

Senate Bill 353

By: Senators Cheeks of the 23rd, Cagle of the 49th, Crofts of the 17th and Stokes of the 43rd

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 1 of Title 7 of the Official Code of Georgia Annotated, known as the
 2 "Financial Institutions Code of Georgia," so as to include objectives of the chapter for entities
 3 under the supervision of the Department of Banking and Finance that are not financial
 4 institutions; to change the restrictions on investments by certain employees of the
 5 department; to specify the restrictions on the receipt of gifts and business activities by certain
 6 employees of the department; to authorize the department to collect certain fees by electronic
 7 deductions; to authorize the department to share certain information with federal or state
 8 regulatory agencies; to specify the types of hearings available to a party; to provide for
 9 certain types of stock and securities transactions by banks; to authorize the board of directors
 10 of a credit union to fill vacancies on the supervisory committee; to limit the powers of the
 11 supervisory committee; to change the capital and reserve requirements for credit unions; to
 12 establish reserve requirements for a central credit union; to exempt national banks and
 13 federal credit unions from licensing requirements as check cashers; to authorize the
 14 department to conduct background checks on any individual who directs the affairs or
 15 establishes policy for a licensed mortgage business; to require applicants and licensees to
 16 obtain background checks on certain employees; to authorize the department to discuss
 17 background information on employees with licensees; to eliminate the requirement of notice
 18 to the department of payment of a creditor's claim; to require licensees to state in
 19 advertisements that they are licensed in Georgia; to provide for related matters; to repeal
 20 conflicting laws; and for other purposes.

21 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

22 **SECTION 1.**

23 Chapter 1 of Title 7 of the Official Code of Georgia Annotated, known as the "Financial
 24 Institutions Code of Georgia," is amended by striking paragraphs (8) and (9) of subsection
 25 (a) of Code Section 7-1-3, relating to the objectives of the chapter and standards for

1 construction and regulation, and inserting in their places new paragraphs (8), (9), and (10)
2 to read as follows:

3 "(8) Opportunity for management of financial institutions to exercise their business
4 judgment; ~~and~~

5 (9) Simplification and modernization of the law governing banking, trust, and other
6 financial institutions; ~~and~~

7 (10) As to other entities under the supervision of the department that are not financial
8 institutions, including check cashers and mortgage lenders and brokers, to provide for:

9 (A) Supervision and examination of their business affairs to ensure that they operate
10 in a manner consistent with state law;

11 (B) Protection of the interests of consumers and service by these entities which is
12 responsive to their consumers; and

13 (C) Simplification and modernization of the law that governs these entities, together
14 with the delegation of rulemaking power and administrative discretion to the
15 department to carry out its responsibilities, keeping in mind the need for economic and
16 technological progress in the industry."

17 SECTION 2.

18 Said chapter is further amended by striking Code Section 7-1-37, relating to restrictions on
19 the commissioner, deputy commissioners, and examiners, and inserting in its place the
20 following:

21 "7-1-37.

22 (a) Except as provided in subsections (c), ~~and (d), and (e)~~ of this Code section, ~~neither the~~
23 ~~commissioner, any deputy commissioner or assistant deputy commissioner, nor any~~
24 ~~department employee with financial institution or licensee supervisory responsibilities, or~~
25 any examiner employed by the department shall not directly or indirectly:

26 (1) Receive any money or property as a loan, ~~gift, or otherwise~~ from or become indebted
27 to any financial institution or from or to any director, officer, agent, employee, attorney,
28 or subsidiary of a financial institution;

29 (2) Receive any money or property as a gift from any financial institution or from any
30 director, officer, agent, employee, attorney, or subsidiary of a financial institution, unless
31 consistent with the ethics in government policy of this state;

32 (3) Give any money or property as a gift to any financial institution or to any director,
33 officer, agent, employee, attorney or subsidiary of a financial institution, unless consistent
34 with the ethics in government policy of this state.

