

House Bill 1713

By: Representatives Roberts of the 135th, Williams of the 128th, Ehrhart of the 28th, Brooks of the 47th, Massey of the 24th, and others

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 licensing of persons who provide deferred presentment services; to
3 provide for a short title; to define certain terms; to provide for licenses, qualifications, and
4 application therefore; to provide for fees; to provide for limitations; to provide for consumer
5 notices; to provide for rules and regulations; to provide for penalties and hearings; to provide
6 for complaint investigation; to provide for annual reports; to provide for related matters; to
7 provide an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is
11 amended by adding at the end thereof a new Chapter 9 to read as follows:

12 "CHAPTER 9

13 7-9-1.

14 This chapter shall be known and may be cited as the 'Deferred Presentment Services Act.'

15 7-9-2.

16 As used in this chapter, the term:

17 (1) 'Affiliate' or 'person affiliated with' means, when used with reference to a specified
18 person, a person who, whether directly, indirectly, or through one or more intermediaries,
19 controls, is controlled by, or is under common control with the person specified. Any
20 beneficial owner of 20 percent or more of the combined voting power of all classes of
21 voting securities of a person or any executive officer, director, trustee, joint venturer, or
22 general partner of a person is an affiliate of such person unless the shareholder, executive

- 1 officer, director, trustee, joint venturer, or general partner shall prove that he or she in fact
2 does not control, is not controlled by, or is not under common control with such person.
- 3 (2) 'Amount financed' has the same meaning ascribed to it in Regulation Z of the federal
4 Truth-In-Lending Act, 12 C.F.R. 226.18(b), as amended.
- 5 (3) 'Check' means a negotiable instrument, as such term is defined in Code Section
6 11-3-104, signed by the maker and made payable to a person licensed under this chapter.
- 7 (4) 'Commissioner' means the commissioner of the Department of Banking and Finance
8 or his or her designated representative.
- 9 (5) 'Consumer' means a person other than an organization who is the buyer, lessee, or
10 debtor to whom credit is granted in a consumer credit transaction.
- 11 (6) 'Deferred presentment services' means a transaction whereby the lender, for a service
12 fee, does the following:
- 13 (A) Accepts a check from the consumer;
- 14 (B) Agrees to hold the check for a period of time prior to negotiation or deposit of the
15 check; and
- 16 (C) Pays to the person, credits to the person's account, or pays to another party on the
17 person's behalf the amount of the check, less service fees, permitted under subsection
18 (d) of Code Section 7-9-10.
- 19 (7) 'Department' means the Department of Banking and Finance.
- 20 (8) 'Lender' means any person who is licensed to engage in the business of deferred
21 presentment services under this chapter.
- 22 (9) 'Licensee' means a person licensed to provide deferred presentment services pursuant
23 to this chapter.
- 24 (10) 'Multiple transactions' means more than one deferred presentment services
25 agreement in effect at any one time.
- 26 (11) 'Person' means an individual, group of individuals, partnership, association,
27 corporation, or any other business unit or legal entity.
- 28 (12) 'Renewal' means an extension of a deferred presentment services agreement
29 whereby the consumer and lender agree to extend the due date of the original deferred
30 presentment services agreement only for a service fee.
- 31 (13) 'Service fee' means the fee or other form of compensation, however paid, authorized
32 in Code Sections 7-9-10 and 7-9-11 for the deferral of the presentation of a check
33 pursuant to this chapter. Such fee shall not be deemed to be interest for any purpose.

1 7-9-3.

2 (a) No person shall engage in the business of deferred presentment services or in any
3 service substantially similar to deferred presentment services without having first obtained
4 a license from the department as provided in this chapter.

5 (b) The department shall promulgate rules and regulations providing for application
6 processing and deadlines.

7 (c) A separate license shall be required for each person who engages in the business of
8 deferred presentment services, and if that person desires to transact business at more than
9 one location each location must be approved by the department before it commences
10 operation.

