

Senate Bill 16

By: Senators Cheeks of the 23rd, Harbison of the 15th, Stokes of the 43rd, Gingrey of the 37th and Stephens of the 51st

AS PASSED SENATE

**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 change the provisions relating to definitions; to change the provisions relating to real estate loans; to change the provisions relating to corporate stock and securities; to change the provisions relating to boards of directors; to change the provisions relating to merger plans; to provide for department review of certain mergers; to change the provisions relating to the effect of issuance of a certificate of merger or consolidation; to provide for department review of a plan of conversion; to change the provisions relating to the powers of Georgia state banks; to change the provisions relating to third-party payment services; to change the provisions relating to mortgage broker licenses; to change the provisions relating to the financial requirements for licensing and registration of mortgage brokers; to clarify the requirements relative to licensees and registrants; to change the provisions relating to renewal of licenses and registrations; to provide for disclosure of written complaints received by the department; to make changes in the provisions relating to rule making; to authorize the department to prescribe standards related to accuracy of required disclosures; to provide for civil penalties or fines; 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, relating to financial institutions, is amended by striking paragraphs (7) and (11) of Code Section 7-1-4 relating to definitions, and inserting in lieu thereof two new paragraphs (7) and (11) to read as follows:

"(7) 'Bank' means a corporation existing under the laws of this state on April 1, 1975, or organized under this chapter and authorized to engage in the business of receiving deposits withdrawable on demand or deposits withdrawable after stated notice or lapse

of time; 'bank' shall also include national banks located in this state for the purpose of Part 6 of Article 2 of this chapter, relating to deposits, safe-deposit agreements, and money received for transmission, and Article 8 of this chapter, relating to multiple deposit accounts; provided, however, that 'bank' shall not include a credit union, a building and loan association, a savings and loan association, or a licensee under Article 4 of this chapter. 'Bank' shall include a federal or state credit union for the purposes of Part 6 of Article 2 of this chapter, provided that this inclusion is not intended to grant or expand any powers to credit unions not authorized in Part 6 of Article 2 of this chapter or by other law."

~~"(11) 'Certificate of reliance' means a written statement which:~~

~~(A) Is signed by an officer or authorized employee of a financial institution;~~

~~(B) States that the financial institution is relying primarily on the obligation of a person or corporation or on security in a transaction as to which such reliance has an effect on the application of a provision of this chapter;~~

~~(C) States the facts which are the basis of such reliance; and~~

~~(D) Is retained in the financial institution's files related to the transaction in connection with which statement is made~~ Reserved."

SECTION 2.

Said chapter is further amended by striking paragraph (2) of subsection (b) of Code Section 7-1-286, relating to real estate loans, and inserting in lieu thereof a new paragraph (2) to read as follows:

"(2) A loan in connection with which the bank takes a real estate lien as security in the exercise of banking prudence but as to which it is relying for repayment on:

(A) The general credit of the obligor or of an installment buyer or of a lessee of the real estate;

(B) Collateral other than the real estate lien;

(C) A guaranty or an agreement to take over or purchase the loan, in the event of default, by a financially responsible person other than a person engaged in the business of guaranteeing real estate loans; or

(D) An agreement by a financially responsible person to take over or purchase the loan, or to provide funds for payment thereof, within a period of two years from the date of the loan;

and there is ~~a certificate of reliance~~ documentation in the file setting forth the applicable facts to support reliance on this paragraph."

SECTION 3.

1 Said chapter is further amended by striking Code Section 7-1-288, relating to corporate stock
2 and securities, and inserting in lieu thereof a new Code Section 7-1-288 to read as follows:
3 "7-1-288.

4 (a) Except as provided in subsections (b) and (c) of this Code section and in Code Section
5 7-1-261, a bank may not engage in any transaction with respect to shares of stock or other
6 capital securities of any corporation.

7 (b) A bank may:

8 (1) Engage in transactions with respect to issuance and transfer of shares of its own stock
9 and capital securities and in other transactions with respect to such stock and capital
10 securities authorized by this chapter;

11 (2) Purchase and sell shares of stock, bonds, capital securities, and other investment
12 products upon the order of and for the account of a customer without recourse against it;

13 (3) Receive a pledge or other security interest in stock or capital securities in order to
14 secure loans made in good faith, except that it may not receive such interests in its own
15 stock or capital securities nor lend in one or more transactions, involving one or more
16 borrowers, more than 30 percent of its statutory capital base on the stock or capital
17 securities of any corporation (including therein loans made directly to the corporation
18 without ample security but excluding obligations representing the sale of federal or
19 correspondent funds to another financial institution). The department may, by regulation
20 or otherwise, specify that two or more corporations are so interrelated that their stock
21 shall be regarded as the stock of one corporation for the purposes of this subsection.