35 ~~(2)~~ (4) Own any share in or securities of a financial institution or otherwise have an
36 ownership interest in a financial institution; or

1 ~~(3)~~ (5) Engage in the business of a financial institution.

2 (b) For purposes of this Code section and subject to subsection (c) of this Code section,
3 the term 'financial institution' shall include a bank holding company and any subsidiary of
4 a bank holding company.

5 (c) Notwithstanding the provisions of subsection (a) of this Code section, the
6 commissioner, any deputy commissioner, ~~or assistant deputy commissioner, and any~~
7 department employee with financial institution or licensee supervisory responsibilities, or
8 examiners employed by the department may borrow money from and otherwise deal with
9 any financial institution or subsidiary thereof existing under the laws of the United States
10 or of any state other than this state, provided the obligee financial institution or subsidiary
11 is not examined or regulated by the department. For the purposes of this subsection, a
12 financial institution shall not be considered regulated solely because it is required to file
13 an exemption from licensing under Code Section 7-1-1001 or solely because it is owned
14 or controlled by another bank or corporation which is or may be examined or regulated by
15 the department. All extensions of credit, including but not limited to such permitted loans,
16 which obligate the commissioner or any deputy commissioner to such a financial institution
17 or subsidiary, directly or contingently by way of guaranty, endorsement, or otherwise, or
18 which renew or modify existing obligations shall be reported by the individual concerned
19 to the Attorney General in writing, within ten days after the execution thereof, showing the
20 nature of the undertaking and the amount and terms of the loan or other transaction. All
21 credit obligations of a similar nature to those set forth above on the part of any ~~assistant~~
22 ~~deputy commissioner~~ other department employee with financial institution or licensee
23 supervisory responsibilities or examiner shall be reported to the commissioner within ten
24 days after the execution thereof.

25 (d) Nothing in this Code section shall prohibit the commissioner, any deputy
26 commissioner, any ~~assistant deputy commissioner,~~ department employee with financial
27 institution or licensee supervisory responsibilities, or any examiner of the department from
28 maintaining a deposit in any financial institution, purchasing banking services other than
29 credit services, or owning a single share in a credit union in the ordinary course of business
30 and under rates and terms generally available to other customers of the financial institution.
31 The provisions of this Code section shall not be applicable in the cases of a lender credit
32 card obligation to a financial institution where the maximum outstanding credit may not
33 exceed \$10,000.00 nor to any other credit obligation fully secured by the pledge of a
34 deposit account in the lending institution, provided that the financial institution is not
35 within the employee's assigned examination authority and provided the rates and terms of
36 all such obligations are not preferential in comparison to similar obligations of the financial
37 institution's other customers. Such exempt obligations shall, however, be reported as

1 provided in subsection (c) of this Code section, and the employee shall be disqualified from
2 any dealings with the obligee financial institution.

3 (e)(1) The commissioner, a deputy commissioner, a department employee with financial
4 institution or licensee supervisory responsibilities, or an examiner of the department may
5 be permitted to own securities of a financial institution under the following
6 circumstances:

7 (A) A deputy commissioner, a department employee with financial institution or
8 licensee supervisory responsibilities, or an examiner of the department may own such
9 a security if the security was obtained prior to commencement of employment with the
10 department;

11 (B) A deputy commissioner, a department employee with financial institution or
12 licensee supervisory responsibilities, or an examiner of the department may own such
13 a security if the ownership of the security was acquired through inheritance; gift; stock
14 split or dividend; merger, acquisition, or other change in corporate structure; or
15 otherwise without specific intent on the part of the employee to acquire the interest; and

16 (C) The commissioner, a deputy commissioner, a department employee with financial
17 institution or licensee supervisory responsibilities or an examiner of the department
18 may own such a security if the security is part of an investment fund, provided that,
19 upon initial or subsequent investment by the employee, excluding ordinary dividend
20 reinvestment, the fund does not have invested, or indicate in its prospectus the intent
21 to invest, more than 30 percent of its assets in the securities of one or more Federal
22 Deposit Insurance Corporation insured depository institutions or Federal Deposit
23 Insurance Corporation insured depository institution holding companies and the
24 employee neither exercises control nor has the ability to exercise control over the
25 financial interests held in the fund.