11 (d) A deferred presentment services transaction that complies with the provisions of this
12 chapter shall not be construed to be a loan for the purpose of Chapters 3 or 4 of this title.
13 A deferred presentment services transaction shall not be subject to the provisions of Code
14 Section 16-9-20, except as provided in subsection (d) of Code Section 7-9-10.

15 7-9-4.

16 (a) Each application for a license shall be in writing and under oath to the commissioner
17 in a form prescribed by the department and shall include, but shall not be limited to, the
18 following:

19 (1) The legal name, residence address, and business address of the applicant and, if the
20 applicant is a partnership, association, or corporation, the name, residence address, and
21 business address of every member, officer, managing employee, and director thereof;

22 (2) The name and street address of the registered agent for service of process of the
23 applicant, the location at which the deferred presentment services shall be conducted, and
24 such other data and information as the commissioner may require with respect to the
25 applicant, its directors, trustees, officers, members, managing employees, or agents;

26 (3) The relevant business records of the applicant indicating a minimum net worth,
27 determined in accordance with generally accepted accounting principles by a certified
28 public accountant, of at least \$25,000.00 available for the operation of each location, up
29 to a maximum of \$250,000.00;

30 (4) Any criminal record of the applicant, a manager, or an employee or, if the applicant
31 is a partnership, association, or corporation, any criminal record of any person who is a
32 director, officer, or shareholder of 10 percent or more of the outstanding stock of the
33 applicant or who owns or controls the applicant; any record of fraud or other act of
34 personal dishonesty; any act, omission, or practice that constitutes a breach of a fiduciary
35 duty; or any record of suspension, removal, or administrative action by any agency or
36 department of the United States or any state resulting from participation in the conduct

1 of any business. The department shall be authorized to obtain conviction data, including
2 without limitation information from the Georgia Crime Information Center derived from
3 fingerprints, with respect to any such persons in the same manner as provided in Code
4 Section 7-1-1004. Failure to disclose this information shall be grounds for summary
5 denial or revocation of a license;

6 (5) A corporate surety bond in a form acceptable to the department in favor of the
7 commissioner executed by a corporate surety authorized to transact business in this state
8 and approved by the department in the principal sum equal to the lesser of \$10,000.00 per
9 location up to a maximum of \$250,000.00. Such bond shall be payable to the
10 commissioner and shall be contingent upon compliance with this chapter and the payment
11 by the licensee of any and all moneys that may become due and owing by the licensee to
12 consumers or the department as a result of the receipt, handling, transmission, and
13 payment of money arising out of the business of the licensee of cashing and retaining
14 checks pursuant to the license issued to the licensee under this chapter. The department
15 may apply to the surety for such sums owing and any person damaged by noncompliance
16 of a licensee may proceed on the bond;

17 (6) A licensing fee equal to \$500.00 for the first location and \$100.00 for each additional
18 location, which the department may adjust from time to time, which shall be refunded if
19 the application is denied, and which, if the license is granted, shall satisfy the fee
20 requirement for the first license year. The license period shall begin July 1 of each year;

21 (7) A copy of the written agreement that the applicant proposes to enter into with
22 customers and a copy of the proposed schedule of fees to be charged to the customers,
23 both of which are to be in conformity with this chapter; and

24 (8) A nonrefundable investigation fee of \$250.00 per location.

25 (b) In order for an applicant to qualify for and retain a license, the applicant must satisfy
26 the objective criteria set forth in this Code section, including the financial responsibility,
27 financial condition, business experience, character, and general fitness requirements.

