

Senate Bill 78

By: Senator Cheeks of the 23rd

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance,
2 so as to provide for the use of a collection agency to collect fees owed to the state; to provide
3 for the disclosure of a bank's examination information to its holding company; to provide for
4 changes in dissolution proceedings; to enable a bank or trust company to organize as a
5 limited liability company; to provide for minimum capital stock requirements for established
6 banks and trust companies; to require compliance with minimum age laws for mergers; to
7 authorize all banks to operate automated teller machines statewide; to provide for certain
8 changes in preferred shares of credit unions; to provide for certain definitions related to the
9 sale of checks; to provide for a license to sell checks to include a license for the business of
10 money transmission; to make changes in the requirements for licenses to transmit money; to
11 make changes in the bonding requirements for licenses; to provide for examination by the
12 Department of Banking and Finance of businesses selling checks or transmitting money; to
13 establish record-keeping requirements; to provide for cease and desist orders for unlicensed
14 businesses; to condition the exemption of certain employees from licensing requirements for
15 mortgage lenders and brokers; to change the financial requirements for licensing and
16 registration; to prohibit certain officers from conducting mortgage business after suspension
17 or revocation of a license; to make changes in the information provided to the public related
18 to licensees or registrants; to provide for enforcement for violation of the "Georgia Fair
19 Lending Act"; to provide for enforcement of an order of the department; to provide for cease
20 and desist orders for bond cancellation and for the rescinding of such orders upon bond
21 reinstatement; to require the payment of fees established by the department as a condition to
22 organize, own, or control a credit card bank; to provide for related matters; to repeal
23 conflicting laws; and for other purposes.

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is amended by striking Code Section 7-1-43, relating to disposition of fees collected and payment of expenses from appropriations, and inserting in its place the following:

"7-1-43.

Fees prescribed by this chapter shall be collected by the department and deposited with the Office of Treasury and Fiscal Services. The department may, at its discretion, remit such amounts net of the cost of recovery, which cost may include fees paid to a collection agency or attorney for recovery of moneys due the department. All of the expenses incurred in connection with the conduct of the business of the department shall be paid out of the appropriations of funds to the department by the General Assembly. Such expenses shall include all expenses incurred as travel expenses by personnel of the department when away from their official station as assigned by the commissioner."

SECTION 2.

Said title is further amended by striking paragraph (5) of subsection (b) of Code Section 7-1-70, relating to disclosure of information, and inserting in its place the following:

"(5) Made to any officer, attorney, or director of the involved financial institution ~~involved, made to any officer, attorney, or director of the involved financial institution's holding company,~~ or with the written consent of said financial institution or holding company;".

SECTION 3.

Said title is further amended by striking subsection (e) of Code Section 7-1-115, relating to winding up voluntary dissolution proceedings, and inserting in its place the following:

"(e) During the course of dissolution proceedings, the financial institution shall make such reports as the department may require and shall continue to be subject to the provisions of this chapter concerning examinations and investigations of financial institutions. Furthermore, during the course of a voluntary dissolution, the financial institution with the written permission of the department may elect to use provisions of Article 14 of Chapter 2 of Title 14 that are not in conflict with this chapter."

SECTION 4.

Said title is further amended by adding following Code Section 7-1-390, relating to incorporators, a new Code Section 7-1-390.1 to read as follows:

1 "7-1-390.1.

2 (a) Subject to the requirements and restrictions of this chapter including, but not limited
3 to, deposit insurance requirements where applicable, a bank or trust company may organize
4 as a limited liability company pursuant to Chapter 11 of Title 14.

5 (b) The department shall have the authority to promulgate rules and regulations in
6 accordance with Code Section 7-1-3 specifying the conditions under which a bank or trust
7 company may organize as a limited liability company.

8 (c) To the extent the provisions of Chapter 11 of Title 14 are consistent with and not in
9 conflict with the provisions of this chapter and the rules and regulations of the department,
10 such provisions shall apply to a bank or trust company that has organized as a limited
11 liability company."

12 SECTION 5.

13 Said title is further amended by striking Code Section 7-1-410, relating to minimum capital
14 stock, and inserting in its place the following:

15 "7-1-410.