26 (2) In the case of permissible acquisitions pursuant to subparagraphs (A) and (B) of
27 paragraph (1) of this subsection, the employee shall make a full, written disclosure to the
28 commissioner within 30 days of beginning employment or acquiring the interest. The
29 employee is disqualified from participating in or sharing information regarding any
30 matter or activity that concerns the financial institution. Such disqualification must not,
31 in the judgment of the commissioner, unduly interfere with the employee's duties.

32 (3) In the event any covered person inadvertently and without intent on his or her part
33 acquires an interest in a security that is not allowed by this subsection, such security shall
34 be disposed of within 90 days of acquisition.

35 (e)(f) No examiner, which for the purposes of this Code section shall include a supervisor
36 as defined by the department, may examine a financial institution to which he or she is
37 indebted or of which he or she owns securities under the exceptions in

1 subparagraphs (e)(1)(A) and (e)(1)(B) of this Code section, nor may an examiner obtain
 2 credit from a financial institution if he or she has examined such financial institution in the
 3 preceding 12 months. An examiner who wishes to borrow funds from any financial
 4 institution he or she has examined in the past five years must first obtain the written
 5 permission of the commissioner. This subsection is included as an additional precaution
 6 and is not intended to preclude the operation of any other applicable law or regulation.

7 (g) The commissioner, any deputy commissioner, any department employee with financial
 8 institution or licensee supervisory responsibility, or any examiner shall not directly or
 9 indirectly:

10 (1) Receive any money or property as a loan from any department licensee or any
 11 director, officer, agent, employee, or attorney of a department licensee, unless such
 12 employee does not examine or exercise supervisory responsibility over that licensee. Any
 13 debt owed by a deputy commissioner, department employee with financial institution or
 14 licensee supervisory responsibility, or examiner of a department licensee must be
 15 reported to the commissioner. Reporting by the commissioner shall be made to the
 16 Attorney General;

17 (2) Receive any money or property as a gift from any department licensee or any
 18 director, officer, agent, employee, or attorney of a department licensee, unless consistent
 19 with the ethics in government policy of this state;

20 (3) Give any money or property as a gift to any department licensee or any director,
 21 officer, agent, employee, or attorney of a department licensee, unless consistent with the
 22 ethics in government policy of this state; or

23 (4) Engage in the business of a department licensee.

24 ~~(f)~~(h) No director, officer, agent, employee, or attorney of a financial institution,
 25 individually or in his or her official capacity, shall knowingly participate in a violation of
 26 this Code section. However, nothing in this Code section shall restrict the right of the
 27 commissioner, any deputy commissioner, any department employee with financial
 28 institution or licensee supervisory responsibilities, or any examiner to deal as any other
 29 consumer with such director, officer, agent, employee, or attorney in the ordinary course
 30 of business in consumer areas of trade or commerce not regulated by the department and
 31 under terms and conditions which are not preferential.

32 ~~(g)~~ (i) The commissioner, any deputy commissioner, ~~or assistant deputy commissioner,~~
 33 any department employee with financial institution or licensee supervisory responsibilities,
 34 or any examiner employed by the department who shall violate or participate in a violation
 35 of this Code section shall be guilty of a misdemeanor. Violation of this Code section shall
 36 be grounds for removal from office.

1 (h) (j) The commissioner may adopt additional supplementary administrative policies and
 2 departmental rules governing ethical conduct and conflicts of interest on the part of
 3 employees of the department and providing certain definitions and clarifications to
 4 effectuate the purposes of this Code section."

5 SECTION 3.

6 Said chapter is further amended by striking Code Section 7-1-41, relating to the prescribing
 7 of fees, and inserting in its place the following:

8 "7-1-41.