22 (c) Notwithstanding any other provisions of law to the contrary, a bank may acquire and
23 hold for its own account:

24 (1) Shares of stock of a federal reserve bank without limitation of amount;

25 (2) Shares of stock ~~of~~ or interests in:

26 (A) Any state or federal government sponsored instrumentality for the guarantee,
27 underwriting, or marketing of residential housing or financing of residential housing;

28 (B) A business development corporation or small minority business development
29 corporation authorized under Article 6 of this chapter;

30 (C) An agricultural credit corporation duly organized under the laws of this state
31 having authority to make loans to farmers of this state for agricultural purposes under
32 programs administered by the federal farm credit system;

33 (D) A bank service corporation created to provide support services for one or more
34 financial institutions;

35 (E)(i) A bank principally engaged in foreign or international banking or banking in
36 a dependency or insular possession of the United States, either directly or through the
37 agency, ownership, or control of local institutions in foreign countries or in such

dependencies or insular possessions, including the stock of one or more corporations existing pursuant to Section 25(a) of the Federal Reserve Act, provided that, before a bank may purchase a majority interest in any such banking institution, it shall enter into an agreement with the department to restrict its operations in such manner as the department may prescribe; and provided, further, that, if the department determines that said restrictions have not been complied with, it may order the disposition of said stock upon reasonable notice.

(ii) A bank engaged in providing banking or other financial services to depository financial institutions, which bank's ownership consists primarily of such depository financial institutions;

(F) A corporation engaged in functions or activities that the bank or trust company is authorized to carry on, including, but not limited to: conducting a safe-deposit business; holding real estate; acting as a financial planner or investment adviser; offering of a full range of investment products; promoting and facilitating international trade and commerce; and exercising powers incidental to financial activities as provided in paragraph (11) of Code Section 7-1-261; in addition to functions or activities which include exercising powers granted by department regulations or exercising powers determined by the commissioner to be financial in nature or incidental to the provision of financial services, so long as these activities do not pose undue risk to the safety and soundness of the financial institution and are consistent with the objectives of this chapter as stated in Code Section 7-1-3; provided, however, unless the bank is exempt, nothing contained in this subparagraph shall relieve any such corporation from undertaking registration, licensing, or other qualification to engage in such functions or activities as may otherwise be required by law; and

(G) Other corporations created pursuant to act of Congress or pursuant to Chapter 3 of Title 14, known as the 'Georgia Nonprofit Corporation Code,' for the purpose of meeting the agricultural, housing, health, transit, educational, environmental, or similar needs where the department determines that investment therein by banks is in the public interest;

~~provided that the bank's investment in any such category of stock under this paragraph shall not exceed 10 percent of its statutory capital base, except that, in the case of stock acquired under subparagraph (F) of this paragraph, such investment shall not exceed the lesser of 10 percent of the total assets of the bank or 100 percent of the statutory capital base of the bank; and provided, further, that no acquisitions may be made pursuant to subparagraphs (D) through (G) of this paragraph without the prior approval of the department;~~

(3) Shares of stock of small business investment companies organized under acts of Congress and doing business in this state, provided that the aggregate investment by the bank in such shares shall not exceed 5 percent of its statutory capital base; and

(4) Shares of stock or partnership interests in a corporation or partnership the primary business of which, as determined by the department, is to promote the public welfare or community development by engaging in the development of low and moderate-income housing, job training and job placement programs, credit counseling, public education regarding financial matters, small business development, and other similar purposes. The ability to invest in such stock or partnership interests shall also be subject to such limitations and approval procedures as the department deems necessary in order to assure that such investments are not a safety and soundness concern.

