

Senate Bill 405

By: Senators Cheeks of the 23rd and Stephens of the 51st

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to
2 financial institutions, so as to provide for financial institutions to offer financial services to
3 customers consistent with procedures of the Department of Banking and Finance; to
4 authorize the department to enter into agreements with other regulatory authorities; to
5 authorize loan officers to serve as credit committees; to prohibit licensing of certain persons
6 convicted of certain crimes; to increase the record-keeping time requirement; to change a
7 certain definition; to require financial institutions and money service businesses to comply
8 with federal law; to establish requirements for regulation for mortgage lenders and brokers;
9 to provide for related matters; to repeal conflicting laws; and for other purposes.

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

11 **SECTION 1.**

12 Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial
13 institutions, is amended by striking subsection (a) of Code Section 7-1-72, relating to
14 regulation of persons performing financial services for financial institutions, and inserting
15 in its place the following:

16 "(a) Notwithstanding other provisions of law and consistent with the objectives of this
17 chapter as set forth in Code Section 7-1-3 and subject to the ~~prior approval procedures~~
18 provided in regulations of the department, a financial institution may provide financial
19 services to its customers either directly or through employment of duly licensed persons
20 provided such financial institution or its licensed employee or agent has qualified under
21 other laws otherwise applicable to other providers of such financial services."

22 **SECTION 2.**

23 Said chapter is further amended by striking subsection (a) of Code Section 7-1-78, relating
24 to cooperative or reciprocal agreements with other state or federal regulatory authorities, and
25 inserting in its place the following:

1 "(a) The department may, at its discretion, enter into cooperative or reciprocal agreements
2 with other state or federal regulatory authorities and may furnish to such authorities
3 information contained in the examinations, reports, and institution files, provided the
4 information is to be used for confidential, regulatory purposes."

SECTION 3.

6 Said chapter is further amended by striking subsection (a) of Code Section 7-1-633, relating
7 to the organizational meeting of the board of directors of a credit union, and inserting in its
8 place the following:

9 "(a) Within 30 days after receipt of the certificate of incorporation from the Secretary of
10 State, an organizational meeting of the board of directors named in the articles of
11 incorporation shall be held for the purpose of accepting the certificate and bylaws,
12 appointing a credit committee or, in lieu thereof, loan officers and a supervisory committee,
13 and electing or appointing the officers, as provided in Code Section 7-1-655, who shall
14 serve until the first directors' meeting after the first annual meeting. Notice of the meeting
15 shall be given at least five days prior to the date of the meeting."

SECTION 4.

17 Said chapter is further amended by striking subsections (a), (b), and (f) of Code Section
18 7-1-658, relating to procedures for issuance of loans by credit unions, and inserting in their
19 place the following:

20 "(a) Credit unions may lend money to their members at reasonable rates of interest, which
21 shall not exceed 1 1/4 percent each month on the unpaid balance, or such greater rates as
22 shall be authorized for other financial institutions for such purposes as may be approved
23 by the credit committee ~~or an authorized employee~~.

24 (b) Loans shall be supervised as follows:

25 (1) The credit committee shall have the general supervision of all loans to members. The
26 credit committee shall hold such meetings as the business of the credit union may require
27 and not less frequently than once ~~a month~~ each quarter to consider applications for loans.
28 Reasonable notice of such meetings shall be given to all members of the committee.
29 Actions of the credit committee shall be reported to the board in such form as the board
30 shall prescribe at each regular meeting of the board. No loan shall be made unless it is
31 approved by a majority of the entire committee, except as provided in this Code section;
32 (2) The credit committee may appoint one or more employees to be loan officers and
33 delegate to such persons the power to approve or disapprove loans subject to such
34 limitations or conditions as the credit committee prescribes. Records of loans approved
35 shall be maintained in such form as the credit committee shall prescribe and shall be

made available to the credit committee upon request. All loans in excess of 50 percent of a credit union's maximum loan limitation or such lower limit as the credit committee shall establish shall be acted upon by the credit committee. The credit committee may not appoint more than one of its members to be a loan officer. No person shall have the authority to disburse funds of the credit union for any loan which has been approved by such person. ~~Not more than one member of the credit committee may be appointed as provided in this paragraph;~~

~~(3) An applicant for a loan may appeal to the directors from the decisions of the credit committee, if it is so provided in the bylaws and in the way and manner therein provided.~~

In lieu of a credit committee, the board of directors may appoint one or more loan officers and delegate to such persons the power to approve or disapprove loans subject to such limitations or conditions as the board prescribes. All other duties of the credit committee as described in this article shall become the duties of the board of directors. Records of loans approved shall be maintained by the loan officers in such form as the board shall prescribe and a listing of all loans made, including the name of the borrower and the amount of the loan, shall be submitted to the board at each meeting; and

(4) Members may appeal a credit decision made by a loan officer to the credit committee or to the board if denied by the credit committee. Where there is no credit committee, appeal shall be made to the board."