9 (a) The department may, by regulation, prescribe annual examination fees, license fees,
 10 registration fees, and supervision fees to be paid by the institutions and entities assigned
 11 to the department by this title for regulation, supervision, licensure, or registration. In
 12 addition, the department may, by regulation, prescribe reasonable application and related
 13 fees, special investigation fees, hearing fees, mortgage loan fees, and fees to provide copies
 14 of any book, account, report, or other paper filed in its office or for any certification thereof
 15 or for processing any papers as required by this title. Such fees may vary by type of
 16 institution regulated and nature of the work performed.

17 (b) The department, in its discretion, may require the payment of such fees in any manner
 18 deemed to be efficient, including collection through automated clearing-house
 19 arrangements or other electronic means, so that the state receives funds no later than the
 20 date the payment is required to be made."

21 SECTION 4.

22 Said chapter is further amended by striking subsection (b) of Code Section 7-1-70, relating
 23 to disclosure of information, and inserting in its place the following:

24 "(b) Subject to the exceptions, safeguards, and limitations contained in subsection (c) of
 25 this Code section, the restrictions of subsection (a) of this Code section shall not apply to
 26 disclosures:

27 (1) Within the department or made to the Governor in the course of official duties;

28 (2) Required by law, including disclosures required by subpoena or other legal process
 29 of a court or administrative agency having competent jurisdiction in legal proceedings
 30 and, where applicable, when the financial institution is a party or where the information
 31 is not otherwise available upon direct subpoena of a financial institution;

32 (3) In prosecutions or other court actions to which the department or the commissioner
 33 is a party;

34 (4) Made to federal ~~bank~~ or state financial institution supervisory agencies, other federal
 35 or state regulatory agencies with legal authority over such institution, the United States

1 Department of Justice (including the Federal Bureau of Investigation), the United States
 2 Department of the Treasury, the Georgia Bureau of Investigation, or state or local law
 3 enforcement authorities;

4 (5) Made to any officer, attorney, or director of the financial institution involved or with
 5 the written consent of said financial institution;

6 (6) Made in a ~~summary of condition of financial institutions published by the~~
 7 ~~department;~~ publication of the department which is available to the general public;

8 (7) Of general economic and similar data considered by the department in regard to
 9 requests for new articles, new branches, changes in the location of facilities, or similar
 10 matters made to parties interested in the department's action in regard thereto; and

11 (8) Made to a financial institution concerning the past job performance of a prospective
 12 employee with the written consent of such prospective employee, provided such written
 13 consent shall not be required in circumstances provided for in Code Section 7-1-840."

14 SECTION 5.

15 Said chapter is further amended in Code Section 7-1-91, relating to orders by the department,
 16 enforcement, and civil penalties, by adding a new subsection (i) to read as follows:

17 "(i) Any hearing afforded to any party pursuant to this chapter shall be heard by the
 18 commissioner or his or her designee unless a specific reference is made to an
 19 administrative hearing conducted pursuant to Chapter 13 of Title 50, the 'Georgia
 20 Administrative Procedure Act,' or to a court hearing. In any administrative hearing the
 21 hearing officer shall render an initial decision and the department shall render a final
 22 decision as provided for in Chapter 13 of Title 50."

23 SECTION 6.

24 Said chapter is further amended by striking subsection (a) of Code Section 7-1-288, relating
 25 to real estate loans, acquisition by bank or trust company of ownership interest, and
 26 limitations, and inserting in its place the following:

27 "~~(a) Except as provided in subsections (b) and (c) of this Code section and in Code Section~~
 28 ~~7-1-261, a A bank may not engage in any transaction with respect to shares of stock or~~
 29 ~~other capital securities of any corporation in accordance with this Code section and in other~~
 30 ~~instances as provided in state or federal law."~~

31 SECTION 7.

32 Said chapter is further amended by striking paragraph (5) of subsection (a) of Code Section
 33 7-1-656, relating to the duties of directors, meetings, and applicability of Code Section
 34 7-1-490, and inserting in its place the following:

1 "(5) To fill vacancies on the board of directors, ~~and credit committee,~~ and supervisory
2 committee until the election and qualification of a successor;"

3 **SECTION 8.**

4 Said chapter is further amended by striking Code Section 7-1-657, relating to the duties of
5 a supervisory committee, inspections, and comprehensive annual audits, and inserting in its
6 place the following:

7 "7-1-657.