(d) A bank acquiring stock or an interest in an entity listed in paragraph (2) of subsection (c) of this Code section shall be subject to the following limitations:

(1) Where the entity carries on only such activities as the bank could legally perform itself, there is no limitation on investment;

(2) Where the activities of the entity go beyond those that the bank could legally perform, the bank's investment may not exceed 10 percent of its statutory capital base; and

(3) Where the investment is in stock of the Federal Home Loan Bank, there is no limitation on the bank's investment, provided such investment is for the purpose of utilizing the services of the Federal Home Loan Bank.

(e) Prior approval by the department is required for acquisitions listed in subparagraphs (D) through (G) of subsection (c) of this Code section. The department, by regulation, may permit expedited or notice only procedures and may provide for applicable administrative fees.

~~(d)~~(f) The department may by rule or regulation prescribe less restrictive investment limitations than those contained in this Code section for banks meeting certain financial and management criteria."

SECTION 4.

Said chapter is further amended by striking subsections (b) and (c) of Code Section 7-1-480, relating to boards of directors, and inserting thereof two new subsections to read as follows:

"(b) Seventy-five percent of the directors ~~Each director~~ shall be a ~~citizen~~ citizens of the United States and at least a majority ~~of the directors~~ shall:

(1) Reside in Georgia; or

(2) Reside within 40 miles of any banking location authorized to offer a complete banking or trust service.

(c) The residency requirements of paragraphs (1) and (2) of subsection (b) of this Code section shall not apply to banks having branches in states other than Georgia, provided the residency of directors is consistent with the bank's articles of incorporation and bylaws."

SECTION 5.

Said chapter is further amended by striking subsections (b) and (e) of Code Section 7-1-530, relating to authority to merge or consolidate, and inserting in lieu thereof two new subsections to read as follows:

"(b) A corporation other than a bank or trust company may be merged into or consolidated with a bank or trust company, provided that:

(1) The resulting institution is a bank or trust company;

(2) The resulting institution holds only assets and liabilities and is engaged only in activities which may be held or engaged in by a bank or trust company; and

(3) The merger or consolidation is not otherwise unlawful."

"(e) In the case of a merger of a Georgia state bank with ~~another~~ any other bank or banks, with the Georgia bank as the resulting bank, any assets, ~~or~~ lines of business, activities, or powers which may accrue to the resulting bank which would not be allowed for a Georgia state bank shall be provided for in the plan of merger. Such plan shall include the proposal for holding or disposal of such assets or the continuation or termination of such line of business, or activity, or power. The department shall review the plan to determine whether, in the interest of safety and soundness and consistent with the other objectives of Code Section 7-1-3, the activity, power, asset, or line of business should be approved, denied, or phased out within a reasonable period of time, to be determined by the department within a reasonable time as determined by the department but in no event longer than four years from the date of merger, unless special permission for the activity is given pursuant to Code Section 7-1-628.6."

SECTION 6.

Said chapter is further amended by striking subsection (e) of Code Section 7-1-536, relating to the effect of merger or consolidation, and inserting in lieu thereof a new subsection (e) to read as follows:

"(e) The resulting bank or trust company shall have the authority to engage only in such business and exercise only such powers as are then permissible upon original incorporation under this chapter and shall be subject to the same prohibitions and limitations as it would then be subject to upon original incorporation, ~~except that it~~ It may, however, subject to permission of the department as set out in Code Sections 7-1-530 and 7-1-555, engage in any business and exercise any right that any bank or trust company which is a party to the

1 plan could lawfully exercise or engage in immediately prior to the merger or
2 consolidation."

3 SECTION 7.

4 Said chapter is further amended by striking paragraph (5) of subsection (b) of Code Section
5 7-1-555, relating to the effect of issuance of certificate of merger or consolidation, and
6 inserting in lieu thereof a new paragraph (5) to read as follows:

7 "(5) The bank or trust company shall have the authority to engage only in such lines of
8 business and activities and exercise only such powers or hold such assets as are then
9 permissible upon original incorporation under this chapter and shall be subject to the
10 same prohibitions and limitations as it would then be subject to upon original
11 incorporation; provided, however, that if the converting institution owns or holds assets,
12 or engages in any business, or has powers that would not be allowed ~~of~~ for a state bank,
13 then the plan of conversion shall include a plan for holding or disposal of such
14 nonconforming assets or the continuation or termination of such line of business, activity,
15 or power. The department shall review the plan to determine whether, in the interest of
16 safety and soundness and the other objectives of Code Section 7-1-3, the activity, power,
17 asset, or line of business should be approved, denied, or phased out within a reasonable
18 period of time, to be determined by the department; ~~within a reasonable time but in no~~
19 ~~event longer than four years from the date of conversion. If such nonconforming assets~~
20 ~~exist in states outside of Georgia, Code Section 7-1-628.6 shall also apply, and the~~
21 ~~commissioner shall use his or her discretion in allowing the retention of such assets; and"~~.