28 (c) The department may refuse to issue a license, or may revoke an existing license, if it
29 finds that the applicant, or any person who is a director, officer, partner, agent, employee,
30 or ultimate equitable owner of 10 percent or more of the applicant, has been convicted of
31 a felony involving moral turpitude in any jurisdiction or of a crime that, if committed
32 within this state, would constitute a felony involving moral turpitude under the laws of this
33 state. For the purposes of this chapter, a person shall be deemed to have been convicted
34 of a crime if such person has pled guilty to a charge before a court or federal magistrate or
35 has been found guilty of such a charge by the decision or judgment of a court or federal
36 magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the
37 suspension thereof, unless such plea of guilt or such decision, judgment, or verdict has been

1 set aside, reversed, or otherwise abrogated by lawful judicial process, or unless the person
2 convicted of the crime has received a pardon therefor from the President of the United
3 States or the governor or other pardoning authority in the jurisdiction where the conviction
4 was had or has received an official certification or pardon granted by the State Board of
5 Pardons and Paroles that removes the legal disabilities resulting from such conviction and
6 restores civil and political rights in this state.

7 (d) The department may revoke, suspend, or decline to grant a license if a licensee, its
8 employees, or its agents employ any person against whom a final cease and desist order has
9 been issued because of a violation of this chapter or because of such person's own license
10 having been suspended or revoked within the 12 months immediately preceding such
11 person's first becoming so employed.

12 7-9-5.

13 (a) Upon the filing of an application in a form prescribed by the commissioner and
14 accompanied by the required fee and documents, the commissioner shall investigate
15 whether the requirements prescribed by this chapter have been satisfied. If the
16 commissioner finds that the requirements have been satisfied and approves the application,
17 the commissioner shall issue to the applicant a license to engage in the deferred
18 presentment services business in this state.

19 (b) The license issued pursuant to subsection (a) of this Code section shall be
20 conspicuously posted in each place of business of the licensee.

21 (c) A license issued pursuant to this chapter shall remain in force and effect for a period
22 of one year after its date of issuance unless earlier surrendered, suspended, or revoked. All
23 licenses shall expire on June 30 following issuance. The commissioner is authorized to
24 prorate the initial license fee for applications that will expire in less than 12 calendar
25 months; but if a license is later surrendered, suspended, or revoked, no proration of fees
26 shall be authorized.

27 7-9-6.

28 (a) An application for a license under this chapter shall be denied for the failure of the
29 applicant to comply with the prescribed requirements of this chapter and such denial shall
30 be subject to notice and a hearing.

31 (b) In any hearing on the denial of a license, the burden of proving entitlement to a license
32 shall be on the applicant. The commissioner may summarily deny without notice or
33 hearing any incomplete or inadequate application or any application that includes any
34 person who:

1 (1) Controls the applicant or is a director, officer, manager, member, or shareholder of
2 10 percent or more of the applicant's outstanding stock; and

3 (2) Has had a conviction of a felony involving moral turpitude or has had a license for
4 deferred presentment services suspended or revoked in any state within one year
5 preceding the date of the application.

6 7-9-7.

7 (a) A license issued pursuant to this chapter is not transferable or assignable.

8 (b) As used in this Code section, the term 'control' means:

9 (1) In the case of a corporation, direct or indirect ownership or the right to control 10
10 percent or more of the voting shares of the corporation or the ability of a person to elect
11 a majority of the directors or otherwise effect a change in policy; and

12 (2) In the case of any other entity, the ability to change the principals of the organization,
13 whether active or passive.

14 (c) The prior written approval of the commissioner is required for the continued operation
15 of a deferred presentment services business whenever a change in control of a licensee is
16 proposed.

17 (d) The commissioner may require a licensee to provide information that the commissioner
18 deems necessary in order to determine whether a new application is required when a
19 change in control of a licensee is requested. Administrative costs incurred by the
20 commissioner in investigating a change of control request, or where such a request is found
21 to have been required, shall be paid by the person requesting such approval, subject to the
22 limitations set forth in this chapter and the regulations promulgated under this chapter.

23 (e) A licensee shall notify the department in writing five days before making any change
24 in the licensee's business location or name.

25 7-9-8.

