

House Bill 163

By: Representatives Tumlin of the 38th, Williams of the 165th, Wix of the 33rd, Franklin of the 43rd, Ehrhart of the 36th, 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 therefor; 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 amend Title 16 of the Official
7 Code of Georgia Annotated, relating to crimes and offenses, so as to repeal Chapter 17,
8 "Payday Lending"; to provide for related matters; to provide for severability; to provide for
9 preemption; to provide an effective date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

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

14 "CHAPTER 9

15 7-9-1.

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

17 7-9-2.

18 As used in this chapter, the term:

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

1 person is an affiliate of such person unless the shareholder, executive officer, director,
2 trustee, joint venturer, or general partner shall prove that he or she in fact does not
3 control, is not controlled by, or is not under common control with such person.

4 (2) 'Amount financed' has the same meaning ascribed to it in Regulation Z of the federal
5 Truth-In-Lending Act, 12 C.F.R. 226.18(b), as amended.

6 (3) 'Check' means a negotiable instrument, as such term is defined in Code Section
7 11-3-104, signed by the maker and made payable to a person licensed under this chapter.

8 (4) 'Commissioner' means the Commissioner of Insurance or his or her designated
9 representative.

10 (5) 'Consumer' means a person other than an organization who is the buyer, lessee, or
11 debtor to whom credit is granted in a consumer credit transaction.

12 (6) 'Deferred presentment services' means a transaction whereby the deferred
13 presentment services provider, for a fee, does the following:

14 (A) Accepts a check from the consumer;

15 (B) Agrees to hold the check for a period of time prior to negotiation or deposit of the
16 check; and

17 (C) Pays to the person, credits to the person's account, or pays to another party on the
18 person's behalf the amount of the check, less service fees, permitted under
19 subsection (d) of Code Section 7-9-10.

20 The term 'deferred presentment services' shall also include any such arrangement in
21 which a licensee pays a cash advance to a consumer in return for an automated
22 clearing-house authorization to debit a consumer's checking account on a subsequent
23 date.

24 (7) 'Deferred presentment services provider' means any person who is licensed to engage
25 in the business of deferred presentment services under this chapter.

26 (8) 'Department' means the Department of Insurance.

27 (9) 'Licensee' means a person licensed to provide deferred presentment services pursuant
28 to this chapter.

29 (10) 'Multiple transactions' means more than one deferred presentment services
30 agreement in effect at any one time with any deferred presentments provider.

31 (11) 'Person' means an individual, group of individuals, partnership, association,
32 corporation, or any other business unit or legal entity.

33 (12) 'Renewal' means an extension of a deferred presentment services agreement
34 whereby the consumer and licensee agree to extend the due date of the original deferred
35 presentment services agreement only for a service fee.

1 (13) 'Service fee' means the fee or other form of compensation, however paid, authorized
2 in Code Sections 7-9-10 and 7-9-11 for the deferral of the presentation of a check
3 pursuant to this chapter. Such fee shall not be deemed to be interest for any purpose.

4 7-9-3.

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

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

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

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

18 7-9-4.

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

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

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

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

32 (4) Any criminal record of the applicant, a manager, or an employee or, if the applicant
33 is a partnership, association, or corporation, any criminal record of any person who is a
34 director, officer, or shareholder of 10 percent or more of the outstanding stock of the
35 applicant or who owns or controls the applicant; any record of fraud or other act of

1 personal dishonesty; any act, omission, or practice that constitutes a breach of a fiduciary
2 duty; or any record of suspension, removal, or administrative action by any agency or
3 department of the United States or any state resulting from participation in the conduct
4 of any business. The department shall be authorized to obtain conviction data, including
5 without limitation information from the Georgia Crime Information Center derived from
6 fingerprints, with respect to any such persons in the same manner as provided in Code
7 Section 7-1-1004. Failure to disclose this information shall be grounds for summary
8 denial or revocation of a license;

9 (5) A corporate surety bond in a form acceptable to the department in favor of the
10 commissioner executed by a corporate surety authorized to transact business in this state
11 and approved by the department in the principal sum of \$25,000.00 per location not to
12 exceed a total of \$250,000.00. Such bond shall be payable to the commissioner and shall
13 be contingent upon compliance with this chapter and the payment by the licensee of any
14 and all moneys that may become due and owing by the licensee to consumers or the
15 department as a result of the receipt, handling, transmission, and payment of money
16 arising out of the business of the licensee of cashing and retaining checks pursuant to the
17 license issued to the licensee under this chapter. The department may apply to the surety
18 for such sums owing and any person damaged by noncompliance of a licensee may
19 proceed on the bond;

20 (6) An annual licensing fee of \$1,000.00 for each location which shall be refunded if the
21 application is denied and which, if the license is granted, shall satisfy the fee requirement
22 for the first license year. The license period shall begin July 1 of each year;

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

26 (8) A one-time, nonrefundable investigation fee of \$500.00 per location.