16 (a) Except as provided in subsections (b) and (c) of this Code section, the minimum capital
17 stock of a de novo bank or trust company shall be \$3 million. An established bank or trust
18 company no longer in de novo status shall maintain a minimum capital stock of \$3 million
19 or such greater amount as the department may require based on a proportion of capital to
20 total assets.

21 (b) A de novo bank or trust company whose main office is located in a county with a
22 population of less than 200,000, according to the last official United States census, shall
23 have a minimum capital stock of \$2 million. An established bank or trust company located
24 in such county shall maintain a minimum capital stock of \$2 million or such greater amount
25 as the department may require based on a proportion of capital to total assets.

26 (c) A bank or trust company existing on July 1, 1989, with a capital stock of less than that
27 required by subsections (a) and (b) of this Code section shall not be required to increase its
28 capital stock above the amount outstanding on July 1, 1989, except as otherwise provided
29 by law."

30 SECTION 6.

31 Said title is further amended by striking subsection (a) of Code Section 7-1-530, relating to
32 authority to merge or consolidate, merger or consolidation across state lines, and required
33 provisions of the merger plan, and inserting in its place the following:

34 "(a) Upon compliance with the requirements of this part and other applicable laws and
35 regulations, including any branching and minimum age laws and regulations, one or more

banks or trust companies may merge or consolidate, provided that an institution exercising trust powers alone may merge or consolidate only with another such trust company."

SECTION 7.

Said title is further amended by striking paragraph (1) of subsection (c) of Code Section 7-1-603, relating to extension of existing banking locations, automated teller machines, cash dispensing machines, point-of-sale terminals, and other extensions, and inserting in its place the following:

"(1) Any Georgia state bank or credit union may operate automated teller machines throughout the state. Any bank not otherwise doing a lawful banking business in this state may operate automated teller machines ~~which shall be~~ throughout this state, provided such automated teller machines are unstaffed and ~~may be located throughout the state~~ not combined with a staffed facility. These machines may be operated individually by any bank or jointly on a cost-sharing basis by two or more banks or other financial institutions;".

SECTION 8.

Said title is further amended by striking paragraphs (4), (5), (6), (7), (8), and (9) of subsection (c) of Code Section 7-1-652, relating to joint, minor, and trust shares and deposits and preferred capital base shares, and inserting in their respective places the following:

"(4) Such shares may have a preference on the payment of dividends and interest up to 2 percent over the dividend rate paid to members on regular shares and deposits or such higher rates as approved by the credit union members and the department. Any such preference shall be fixed at the time of issuance of the shares;

~~(5) Such shares shall be entitled to vote as a class in any action to merge, consolidate, or voluntarily dissolve the credit union;~~

~~(6) Such shares may be accorded the right to vote as a class in the election of directors for the purpose of electing directors representing the class, provided that the number of such directors shall not exceed one-third of the number elected by the holders of regular shares;~~

~~(7)~~(5) Such shares shall be subordinate to claims of depositors and other creditors in the event of liquidation of the credit union but shall rank ahead of the claims of regular shares;

~~(8) In the event of redemption, such shares may be entitled to receive a pro rata portion of the retained earnings, after the payment of dividends and interest, accumulated by the credit union during the most recent whole calendar years, not in excess of five years, in which the shares were outstanding. Such pro rata portion shall be determined by taking~~

~~the ratio of the shares being redeemed to the total number of preferred capital base shares outstanding on the date of redemption. The portion of retained earnings available for redemption under this paragraph and the right thereto shall be fixed at the time of issuance of the shares but shall not exceed 50 percent;~~

~~(9) Where accorded voting rights, whether by statute or in the bylaws of the credit union, such rights shall be on a basis of one vote for each \$1,000.00 or fraction thereof paid into the credit union for such shares."~~

SECTION 9.

Said title is further amended by striking Code Section 7-1-680, relating to definitions, and inserting in its place the following:

"7-1-680.

(a) As used in this article, the term or terms:

(1) 'Check' means any check, money order, or any other instrument, order, or device for the payment or transmission of money or monetary value, whether or not it is a negotiable instrument under the terms of Article 3 of Title 11, relating to negotiable instruments. The term does not include a credit card voucher, letter of credit, or any other instrument that is redeemable by the issuer in goods or services.

(2) 'Licensee' means a ~~corporation~~ person duly licensed by the department pursuant to this article.