8 ~~(a) The supervisory committee shall supervise the acts of the credit committee and~~
9 ~~officers, any or all of whom the supervisory committee may, at any time by a unanimous~~
10 ~~vote, suspend. Within seven days after such suspension, the supervisory committee shall~~
11 ~~cause notice to be given to the board of directors and to the department of a special meeting~~
12 ~~to take action on such suspension; such notice shall clearly indicate the purpose of the~~
13 ~~meeting. By a majority vote the committee may call a meeting of the board of directors to~~
14 ~~consider any violation of this article or of the bylaws or any practice of the credit union~~
15 ~~which, in the opinion of the committee, is unsafe or unauthorized. Notice of such meeting~~
16 ~~shall also be given to the department. The supervisory committee shall be responsible for~~
17 ~~securing a comprehensive audit of the credit union at least once each year. The committee~~
18 ~~may employ the services of an independent accountant or firm of such accountants or the~~
19 ~~internal auditors of any sponsoring group, concern, or association of credit unions to make~~
20 ~~such comprehensive audit. The results of the audit shall be submitted to the board and the~~
21 ~~committee shall present a summary of the results of the audit to the membership. The~~
22 ~~committee shall make recommendations to the board for the correction of any deficiencies~~
23 ~~disclosed by the audit. The annual audit shall include a confirmation of the share, deposit,~~
24 ~~and loan accounts of the members and such other procedures as the department might~~
25 ~~require. The annual audit shall be preserved with the records of the credit union and a copy~~
26 ~~shall be filed with the department.~~

27 ~~(b) As frequently as it deems necessary, the The supervisory committee, shall from time~~
28 ~~to time, may conduct or cause to be conducted other audit functions or reviews of~~
29 ~~operations or may make or cause to be made an inspection of the assets and the liabilities~~
30 ~~of the credit union. The committee shall report the results of any such reviews to the board~~
31 ~~of directors and shall be responsible for making specific recommendations to the board~~
32 ~~regarding any unsafe, unsound, or unauthorized activities discovered. At least once each~~
33 ~~calendar year the supervisory committee shall cause to be made a comprehensive audit and~~
34 ~~submit a report of the same to the board and a summary of that report at the next annual~~
35 ~~meeting of the members of the credit union. The supervisory committee may employ the~~
36 ~~services of an independent accountant or firm of such accountants or the internal auditors~~

1 ~~of any sponsoring group or concern or association of credit unions to make such~~
 2 ~~comprehensive audit. The annual audit shall include a confirmation of the share, deposit,~~
 3 ~~and loan accounts of the members and such other procedures as the department might~~
 4 ~~require. The annual audit shall be preserved with the records of the credit union and a copy~~
 5 ~~filed with the department. "~~

6 SECTION 9.

7 Said chapter is further amended by striking Code Section 7-1-659, relating to entrance fees,
 8 reserves, and the exclusion of state and federal credit union reserves from tax calculation, and
 9 inserting in its place the following:

10 "7-1-659.

11 (a) A credit union may charge entrance fees as provided in the bylaws. All such fees shall,
 12 after payment of organizational expense, be known as reserve income and shall be added
 13 to the regular reserve of the credit union.