"(f) Approval of loans by either the credit committee or an authorized employee shall be evidenced, prior to disbursement of the loan proceeds, by a writing signed by a committee member or an authorized employee stating that the committee or an authorized employee has approved the loan. If the board appoints loan officers in lieu of a credit committee, it shall establish policies for approval of loans by those loan officers."

SECTION 5.

Said chapter is further amended by striking subsection (c) of Code Section 7-1-682, relating to qualifications of applicants for licenses to sell checks or money orders, investments required, and obtaining conviction data concerning the applicants, and inserting in its place the following:

"(c) The department shall not issue such license if it finds that the applicant or any person who is a director, officer, partner, agent, employee, or substantial stockholder of the applicant has been convicted of a felony involving moral turpitude in any jurisdiction or of a crime, which if committed within this state would constitute a felony involving moral turpitude under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall have been found guilty thereof

1 by the decision or judgment of a court or federal magistrate or by the verdict of a jury,
2 irrespective of the pronouncement of sentence or the suspension thereof, unless such plea
3 of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or
4 otherwise abrogated by lawful judicial process and regardless of whether first offender
5 treatment without adjudication of guilt pursuant to the charge was entered, unless and until
6 such plea of guilty or such decision, judgment, or verdict shall have been set aside,
7 reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or
8 both probation and sentence of a first offender have been successfully completed and
9 documented or unless the person convicted of the crime shall have received a pardon
10 therefor from the President of the United States or the governor or other pardoning
11 authority in the jurisdiction where the conviction was had, or shall have received a
12 certificate of good conduct an official certification or pardon granted by the State Board
13 of Pardons and Paroles pursuant to the provisions of the executive law to remove the
14 disability under this article because of such conviction which removes the legal disabilities
15 resulting from such conviction and restores civil and political rights in this state. The term
16 'substantial stockholder' as used in this subsection shall be deemed to refer to a person
17 owning or controlling 10 percent or more of the total outstanding stock of the corporation
18 in which such person is a stockholder."

SECTION 6.

20 Said chapter is further amended by striking the introductory language of subsection (a) of
21 Code Section 7-1-687.1, relating to maintenance and retention of books, accounts, and other
22 records, and inserting in its place the following:

23 "(a) Each licensee shall make, keep, and reserve the following books, accounts, and other
24 records for a period of ~~three~~ five years:"

SECTION 7.

26 Said chapter is further amended by striking subsection (b) of Code Section 7-1-702, relating
27 to background investigations of applicants for licenses to cash checks, drafts, or money
28 orders, effect of past convictions, conviction data, license posting requirements, and term of
29 licenses, and inserting in its place the following:

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

1 charge thereof before a court or federal magistrate; or shall have been found guilty thereof
2 by the decision or judgment of a court or federal magistrate or by the verdict of a jury,
3 irrespective of the pronouncement of sentence or the suspension thereof, unless such plea
4 of guilty; or such decision, judgment, or verdict; shall have been set aside, reversed, or
5 otherwise abrogated by lawful judicial process and regardless of whether first offender
6 treatment without adjudication of guilt pursuant to the charge was entered, unless and until
7 such plea of guilty or such decision, judgment, or verdict shall have been set aside,
8 reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or
9 both probation and sentence of a first offender have been successfully completed and
10 documented or unless the person convicted of the crime shall have received a pardon
11 therefor from the President of the United States or the governor or other pardoning
12 authority in the jurisdiction where the conviction was had, or shall have received a
13 certificate of good conduct an official certification or pardon granted by the State Board
14 of Pardons and Paroles pursuant to the provisions of the executive law to remove the
15 disability under this article because of such conviction which removes the legal disabilities
16 resulting from such conviction and restores civil and political rights in this state. The term
17 'substantial stockholder' as used in this subsection shall be deemed to refer to a person
18 owning or controlling 10 percent or more of the total outstanding stock of the corporation
19 in which such person is a stockholder."

20 **SECTION 8.**

21 Said chapter is further amended by striking subparagraph (F) of paragraph (6) of Code
22 Section 7-1-911, relating to definitions relative to records and reports of currency
23 transactions, and inserting in its place the following:

24 "(F) A licensee under Article 4 or Article 4A of this chapter and such other persons as
25 may be engaged in the business of:
26 (i) Cashing checks for a fee; or
27 (ii) Performing transactions by wire or other electronic means to facilitate the
28 movement or transfer of money."