(3) 'Monetary value' means a medium of exchange whether or not redeemable in money.

(4) 'Money transmission' means engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means including, but not limited to, an order, wire, facsimile, or electronic transfer.

~~(5)~~ 'Sale' and 'selling' mean the passing of title from the seller or his or her agent to a holder or remitter for a price or an agreement to transfer money or monetary value for a price.

(b) Other statutory definitions applying to this article are:

(1) 'Delivery' as defined in paragraph (14) of Code Section 11-1-201.

(2) 'Issue' as defined in paragraph (a) of Code Section 11-3-105.

(3) 'Sale of checks' or 'issuance of checks' shall include money transmission.

~~(3)~~(4) 'Signed' as defined in paragraph (39) of Code Section 11-1-201."

SECTION 10.

Said title is further amended by striking Code Section 7-1-681, relating to license required, and inserting in its place the following:

1 "7-1-681.

2 No person or corporation, other than a bank or trust company, a credit union, a savings and
3 loan association, or a savings bank, whether state or federally chartered ~~but domiciled in~~
4 ~~this state~~, the authorized agent of a licensee, or the United States Postal Service shall
5 engage in the business of selling or issuing checks without having first obtained a license
6 under this article. This restriction applies to any nonresident person or corporation that
7 engages in this state in the business of selling or issuing checks through a branch,
8 subsidiary, affiliate, or agent in this state. A license for the sale of checks or money orders
9 shall also qualify as a license for the business of money transmission."

10 SECTION 11.

11 Said title is further amended by striking Code Section 7-1-682, relating to qualifications of
12 licensees, investments required, and obtaining conviction data, and inserting in its place the
13 following:

14 "7-1-682.

15 (a) In order to qualify for a license under this article, an applicant shall:

16 (1) Satisfy the department that it is financially sound and responsible and appears able
17 to conduct the business of selling checks in an honest and efficient manner and with
18 confidence and trust of the community; and

19 (2) Comply with the bonding requirements, furnish the statements, and pay the fees
20 prescribed in this article. In the case of a money transmitter, the department may in its
21 discretion require only a bond.

22 (b) In addition to the qualifications set forth in subsection (a) of this Code section, the
23 department may require a licensee to maintain investments having an aggregate market
24 value at least equal to the amount of outstanding checks issued or sold, or for money
25 transmitters, equal to the outstanding orders to transmit but not yet paid for by the licensee
26 pursuant to this article. The department may promulgate regulations establishing those
27 investments which shall be deemed permissible investments for the purpose of complying
28 with this subsection. Permissible investments, even if commingled with other assets of the
29 licensee, shall be deemed by operation of law to be held in trust for the benefit of the
30 purchasers and holders of the licensee's outstanding checks in the event of bankruptcy of
31 the licensee.

32 (c) The department shall not issue such license if it finds that the applicant or any person
33 who is a director, officer, partner, agent, employee, or substantial stockholder of the
34 applicant has been convicted of a felony involving moral turpitude in any jurisdiction or
35 of a crime, which if committed within this state would constitute a felony involving moral
36 turpitude under the laws of this state. For the purposes of this article, a person shall be

1 deemed to have been convicted of a crime if such person shall have pleaded guilty to a
2 charge thereof before a court or federal magistrate or shall have been found guilty thereof
3 by the decision or judgment of a court or federal magistrate or by the verdict of a jury,
4 irrespective of the pronouncement of sentence or the suspension thereof, unless such plea
5 of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or
6 otherwise abrogated by lawful judicial process or unless the person convicted of the crime
7 shall have received a pardon therefor from the President of the United States or the
8 governor or other pardoning authority in the jurisdiction where the conviction was had, or
9 shall have received a certificate of good conduct granted by the State Board of Pardons and
10 Paroles pursuant to the provisions of the executive law to remove the disability under this
11 article because of such conviction. The term 'substantial stockholder' as used in this
12 subsection shall be deemed to refer to a person owning or controlling 10 percent or more
13 of the total outstanding stock of the corporation in which such person is a stockholder.

