

Senate Bill 353

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

AS PASSED

A BILL TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 1 of Title 7 of the Official Code of Georgia Annotated, known as the "Financial Institutions Code of Georgia," is amended by striking paragraphs (8) and (9) of subsection (a) of Code Section 7-1-3, relating to the objectives of the chapter and standards for construction and regulation, and inserting in their places new paragraphs (8), (9), and (10) to read as follows:

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

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

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

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

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

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

SECTION 2.

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

"7-1-37.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e)(f) No examiner, which for the purposes of this Code section shall include a supervisor as defined by the department, may examine a financial institution to which he or she is 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.

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

SECTION 3.

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

"7-1-41.

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

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

SECTION 4.

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

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

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

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

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

(4) Made to federal ~~bank~~ or state financial institution supervisory agencies, other federal 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 by striking subsection (a) of Code Section 7-1-288, relating
16 to corporate stocks and securities, and inserting in its place the following:

17 "(a) ~~Except as provided in subsections (b) and (c) of this Code section and in Code Section~~
18 ~~7-1-261, a~~ A bank may ~~not~~ engage in any transaction with respect to shares of stock or
19 other capital securities of any corporation in accordance with this Code section and in other
20 instances as provided in state or federal law."

21 SECTION 6.

22 Said chapter is further amended by striking paragraph (5) of subsection (a) of Code Section
23 7-1-656, relating to the duties of directors, meetings, and applicability of Code Section
24 7-1-490, and inserting in its place the following:

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

27 SECTION 7.

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

31 "7-1-657.

32 (a) ~~The supervisory committee shall supervise the acts of the credit committee and~~
33 ~~officers, any or all of whom the supervisory committee may, at any time by a unanimous~~
34 ~~vote, suspend. Within seven days after such suspension, the supervisory committee shall~~

1 ~~cause notice to be given to the board of directors and to the department of a special meeting~~
2 ~~to take action on such suspension; such notice shall clearly indicate the purpose of the~~
3 ~~meeting. By a majority vote the committee may call a meeting of the board of directors to~~
4 ~~consider any violation of this article or of the bylaws or any practice of the credit union~~
5 ~~which, in the opinion of the committee, is unsafe or unauthorized. Notice of such meeting~~
6 ~~shall also be given to the department. The supervisory committee shall be responsible for~~
7 ~~securing a comprehensive audit of the credit union at least once each year. The committee~~
8 ~~may employ the services of an independent accountant or firm of such accountants or the~~
9 ~~internal auditors of any sponsoring group, concern, or association of credit unions to make~~
10 ~~such comprehensive audit. The results of the audit shall be submitted to the board and the~~
11 ~~committee shall present a summary of the results of the audit to the membership. The~~
12 ~~committee shall make recommendations to the board for the correction of any deficiencies~~
13 ~~disclosed by the audit. The annual audit shall include a confirmation of the share, deposit,~~
14 ~~and loan accounts of the members and such other procedures as the department might~~
15 ~~require. The annual audit shall be preserved with the records of the credit union and a copy~~
16 ~~shall be filed with the department.~~

17 (b) ~~As frequently as it deems necessary, the~~ The supervisory committee, ~~shall from time~~
18 ~~to time, may conduct or cause to be conducted other audit functions or reviews of~~
19 ~~operations or may make or cause to be made an inspection of the assets and the liabilities~~
20 ~~of the credit union. The committee shall report the results of any such reviews to the board~~
21 ~~of directors and shall be responsible for making specific recommendations to the board~~
22 ~~regarding any unsafe, unsound, or unauthorized activities discovered. At least once each~~
23 ~~calendar year the supervisory committee shall cause to be made a comprehensive audit and~~
24 ~~submit a report of the same to the board and a summary of that report at the next annual~~
25 ~~meeting of the members of the credit union. The supervisory committee may employ the~~
26 ~~services of an independent accountant or firm of such accountants or the internal auditors~~
27 ~~of any sponsoring group or concern or association of credit unions to make such~~
28 ~~comprehensive audit. The annual audit shall include a confirmation of the share, deposit,~~
29 ~~and loan accounts of the members and such other procedures as the department might~~
30 ~~require. The annual audit shall be preserved with the records of the credit union and a copy~~
31 ~~filed with the department. "~~

32 SECTION 8.

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

36 "7-1-659.