29 **SECTION 9.**

30 Said chapter is further amended by striking paragraph (1) of subsection (a) of Code Section
31 7-1-912, relating to records and reports of certain currency transactions, regulations
32 governing currency transactions, commissioner's authority to examine or investigate under
33 Code Section 7-1-64, prohibited acts, and definitions, and inserting in its place the
34 following:

"(a)(1) Every financial institution shall keep a record of currency transactions in excess of \$10,000.00 and shall comply with federal law as to their filing. Financial institutions and other money service businesses are required by state law to comply with the filing, reporting, and record-keeping requirements provided for in federal law. The department may promulgate regulations that specify additional requirements for currency transaction reports, record keeping, and suspicious activity reports."

SECTION 10.

8 Said chapter is further amended by striking subsection (a) of Code Section 7-1-1003.2,
9 relating to financial requirements for licensing and registration of mortgage lenders and
10 mortgage brokers, and inserting in its place the following:

11 "(a) Each licensed mortgage broker must provide the department with a bond. The bond
12 for a mortgage broker shall be in the principal sum of \$50,000.00 or such greater sum as
13 the department may require and the bond shall meet the other requirements of subparagraph
14 (c)(2)(B) of this Code section. In lieu of a bond, a mortgage broker may: provide the
15 department with evidence from the United States Department of Housing and Urban
16 Development that the broker is a loan correspondent under Title I, Title II, or Title I and
17 Title II for each year the broker is licensed by the department. The bond and the United
18 States Department of Housing and Urban Development requirements are continuous in
19 nature.

20 (1) Provide the department with an audited financial statement that discloses that the
21 broker has a bona fide and verifiable tangible net worth of \$100,000.00; or
22 (2) Provide the department with evidence from the United States Department of Housing
23 and Urban Development that the broker is a loan correspondent under Title I, Title II, or
24 Title I and Title II for each year the broker is licensed by the department. Such
25 requirement shall be continuous in nature."

SECTION 11.

27 Said chapter is further amended by striking Code Section 7-1-1003.3, relating to application
28 for registration as a mortgage lender or mortgage broker, and inserting in its place the
29 following:

30 "7-1-1003.3.

31 (a) An application to register as a mortgage lender or broker under this article shall be
32 made annually in writing, under oath, on a form provided by the department, subject to
33 requirements specified by rules and regulations of the department and shall be renewed
34 each year by April 1.

(b) The application shall include all of the items requested of applicants for licenses in Code Section 7-1-1003."

SECTION 12.

Said chapter is further amended by striking subsection (i) of Code Section 7-1-1004, relating to the investigation of applicants for mortgage lender or mortgage broker licenses, and inserting in its place the following:

"(i) The department may not issue a license to and may revoke a license from an applicant or licensee if such person employs any other person against whom a final cease and desist order has been issued within the preceding three years, if such order was based on a violation of Code Section 7-1-1013 or based on the conducting of a mortgage business without a required license, or whose license has been revoked within three years of the date such person was hired. Each applicant and licensee shall, before hiring an employee, examine the department's public records to determine that such employee is not subject to the type of cease and desist order described in this subsection."

SECTION 13.

Said chapter is further amended by striking subsections (a) and (b) of Code Section 7-1-1010, relating to annual financial statements of mortgage brokers, and inserting in their place the following:..

(a) Each mortgage broker licensed or registered under this article shall submit to the department initially an unaudited financial statement certified to be true and correct by the mortgage broker; provided, however, that if the mortgage broker is using its net worth and not a surety bond or letter of credit to meet the requirements for licensure in Code Section 7-1-1003.2, the mortgage broker shall submit to the department with the initial application for licensure and with any renewal applications an audited financial statement. If a mortgage broker is a United States Department of Housing and Urban Development loan correspondent, such broker must also submit to the department the audit that is required for the United States Department of Housing and Urban Development. The department may require the mortgage broker to have made an audit of the books and affairs of the licensed or registered business and submit to the department an audited financial statement if the department finds that such an audit is necessary to determine whether the mortgage broker is complying with the provisions of this article and the rules and regulations adopted in furtherance of this article.

(b) Each mortgage lender licensed or registered under this article shall at least once each year have made an audit of the books and affairs of the licensed or registered business and submit to the department at renewal an audited financial statement, except that a mortgage

lender licensed or registered under this article which is a subsidiary shall comply with this provision by annually providing a consolidated audited financial statement of its parent company and a financial statement, which may be unaudited, of the licensee or registrant which is prepared in accordance with generally accepted accounting principles. A lender who utilizes a bond in lieu of an audit need not supply such audit, unless specially required by the department. An audit must be less than 15 months old to be acceptable. The department may by regulation establish additional minimum standards for audits and reports under this Code section."

SECTION 14.

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