institutions shall be organized as corporations under the Wyoming Business Corporation Act to exercise the powers set forth in subsection (b) of this section.

(b) Each special purpose depository institution may:

(i) Make contracts as a corporation under Wyoming law;

(ii) Sue and be sued;

(iii) Receive notes and buy and sell gold and silver coins and bullion as permitted by federal law;

(iv) Carry on a nonlending banking business for depositors, consistent with subsection (c) of this section;

(v) Provide payment services upon the request of a depositor;

(vi) Make an application to become a member bank of the federal reserve system;

(vii) Engage in any other activity that is usual or incidental to the business of banking, subject to the prior written approval of the commissioner. The commissioner shall not approve a request to engage in an incidental activity if he finds that the requested activity will adversely affect the solvency or the safety and soundness of the special purpose depository institution or conflict with any provision of this chapter.~~;~~ As used in this paragraph, "incidental activity" includes:

(A) Custody, safekeeping and asset servicing, including custodial services under W.S. 34-29-104;

(B) Investment adviser, investment company and broker-dealer activities;

(C) Commodities intermediary activities;

(D) Exercising fiduciary powers similar to those permitted to national banks;

(E) Receiving deposits relating to activities under this paragraph;

(F) Other incidental activities authorized by the commissioner.

****

STAFF COMMENT

Note: Subparagraph (A), above, is consistent with the Task Force's request to have 20 LSO 164-SPDI-digital assets custodianship incorporated into this bill draft. Subparagraph (A) allows a SPDI to engage in digital asset custodial services under W.S. 34-29-104.

NOTE: The Banking Division has been asked to provide information to the Task Force regarding the nature of the "incidental activities" authorized above, the extent to which each activity is customarily performed by banks, and to what extent, if any, this definition of "incidental activities" would allow a SPDI to perform functions not typically offered by banks.

NOTE: The Banking Division has been asked to provide addition information regarding the following: The language above allows a SPDI to receive deposits "relating to [incidental] activities under this paragraph." Language later in this bill (see p.9 and related staff comment) establishes that depositors to whom a SPDI offers incidental services do not have to meet the standard depositor qualifications. Please be prepared to describe the types of deposits this might allow and the nature of the expansion in depositor types.
****

(viii) Exercise powers and rights otherwise authorized by law which are not inconsistent with this chapter.

(c) Except as otherwise provided in this subsection, a special purpose depository institution shall not make loans, including the provision of temporary credit relating to overdrafts. A special purpose depository institution may purchase debt obligations specified by W.S. 13-12-105(b)(iii).

(d) A special purpose depository institution shall maintain its principal operating headquarters and the primary office of its chief executive officer in Wyoming.

(e) As otherwise authorized by this section, the special purpose depository institution may conduct business with depositors outside this state.

(f) Subject to the laws of the host state, a special purpose depository institution may open a branch in another state in the manner set forth in W.S. 13-2-803. A special purpose depository institution, including any branch of the institution, may only accept deposits or provide other services under this chapter to depositors engaged in ~~a bona fide business~~ activities which ~~is~~ are lawful under the laws of Wyoming, the laws of the host state and federal law.

13-12-104. Requirements relating to depositors; nature of business.

(a) Except as otherwise provided by subsection (d) of this section, no depositor shall maintain an account with a special purpose depository institution or otherwise receive any services from the institution unless the depositor meets the criteria of this subsection. A depositor shall:

(i) Be a legal entity other than a natural person;

(ii) Be in good standing with the jurisdiction in the United States in which it is incorporated or organized;

(iii) Maintain deposits with the institution totaling not less than five thousand dollars ($5,000.00);

(iv) Be engaged in a lawful, bona fide business, consistent with subsection (c) of this section and W.S. 13-12-103(f); and

(v) Make sufficient evidence available to the special purpose depository institution to enable compliance with anti-money laundering, customer identification and beneficial ownership requirements, as determined by the institution.