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

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

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

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

14 7-9-5.

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

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

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

29 7-9-6.

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

33 (b) In any hearing on the denial of a license, the burden of proving entitlement to a license
34 shall be on the applicant. The commissioner may summarily deny without notice or

1 hearing any incomplete or inadequate application or any application that includes any
2 person who:

3 (1) Controls the applicant or is a director, officer, manager, member, or shareholder of
4 10 percent or more of the applicant's outstanding stock; and

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

8 7-9-7.

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

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

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

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

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

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

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

27 7-9-8.

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

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

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

- 1 (3) Any felony indictment of the licensee or any of its directors, officers, managers, or
2 principals;
- 3 (4) Any felony conviction of the licensee or any of its directors, officers, or principals;
4 provided, however, that conviction of a felony involving moral turpitude shall constitute
5 grounds for immediate revocation of a license; or
- 6 (5) Such other events as the commissioner may determine and identify by rule or
7 regulation.

8 7-9-9.

9 A license may be renewed for a period of one year upon the filing of an application
10 conforming to the requirements of this chapter with such modifications as the department
11 may require. No investigation fee shall be payable in connection with such renewal
12 application, but an annual license fee of \$1,000.00 for each location shall be paid with each
13 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 12 point boldface type:

10 'State law prohibits deferred presentment services transactions exceeding \$750 total
11 debt or 25% of your monthly gross income from any single deferred presentment
12 services provider. Exceeding this amount may create financial hardships for you and
13 your family. You have the right to rescind this transaction on or before the close of the
14 next business day following this transaction.'

15 (b) Each deferred presentment services transaction shall be documented by a written
16 agreement signed by both the licensee and consumer. The written agreement shall contain
17 the name of the consumer, the transaction date, the amount of the check, the annual
18 percentage rate charged, and a statement of the total amount of service fees charged,
19 expressed both as a dollar amount and an annual percentage rate consistent with the format
20 and content of the federal Truth-In-Lending Act. In addition, the written agreement shall
21 include all disclosures required by this Code section. The written agreement shall set a
22 date, not more than 31 days after the deferred presentment services transaction date, upon
23 which the check may be deposited or negotiated.

24 (c) The written agreement shall not contain any of the following provisions: a hold
25 harmless clause; a confession of judgment clause; a mandatory arbitration clause that does
26 not comply with the standards set forth in the statement of principles of the National
27 Consumer Dispute Advisory Committee of the American Arbitration Association in effect
28 on July 1, 2007; any provision in which the consumer agrees not to assert a claim or
29 defense arising out of the contract; any assignment of or order for payment of wages or
30 other compensation for services; or any waiver by the consumer of any provision of this
31 chapter. Selling any insurance of any kind in connection with the making or collecting of
32 a deferred deposit transaction is prohibited.

33 (d) A transaction is completed when the licensee presents the check or debits the
34 consumer's checking account for payment or the consumer redeems the check by paying
35 the full amount of the check to the holder. The consumer shall not be charged any
36 additional charge or fee for cashing the licensee's business check or money order. Once

1 the consumer has completed the deferred presentment services transaction, the consumer
2 may enter into a new deferred presentment agreement with the licensee.

3 (e) A licensee may charge a service fee for each deferred presentment services transaction,
4 which service fee may not exceed \$15.00 per \$100.00 or portion thereof borrowed. The
5 licensee may charge only those fees authorized in this chapter in connection with a deferred
6 presentment services transaction.

7 (f) A consumer shall have the right to rescind, at no cost, the deferred presentment services
8 transaction on or before the close of the next business day following the transaction. In
9 order to rescind a deferred presentment services transaction, a consumer need only inform
10 the licensee of the consumer's desire to rescind and return to the licensee cash in an amount
11 equal to the amount financed.

12 (g) The maker of a check shall have the right to redeem the check from the licensee before
13 the agreed date of presentment upon payment to the licensee of the full amount of the
14 check in cash or its equivalent.

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

17 (i) A consumer shall be permitted to make partial payments in accordance with Code
18 Section 7-9-12.

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

21 (k) If a check is returned to the licensee from a payor financial institution due to a closed
22 account or a stop payment order, the licensee shall have the right to all civil means and fees
23 available and allowed by Code Section 13-6-15; provided, however, that double damages
24 shall not be allowed. The provisions of paragraph (3) of subsection (e) of Code Section
25 13-6-15 shall not apply to this Code section.

