

Senate Bill 70

By: Senators Hamrick of the 30th, Hudgens of the 47th, Thompson of the 33rd, Murphy of the 27th, Tarver of the 22nd and others

AS PASSED

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 generally, so as to update the banking laws in order to reflect changes
 3 in federal law and for other purposes; to exclude the value of good will in certain
 4 transactions; to regulate real estate loans; to allow for the electronic transmission of proxy;
 5 to allow for share exchange in mergers or consolidations; to define share exchange; to change
 6 the qualifications for check sellers; to require background checks on employees and agents
 7 of check sellers; to provide for registration and testing of check sellers who are not licensed;
 8 to provide for a bond to be posted by check sellers; to provide for a cease and desist order
 9 to be issued against noncompliant licensees; to provide a penalty for withholding or
 10 falsifying information submitted to the department; to provide for registered check cashers;
 11 to provide for background checks for check cashers; to place a limit on check-cashing fees;
 12 to provide for background checks for mortgage lenders or mortgage brokers; to provide for
 13 advertising restrictions; to provide for related matters; to provide an effective date; to repeal
 14 conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial
 18 institutions generally, is amended by revising subparagraph (A) of paragraph (35) of Code
 19 Section 7-1-4, relating to definitions, as follows:

20 "(A) The sum of the capital stock, the paid-in capital, the appropriated retained
 21 earnings, and the capital debt of a bank or trust company less any amount of good will,
 22 core deposit intangibles, or other intangible assets related to the purchase, acquisition,
 23 or merger of a bank charter; or"

1 (2) The resulting institution of the merger or consolidation, or the acquired bank or trust
 2 company in a share exchange, holds only assets and liabilities and is engaged only in
 3 activities which may be held or engaged in by a bank or trust company; and

4 (3) The merger, share exchange, or consolidation is not otherwise unlawful.

5 (c) A merger, share exchange, or consolidation pursuant to subsection (b) of this Code
 6 section shall be made by compliance with the requirements of this part. Title 14 shall not
 7 be applicable to such a merger, share exchange, or consolidation.

8 (d) A merger, share exchange, or consolidation across state lines ~~of any~~ involving one or
 9 more banks or trust companies shall also be subject to the provisions of Part 20 of this
 10 article.

11 (e) In the case of a merger of a Georgia state bank with any other bank or banks, with the
 12 Georgia bank as the resulting bank, any assets, lines of business, activities, or powers
 13 which may accrue to the resulting bank which would not be allowed for a Georgia state
 14 bank shall be provided for in the plan of merger. Such plan shall include the proposal for
 15 holding or disposal of such assets or the continuation or termination of such line of
 16 business, activity, or power. The department shall review the plan to determine whether,
 17 in the interest of safety and soundness and consistent with the other objectives of Code
 18 Section 7-1-3, the activity, power, asset, or line of business should be approved, denied, or
 19 phased out within a reasonable period of time, to be determined by the department.

20 (f) As used in this part, the term 'share exchange' means a plan of exchange of all of the
 21 outstanding shares of one or more classes or series of shares in accordance with this part.

22 (g) Subject to the provisions of this part, this Code section does not limit the power of a
 23 corporation other than a bank or trust company to acquire all or part of the shares of one
 24 or more classes or series of a bank or trust company through a voluntary exchange of
 25 shares or otherwise."

26 SECTION 5.

27 Said chapter is further amended in Code Section 7-1-531, relating to requirements for merger
 28 or consolidation plan and modification of the plan, by revising subsection (a) as follows:

29 "(a) The requirements for a merger, share exchange, or consolidation which must be
 30 satisfied by the parties thereto are as follows:

31 (1) The parties shall adopt a plan stating the method, terms, and conditions of the merger,
 32 share exchange, or consolidation, including the rights under the plan of the shareholders
 33 of each of the parties and any agreement concerning the merger, share exchange, or
 34 consolidation. Said plan shall specify:

1 (A) The name that such bank or trust company shall have upon and after such merger,
 2 share exchange, or consolidation, which may be the name of any one of the institutions
 3 or the combined names of two or more of the institutions or such other name as stated;