26 Within 15 days following the occurrence of any one of the following events, a licensee
27 shall file a written report with the commissioner describing such event and its expected
28 impact on the activities of the licensee in this state, any one of which may be grounds for
29 the revocation or suspension of a license:

30 (1) The institution of revocation or suspension proceedings against the licensee by any
31 state or governmental authority;

32 (2) The denial of the opportunity to engage in the business of deferred presentment
33 services by any state or governmental authority;

34 (3) Any felony indictment of the licensee or any of its directors, officers, managers, or
35 principals;

1 (4) Any felony conviction of the licensee or any of its directors, officers, or principals;
 2 provided, however, that conviction of a felony involving moral turpitude shall constitute
 3 grounds for immediate revocation of a license; or

4 (5) Such other events as the commissioner may determine and identify by rule or
 5 regulation.

6 7-9-9.

7 A license may be renewed for a period of one year upon the filing of an application
 8 conforming to the requirements of this chapter with such modifications as the department
 9 may require. No investigation fee shall be payable in connection with such renewal
 10 application; but an annual license fee of \$500.00 for the first location and \$100.00 for each
 11 additional location, which the department may increase or decrease by not more than 10
 12 percent in any year to defray the cost of investigation and supervision, shall be paid with
 13 each renewal application. Such annual license fee shall not be refunded or prorated if the
 14 renewal application is approved. If the renewal is denied, one half of the total fee shall be
 15 refunded, unless the applicant contests the denial and such denial is upheld after a hearing.
 16 Upon a denial becoming final, the applicant may not initiate new deferred presentment
 17 services transactions, but may continue collection efforts on all outstanding transactions.
 18 If a renewal application is filed with the department by the due date established by
 19 department regulation, the license sought to be renewed shall continue in force until the
 20 issuance by the department of the renewal license or denial.

21 7-9-10.

22 (a) A person licensed pursuant to this chapter shall:

23 (1) Comply with all applicable provisions of state and federal law regarding cash
 24 transactions and cash transaction reporting;

25 (2) Display its license in a conspicuous location in each place of business;

26 (3) Display in a conspicuous location in each place of business the name and toll-free
 27 telephone number of a consumer credit counseling service organization;

28 (4) Maintain and use in its business any books, accounts, and records the commissioner
 29 may require to carry into effect the provisions of this chapter and the administrative
 30 regulations issued under this chapter;

31 (5) Post at any place of business where deferred presentment services are provided a
 32 notice of the charges imposed for such deferred presentment services;

33 (6) Preserve its books, accounts, and records for at least two years or such longer period
 34 as provided by regulations. The books, accounts, and records must be maintained

1 separately from those relating to any other business or businesses in which the person is
2 engaged;

3 (7) Provide the following notice in a prominent place on each deferred presentment
4 services agreement in at least ten-point type:

5 'A deferred presentment services transaction is not intended to meet long-term financial
6 needs. A deferred presentment services transaction should be used only to meet
7 short-term cash needs.'; and

8 (8) Provide the following notice in a prominent place on each deferred presentment
9 services agreement in at least ten-point type:

10 'State law prohibits deferred presentment services transactions exceeding \$500.00 total
11 debt from any single deferred presentment lender. Exceeding this amount may create
12 financial hardships for you and your family. You have the right to rescind this
13 transaction on or before the close of the next business day following this transaction.'

14 (b) Each deferred presentment services transaction shall be documented by a written
15 agreement signed by both the lender and consumer. The written agreement shall contain
16 the name of the consumer, the transaction date, the amount of the check, the annual
17 percentage rate charged, and a statement of the total amount of service fees charged,
18 expressed both as a dollar amount and an annual percentage rate consistent with the format
19 and content of the federal Truth-In-Lending Act. In addition, the written agreement shall
20 include all disclosures required by this Code section. The written agreement shall set a
21 date, not more than 45 days after the deferred presentment services transaction date, upon
22 which the check may be deposited or negotiated.

23 (c) A transaction is completed when the lender presents the check or debits the consumer's
24 checking account for payment or the consumer redeems the check by paying the full
25 amount of the check to the holder. The consumer shall not be charged any additional
26 charge or fee for cashing the lender's business check or money order. Once the consumer
27 has completed the deferred presentment services transaction, the consumer may enter into
28 a new deferred presentment agreement with the lender.