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

31 7-9-11.

32 A person licensed pursuant to this chapter shall not:

33 (1) Require a consumer to provide security for the transaction or require the consumer
34 to provide guaranty from another person;

35 (2) Allow any consumer to have multiple transactions from the same deferred
36 presentment services provider;

- 1 (3) Allow a transaction with an aggregate face value exceeding the lesser of \$750.00 or
2 25 percent of the consumer's monthly gross income;
- 3 (4) Use any device, plan, or agreement, including agreements with affiliated licensees,
4 or use any agreements with any check cashers, either formal or informal, with the intent
5 to obtain greater charges than otherwise would be authorized by this chapter. Such
6 prohibition shall include, but not be limited to, any fee to cash a check given to a
7 consumer by a licensee;
- 8 (5) Charge any fees not specifically authorized in this chapter;
- 9 (6) Alter or delete the date on any check accepted by the licensee, accept an undated
10 check, or accept a check dated on a date other than the date on which the licensee accepts
11 the check;
- 12 (7) Engage in unfair or deceptive acts, practices, or advertising or pursue a course of
13 action not in good faith or fair dealing in the conduct of the licensed business;
- 14 (8) Except as specifically authorized under this chapter, use or threaten to use the
15 criminal process available under Code Section 16-9-20 to collect on a deferred
16 presentment services transaction or any civil process to collect the payment of a deferred
17 presentment services transaction not generally available to creditors to collect on
18 consumer loans in default;
- 19 (9) Allow a consumer to renew or roll over a deferred presentment services transaction
20 by paying only an additional fee to extend the due date of the existing transaction; or
- 21 (10) Knowingly offer or provide deferred presentment services or a cash advance of any
22 kind to an active duty member of the United States military or his or her dependents.

23 7-9-12.

- 24 (a) A licensee must provide a consumer written notice of the consumer's right to request
25 a repayment plan according to subsection (b) of this Code section. The form of such
26 written notice shall be either prescribed or approved by the department and such notice
27 shall be set forth conspicuously both at the point of sale and in every deferred presentment
28 services agreement.
- 29 (b) If a consumer is unable to pay on the due date the full amount owing under a deferred
30 presentment services transaction with a licensee, then the consumer shall have the right to
31 request in writing from such licensee a mandatory repayment plan. The licensee shall be
32 required to provide to such consumer such a repayment plan, subject to the terms and
33 conditions set forth below, at least once in a 12 month period. A consumer who has
34 requested a repayment plan may repay the amount owed according to the following terms:
 - 35 (1) The consumer must request the repayment plan, in writing, on or before the due date
36 of the transaction;

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

4 (3) The consumer shall be allowed to repay the transaction in no more than four equal
5 installments with one installment due on each of the consumer's next four pay dates; and

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

8 7-9-13.

9 (a) Whenever it appears to the department that any person required to be licensed under
10 this chapter or any person employed by or acting as an agent for a licensee has violated any
11 law of this state or any order or regulation of the department, the department may issue an
12 initial written order requiring such person to cease and desist immediately from such
13 unauthorized practices. Such cease and desist order shall be final 20 days after it is issued
14 unless the person to whom it is issued makes a written request within such 20 day period
15 for a hearing. The hearing shall be conducted in accordance with Chapter 13 of Title 50,
16 the 'Georgia Administrative Procedure Act.' A cease and desist order to an unlicensed
17 person that orders such person to cease engaging in a deferred presentment services
18 business without a license shall be final 30 days from the date of issuance with no
19 opportunity for an administrative hearing. If the proper license is obtained within the 30
20 day period, the department shall rescind the order. All final orders of the department are
21 conclusive and subject only to judicial review under Code Section 7-1-90.

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

31 (c) Any person required to be licensed under this chapter or any such person's employee
32 or agent who violates the terms of any order issued pursuant to this Code section shall be
33 liable for a civil penalty not to exceed \$1,000.00. Each day during which the violation
34 continues shall constitute a separate offense. In determining the amount of penalty, the
35 department shall take into account the appropriateness of the penalty relative to the size of
36 the financial resources of such person, the good faith efforts of such person to comply with

1 the order, the gravity of the violation, any history of violations by such person, and such
2 other factors or circumstances as shall have contributed to the violation. The department
3 may at its discretion compromise, modify, or refund any penalty that is subject to
4 imposition or has been imposed pursuant to this Code section. Any person assessed as
5 provided in this subsection shall have the right to request a hearing on the matter within ten
6 days after notification of the assessment has been served upon the licensee involved;
7 otherwise, such penalty shall be final except as to judicial review as provided in Code
8 Section 7-1-90.

