

Senate Bill 82

By: Senators Hamrick of the 30th, Schaefer of the 50th, Hudgens of the 47th, Cagle of the 49th, Shafer of the 48th and others

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 supplement definitions relating to financial institutions; to
3 define time parameters for meeting notices; to implement personnel policies; to promulgate
4 regulations promoting parity with federal financial institutions; to prohibit certain persons
5 from participating in financial institutions; to allow Georgia and federal courts access to
6 financial information; to lengthen the time for closure of stock transfer books; to protect the
7 shareholders during bank conversions, mergers, and consolidations; to require notice to the
8 department when articles are amended; to update the financial requirements for licensure of
9 mortgage brokers; to provide for related matters; to provide an effective date; to repeal
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial
14 institutions, is amended by striking paragraph (32) in Code Section 7-1-4, relating to
15 definitions regarding financial institutions, and inserting a new paragraph (31.1) to read as
16 follows:

17 "(31.1) 'Savings bank' means a state chartered bank that has powers no greater than a
18 state bank as provided in this chapter but that may lend and invest in commercial loans
19 in an aggregate amount that does not exceed 50 percent of its total assets. Such bank may
20 elect, subject to department approval, or the department may require, that the savings
21 bank comply with selected provisions of the Home Owners' Loan Act of 1933 that in the
22 judgment and discretion of the department would be consistent with the charter and
23 purpose of the bank. For the purposes of this paragraph, the term 'commercial loan'
24 means a loan for business, commercial, corporate, or agricultural purposes.

25 (32) ~~'Savings bank' or 'state~~ State savings and loan association' means a bank which pays
26 interest on substantially all of its depositors' funds and the majority of whose loans are

1 secured by first liens on or other security interest in residential real property or upon the
2 security of its deposits."

3 **SECTION 2.**

4 Said chapter is further amended by striking paragraph (1) of Code Section 7-1-6, relating to
5 notice requirements, and inserting in its place the following:

6 "(1) Any notice required to be given under this chapter may be delivered in person by
7 first-class mail, or by telegram, charges prepaid, to the last known address of the person
8 or corporation or to the registered office of the corporation. If the notice is sent by mail
9 or by telegraph, it shall be deemed to have been given when deposited in the United
10 States mail or with a telegraph office. If such notice is of a meeting, it shall specify the
11 place, day, and hour of the meeting. Notice of a meeting of shareholders shall be given
12 not less than ten nor more than ~~50~~ 60 days before the meeting. Notice of a special
13 meeting shall specify the general nature of the business to be transacted."

14 **SECTION 3.**

15 Said chapter is further amended by striking subsection (a) of Code Section 7-1-35, relating
16 to appointment of a senior deputy commissioner and other personnel, and inserting in its
17 place the following:

18 "(a) The commissioner shall appoint from time to time, with the right to discharge at will,
19 a senior deputy commissioner of banking and finance. The commissioner may appoint
20 additional deputy commissioners as needed. All deputy commissioners shall also be ex
21 officio examiners. The commissioner may appoint such additional examiners and
22 assistants as he or she may need to discharge in a proper manner the duties imposed upon
23 the commissioner by law, subject to any applicable state laws or rules and or regulations
24 ~~of the state merit system~~ and within the limitations of the appropriation to the department
25 as prescribed in this chapter. ~~Each deputy commissioner and not more than ten additional~~
26 ~~persons designated by the commissioner shall be in the unclassified service. Further, all~~
27 ~~persons in the positions of assistant deputy commissioner, supervisory examiner, and senior~~
28 ~~financial examiner shall be in the unclassified service. All persons in the positions of~~
29 ~~district director, assistant deputy commissioner, supervisory examiner, and senior financial~~
30 ~~examiner shall have had at least five years of experience as an examiner in a federal or state~~
31 ~~agency supervising financial institutions. All other personnel of the department including~~
32 ~~assistant financial examiners and financial examiners shall be governed by such rules of~~
33 ~~position, classification, appointment, promotion, demotion, transfer, dismissal,~~
34 ~~qualification, compensation, seniority privileges, tenure, and other employment standards~~
35 ~~of the state merit system. As used in this Code section, the term 'state merit system' shall~~

1 ~~mean that system established pursuant to Article 1 of Chapter 20 of Title 45. Hiring,~~
 2 ~~promotion, and other personnel policies of the department shall be consistent with~~
 3 ~~guidelines or directives of the state, shall be in writing, and shall be made available upon~~
 4 ~~request to employees of the department."~~