29 (d) A lender may charge a service fee for each deferred presentment services transaction,
30 which service fee may not exceed 15 percent of the amount financed. The lender may
31 charge only those fees authorized in this chapter in connection with a deferred presentment
32 services transaction.

33 (e) A consumer shall have the right to rescind, at no cost, the deferred presentment
34 services transaction on or before the close of the next business day following the
35 transaction. In order to rescind a deferred presentment services transaction, a customer
36 need only inform the licensee of the consumer's desire to rescind and return to the licensee
37 cash in an amount equal to the amount financed.

1 (f) The maker of a check shall have the right to redeem the check from the licensee before
2 the agreed date of presentment upon payment to the licensee of the full amount of the
3 check in cash or its equivalent.

4 (g) Proceeds to the maker in a deferred presentment services transaction may be made in
5 the form of a licensee's business check, money order, debit, or cash.

6 (h) A consumer shall be permitted to make partial payments in accordance with Code
7 Section 7-9-12 of this chapter.

8 (i) Before a licensee presents for payment or deposit a check accepted by a licensee, the
9 check shall be endorsed with the actual name under which the licensee is doing business.

10 (j) If a check is returned to the licensee from a payor financial institution due to
11 insufficient funds, a closed account, or a stop payment order, the licensee shall have the
12 right to all civil means and fees available and allowed by Code Section 13-6-15; provided,
13 however, that double damages shall not be allowed. The provisions of paragraph (3) of
14 subsection (e) of Code Section 13-6-15 shall not apply to this Code section.

15 (k) If a check is returned to a licensee under the circumstances described in paragraph (1)
16 of subsection (a) of Code Section 16-9-20, the individual who issued the check shall be
17 subject to prosecution under Code Section 16-9-20. Except as expressly provided in this
18 subsection, no individual who issues a check to a licensee under this chapter shall be
19 convicted of or considered to have violated any other provision of Code Section 16-9-20.

20 (l) Subject to the following subsections, every licensee under this chapter may charge and
21 collect a maximum fee on any deferred presentment services transaction not to exceed 15
22 percent of the amount financed.

23 7-9-11.

24 (a) A person licensed pursuant to this chapter shall not:

25 (1) Require a customer to provide security for the transaction or require the customer to
26 provide guaranty from another person;

27 (2) Allow any customer to have multiple transactions dated on the same day or multiple
28 transactions involving more than four checks total from the same deferred presentment
29 services lender, including the current transaction, or an aggregate face value exceeding
30 \$500.00 total debt from the deferred presentment services lender;

31 (3) Use any device, plan, or agreement, including agreements with affiliated licensees,
32 or use any agreements with any check cashiers, either formal or informal, with the intent
33 to obtain greater charges than otherwise would be authorized by this chapter. Such
34 prohibition shall include, but not be limited to, any fee to cash a check given to a
35 customer by a licensee;

36 (4) Charge any fees not specifically authorized in this chapter;