14 (b) Immediately before the payment of each dividend, the gross earnings of the credit
 15 union shall be determined. There shall be set aside from that amount as ~~a regular reserve~~
 16 ~~against an allowance for loan and lease losses on loans and contingencies, sums adequate~~
 17 ~~to cover such anticipated losses, based on the risk characteristics of the loan portfolio. not~~
 18 ~~less than those calculated in accordance with the following schedule:~~

19 (1) ~~Five percent of gross income until the regular reserve shall equal 7 1/2 percent of the~~
 20 ~~total of outstanding loans and risk assets;~~

21 (2) ~~Whenever the regular reserve falls below 7 1/2 percent of the total of outstanding~~
 22 ~~loans and risk assets, it shall be replenished as provided in paragraph (1) of this~~
 23 ~~subsection.~~

24 (c) ~~The regular reserve shall belong to the credit union and shall be used to meet losses and~~
 25 ~~shall not be distributed except on dissolution of the credit union. All credit unions shall be~~
 26 ~~subject to the capital and reserve requirements of Part 702 of the Rules and Regulations of~~
 27 ~~the National Credit Union Administration, known as Prompt Corrective Action. Credit~~
 28 ~~unions that are less than ten years old shall operate according to a business plan which shall~~
 29 ~~contain requirements for reserves and which shall be approved by the department. The~~
 30 ~~department shall have the discretion to require additional capital and reserves to assure the~~
 31 ~~safety and soundness of any credit union.~~

32 (d) In addition to ~~such~~ regular reserves, special reserves to protect the interest of members
 33 shall be established when found necessary in any special case by the board of directors of
 34 the credit union or by the department.

35 (e) ~~For the purpose of this Code section, the term 'risk assets' shall mean all assets of the~~
 36 ~~credit union except:~~

1 principles and such other reserves as may be required by the rules and regulations of the
 2 department.

3 (g) A central credit union shall have all the rights and powers of any other credit union
 4 organized under this chapter and the additional rights and powers specified in this Code
 5 section, ~~notwithstanding any limitations or restrictions found elsewhere in this chapter.~~"

6 SECTION 11.

7 Said chapter is further amended by striking subsection (a) of Code Section 7-1-709, relating
 8 to the applicability of the article, and inserting in its place the following:

9 "(a) This article shall not apply to any bank, trust company, credit union, building and loan
 10 association, or savings and loan association which is chartered under the laws of this state
 11 or under federal law and ~~domiciled in this state~~ which has lawfully entered this state to
 12 engage in a banking business."

13 SECTION 12.

14 Said chapter is further amended by striking Code Section 7-1-1004, relating to the
 15 investigation of an applicant and its officers, audit, education, experience, and other
 16 requirements relative to licensees and registrants, and inserting in its place the following:

17 "7-1-1004.

18 (a) Upon receipt of an application for license, the department shall conduct such
 19 investigation as it deems necessary to determine that the applicant and ~~its officers,~~
 20 ~~directors, and principals~~ the individuals who direct the affairs or establish policy for the
 21 licensee, including the officers, directors, or the equivalent, are of good character and
 22 ethical reputation; that the applicant and such persons meet the requirements of subsection
 23 (d) of this Code section; that the applicant and such persons ~~demonstrates~~ demonstrate
 24 reasonable financial responsibility; that the applicant has reasonable policies and
 25 procedures to receive and process customer grievances and inquiries promptly and fairly;
 26 and that the applicant has and maintains a registered agent for service in this state.

27 (b) The department shall not license any applicant unless it is satisfied that the applicant
 28 may be expected to operate its mortgage lending or brokerage activities in compliance with
 29 the laws of this state and in a manner which protects the contractual and property rights of
 30 the citizens of this state.

31 (c) The department may establish by rule or regulation minimum education or experience
 32 requirements for an applicant for a mortgage broker license or renewal of such a license.