22 SECTION 8.

23 Said chapter is further amended by striking subsection (b) of Code Section 7-1-628.6,
24 relating to powers of out-of-state banks branching into Georgia, and inserting in lieu thereof
25 a new subsection (b) to read as follows:

26 "(b) A Georgia state bank may conduct any activities at any branch outside Georgia that
27 are authorized by Georgia law or that are permissible for a bank chartered by the host state
28 where the branch is located, except to the extent such activities are expressly prohibited by
29 the laws of this state or by any regulation or order of the commissioner applicable to the
30 Georgia state bank and except where the activity is one that requires approval from the
31 department, in which case such approval must be secured; provided, however, that the
32 commissioner may waive any prohibition or requirement for approval if he or she
33 determines, by order or regulation, that the involvement of out-of-state branches of the
34 Georgia state bank in particular activities would not threaten the safety or soundness of
35 such bank."

SECTION 9.

Said chapter is further amended by striking Code Section 7-1-670, relating to third-party payment services, and inserting in lieu thereof a new Code Section 7-1-670 to read as follows:

"7-1-670.

(a) Any credit union may apply to the department for permission to offer third-party payment services to its members. The department shall exercise its discretion in determining whether to approve such request but shall not grant its approval until it is satisfied that:

(1) The convenience and need of the membership will be served by the proposed change;

(2) There is reasonable promise of adequate support of the program in light of:

(A) The competition offered by existing financial institutions;

(B) The financial history of the credit union and its membership; and

(C) The opportunities for profitable employment of depositors' funds as indicated by the average demand for credit, the number of potential depositors, the volume of transactions, and stability of the common bond;

(3) The managerial resources, internal controls, and operating procedures of the credit union are sufficient to administer the program in a safe and sound manner; and

(4) The capital and reserves of the credit union are adequate in light of current economic conditions and asset quality of the credit union.

(b) A credit union meeting certain financial and managerial criteria specified by department rule, regulation, or policy shall be exempt from the need for prior approval. Prior notice of intent to offer third-party payment services will be provided to the department.

~~(b)(c)~~ Upon ~~receipt of approval to offer~~ the commencement of third-party payment services, a credit union shall be subject to Code Sections 7-1-286, pertaining to real estate loans; 7-1-287, pertaining to investment securities; 7-1-288, pertaining to corporate stock and securities; 7-1-371, pertaining to legal reserve requirements; and rules and regulations of the department relating to the foregoing Code sections of law and shall not pay a greater rate of interest on third-party payment accounts than is allowed to be paid by commercial banks.

~~(c)(d)~~ Authority to offer third-party payment services may be suspended or revoked in accordance with Code Section 7-1-91."

SECTION 10.

Said chapter is further amended by striking "and" at the end of paragraph (6), by striking the period and inserting in lieu thereof "; and" at the end of paragraph (7), and by adding following paragraph (7) of subsection (b) of Code Section 7-1-1003, relating to applications for licenses, a new paragraph (8) to read as follows:

"(8) For mortgage brokers, evidence of satisfaction of experience or education requirements, as required by regulations of the department."

SECTION 11.

Said chapter is further amended by striking Code Section 7-1-1003.2, relating to financial requirements for licensing and registration, and inserting in lieu thereof a new Code Section 7-1-1003.2 to read as follows:

"7-1-1003.2.

(a) Each licensed mortgage broker must provide the department with a bond. The bond for a mortgage broker shall be in the principal sum of \$50,000.00 or such greater sum as the department may require and the bond shall meet the other requirements of subparagraph (c)(2)(B) of this Code section. In lieu of a bond, a mortgage broker may provide the department with an audited financial statement that discloses that the broker has a bona fide and verifiable tangible net worth of \$25,000.00. ~~All other~~ Upon initial application and submission of the bond, such mortgage brokers must, ~~upon initial application,~~ submit an unaudited financial statement certified to be true and correct by the mortgage broker.