- 1 (5) Alter or delete the date on any check accepted by the licensee, accept an undated
2 check, or accept a check dated on a date other than the date on which the licensee accepts
3 the check;
- 4 (6) Engage in unfair or deceptive acts, practices, or advertising or pursue a course of
5 action not in good faith or fair dealing in the conduct of the licensed business;
- 6 (7) Except as specifically authorized under this chapter, use or threaten to use the
7 criminal process available under Code Section 16-9-20 to collect on a deferred
8 presentment services transaction or any civil process to collect the payment of a deferred
9 presentment services transaction not generally available to creditors to collect on
10 consumer loans in default; or
- 11 (8) Allow a customer to renew or roll over a deferred presentment services transaction
12 by paying only an additional fee to extend the due date of the existing transaction.
- 13 (b) In addition to the obligations and duties required under subsection (a) of this Code
14 section, if the customer is a member of the military services of the United States, the
15 following duties and obligations apply to any provider of deferred presentment services:
- 16 (1) The provider is prohibited from garnishment of any military wages or salaries;
- 17 (2) The provider is prohibited from conducting any collection activity against a military
18 customer who has been deployed to a combat or combat support posting for the duration
19 of the deployment;
- 20 (3) The provider is prohibited from contacting the commanding officer of a military
21 customer in an effort to collect on the loan;
- 22 (4) The provider agrees to be bound by the terms of any repayment agreement that it
23 negotiates through military counselors or third-party credit counselors; and
- 24 (5) The provider agrees to honor any statement or proclamation by a military base
25 commander that a specific deferred presentment services provider branch location has
26 been declared off limits to military personnel.
- 27 (c) In addition to the disclosure required under Code Section 7-9-10, if the customer is a
28 member of the military services of the United States, the following disclosures shall be
29 made in writing by any provider of deferred presentment services;
- 30 (1) A notice that the provider is prohibited from garnishment of any military wages or
31 salaries;
- 32 (2) A notice that the provider is prohibited from conducting any collection activity
33 against a military customer who has been deployed to a combat or combat support
34 posting for the duration of the deployment;
- 35 (3) A notice that the provider is prohibited from contacting the commanding officer of
36 a military customer in an effort to collect on a loan;

1 (4) A notice that the provider agrees to be bound by the terms of any repayment
2 agreement that it negotiates through military counselors or third-party credit counselors;
3 and

4 (5) A notice that the provider agrees to honor any statement or proclamation by a
5 military base commander that a specific deferred presentment services provider branch
6 location has been declared off limits to the military personnel.

7 7-9-12.

8 (a) For purposes of complying with this Code section, 'consecutive transaction' means a
9 deferred presentment services transaction that is entered into within three days of a
10 previously terminated transaction.

11 (b) A licensee must provide a consumer written notice of the consumer's right to request
12 a repayment plan under the circumstances described below. The form of such written
13 notice shall be either prescribed or approved by the department and such notice shall be set
14 forth conspicuously both at the point of sale and in every deferred presentment services
15 agreement.

16 (c) If a consumer is unable to pay on the due date, the full amount owing under a deferred
17 presentment services transaction with a licensee, then the consumer shall have the right to
18 request in writing from such licensee a mandatory repayment plan. A consumer who has
19 requested a repayment plan may repay such consecutive transaction on the following terms:

20 (1) The consumer must request the repayment plan, in writing, on or before the due date
21 of the transaction;

22 (2) The consumer shall agree not to enter into any additional deferred presentment
23 services transactions during or for seven days following the payment plan term with any
24 other licensee;

25 (3) The consumer shall be allowed to repay the transaction in four equal installments
26 with one installment due on each of the customer's next four pay dates; and

27 (4) The licensee shall not charge a consumer any additional fee for utilizing the
28 mandatory repayment plan.

29 7-9-13.

30 (a) Whenever it appears to the department that any person required to be licensed under
31 this chapter or any person employed by or acting as an agent for a licensee has violated any
32 law of this state or any order or regulation of the department, the department may issue an
33 initial written order requiring such person to cease and desist immediately from such
34 unauthorized practices. Such cease and desist order shall be final 20 days after it is issued
35 unless the person to whom it is issued makes a written request within such 20 day period

1 for a hearing. The hearing shall be conducted in accordance with Chapter 13 of Title 50,
2 the 'Georgia Administrative Procedure Act.' A cease and desist order to an unlicensed
3 person that orders such person to cease engaging in a deferred presentment services
4 business without a license shall be final 30 days from the date of issuance with no
5 opportunity for an administrative hearing. If the proper license is obtained within the 30
6 day period, the department shall rescind the order. All final orders of the department are
7 conclusive and subject only to judicial review under Code Section 7-1-90.