5 SECTION 4.

6 Said chapter is further amended by striking paragraph (2) of subsection (b) and subsections
 7 (c), (d), and (e) of Code Section 7-1-61, relating to promulgation of rules and regulations by
 8 the department, and inserting in their place the following:

9 "(2) The authority of ~~national banks~~ any federally chartered bank, as defined as in Code
 10 Section 7-1-621, operating pursuant to federal law, regulation, or authoritative
 11 pronouncement;"

12 "~~(d)~~(c) Rules and regulations promulgated by the department may provide for controls,
 13 registration, or restrictions reasonably necessary to:

14 (1) Prevent unfair or deceptive business practices which are prohibited under Code
 15 Section 10-1-393;

16 (2) Prevent deceptive or misleading business practices by financial services providers
 17 which may occur by way of alternate delivery systems for the provision of financial
 18 products and services such as the Internet or other telecommunication capabilities; or

19 (3) Prevent or control unfair or deceptive business practices which would operate to the
 20 detriment of any competing business or enterprise or to persons utilizing the services of
 21 any financial institution, its subsidiary, or affiliate.

22 ~~(e)~~(d) All rules and regulations shall be promulgated in accordance with Chapter 13 of
 23 Title 50, the 'Georgia Administrative Procedure Act,' including the requirements for
 24 hearing as stated in that chapter. Regulations issued under this or other provisions of this
 25 chapter may make appropriate distinctions between types of financial institutions and may
 26 be amended, modified, or repealed from time to time.

27 ~~(c)~~(e) ~~In the further exercise of the discretion permitted by this Code section and to~~ To
 28 provide parity with other federally insured financial institutions, the commissioner may,
 29 by specific order directed to an individual financial institution or category of financial
 30 institutions, modify or amend the following qualifying or limiting requirements imposed
 31 on financial institutions by this chapter:

32 (1) Collateral requirements and limits on the amount of obligations owing to it from any
 33 one person or corporation;

34 (2) Loan to value or other limitations in ~~real estate~~ lending;

35 (3) Limitations on the amount of investments in stock or other capital securities of a
 36 corporation or other entity; ~~and~~

1 (4) Limitations on the amount of bank acceptances to be issued; and

2 (5) If Georgia law has been determined to be federally preempted, other limitations or
 3 restrictions on financial institutions contained in this chapter.

4 No such order will be issued unless the commissioner determines that such activity will not
 5 present undue safety and soundness risks to the financial institution or institutions involved.

6 In making such a determination, the commissioner shall consider the financial condition
 7 and regulatory safety and soundness ratings of the institution or institutions affected and
 8 the ability of management to administer and supervise the activity. Any such order
 9 pursuant to this subsection will be available for public review."

10 SECTION 5.

11 Said chapter is further amended by striking Code Section 7-1-71, relating to removal of
 12 officers, directors, and employees of financial institutions, and inserting in its place the
 13 following:

14 "7-1-71.

15 (a) The department, by order of the commissioner, shall have the right to require the
 16 immediate suspension from office of any director, officer, or employee of any financial
 17 institution ~~who shall be found by it~~ and to prohibit any such person's participation in the
 18 affairs of any financial institution if the department finds such person:

19 (1) To be dishonest, incompetent, or reckless in the management of the affairs of the
 20 financial institution;

21 (2) To have persistently violated the laws of this state;

22 (3) To have violated the lawful orders, regulations, or conditions of a written agreement
 23 of or with the department;

24 (4) To have been indicted for any crime involving moral turpitude or breach of trust;

25 (5) To have evidenced an inability to conduct his or her own financial affairs or the
 26 affairs of a company in which such individual owns a majority interest or has
 27 responsibility for financial matters, in a fiscally responsible, diligent, or lawful fashion;
 28 or

29 (6) To have engaged in any unsafe or unsound practice in connection with any insured
 30 depository institution or to have demonstrated willful or continuing disregard for the
 31 safety and soundness of a financial institution.

32 (b) A prohibition order, which prohibits an individual from participating in any capacity
 33 in the affairs of a financial institution, may be issued by the commissioner in connection
 34 with a suspension order issued under the authority of this Code section. Such prohibition
 35 order may provide that if an officer, director, or employee has been removed from office
 36 temporarily or permanently at a financial institution, he or she may also be prohibited from

1 participating in any manner in the conduct of the affairs of any financial institution during
 2 the time the prohibition order is in effect.

3 ~~(b)~~(c) The department shall serve written notice upon the party of its determination to
 4 suspend such person from office or prohibit such person from participating in the affairs
 5 of a financial institution pursuant to ~~subsection (a)~~ subsections (a) and (b) of this Code
 6 section. ~~The~~ A suspension order or a prohibition order shall be effective upon such service
 7 and shall specify whether the suspension is temporary, the duration and terms of the
 8 suspension if temporary, or if it is permanent. The prohibition order shall be consistent in
 9 duration with the suspension order.