14 (d) The department shall be authorized to obtain conviction data with respect to any
15 applicant or any person who is a director, officer, partner, agent, employee, or ultimate
16 equitable owner of 10 percent or more of the applicant. Upon receipt of information from
17 the Georgia Crime Information Center that is incomplete or that indicates an applicant or
18 any person who is a director, officer, partner, agent, employee, or ultimate equitable owner
19 of 10 percent or more of the applicant has a criminal record in a state other than Georgia,
20 the department shall submit to the Georgia Crime Information Center two complete sets
21 of fingerprints of such applicant or such person, the required records search fees, and such
22 other information as may be required. Upon receipt thereof, the Georgia Crime Information
23 Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation
24 for a search of bureau records and an appropriate report and shall retain the other set and
25 promptly conduct a search of its own records and records to which it has access. The
26 Georgia Crime Information Center shall notify the department in writing of any derogatory
27 finding, including, but not limited to, any conviction data regarding the fingerprint records
28 check, or if there is no such finding. All conviction data received by the department shall
29 be used by the department for the exclusive purpose of carrying out its responsibilities
30 under this article, shall not be a public record, shall be privileged, and shall not be disclosed
31 to any other person or agency except to any person or agency which otherwise has a legal
32 right to inspect the file. All such records shall be maintained by the department pursuant
33 to laws regarding such records and the rules and regulations of the Federal Bureau of
34 Investigation and the Georgia Crime Information Center, as applicable. As used in this
35 subsection, 'conviction data' means a record of a finding, verdict, or plea of guilty or a plea
36 of nolo contendere with regard to any crime, regardless of whether an appeal of the
37 conviction has been sought."

SECTION 12.

Said title is further amended by striking subsection (b) of Code Section 7-1-683, relating to license application, fee, bonding, and alternative deposit of assets, and inserting in its place the following:

"(b) The application shall be filed together with:

(1) An investigation and supervision fee established by regulation of the department, which shall not be refundable but which, if the license is granted, shall satisfy the fee requirement for the first license year or the remaining part thereof; and

(2) A corporate surety bond issued by a bonding company or insurance company authorized to do business in this state and approved by the department. The bond for check sellers shall be in the principal sum of \$100,000.00, and the bond for money transmitters shall be in the principal sum of \$50,000.00, and in an additional principal sum of \$5,000.00 for each location, in excess of one, at or through which the applicant proposes to engage in this state in the business of selling or issuing checks, until the principal sum shall aggregate \$250,000.00, provided that the department may require additional coverage for the adequate protection of check holders if the average daily balances outstanding or, for money transmitters, if the outstanding orders to transmit not yet paid for by the licensee, exceed \$250,000.00 ~~when the department conducts its annual examination and review~~ at intervals during the year as required by regulations. If required by the department the additional coverage shall be limited to \$1,250,000.00 or the average daily balances or orders outstanding in the State of Georgia for the preceding year, whichever is lesser. The bond shall be in a form satisfactory to the department and shall run to the State of Georgia for the benefit of any check holders against the licensee or his or her agents. The condition of the bond shall be that the licensee will pay any and all moneys that may become due and owing any creditor of or claimant against the licensee arising out of the licensee's business of selling or issuing checks in this state, whether through its own act or the acts of an agent. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. Claimants against the licensee may themselves bring an action directly on the bond. The liability arising under this paragraph shall be limited to the receipt, handling, transmission, and payment of money arising out of the licensee's business of selling or issuing checks in this state."

SECTION 13.

Said title is further amended by adding following Code Section 7-1-684, relating to investigation of applicants, granting of licenses, and single license for issuer and subsidiary seller, a new Code Section 7-1-684.1 to read as follows:

1 "7-1-684.1.

2 (a) To assure compliance with the provisions of this article and in consideration of any
3 application to renew a license pursuant to the provisions of Code Section 7-1-685, the
4 department or its designated agent may examine the books and records of any licensee to
5 the same extent as it is authorized to examine financial institutions under this chapter. Each
6 licensee shall pay an examination fee as established by regulations of the department to
7 cover the cost of such examination. The on-site examination may be conducted in
8 conjunction with examinations to be performed by representatives of agencies of another
9 state. The commissioner, in lieu of an on-site examination, may accept the examination
10 report of an agency of another state or a report prepared by an independent accounting firm
11 and reports so accepted shall be considered for all purposes as an official report of the
12 commissioner. If the department determines, based on the records submitted to the
13 department and past history of operations in the state, that an on-site examination is
14 unnecessary then the on-site examination may be waived by the department.