9 (d) The department may by rule or regulation prescribe administrative fines or penalties
10 for violations of this chapter or of any rules or regulations promulgated by authority of this
11 chapter, which may include requiring refunds of fees to consumers if such fees were not
12 in compliance with this chapter.

13 (e) Initial judicial review of the decision of the department entered pursuant to this Code
14 section shall be available solely in the Superior Court of Fulton County.

15 7-9-14.

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

29 7-9-15.

30 (a) In addition to the remedies available under subsection (b) of this Code section, any
31 person aggrieved by the conduct of a licensee under this chapter in connection with the
32 licensee's regulated activities may file a written complaint with the commissioner, who
33 may investigate the complaint. In the course of the investigation of any complaint or
34 suspected noncompliance with this chapter, the commissioner may subpoena witnesses;
35 administer oaths; examine any individual under oath; and compel the production of records,

1 books, papers, contracts, or other documents relevant to such investigation. If any person
2 fails to comply with a subpoena of the commissioner under this chapter or to testify
3 concerning any matter about which the person may be interrogated under this chapter, the
4 commissioner may petition any principal court of competent jurisdiction for enforcement.
5 If any licensee or its employee or agent fails to comply with a court ordered subpoena, its
6 license shall be suspended pending compliance with the subpoena. If the commissioner
7 receives a complaint or otherwise has a reasonable suspicion of noncompliance with this
8 chapter, he or she shall have the administrative power to investigate and take administrative
9 action or refer a situation to law enforcement authorities when appropriate.

10 (b) If any deferred presentment transaction is made in willful violation of the provisions
11 of this Code section, except as a result of a bona fide error, such transaction may be
12 canceled by a court of competent jurisdiction.

13 (c) Subject to the provisions of subsection (d) of this Code section in which a licensee and
14 consumer may enter into an arbitration agreement, any other agreement whereby the
15 consumer waives the benefits of this Code section shall be deemed to be against public
16 policy and void.

17 (d) Any deferred presentment services transaction in violation of this chapter shall be
18 subject to an action, which may be brought in a court of competent jurisdiction, by the
19 consumer seeking damages, reasonable attorney's fees, and costs; provided, however, that
20 nothing in this subsection shall prohibit a licensee and consumer from entering into an
21 arbitration agreement whereby the licensee and consumer agree to waive their right to file
22 a lawsuit and to proceed in court to have a jury trial and instead agree to submit their
23 dispute to an arbitrator for a decision.

24 7-9-16.

25 To assure compliance with the provisions of this chapter, the commissioner may examine
26 the relevant business books and records of any licensee. The commissioner may charge
27 and collect an examination fee as established by rule or regulation for any compliance
28 examination conducted by the commissioner. The commissioner, for the purpose of
29 discovering violations of this chapter and for the purpose of determining whether persons
30 are subject to the provisions of this chapter, is authorized to examine persons licensed
31 under this chapter and persons reasonably suspected by the commissioner of conducting
32 business which requires a license under this chapter, including all relevant books, records,
33 and papers employed by such persons in the transaction of business, and to subpoena
34 witnesses and documents and examine individuals under oath concerning matters relating
35 to the business of such persons, or such other matters as may be relevant to the discovery

1 of violations of this chapter, including without limitation the conduct of business without
2 a license as required by this chapter.

3 7-9-17.

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

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

10 (2) If the licensee is a corporation, the names and addresses of its officers and directors
11 and its registered agent for service of process; if the licensee is a partnership, the names
12 and addresses of the partners; or, if the licensee is a limited liability company, the names
13 and addresses of the board of governors of the limited liability company and its registered
14 agent for service of process;

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

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

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

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

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

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

29 7-9-18.

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

1 7-9-19.

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

6 7-9-20.

7 If any provision of this chapter or the application thereof to any person or circumstance is
8 held invalid for any reason, the invalidity shall not affect the other provisions or any other
9 application of this chapter which can be given effect without the invalid provisions or
10 application.

11 7-9-21.

12 To the extent this chapter conflicts with any other state law, rule, regulation, or ordinance,
13 this chapter is superior and supersedes those laws, rules, regulations, or ordinances for the
14 purposes of regulating deferred presentment services in the State of Georgia."

15 **SECTION 2.**

16 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
17 amended by repealing Chapter 17, relating to payday lending, and designating said chapter
18 as reserved.

19 **SECTION 3.**

20 This Act shall become effective on July 1, 2007.

21 **SECTION 4.**

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