10 ~~(c)~~(d) Any person suspended or prohibited under this Code section may request his or her
 11 reinstatement in writing delivered to the department within ten days of his or her
 12 suspension or prohibition. If such reinstatement is not requested, the director, officer, or
 13 employee shall be considered permanently removed and, if so ordered, permanently
 14 prohibited from participation in the affairs of any financial institution.

15 ~~(d)~~(e) Upon request for reinstatement, the department shall conduct an internal review of
 16 the matter during which such person has the opportunity to state his or her case to the
 17 commissioner. The department shall deliver the findings of the hearing to such person.
 18 If the person requests further review, the department may refer the matter to the state
 19 agency for administrative hearings under Chapter 13 of Title 50, the 'Georgia
 20 Administrative Procedure Act,' where a nonpublic hearing shall be held to review the
 21 department's decision. The final decision of the department shall be conclusive, except as
 22 it may be subject to judicial review under Code Section 7-1-90.

23 (f) Any order issued pursuant to this Code section shall also be delivered to the financial
 24 institution with which the party was associated at the time such order was issued."

25 SECTION 6.

26 Said chapter is further amended by striking subsection (c) of Code Section 7-1-151, relating
 27 to appointment of the department as a receiver, and inserting in its place the following:

28 "(c) In any proceeding for the appointment of a receiver of an institution whose deposits
 29 or shares are insured by a public body of the United States, the court may upon the
 30 recommendation of the department (whether or not the department is a party) appoint said
 31 public body or its administrator as receiver. If said public body or its administrator accepts
 32 the appointment, it or he or she shall have all the rights, powers, and duties of the
 33 department as receiver under this chapter and all the rights, powers, and duties as conferred
 34 by other applicable law. The public body or its administrator may act as receiver without
 35 bond."

1 and serve such motion to quash or for protection shall constitute consent for all purposes
2 to disclosure, production, or examination made pursuant to this Code section."

3 **SECTION 9.**

4 Said chapter is further amended by striking subsections (a) and (b) of Code Section 7-1-433,
5 relating to the closure of stock transfer books, and inserting in their place the following:

6 "(a) For the purpose of determining shareholders entitled to notice of or to vote at any
7 meeting of shareholders or any adjournment thereof, or entitled to receive payment of any
8 dividend, or in order to make a determination of shareholders for any other proper purpose,
9 the board of directors of a bank or trust company may provide that the stock transfer books
10 shall be closed for a stated period not to exceed, in any case, ~~50~~ 70 days. If the stock
11 transfer books shall be closed for the purpose of determining shareholders entitled to notice
12 of or to vote at a meeting of shareholders, such books shall be closed for at least ten days
13 immediately preceding such meeting.

14 (b) In lieu of closing the stock transfer books, the bylaws or, in the absence of an
15 applicable bylaw, the board of directors may fix in advance a date as the record date for
16 any such determination of shareholders, such date in any case to be not more than ~~50~~ 70
17 days and, in case of a meeting of shareholders, not less than ten days prior to the date on
18 which the particular action requiring such determination of shareholders is to be taken."

19 **SECTION 10.**

20 Said chapter is further amended by striking paragraph (1) of subsection (a) of Code Section
21 7-1-550, relating to conversions and mergers of state and national banks, and inserting in its
22 place the following:

23 "(1) Compliance with the applicable laws of the United States, including any provisions
24 thereof relating to approval of said conversion, merger, or consolidation by the
25 shareholders and directors of the national bank and to dissenting rights of shareholders
26 in such national bank, and compliance with any other requirements prescribed by the
27 department to protect the shareholders or members and the safety and soundness of the
28 institution;".

29 **SECTION 11.**

30 Said chapter is further amended by striking subsections (a) and (b) of Code Section 7-1-635,
31 relating to department approval for amendments to articles or bylaws, and inserting in their
32 place the following:

33 "(a) The department shall, in its discretion, approve or disapprove of proposed
34 amendments to the articles or to the bylaws within 90 days after they are submitted by the

1 credit union and within that time shall so advise the Secretary of State of any changes to
 2 the articles and inform the credit union in writing of its approval or disapproval.

3 (b) If the department should disapprove any articles or proposed amendments to articles
 4 or bylaws, it shall state the reasons for its disapproval. The subscribers or credit union
 5 shall have reasonable time, not more than 90 days from the date of disapproval or such
 6 additional time as the department may allow, to correct any matters causing its disapproval.
 7 If such matter is corrected, the department shall then advise the Secretary of State and
 8 credit union in writing of its approval of changes to the articles or the credit union alone
 9 in writing of its approval in the case of amendment of the bylaws."