(b) Except as otherwise provided in subsection (c) of this Code section, the department shall not license or register any mortgage lender unless the applicant or registrant submits audited financial statements covering the most recent fiscal year preceding the date of the application or registration and such other financial data as the department may require that disclose that the applicant or registrant has a bona fide and verifiable tangible net worth of \$250,000.00 or such greater amount as the department may reasonably require, which net worth must be continuously maintained as a condition of licensure or registration.

(c) The department may issue a mortgage lender's license to an applicant with a bona fide and verifiable tangible net worth of less than \$250,000.00 but not less than \$100,000.00, provided that such applicant satisfies the following requirements in support of an application for a mortgage lender's license in addition to all other applicable requirements for licensure under this article:

(1) The applicant shall certify that such applicant transfers or assigns all mortgage loans funded with such applicant's own funds, including, but not limited to, draws on a warehouse line of credit to another mortgage lender prior to the due date of the first payment by the borrower but in no event later than 45 days after the date of funding; and

(2) The applicant shall submit the following to the department:

(A) Audited financial statements covering the applicant's most recent fiscal year preceding the date of the application and such other financial data as the department may require that disclose that the applicant has a bona fide and verifiable tangible net worth of \$100,000.00 or such greater amount as the department may reasonably require;

(B) A corporate surety bond in the principal amount of \$100,000.00, which bond shall be for a term and in a form satisfactory to the department, shall be issued by a bonding company or insurance company authorized to do business in this state and approved by the department, and shall run to the State of Georgia for the benefit of any person damaged by noncompliance of a licensee with any condition of such bond. Damages under the bond shall include moneys owed to the department for fees, fines, or penalties. Such bond shall be continuously maintained thereafter in full force. Such bond shall be conditioned upon the applicant or the licensee conducting his or her licensed business in conformity with this article and all applicable laws; and

(C) Evidence of having received approval to participate as a mortgagee loan correspondent in the mortgage insurance programs administered by the United States Department of Housing and Urban Development.

(d) An irrevocable letter of credit from a federally insured financial institution in form and terms acceptable and payable to the department may be substituted for the bond requirement for a mortgage broker or mortgage lender license.

(e) Any person including the department who may be damaged by noncompliance of a licensee with any condition of a bond may proceed on such bond against the principal or surety thereon, or both, to recover damages.

(f) The department may promulgate rules and regulations with respect to the definition of net worth and the requirement for maintaining net worth as a condition of licensure or registration.

(g) Both the net worth requirement and the bond, wherever applicable, must be continuously maintained as a condition of licensure or registration."

SECTION 12.

Said chapter is further amended by striking Code Section 7-1-1004, relating to investigation of applicant and its officers, and inserting in lieu thereof a new Code Section 7-1-1004 to read as follows:

"7-1-1004.

(a) Upon receipt of an application for license, the department shall conduct such investigation as it deems necessary to determine that the applicant and its officers,

1 directors, and principals are of good character and ethical reputation; that the applicant
2 demonstrates reasonable financial responsibility; that the applicant has reasonable policies
3 and procedures to receive and process customer grievances and inquiries promptly and
4 fairly; and that the applicant has and maintains a registered agent for service in this state.

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

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

11 (d) The department may not issue or may revoke a license if it finds that the applicant, or
12 any person who is a director, officer, partner, agent, employee, or ultimate equitable owner
13 of 10 percent or more of the applicant, has been convicted of a felony involving moral
14 turpitude in any jurisdiction or of a crime which, if committed within this state, would
15 constitute a felony involving moral turpitude under the laws of this state. For the purposes
16 of this article, a person shall be deemed to have been convicted of a crime if such person
17 shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall
18 have been found guilty thereof by the decision or judgment of a court or federal magistrate
19 or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension
20 thereof, and regardless of whether first offender treatment without adjudication of guilt
21 pursuant to the charge was entered, unless and until such plea of guilty, or such decision,
22 judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful
23 judicial process or until probation, sentence, or both probation and sentence of a first
24 offender have been successfully completed and documented or unless the person convicted
25 of the crime shall have received a pardon therefor from the President of the United States
26 or the Governor or other pardoning authority in the jurisdiction where the conviction was
27 had or shall have received an official certification or pardon granted by the State Board of
28 Pardons and Paroles which removes the legal disabilities resulting from such conviction
29 and restores civil and political rights in this state.