33 (d) The department may not issue or may revoke a license if it finds that the applicant, or
 34 any person who is a director, officer, partner, agent, employee, or ultimate equitable owner
 35 of 10 percent or more of the applicant or any individual who directs the affairs or

1 establishes policy for the licensee, has been convicted of a felony involving moral turpitude
2 in any jurisdiction or of a crime which, if committed within this state, would constitute a
3 felony involving moral turpitude under the laws of this state. For the purposes of this
4 article, a person shall be deemed to have been convicted of a crime if such person shall
5 have pleaded guilty to a charge thereof before a court or federal magistrate or shall have
6 been found guilty thereof by the decision or judgment of a court or federal magistrate or
7 by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension
8 thereof, and regardless of whether first offender treatment without adjudication of guilt
9 pursuant to the charge was entered, unless and until such plea of guilty, or such decision,
10 judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful
11 judicial process or until probation, sentence, or both probation and sentence of a first
12 offender have been successfully completed and documented or unless the person convicted
13 of the crime shall have received a pardon therefor from the President of the United States
14 or the Governor or other pardoning authority in the jurisdiction where the conviction was
15 had or shall have received an official certification or pardon granted by the State Board of
16 Pardons and Paroles which removes the legal disabilities resulting from such conviction
17 and restores civil and political rights in this state.

18 (e) The department shall be authorized to obtain conviction data with respect to any
19 applicant or any person who is a director, officer, partner, agent, employee, or ultimate
20 equitable owner of 10 percent or more of the applicant and any individual who directs the
21 affairs of the company or establishes policy. ~~Upon receipt of information from the Georgia~~
22 ~~Crime Information Center that is incomplete or that indicates an applicant or any person~~
23 ~~who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10~~
24 ~~percent or more of the applicant has a criminal record in any state other than Georgia, the~~
25 The department shall submit to the Georgia Crime Information Center two complete sets
26 of fingerprints of such applicant or such person, together with the required records search
27 fees; and such other information as may be required. Fees for background checks that the
28 department administers shall be sent to the department by applicants and licensees together
29 with the fingerprints. Applicants and licensees shall have the primary responsibility for
30 obtaining background checks of covered employees which are defined as employees who
31 work in this state and also have the authority to enter, delete, or verify any information on
32 any mortgage loan application form or document. The department shall, however, retain
33 the right to obtain conviction data on covered employees.

34 (f) Every licensee and applicant shall be authorized and required to obtain background
35 checks on covered employees. Such background checks shall be handled by the Georgia
36 Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations
37 of the Georgia Crime Information Center. Licensees and applicants shall be responsible

1 for any applicable fees charged by the center. An applicant or licensee may employ a
2 person whose background must be checked and has 90 days from the date of hire to obtain
3 satisfactory background data. This provision does not apply to directors, officers, partners,
4 agents, or ultimate equitable owners of 10 percent or more or to persons who direct the
5 company's affairs or establish policy, whose background must have been investigated
6 through the department before taking office, beginning employment, or securing
7 ownership. Upon receipt of information from the Georgia Crime Information Center that
8 is incomplete or that indicates an employee has a criminal record in any state other than
9 Georgia, the employer shall submit to the department two complete sets of fingerprints of
10 such person, together with the applicable fees and any other required information. The
11 department shall submit such fingerprints as provided in subsection (e) of this Code
12 section.

13 (g) Upon receipt thereof of fingerprints, fees, and other required information, the Georgia
14 Crime Information Center shall promptly transmit one set of fingerprints to the Federal
15 Bureau of Investigation for a search of bureau records and an appropriate report and shall
16 retain the other set and promptly conduct a search of its own records and records to which
17 it has access. The Georgia Crime Information Center shall notify the department in writing
18 of any derogatory finding, including, but not limited to, any conviction data regarding the
19 fingerprint records check, or if there is no such finding. All conviction data received by the
20 department or by the applicant or licensee shall be used by the party requesting such data
21 department for the exclusive purpose of carrying out the responsibilities of this article, shall
22 not be a public record, shall be privileged, and shall not be disclosed to any other person
23 or agency except to any person or agency which otherwise has a legal right to inspect the
24 file. The department shall be entitled to review any applicant's or licensee's files to
25 determine whether the required background checks have been run and whether all covered
26 employees are qualified. The department shall be authorized to discuss the status of
27 employee background checks with licensees. All such records shall be maintained by the
28 department and the applicant or licensee pursuant to laws regarding such records and the
29 rules and regulations of the Federal Bureau of Investigation and the Georgia Crime
30 Information Center, as applicable. As used in this subsection, 'conviction data' means a
31 record of a finding, verdict, or plea of guilty or plea of nolo contendere with regard to any
32 crime, regardless of whether an appeal of the conviction has been sought, subject to the
33 conditions set forth in subsection (d) of this Code section. Violation of this Code section
34 may subject a licensee to the revocation of its license.