4 (B) The persons who shall constitute the board of directors of the bank or trust
 5 company after the merger, share exchange, or consolidation;

6 (C) ~~The~~ In the case of a merger or consolidation, the manner and basis of converting
 7 the shares of each merged or consolidated institution into shares or other securities or
 8 obligations of the surviving bank or trust company and, if any shares of any of the
 9 merged or consolidated institutions are not to be converted solely into shares or other
 10 securities of the surviving bank or trust company, the amount of cash or securities of
 11 any other corporation, or combination of cash and such securities, which is to be paid
 12 or delivered to the holders of such shares in exchange for or upon the surrender of such
 13 shares, which cash or securities may be in addition to or in lieu of the shares or other
 14 securities of the surviving bank or trust company; and

15 (D) In the case of a share exchange, the terms and conditions of the share exchange and
 16 the manner and basis of exchanging the shares to be acquired for shares, obligations,
 17 or other securities of the acquiring or any other corporation or for cash or other property
 18 in whole or in part; and

19 ~~(D)~~(E) Such other provisions with respect to the proposed merger or consolidation as
 20 are deemed desirable.

21 (2) Adoption of the plan by each party thereto shall require the affirmative vote of at
 22 least:

23 (A) A majority of the directors; and

24 (B) The shareholders entitled to cast two-thirds of the votes which all shareholders are
 25 entitled to cast thereon and, if any class of shares is entitled to vote thereon as a class,
 26 the holders of at least two-thirds of the outstanding shares of such class, at a meeting
 27 of shareholders.

28 (3) The notice shall include a copy or summary of the plan and a full statement of the
 29 rights and remedies of dissenting shareholders, the method of exercising them, and the
 30 limitations on such rights and remedies."

31 SECTION 6.

32 Said chapter is further amended by revising Code Section 7-1-532, relating to execution,
 33 contents, and filing of articles of merger or consolidation, as follows:

34 "7-1-532.

35 (a) Upon adoption of the plan of merger, share exchange, or consolidation as provided in
 36 Code Section 7-1-531, the parties to the merger, share exchange, or consolidation shall file

1 in duplicate with the department articles of a merger, share exchange, or consolidation as
2 required by this Code section, together with the fee required by Code Section 7-1-862.

3 (b) The articles of merger, share exchange, or consolidation shall be signed by two duly
4 authorized officers of each party to the plan under their respective seals and shall contain:

5 (1) The names of the parties to the plan and of the resulting bank or trust company or the
6 acquiring corporation in a share exchange;

7 (2) The street address and county of the location of the main office and registered agent
8 and registered office of each;

9 (3) The votes by which the plan was adopted and the time, place, and notice of each
10 meeting in connection with such adoption;

11 (4) The names and addresses of the first directors of the resulting bank or trust company
12 or the directors of the acquired corporation in a share exchange;

13 (5) In the case of a merger, any amendment of the articles of the resulting bank or trust
14 company;

15 (6) In the case of a consolidation, the provisions required in articles of a new bank or
16 trust company by paragraphs (4), (5), (6), (7), and (10) of subsection (a) of Code Section
17 7-1-392; and

18 (7) The plan.

19 (c) Together with the articles of merger, share exchange, or consolidation, the parties shall
20 deliver to the department a copy of the notice of merger, share exchange, or consolidation
21 and an undertaking, which may appear in the articles of merger, share exchange, or
22 consolidation or be set forth in a letter or other instrument executed by an officer or any
23 person authorized to act on behalf of such bank or trust company, that the request for
24 publication of a notice of filing the articles of merger, share exchange, or consolidation and
25 payment therefor will be made as required by subsection (d) of this Code section.

26 (d) No later than the next business day after filing the articles of merger, share exchange,
27 or consolidation with the department, the parties shall mail or deliver to the publisher of
28 a newspaper which is the official organ of the county where the main office of each party
29 is located a notice which shall contain a statement that the articles of merger, share
30 exchange, or consolidation have been filed with the department, the names of the
31 institutions which are parties to the proposed merger, share exchange, or consolidation, and
32 in the case of a merger the proposed name of the surviving bank or trust company, and
33 shall designate a place where a copy of the articles of merger, share exchange, or
34 consolidation may be examined. Subsections (b) and (c) of Code Section 7-1-7 shall also
35 apply to the notice.