8 (b) Whenever a person required to be licensed under this chapter or any such person's
9 employee or agent fails to comply with the terms of an order of the department that has
10 been properly issued under the circumstances, the department, upon notice of three days
11 to such person, may, through the Attorney General, petition the principal court for an order
12 directing such person to obey the order of the department within the period of time as shall
13 be fixed by the court. Upon the filing of such petition, the court shall allow a motion to
14 show cause why such petition should not be granted. Whenever, after a hearing upon the
15 merits or after failure of such person to appear when ordered, it shall appear that the order
16 of the department was properly issued, the court shall grant the petition of the department.

17 (c) Any person required to be licensed under this chapter or any such person's employee
18 or agent who violates the terms of any order issued pursuant to this Code section shall be
19 liable for a civil penalty not to exceed \$1,000.00. Each day during which the violation
20 continues shall constitute a separate offense. In determining the amount of penalty, the
21 department shall take into account the appropriateness of the penalty relative to the size of
22 the financial resources of such person, the good faith efforts of such person to comply with
23 the order, the gravity of the violation, any history of violations by such person, and such
24 other factors or circumstances as shall have contributed to the violation. The department
25 may at its discretion compromise, modify, or refund any penalty that is subject to
26 imposition or has been imposed pursuant to this Code section. Any person assessed as
27 provided in this subsection shall have the right to request a hearing into the matter within
28 ten days after notification of the assessment has been served upon the licensee involved;
29 otherwise, such penalty shall be final except as to judicial review as provided in Code
30 Section 7-1-90.

31 (d) The department may by rule or regulation prescribe administrative fines or penalties
32 for violations of this chapter or of any rules or regulations promulgated by authority of this
33 chapter, which may include requiring refunds of fees to customers if such fees were not in
34 compliance with this chapter.

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

1 7-9-14.
2 The commissioner may enter into consent orders at any time with any authorized person
3 to resolve any matter arising under this chapter. A consent order shall be signed by the
4 person to whom it is issued, or such person's duly authorized representative, and shall
5 indicate agreement to the terms contained therein. A consent order need not constitute an
6 admission by any person that any provision of this chapter or any rule, regulation, or order
7 promulgated or issued under this chapter has been violated, nor need it constitute a finding
8 by the commissioner that such person has violated any provision of this chapter or any rule,
9 regulation, or order promulgated or issued under this chapter. Notwithstanding the
10 issuance of a consent order, the commissioner may seek civil or criminal penalties or
11 administrative fines concerning matters encompassed by the consent order. In cases
12 involving extraordinary circumstances requiring immediate action, the commissioner may
13 take any enforcement action authorized by Code Section 50-13-18. All such actions shall
14 be final when taken except as to judicial review as provided in Code Section 7-1-90.

15 7-9-15.
16 (a) In addition to the remedies available under subsection (b) of this Code section, any
17 person aggrieved by the conduct of a licensee under this chapter in connection with the
18 licensee's regulated activities may file a written complaint with the commissioner, who
19 may investigate the complaint. In the course of the investigation of any complaint or
20 suspected noncompliance with this chapter, the commissioner may subpoena witnesses;
21 administer oaths; examine any individual under oath; and compel the production of records,
22 books, papers, contracts, or other documents relevant to such investigation. If any person
23 fails to comply with a subpoena of the commissioner under this chapter or to testify
24 concerning any matter about which the person may be interrogated under this chapter, the
25 commissioner may petition any principal court of competent jurisdiction for enforcement.
26 If any licensee or its employee or agent fails to comply with a court ordered subpoena, its
27 license shall be suspended pending compliance with the subpoena. If the commissioner
28 receives a complaint or otherwise has a reasonable suspicion of noncompliance with this
29 chapter, he or she shall have the administrative power to investigate and take administrative
30 action or refer a situation to law enforcement authorities when appropriate.
31 (b) If any deferred presentment transaction is made in willful violation of the provisions
32 of this Code section, except as a result of a bona fide error, such transaction may be
33 canceled by a court of competent jurisdiction.
34 (c) Subject to the provisions of subsection (d) of this Code section in which a licensee and
35 consumer may enter into an arbitration agreement, any other agreement whereby the

1 consumer waives the benefits of this Code section shall be deemed to be against public
2 policy and void.