~~(b) A depositor which meets the criteria of subsection (a) of this section shall be issued a depository account and otherwise receive services from the special purpose depository institution, contingent on the availability of sufficient insurance under W.S. 13-12-119(e).~~ [**This subsection is repealed in Section 3 of this legislation**]

(c) Consistent with paragraphs (a)(iv) and (v) of this section and in addition to any requirements specified by federal law, a special purpose depository institution shall require that a potential depositor provide reasonable evidence that the person is engaged in a lawful, bona fide business, or is likely to open a lawful, bona fide business within the next six (6) months. As used in this subsection, "reasonable evidence" includes business entity filings, articles of incorporation or organization, bylaws, operating agreements, business plans, promotional materials, financing agreements or other evidence. This subsection shall not apply to activities conducted under subsection (d) of this section.

(d) A special purpose depository institution may conduct incidental activities under W.S. 13-12-103(b)(vii) with persons who do not meet the criteria of paragraphs (a)(i) through (a)(iv) of this section.

****

STAFF COMMENT

Because "incidental activities" include receiving deposits, the addition of subjection (d), above, will allow SPDIs to receive deposits from depositors who do not meet the existing depositor requirements. However, other language in the bill makes clear that those deposits must relate to the activities that are defined as "incidental activities" [See page 4, 13-12-103(b)(vii)(E)]. Consequently, deposits can be accepted from non-qualified depositors as long as the deposits relate to:

- **Custody, safekeeping and asset servicing, including digital asset custodial services;**
- **Investment adviser, investment company and broker-dealer activities;**
- **Commodities intermediary activities;**
- **Exercising fiduciary powers similar to those permitted to national banks; and**
- **Other incidental activities authorized by the commissioner.**

****

13-12-118. Surety bond; pledged investments; investment income; bond or pledge increases; hearings.

(a) Except as otherwise provided by subsection (b) of this section, a special purpose depository institution shall, before transacting any business, pledge or furnish a surety bond to the commissioner to cover costs likely to be incurred by the commissioner in a liquidation or conservatorship of the special purpose depository institution. The amount of the surety bond or pledge of assets under subsection (b) of this section shall be determined by the commissioner in an amount sufficient to defray the costs of a liquidation or conservatorship.

(b) In lieu of a bond, a special purpose depository institution may irrevocably pledge specified ~~capital~~ assets equivalent to a bond under subsection (a) of this section. ~~Any capital pledged to the commissioner under this subsection shall be held in a state or nationally chartered bank or savings and loan association having a principal or branch office in this state.~~ All costs associated with pledging and holding ~~such capital~~ the assets are the responsibility of the special purpose depository institution. Pledged assets shall be unencumbered and shall not serve as collateral for any other purpose.

(c) ~~Capital~~ Assets pledged to the commissioner shall be of the same nature and quality as those required for state financial institutions under W.S. 9-4-805.

(d) Surety bonds shall run to the state of Wyoming, and shall be approved under the terms and conditions required under W.S. 9-4-804(b) and (c).

(e) The commissioner may adopt rules to establish additional investment guidelines or investment options for purposes of the pledge or surety bond required by this section.

(f) In the event of a liquidation or conservatorship of a special purpose depository institution pursuant to W.S. 13-12-122, the commissioner may, without regard to priorities, preferences or adverse claims, reduce the surety bond or ~~capital~~ assets pledged under this section to cash as soon as practicable and utilize the cash to defray the costs associated with the liquidation or conservatorship.

(g) Income from ~~capital~~ assets pledged under subsection (b) of this section shall be paid to the special purpose depository institution, unless a liquidation or conservatorship takes place.

(h) Upon evidence that the current surety bond or pledged ~~capital is~~ assets are insufficient, the commissioner may require a special purpose depository institution to increase its surety bond or pledged ~~capital~~ assets by providing not less than thirty (30) days written notice to the institution. The special purpose depository institution may request a hearing before the board not more than thirty (30) days after receiving written notice from the commissioner under this subsection. Any hearing before the board shall be held pursuant to the Wyoming Administrative Procedure Act.

Section 2. W.S. 13-12-104(b) is repealed.

Section 3. The amendments made by this act shall apply to special purpose depository institutions who file a charter application on or after October 1, 2019.

****

STAFF COMMENT

The Banking Division has proposed that this legislation apply retroactively to charter applications and SPDIs starting October 1, 2019, before the legislation can be effective. The Task Force may wish to take testimony concerning the logistics and practicality of this timing.

****

Section 4. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)