36 (e) The request for publication of the notice shall be accompanied by a check, draft, or
37 money order in the proper amount in payment of the cost of publication. The notice shall

1 be published once a week for two consecutive weeks commencing within ten days after
2 receipt of the notice by the newspaper.

3 (f) In the event the plan is amended as provided in Code Section 7-1-531, the parties shall
4 promptly file in duplicate with the department an amendment to the articles of
5 consolidation, share exchange, or merger reflecting such amendment of the plan."

6 SECTION 7.

7 Said chapter is further amended by revising Code Section 7-1-533, relating to additional
8 filings with plans of merger or consolidation, as follows:

9 "7-1-533.

10 The parties to the plan shall also file with the department:

11 (1) An application and information desired by the department in order to evaluate the
12 proposed merger, share exchange, or consolidation, which shall be made available in the
13 form specified by the department;

14 (2) Applicable fees established by regulation of the department to defray the expenses
15 of the investigation required by Code Section 7-1-534; and

16 (3) If the merger, share exchange, or consolidation involves the adoption of a new name,
17 a certificate of the Secretary of State reserving said name under Code Section 7-1-131.

18 SECTION 8.

19 Said chapter is further amended by revising Code Section 7-1-534, relating to approval or
20 disapproval of articles of consolidation or merger by department, as follows:

21 "7-1-534.

22 (a) Upon receipt of the articles of consolidation, share exchange, or merger and the filings
23 required by Code Section 7-1-533, the department shall conduct such investigation as it
24 may deem necessary to ascertain whether:

25 (1) The articles of merger, share exchange, or consolidation and supporting items satisfy
26 the requirements of this chapter;

27 (2) The plan and any modification thereof adequately protect the interests of depositors,
28 other creditors, and shareholders;

29 (3) The requirements for a merger, share exchange, or consolidation under all applicable
30 laws have been satisfied and the resulting bank or trust company or the acquired bank or
31 trust company in a share exchange would satisfy the requirements of this chapter
32 applicable to it; and

33 (4) The merger, share exchange, or consolidation would be consistent with adequate and
34 sound banking or fiduciary practice and in the public interest on the basis of:

35 (A) The financial history and condition of the parties to the plan;

1 (B) Their prospects;

2 (C) The character of their management; and

3 (D) The convenience and needs of the area primarily to be served by the resulting
4 institution, or by the acquiring corporation and the acquired bank or trust company in
5 a share exchange.

6 (b) Within 90 days after receipt of the articles of merger, share exchange, or consolidation,
7 the notice of merger or share exchange, and the filings required by Code Section 7-1-533,
8 or within an additional period of not more than 30 days after an amendment to the
9 application is received within the initial 90 day period, the department shall, in its
10 discretion, approve or disapprove the articles on the basis of its investigation and the
11 criteria set forth in subsection (a) of this Code section. Except as provided in Code Section
12 7-1-535, the department shall give the Secretary of State written notice of its approval with
13 a copy of the articles of merger, share exchange, or consolidation and a copy of the notice
14 of merger or share exchange attached. The department shall also give the parties to the
15 plan written notice of its decision and, in the event of disapproval, a statement in general
16 of the reasons for its decision. The decision of the department shall be conclusive, except
17 that it may be subject to judicial review as provided in Code Section 7-1-90."

18 SECTION 9.

19 Said chapter is further amended by revising Code Section 7-1-535, relating to procedure after
20 approval of articles by department and the issuance of a certificate of merger or
21 consolidation, as follows:

22 "7-1-535.