15 (b) The commissioner may:

16 (1) Request financial data from a licensee in addition to that required under this article;
17 and

18 (2) Conduct an on-site examination of a licensee, agent, or location of a licensee within
19 this state without prior notice to the agent or licensee if the commissioner has a
20 reasonable basis to believe that the licensee or agent is not in compliance with this article.

21 The agent or licensee shall pay all reasonably incurred costs of the examination when the
22 commissioner examines an agent's operations."

23 **SECTION 14.**

24 Said title is further amended by adding following Code Section 7-1-687, relating to agents
25 of licensees, a new Code Section 7-1-687.1 to read as follows:

26 "7-1-687.1.

27 (a) Each licensee shall make, keep, and reserve the following books, accounts, and other
28 records for a period of three years:

29 (1) A record of each check sold;

30 (2) A general ledger which shall be posted at least monthly containing all assets,
31 liabilities, capital, and income and expense accounts;

32 (3) Settlement sheets received from agents;

33 (4) Bank statements and bank reconciliation records;

34 (5) Records of outstanding checks;

35 (6) Records of each check paid; and

36 (7) A list of the names and addresses of all of the licensee's agents.

(b) Records required to be made, kept, and reserved pursuant to subsection (a) of this Code section may be maintained in a photographic, electronic, or other similar form.

(c) Records required to be made, kept, and reserved pursuant to subsection (a) of this Code section may be maintained at a location outside the state so long as such records are made accessible to the commissioner within ten days of the date of a written notice by the commissioner to the licensee."

SECTION 15.

Said title is further amended by adding following Code Section 7-1-689, relating to denial, suspension, and revocation of license or designation of agent, a new Code Section 7-1-689.1 to read as follows:

"7-1-689.1.

(a) Whenever it shall appear to the department that any person required to be licensed or registered under this article has violated any law of this state or any order or regulation of the department or is operating without a required license, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices. Such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request for a hearing within such 20 day period. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' A cease and desist order issued to an unlicensed person that orders such person to cease doing business without the appropriate license shall be final 30 days from the date of issuance and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption for the time period cited in the order is obtained within the 30 day period, the order shall be rescinded by the department.

(b) Whenever a person required to be licensed under this article shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department may, through the Attorney General and upon notice of three days to such person, petition the principal court for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition the court shall allow a motion to show cause why it should not be granted. After a hearing upon the merits or after failure of such person to appear when ordered, the court shall grant the petition of the department upon a finding that the order of the department was properly issued.

(c) Any person required to be licensed under this article who violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00. Each day the violation continues shall constitute a separate offense. In

determining the amount of a penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to being imposed or has been imposed pursuant to this Code section. Any person assessed pursuant to this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the licensee involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(d) Initial judicial review of a decision of the department entered pursuant to this Code section shall be available solely in the superior court of the county of domicile of the department.

(e) For purposes of this Code section, the term 'person' includes any officer, director, employee, agent, or other person participating in the conduct of the affairs of the person subject to the orders issued pursuant to this Code section.

(f) In addition to any other administrative penalties authorized by this article, the department may by regulation prescribe administrative fines for violations of this article and of any rules promulgated by the department pursuant to this article."

SECTION 16.

Said title is further amended by striking paragraph (11) of Code Section 7-1-1001, relating to exemption for certain persons and entities and registration requirements, and inserting in its place the following:

"(11) A natural person employed by a licensed mortgage broker, a licensed mortgage lender, or any person exempted from the licensing requirements of this article when acting within the scope of employment and under the supervision of the licensee or exempted person as an employee and not as an independent contractor. To be exempt, a natural person must be employed by only one such employer and must be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004;".

SECTION 17.

Said title is further amended by striking Code Section 7-1-1002, relating to prohibited transaction of business without a license, registration, or exemption, prohibited knowing purchase of mortgage loan from unlicensed or nonexempt broker or lender, and liability of persons controlling violators, and inserting in its place the following:

1 "7-1-1002.