10 SECTION 12.

11 Said chapter is further amended by striking paragraph (2) of Code Section 7-1-650, relating
 12 to powers of credit unions, and inserting in its place the following:

13 "(2) It may receive ~~passbook~~ savings deposits from nonmembers in such manner as the
 14 bylaws may provide, but such deposits may not be subject to check and may not bear a
 15 greater rate of interest than the rate of interest paid to members for the same class of
 16 deposit;".

17 SECTION 13.

18 Said chapter is further amended by striking subsection (a) of Code Section 7-1-667, relating
 19 to credit union mergers, and inserting in its place the following:

20 "(a) A credit union may, with the approval of the department and in accordance with such
 21 uniform rules and regulations as it shall make and promulgate, be merged with another
 22 credit union under the articles of such credit union, upon any plan agreed upon by the
 23 majority of the board of each credit union joining the merger and approved by not less than
 24 two-thirds of the members of each credit union present and eligible to vote at meetings
 25 called for that purpose. The department may allow waiver of the member vote if in its
 26 judgment the merger is necessary to protect the safety and soundness of either or both
 27 credit unions. All property, property rights, and interests of the credit union so merging
 28 shall, upon merger, be transferred to and vested in the credit union under whose articles the
 29 merger is effected without deed, endorsement, or other instrument of transfer; and the debts
 30 and obligations of the credit union so merging shall be deemed to have been assumed by
 31 the credit union under whose articles the merger is effected; and thereafter the articles of
 32 the credit union so merging shall be void."

1 surety bond; but the licensee shall be entitled to receive all interest thereon and shall have
 2 the right, with the approval of the department, to substitute other assets approved by this
 3 Code section for those deposited and shall be required to do so on written order of the
 4 department made for good cause shown; provided, however, if the licensee substitutes
 5 assets more than once during the license period the department may charge a fee for the
 6 processing of such substitution to be prescribed by regulations of the department. In the
 7 event of the failure or insolvency of such licensee, the assets, any proceeds therefrom, and
 8 the funds deposited pursuant to this Code section shall be applied to the payment in full of
 9 claims arising out of transactions in this state for the sale or issuance of checks. This
 10 subsection shall apply to check sellers only and not to money transmitters."

11 SECTION 17.

12 Said chapter is further amended by striking paragraph (10) of Code Section 7-1-1000,
 13 relating to definitions applicable to mortgage lenders and brokers, and inserting in its place
 14 the following:

15 "(10) 'Misrepresent' means to make a false statement of a substantive fact ~~or to engage~~
 16 ~~in, with the intent to deceive or mislead.~~ Misrepresent may also mean to intentionally
 17 engage in any conduct which leads to a false belief which is material to the transaction."

18 SECTION 18.

19 Said chapter is further amended by striking paragraph (1) of subsection (b) of Code Section
 20 7-1-1003, relating to licensing mortgage lenders or mortgage brokers, and inserting in its
 21 place the following:

22 "(1) The legal name and address of the applicant and, if the applicant is a partnership,
 23 association, ~~or~~ corporation, or other business entity, of every member, officer, and
 24 director thereof;"

25 SECTION 19.

26 Said chapter is further amended by striking Code Section 7-1-1003.2, relating to financial
 27 requirements for licensing mortgage brokers, in its entirety and inserting in its place the
 28 following:

29 "7-1-1003.2.

30 (a) Each licensed mortgage broker must provide the department with a bond. The bond for
 31 a mortgage broker shall be in the principal sum of \$50,000.00 or such greater sum as the
 32 department may require and the bond shall meet the other requirements of ~~subparagraph~~
 33 ~~(c)(2)(B)~~ subsection (c) of this Code section. ~~In lieu of a bond, a mortgage broker may~~
 34 ~~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. The bond and the United States Department of Housing and Urban Development requirements are 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 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) subsection (c) of this Code section. ~~In lieu of bond a lender may provide the department with an audited financial 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.~~

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

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

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

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

~~(B) A corporate surety bond in the principal amount of \$100,000.00, which~~

(c) Bond requirements:

(1) The bond requirements for mortgage brokers and lenders are continuous in nature and must be maintained at all times as a condition of licensure; and

(2) The corporate surety bond shall be for a term and in a form satisfactory to the department, shall be issued by a bonding company or insurance company authorized to do business in this state and approved by the department, and shall run to the State of

1 Georgia for the benefit of any person damaged by noncompliance of a licensee with this
 2 article, the 'Georgia Residential Mortgage Act,' or with any condition of such bond.