23 (a) If the laws of the United States require the approval of the merger, share exchange, or
24 consolidation by any federal agency, the department may, at its option, after its approval,
25 retain its notice to the Secretary of State until it receives notice of the decision of such
26 agency. If such agency shall refuse to give its approval, the department may, at its option,
27 notify the parties to the plan that the department's approval has been rescinded for that
28 reason. If such agency gives its approval, the department shall deliver its written approval
29 to the Secretary of State for issuance of a certificate of merger, share exchange, or
30 consolidation by the Secretary of State and shall notify the parties to the plan.

31 (b) If all the taxes, fees, and charges required by law shall have been paid and if the name
32 of the resulting bank or trust company in a merger or consolidation continues to be reserved
33 or is available on the records of the Secretary of State, upon receipt of the written approval
34 of the department, the Secretary of State shall issue to the resulting bank or trust company
35 or the acquiring corporation in a share exchange a certificate of merger, share exchange,

1 or consolidation with the approved articles of merger or consolidation attached thereto and
2 shall retain a copy of such certificate, articles, and approval by the department."

3 **SECTION 10.**

4 Said chapter is further amended by revising Code Section 7-1-536, relating to the effect of
5 merger or consolidation, as follows:

6 "7-1-536.

7 (a) As of the issuance of the certificate of merger, share exchange, or consolidation by the
8 Secretary of State, the merger, share exchange, or consolidation shall be effective.

9 (b) The certificate of merger, share exchange, or consolidation shall be conclusive
10 evidence of the performance of all conditions precedent to the merger, share exchange, or
11 consolidation and of the existence or creation of the bank or trust institution, except as
12 against the state.

13 (c) When a merger or consolidation becomes effective, each party to the plan, except the
14 resulting bank or trust company, shall cease to exist as a separate entity but shall continue
15 in, and the parties to the plan shall be, a single corporation which shall be the bank or trust
16 company and which shall have, without further act or deed, all the property, rights, powers,
17 trusts, duties, and obligations of each party to the plan. When a share exchange becomes
18 effective, the shares of each acquired bank or trust company are exchanged as provided in
19 the plan, and the former holders of the shares are entitled only to the share exchange rights
20 provided in the plan of share exchange or to their rights under Code Section 7-1-537.

21 (d) The articles of the resulting bank or trust company shall be, in the case of a merger, the
22 same as its articles prior to the merger with any change stated in the articles of merger or,
23 in the case of a consolidation, the provisions stated in the articles of consolidation.

24 (e) The resulting bank or trust company, or the acquired bank or trust company in a share
25 exchange, shall have the authority to engage only in such business and exercise only such
26 powers as are then permissible upon original incorporation under this chapter and shall be
27 subject to the same prohibitions and limitations as it would then be subject to upon original
28 incorporation. It may, however, subject to permission of the department as set out in Code
29 Sections 7-1-530 and 7-1-555, engage in any business and exercise any right that any bank
30 or trust company which is a party to the plan could lawfully exercise or engage in
31 immediately prior to the merger, share exchange, or consolidation.

32 (f) No liability of any party to the plan or of its shareholders, directors, or officers shall be
33 affected nor shall any lien on any property of a party to the plan be impaired by the merger,
34 share exchange, or consolidation. Any claim existing or action pending by or against any
35 party to the plan may be prosecuted to judgment as if the merger, share exchange, or

1 consolidation had not taken place or the resulting bank or trust company may be substituted
2 in its place."

3 **SECTION 11.**

4 Said chapter is further amended by revising Code Section 7-1-537, relating to rights of
5 dissenting shareholders and the surrender of stock certificates, as follows:

6 "7-1-537.

7 (a) A shareholder of a bank or trust company which is a party to a plan of proposed
8 merger, share exchange, or consolidation under this part who objects to the plan shall be
9 entitled to the rights and remedies of a dissenting shareholder as determined under Chapter
10 2 of Title 14, known as the 'Georgia Business Corporation Code.'