35 (f)(h) The department may deny or revoke a license or otherwise restrict a license if it
36 finds that the applicant or any person who is a director, officer, partner, agent, or ultimate
37 equitable owner of 10 percent or more or person who directs the company's affairs or

1 establishes policy of the applicant has had a license denied, revoked, or suspended within
 2 three years of the date of the application.

3 ~~(g)~~(i) The department may not issue a license to and may revoke a license from an
 4 applicant or licensee if such person employs any other person against whom a final cease
 5 and desist order has been issued within the preceding three years, if such order was based
 6 on a violation of Code Section 7-1-1013 or based on the conducting of a mortgage business
 7 without a required license, or whose license has been revoked within three years of the date
 8 such person was hired.

9 ~~(h)~~(j) Within 90 days after receipt of a completed application and payment of licensing
 10 fees prescribed by this article, the department shall either grant or deny the request for
 11 license.

12 ~~(i)~~(k) A person shall not be indemnified for any act covered by this article or for any fine
 13 or penalty incurred pursuant to this article as a result of any violation of the law or
 14 regulations contained in this article, due to the legal form, corporate structure, or choice of
 15 organization of such person, including but not limited to a limited liability company."

16 **SECTION 13.**

17 Said chapter is further amended by striking subsection (b) of Code Section 7-1-1007,
 18 relating to a licensee giving notice of certain actions brought against it by a creditor or
 19 borrower and notice to the department of cancellation of bond, and inserting in its place the
 20 following:

21 "(b) A corporate surety shall, within ten days after it pays any claim to any ~~creditor or~~
 22 claimant, give notice to the department by registered or certified mail or statutory overnight
 23 delivery of such payment with details sufficient to identify the claimant ~~or creditor~~ and the
 24 claim or judgment so paid. Whenever the principal sum of such bond is reduced by one or
 25 more recoveries or payments thereon, the licensee shall furnish a new or additional bond
 26 so that the total or aggregate principal sum of such bond or bonds shall equal the sum
 27 required under Code Section 7-1-1003 or 7-1-1004 or shall furnish an endorsement duly
 28 executed by the corporate surety reinstating the bond to the required principal sum thereof."

29 **SECTION 14.**

30 Said chapter is further amended by striking Code Section 7-1-1016, relating to regulations
 31 relative to advertising, and inserting in its place the following:

32 "7-1-1016.

33 In addition to such other rules, regulations, and policies as the department may promulgate
 34 to effectuate the purpose of this article, the department shall prescribe regulations

1 governing the advertising of mortgage loans, including without limitation the following
2 requirements:

3 (1) Advertisements for loans regulated under this article may not be false, misleading, or
4 deceptive. No person whose activities are regulated under this article may advertise in
5 any manner so as to indicate or imply that its interest rates or charges for loans are in any
6 way 'recommended,' 'approved,' 'set,' or 'established' by the state or this article;

7 (2) All advertisements disseminated ~~primarily~~ in this state by a licensee or a registrant
8 shall contain the name and an office address of such licensee or registrant, which shall
9 conform to a name and address on record with the department; and

10 (3) No licensee shall advertise its services in Georgia in any media disseminated
11 ~~primarily~~ in this state, whether print or electronic, without the words 'Georgia Residential
12 Mortgage Licensee-' or, for those advertisers licensed in more than one state, a listing of
13 Georgia as a state in which the advertiser is licensed."

14 **SECTION 15.**

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