3 Damages under the bond shall include moneys owed to the department for fees, fines, or
 4 penalties. Such bond shall be continuously maintained thereafter in full force. Such bond
 5 shall be conditioned upon the applicant or the licensee conducting his or her licensed
 6 business in conformity with this article and all applicable laws; ~~and,~~

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

10 (d) ~~An~~ As an alternative to a bond, an applicant or a licensee may supply an irrevocable
 11 letter of credit from a federally insured financial institution in form and terms acceptable
 12 and payable to the department ~~may be substituted for the bond requirement for a mortgage~~
 13 ~~broker or mortgage lender license.~~

14 (e) Any person including the department who may be damaged by noncompliance of a
 15 licensee with any condition of a bond or this article, the 'Georgia Residential Mortgage
 16 Act,' may proceed on such bond against the principal or surety thereon, or both, to recover
 17 damages.

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

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

23 SECTION 20.

24 Said chapter is further amended by striking subsections (a), (d), and (f) of Code Section
 25 7-1-1004, relating to investigations of applicants for licensure, and inserting in their place
 26 the following:

27 "(a) Upon receipt of an application for license, the department shall conduct such
 28 investigation as it deems necessary to determine that the applicant and the individuals who
 29 direct the affairs or establish policy for the licensee applicant, including the officers,
 30 directors, or the equivalent, are of good character and ethical reputation; that the applicant
 31 and such persons meet the requirements of subsection (d) of this Code section; that the
 32 applicant and such persons demonstrate reasonable financial responsibility; that the
 33 applicant has reasonable policies and procedures to receive and process customer
 34 grievances and inquiries promptly and fairly; and that the applicant has and maintains a
 35 registered agent for service in this state."

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

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

1 "(1) Misrepresent the material facts, ~~or~~ make false statements or promises, or submit
 2 false statements or documents likely to influence, persuade, or induce an applicant for a
 3 mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan, or, through agents
 4 or otherwise, pursue a course of misrepresentation by use of fraudulent or unauthorized
 5 documents or other means to the department or anyone ~~through agents or otherwise;~~"

6 "(6) Engage in any transaction, practice, or course of business which is not in good faith
 7 or fair dealing, or which operates a fraud upon any person, in connection with the
 8 attempted or actual making of, purchase of, transfer of, or sale of any mortgage loan;"

9 "(11) Purposely withhold, delete, destroy, or alter information requested by an examiner
 10 of the department or make false statements or material misrepresentations to the
 11 department ~~during the course of an examination or on any application or renewal form~~
 12 ~~sent to the department."~~

13 SECTION 24.

14 Said chapter is further amended by adding a new subsection (h) and by striking paragraph
 15 (1) of subsection (a) and subsection (d) of Code Section 7-1-1017, relating to suspensions
 16 or revocations of licenses, and inserting in their place the following:

17 "(a)(1) The department may suspend or revoke an original or renewal license or
 18 registration on any ground on which it might refuse to issue an original license or
 19 registration or for a violation of any provision of this article or of Chapter 6A of this title
 20 or any rule or regulation issued under this article or under Chapter 6A of this title,
 21 including failure to provide fees on a timely basis, or for failure of the licensee or
 22 registrant to pay, within 30 days after it becomes final, a judgment recovered in any court
 23 within this state by a claimant or creditor in an action arising out of the licensee's or
 24 registrant's business in this state as a mortgage lender or mortgage broker or for violation
 25 of a final order previously issued by the department."

26 "(d) A decision of the department denying a license or registration application, original or
 27 renewal, shall be conclusive, except that it may be subject to judicial review under Code
 28 Section 7-1-90. A decision of the department suspending or revoking a license or
 29 registration shall be subject to judicial review in the same manner as a decision of the
 30 department to take possession of the assets and business of a bank under Code Section
 31 7-1-155."

32 "(h) Whenever the department initiates an administrative action against a current licensee,
 33 the department may pursue that action to its conclusion despite the fact that a licensee may
 34 withdraw its license or fail to renew it."

SECTION 25.

Said chapter is further amended by striking subsections (b) and (c) of Code Section 7-1-1018, relating to cease and desist orders, and inserting in their place the following:

"(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, upon notice of three days to such person, may, through the Attorney General, 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. Whenever, after a hearing upon the merits or after failure of such person to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(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 during which the violation continues shall constitute a separate offense. In determining the amount of 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 imposition or has been imposed pursuant to this Code section. Any person assessed as provided in 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~~ person involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90."

SECTION 26.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 27.

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