2 (a) On and after July 1, 1993, it is prohibited for any person to transact business in this
3 state directly or indirectly as a mortgage broker or a mortgage lender unless such person:

4 (1) Is licensed or registered as such by the department; ~~or~~

5 (2) Is a person exempted from the licensing or registration requirements pursuant to
6 Code Section 7-1-1001; or

7 (3) In the case of an employee of a mortgage broker or mortgage lender, such person has
8 qualified to be relieved of the necessity for a license under the employee exemption in
9 paragraph (11) of Code Section 7-1-1001.

10 (b) On and after July 1, 1995, it is prohibited for any person, as defined in Code Section
11 7-1-1000, including a corporation but not including any natural person who purchases five
12 or fewer mortgage loans in any one calendar year solely as an investment and who is not
13 in the business of brokering, making, purchasing, or servicing mortgage loans, knowingly
14 to purchase, sell, or transfer one or more mortgage loans or loan applications from or to a
15 mortgage broker or mortgage lender who is neither licensed nor exempt from the licensing
16 or registration provisions of this article. Such a purchase shall not affect the obligation of
17 the borrower under the terms of the mortgage loan. The department shall provide for
18 distribution or availability of information regarding approved or revoked licenses.

19 (c) On or after July 1, 1996, every person who directly or indirectly controls a person who
20 violates subsection (a) or (b) of this Code section, every general partner, executive officer,
21 joint venturer, or director of such person, and every person occupying a similar status or
22 performing similar functions as such person violates with and to the same extent as such
23 person, unless the person whose violation arises under this subsection sustains the burden
24 of proof that he or she did not know and, in the exercise of reasonable care, could not have
25 known of the existence of the facts by reason of which the original violation is alleged to
26 exist."

27 **SECTION 18.**

28 Said title is further amended by striking subsections (a) and (b) of Code Section 7-1-1003.2,
29 relating to financial requirements for licensing and registration, and inserting in their
30 respective places the following:

31 "(a) Each licensed mortgage broker must provide the department with a bond. The bond
32 for a mortgage broker shall be in the principal sum of \$50,000.00 or such greater sum as
33 the department may require and the bond shall meet the other requirements of subparagraph
34 (c)(2)(B) of this Code section. In lieu of a bond, a mortgage broker may:

(1) ~~Provide~~ 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~~ \$100,000.00; or

~~(2) Upon initial application and submission of the bond, such mortgage brokers must submit an unaudited financial statement certified to be true and correct by the mortgage broker~~ Provide the department with evidence from the United States Department of Housing and Urban Development that the broker is a loan correspondent under Title I, Title II, or Title I and Title II for each year the broker is licensed by the department. Such requirement shall be continuous in nature.

(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~~ provides the department with a bond. The bond for a mortgage lender shall be in the principal sum of \$150,000.00 or such greater sum as the department may require and which bond shall meet the other requirements of subparagraph (c)(2)(B) of this Code section. In lieu of bond a lender may provide the department with an audited financial statements statement 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."

SECTION 19.

Said title is further amended by striking subsection (h) of Code Section 7-1-1004, relating to investigation of applicant and its officers, audit, education, experience, and other requirements relative to licensees and registrants, and inserting in its place the following:

"(h) The department may deny or revoke a license or otherwise restrict a license if it finds that the applicant or any person who is a director, officer, partner, ~~agent~~, or ultimate equitable owner of 10 percent or more or person who directs the company's affairs or who establishes policy of the applicant has had a license been in one or more of these roles at a mortgage lender, broker, or registrant whose license has been denied, revoked, or suspended within three years of the date of the application."

SECTION 20.

Said title is further amended by striking subsection (f) of Code Section 7-1-1009, relating to maintenance of books, accounts, and records, investigation and examination of licensees and registrants by department, confidentiality, and exemptions from civil liberty, and inserting in its place the following:

"(f) Examinations and investigations conducted under this article and information obtained by the department in the course of its duties under this article are confidential, except as provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70 and in paragraphs (3) and (4) of subsection (c) of this Code section, the department is authorized to share information obtained under this article with other state and federal regulatory agencies or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. The commissioner or an examiner specifically designated may disclose such limited information as is necessary to conduct a civil or administrative investigation or proceeding. The department shall compile information on the number of written complaints received on all licensees. Beginning August 1, 2001, and at least annually thereafter, the department shall disclose to the public the number of such complaints together with the number of Georgia residential mortgage loans made during the same period. In preparing the disclosure, the department shall be authorized to rely upon the number of mortgage loans reported to it in the mortgage license renewal application. Information contained in the records of the department which is not confidential and may be made available to the public either on the department's website or upon receipt by the department of a written request shall include:

(1) The name, business address, and telephone, fax, and license number numbers of a licensee or registrant;

(2) The names and titles of the principal officers;

(3) The name of and the owner or owners thereof;

(4) The name and business address of a licensee's or registrant's agent for service; and

(5) The terms of or a copy of any bond filed by a licensee or registrant."