30 (e) The department shall be authorized to obtain conviction data with respect to any
31 applicant or any person who is a director, officer, partner, agent, employee, or ultimate
32 equitable owner of 10 percent or more of the applicant. Upon receipt of information from
33 the Georgia Crime Information Center that is incomplete or that indicates an 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 has a criminal record in any state other than Georgia,
36 the department shall submit to the Georgia Crime Information Center two complete sets
37 of fingerprints of such applicant or such person, the required records search fees, and such

1 other information as may be required. Upon receipt thereof, the Georgia Crime
2 Information Center shall promptly transmit one set of fingerprints to the Federal Bureau
3 of Investigation for a search of bureau records and an appropriate report and shall retain
4 the other set and promptly conduct a search of its own records and records to which it has
5 access. The Georgia Crime Information Center shall notify the department in writing of
6 any derogatory finding, including, but not limited to, any conviction data regarding the
7 fingerprint records check, or if there is no such finding. All conviction data received by
8 the department shall be used by the department for the exclusive purpose of carrying out
9 the responsibilities of this article, shall not be a public record, shall be privileged, and shall
10 not be disclosed to any other person or agency except to any person or agency which
11 otherwise has a legal right to inspect the file. All such records shall be maintained by the
12 department pursuant to laws regarding such records and the rules and regulations of the
13 Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable.
14 As used in this subsection, 'conviction data' means a record of a finding, verdict, or plea of
15 guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal
16 of the conviction has been sought.

17 (f) The department may deny or revoke a license or otherwise restrict a license if it finds
18 that the applicant or any person who is a director, officer, partner, agent, or ultimate
19 equitable owner of 10 percent or more of the applicant has had a license denied, revoked,
20 or suspended within ~~one year~~ three years of the date of the application.

21 (g) The department ~~shall~~ may not issue a license to and may revoke a license from an
22 applicant or licensee if such person employs any other person against whom a final cease
23 and desist order has been issued within the preceding ~~12 months~~ three years, if such order
24 was based on a violation of Code Section 7-1-1013 or based on the conducting of a
25 mortgage business without a required license, or whose license has been revoked within
26 ~~12 months~~ three years of the date such person was hired.

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

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

33 SECTION 13.

34 Said chapter is further amended by striking subsection (b) of Code Section 7-1-1005, relating
35 to renewal of licenses and registrations, and inserting in lieu thereof a new subsection (b) to
36 read as follows:

SECTION 14.

SECTION 15.

Said chapter is further amended by striking Code Section 7-1-1012, relating to rules and regulations, and inserting in lieu thereof a new Code Section 7-1-1012 to read as follows:

"7-1-1012.

Without limitation on the power conferred by Article 1 of this chapter, the department may make reasonable rules and regulations, not inconsistent with law, for the enforcement of this article, to effectuate the purposes of this article, and to clarify the meaning of terms."

SECTION 16.

Said chapter is further amended by striking Code Section 7-1-1014, relating to regulations governing disclosures required to applicants for mortgage loans, and inserting in lieu thereof a new Code Section 7-1-1014 to read as follows:

"7-1-1014.

In addition to such other rules, regulations, and policies as the department may promulgate to effectuate the purposes of this article, the department shall promulgate regulations governing the disclosure required to be made to applicants for mortgage loans, including, without limitation, the following requirements:

(1) Any person required to be licensed or registered under this article shall provide to each applicant for a mortgage loan prior to accepting an application fee or any third-party fee such as a property appraisal fee, credit report fee, or any other similar fee a disclosure of the fees payable and the conditions under which such fees may be refundable;

(2) Any mortgage lender required to be licensed or registered under this article shall make available to each applicant for a mortgage loan at or before the time a commitment to make a mortgage loan is given a written disclosure of the fees to be paid in connection with the commitment and the loan, or the manner in which such fees shall be determined and the conditions under which such fees may be refundable; and

(3) Any mortgage lender required to be licensed or registered under this article shall disclose to each borrower of a mortgage loan that failure to meet every condition of the mortgage loan may result in the loss of the borrower's property through foreclosure. The borrower shall be required to sign the disclosure at or before the time of the closing of the mortgage loan.

The department may prescribe standards regarding the accuracy of required disclosures and may provide for applicable administrative or civil penalties or fines for failure to provide the disclosures or to meet the prescribed standards."

SECTION 17.

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