3 (d) Any deferred presentment services transaction in violation of this chapter shall be
4 subject to an action, which may be brought in a court of competent jurisdiction, by the
5 consumer seeking damages, reasonable attorneys' fees, and costs; provided, however, that
6 nothing in this subsection shall prohibit a licensee and consumer from entering into an
7 arbitration agreement whereby the licensee and consumer agree to waive their right to file
8 a lawsuit and proceed in court to have a jury trial to resolve their disputes, and instead
9 agree to submit their dispute to an arbitrator for a decision.

10 7-9-16.

11 To assure compliance with the provisions of this chapter, the commissioner may examine
12 the relevant business books and records of any licensee. The commissioner may charge
13 and collect an examination fee as established by rule or regulation for any compliance
14 examination conducted by the commissioner. The commissioner, for the purpose of
15 discovering violations of this chapter and for the purpose of determining whether persons
16 are subject to the provisions of this chapter, is authorized to examine persons licensed
17 under this chapter and persons reasonably suspected by the commissioner of conducting
18 business which requires a license under this chapter, including all relevant books, records,
19 and papers employed by such persons in the transaction of business, and to subpoena
20 witnesses and documents and examine individuals under oath concerning matters relating
21 to the business of such persons, or such other matters as may be relevant to the discovery
22 of violations of this chapter, including without limitation the conduct of business without
23 a license as required by this chapter.

24 7-9-17.

25 (a) Each licensee shall file an annual report together with a license renewal application
26 with the commissioner containing the following information:

27 (1) Balance sheets, statements of income and expense, and such other statistical
28 information as may be required by the commissioner, consistent with generally accepted
29 accounting principles, for the purpose of determining the volume and proper accounting
30 for operations under this chapter;

31 (2) If the licensee is a corporation, the names and addresses of its officers and directors
32 and its registered agent for service of process; if the licensee is a partnership, the names
33 and addresses of the partners; or, if the licensee is a limited liability company, the names
34 and addresses of the board of governors of the limited liability company and its registered
35 agent for service of process;

1 (3) The names and addresses of all affiliated entities regulated under this title doing
2 business in this state;

3 (4) The location of all places of business operated by the licensee and the nature of the
4 business conducted at each location;

5 (5) The names and addresses of persons owning controlling interest in each licensee; and

6 (6) Such other information as the department deems appropriate.

7 (b) If the licensee holds two or more licenses or is affiliated with other licensees, a
8 composite report complying with the requirements of subsection (a) of this Code section
9 may be filed for all licenses.

10 (c) All reports required by this Code section shall be filed in such form as may reasonably
11 be required by the commissioner and shall be sworn to by an officer of the licensee. The
12 information submitted by licensees pursuant to this chapter shall be afforded the same
13 degree of confidentiality by the department and the commissioner as is applicable to all
14 such other reports filed with the commissioner.

15 7-9-18.

16 All penalties and fines recovered by the department shall be paid into the state treasury to
17 the credit of the general fund; provided, however, that the department at its discretion may
18 remit such amounts recovered, net of the cost of recovery, if it makes an accounting of all
19 such costs and expenses of recovery in the same manner as prescribed for judgments
20 received through derivative actions pursuant to the provisions of Code Section 7-1-441.

21 7-9-19.

22 The commissioner may promulgate reasonable rules and regulations in accordance with
23 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act', and not inconsistent
24 with the laws of this state for the administration and enforcement of this chapter and its
25 intent.

26 7-9-20.

27 If any provision of this Act or the application thereof to any person or circumstance is held
28 invalid for any reason, the invalidity shall not affect the other provisions or any other
29 application of this Act which can be given effect without the invalid provisions or
30 application."

31 **SECTION 2.**

32 This Act shall become effective on July 1, 2004.

1

SECTION 3.

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