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

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

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

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

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

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

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

~~(1) Cash on hand;~~

~~(2) Deposits made pursuant to subparagraph (4)(D) of Code Section 7-1-650;~~

~~(3) Assets which are insured by, fully guaranteed as to principal and interest by, or due from the United States government, its agencies, the Federal National Mortgage Association, or the Government National Mortgage Association;~~

~~(4) Loans to students under Title IV, Part B of the Higher Education Act of 1965 or a similar state insurance program;~~

~~(5) Loans insured under Title I of the National Housing Act by the Federal Housing Administration;~~

~~(6) Loans to other credit unions;~~

~~(7) Shares or deposits in other credit unions;~~

(8) ~~Investments authorized by this article;~~

(9) ~~Prepaid expenses;~~

(10) ~~Accrued interest on nonrisk investments;~~

(11) ~~Furniture and equipment; and~~

(12) ~~Land and buildings.~~

~~(f)~~(e) All reserves of credit unions or federal credit unions established in accord with generally accepted accounting ~~procedures~~ principles or upon the specific direction of the department or any federal regulatory body or for the purpose of complying with any conditions lawfully imposed by the department or any federal regulatory body shall not be considered as surplus or undivided profits of any credit union for tax purposes."

SECTION 9.

Said chapter is further amended by striking subsections (f) and (g) of Code Section 7-1-669, relating to central credit unions, and inserting in their places the following:

"(f) The commissioner may issue such special regulations as he or she may deem prudent or necessary to allow ~~the~~ a central credit union to promote effectively the liquidity and sound financial management of its member credit unions without unduly endangering its own liquidity and sound financial condition. Such special regulations need not be applicable to all credit unions but may be applicable only to the central credit union. ~~The central credit union shall be exempt from the provisions relating to the establishment of a regular reserve as set forth in Code Section 7-1-659 but, in lieu thereof, shall maintain a reserve fund as required by regulations promulgated by the commissioner. Such regulations shall not call for a reserve fund or annual transfers to the reserve fund in excess of those required by Code Section 7-1-659.~~ The central credit union shall maintain an adequate allowance for loan and lease losses in accordance with generally accepted accounting principles and such other reserves as may be required by the rules and regulations of the department.

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

SECTION 10.

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

"(a) This article shall not apply to any bank, trust company, credit union, building and loan association, or savings and loan association which is chartered under the laws of this state

1 or under federal law and ~~domiciled in this state~~ which has lawfully entered this state to
2 engage in a banking business."

3 SECTION 11.

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

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

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

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

23 (d) The department may not issue or may revoke a license if it finds that the applicant, or
24 any person who is a director, officer, partner, agent, employee, or ultimate equitable owner
25 of 10 percent or more of the applicant or any individual who directs the affairs or
26 establishes policy for the licensee, has been convicted of a felony involving moral turpitude
27 in any jurisdiction or of a crime which, if committed within this state, would constitute a
28 felony involving moral turpitude under the laws of this state. For the purposes of this
29 article, a person shall be deemed to have been convicted of a crime if such person shall
30 have pleaded guilty to a charge thereof before a court or federal magistrate or shall have
31 been found guilty thereof by the decision or judgment of a court or federal magistrate or
32 by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension
33 thereof, and regardless of whether first offender treatment without adjudication of guilt
34 pursuant to the charge was entered, unless and until such plea of guilty, or such decision,
35 judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful
36 judicial process or until probation, sentence, or both probation and sentence of a first

1 offender have been successfully completed and documented or unless the person convicted
2 of the crime shall have received a pardon therefor from the President of the United States
3 or the Governor or other pardoning authority in the jurisdiction where the conviction was
4 had or shall have received an official certification or pardon granted by the State Board of
5 Pardons and Paroles which removes the legal disabilities resulting from such conviction
6 and restores civil and political rights in this state.

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

23 (f) Every licensee and applicant shall be authorized and required to obtain background
24 checks on covered employees. Such background checks shall be handled by the Georgia
25 Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations
26 of the Georgia Crime Information Center. Licensees and applicants shall be responsible
27 for any applicable fees charged by the center. An applicant or licensee may employ a
28 person whose background must be checked and has 90 days from the date of hire to obtain
29 satisfactory background data. This provision does not apply to directors, officers, partners,
30 agents, or ultimate equitable owners of 10 percent or more or to persons who direct the
31 company's affairs or establish policy, whose background must have been investigated
32 through the department before taking office, beginning employment, or securing
33 ownership. Upon receipt of information from the Georgia Crime Information Center that
34 is incomplete or that indicates an employee has a criminal record in any state other than
35 Georgia, the employer shall submit to the department two complete sets of fingerprints of
36 such person, together with the applicable fees and any other required information. The

1 department shall submit such fingerprints as provided in subsection (e) of this Code
2 section.

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

25 ~~(f)~~(h) The department may deny or revoke a license or otherwise restrict a license if it
26 finds that the applicant or any person who is a director, officer, partner, agent, or ultimate
27 equitable owner of 10 percent or more or person who directs the company's affairs or
28 establishes policy of the applicant has had a license denied, revoked, or suspended within
29 three years of the date of the application.

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

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

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

SECTION 12.

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

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

SECTION 13.

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

"7-1-1016.

In addition to such other rules, regulations, and policies as the department may promulgate to effectuate the purpose of this article, the department shall prescribe regulations governing the advertising of mortgage loans, including without limitation the following requirements:

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

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

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

5 **SECTION 14.**

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