SECTION 21.

Said title is further amended by striking paragraph (1) of subsection (a) of Code Section 7-1-1017, relating to suspension or revocation of licenses, notice, judicial review, and effect on preexisting contract, and inserting in its place a new paragraph (1) of subsection (a) and at the end of said Code section a new subsection (g) to read as follows:

"(a)(1) The department may suspend or revoke an original or renewal license or registration on any ground on which it might refuse to issue an original license or registration or for a violation of any provision of this article or of Chapter 6A of this title or any rule or regulation issued under this article or under Chapter 6A of this title, including failure to provide fees on a timely basis, or for failure of the licensee or

1 registrant to pay, within 30 days after it becomes final, a judgment recovered in any court
 2 within this state by a claimant or creditor in an action arising out of the licensee's or
 3 registrant's business in this state as a mortgage lender or mortgage broker."

4 "(g) Whenever a person subject to an order of the department fails to comply with the
 5 terms of such order which has been properly issued, the department upon notice of three
 6 days to such person may, through the Attorney General, petition the principal court for an
 7 order directing such person to obey the order of the department within the period of time
 8 fixed by the court. Upon the filing of such petition the court shall allow a motion to show
 9 cause why such motion should not be granted. Whenever, after a hearing upon the merits
 10 or after failure of such person to appear when ordered, it shall appear that the order of the
 11 department was properly issued, the court shall grant the petition of the department."

12 SECTION 22.

13 Said title is further amended by striking subsection (a) of Code Section 7-1-1018, relating
 14 to cease and desist orders, enforcement procedure, civil penalty, and fines, and inserting in
 15 its place the following:

16 "(a) Whenever it shall appear to the department that any person required to be licensed or
 17 registered or required to file a notification statement under this article or ~~any person~~
 18 employed by a licensee or registrant pursuant to Code Section 7-1-1001 or who would be
 19 covered by the prohibitions in Code Section 7-1-1013 has violated any law of this state or
 20 any order or regulation of the department, the department may issue an initial written order
 21 requiring such person to cease and desist immediately from such unauthorized practices.
 22 Such cease and desist order shall be final 20 days after it is issued unless the person to
 23 whom it is issued makes a written request within such 20 day period for a hearing. The
 24 hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia
 25 Administrative Procedure Act.' A cease and desist order to an unlicensed person that orders
 26 them to cease doing a mortgage business without the appropriate license shall be final 30
 27 days from the date of issuance, and there shall be no opportunity for an administrative
 28 hearing. If the proper license or evidence of exemption or valid employment status during
 29 the time of the alleged offense is ~~obtained~~ delivered to the department within the 30 day
 30 period, the order shall be rescinded by the department. If a cease and desist order is issued
 31 to a person who has been sent a notice of bond cancellation and if the bond is reinstated or
 32 replaced and such documentation is delivered to the department within the 30 day period
 33 following the date of issuance of the order, the order shall be rescinded. If the notice of
 34 reinstatement of bond is not received within the 30 days, the license shall expire at the end
 35 of the 30 day period and the person shall be required to make a new application for license
 36 and pay the applicable fees. In the case of an unlawful purchase of mortgage loans, such

1 initial cease and desist order to a purchaser shall constitute the knowledge required under
2 subsection (b) of Code Section 7-1-1002 for any subsequent violations."

3 **SECTION 23.**

4 Said title is further amended by striking paragraph (2) of Code Section 7-5-3, relating to
5 organization of credit card banks, and inserting in its place the following:

6 "(2) In connection with the application to organize, or to own and control a credit card
7 bank, the applicant shall pay a ~~filing fee of \$15,000.00 to the department~~ applicable fees
8 established by regulation of the department to defray the cost of the investigation and
9 review of the application;".

10 **SECTION 24.**

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