11 (b) The bank or trust company into which the other or others have been merged or
12 consolidated, or the acquiring corporation in a share exchange, as the case may be, shall
13 have the right to require the return of the original certificates of stock held by each
14 shareholder in each or either of the institutions and in lieu thereof:

15 (1) To issue to each shareholder new certificates for such number of shares of the
16 institution into which the others shall have been merged or consolidated or of the
17 acquiring corporation in a share exchange; or

18 (2) To cause to be paid or delivered to each shareholder the amount of cash or securities
19 of any other corporation or combination of cash and such securities as, under the plan of
20 merger, share exchange, or consolidation, the said shareholder may be entitled to
21 receive."

22 **SECTION 12.**

23 Said chapter is further amended by revising Code Section 7-1-557, relating to merger or
24 consolidation of nonbank corporations into national banks, as follows:

25 "7-1-557.

26 A national bank located in this state may merge or consolidate with, or enter into a share
27 exchange with, a corporation other than a bank or trust company, provided that:

28 (1) Such merger, share exchange, or consolidation is permitted by the laws of the United
29 States and such laws are complied with;

30 (2) The laws governing the merger, share exchange, or consolidation of such corporation
31 are complied with;

32 (3) The resulting institution of the merger or consolidation, or the acquired bank in a
33 share exchange, is a national bank;

1 (4) The resulting institution of the merger or consolidation, or the acquired bank in a
 2 share exchange, holds only assets and liabilities and engages only in activities which may
 3 be held or engaged in by a national bank located in this state; and

4 (5) The merger, share exchange, or consolidation is not otherwise unlawful."

5 SECTION 13.

6 Said chapter is further amended in Code Section 7-1-601, relating to branch offices, by
 7 revising paragraph (2) of subsection (a) as follows:

8 "(2) New or additional branch offices may be established through merger, share
 9 exchange, consolidation, or sale of assets pursuant to Part 14, 15, 16, 19, or 20 of this
 10 article;"

11 SECTION 14.

12 Said chapter is further amended in Code Section 7-1-606, relating to unlawful actions by
 13 bank holding companies unless prior approval of commissioner is received, by revising
 14 subparagraphs (a)(1)(E), (b)(1)(A), and (b)(1)(B) as follows:

15 "(E) For any bank holding company to merge or consolidate with, or enter into a share
 16 exchange with, any other bank holding company; or"

17 "(A) Any acquisition or merger or share exchange or consolidation under this Code
 18 section which would result in a monopoly or which would be in furtherance of any
 19 combination or conspiracy to monopolize or to attempt to monopolize the business of
 20 banking in any part of the State of Georgia; or

21 (B) Any other proposed acquisition or merger or share exchange or consolidation under
 22 this Code section whose effect in any section of the state may be substantially to lessen
 23 competition, or to tend to create a monopoly, or which in any other manner would be
 24 in restraint of trade, unless it finds that the anticompetitive effects of the proposed
 25 transaction are clearly outweighed in the public interest by the probable effect of the
 26 transaction in meeting the convenience and needs of the community to be served."

27 SECTION 15.

28 Said chapter is further amended in Code Section 7-1-608, relating to lawful and unlawful
 29 acquisitions, formations, and mergers by bank holding companies, by revising paragraph (3)
 30 of subsection (b) as follows:

31 "(3) A bank holding company registered with the department and lawfully owning a bank
 32 or a branch of a bank which was formed by the acquisition and subsequent merger of or
 33 share exchange with a Georgia bank, which bank or branch does a lawful banking
 34 business in this state, may acquire control through formation of a de novo bank in

1 Georgia, provided that departmental approval and any required federal approvals are
 2 obtained. No out-of-state bank holding company may enter Georgia to do a banking
 3 business by formation of a de novo bank; and"

4 SECTION 16.

5 Said chapter is further amended in Code Section 7-1-670, relating to third-party payment
 6 services offered by credit unions, by revising subsection (c) as follows:

7 "(c) Upon the commencement of third-party payment services, a credit union shall be
 8 subject to Code Sections ~~7-1-286, pertaining to real estate loans~~; 7-1-287, pertaining to
 9 investment securities; 7-1-288, pertaining to corporate stock and securities; 7-1-371,
 10 pertaining to legal reserve requirements; and rules and regulations of the department
 11 relating to the foregoing Code sections of law and shall not pay a greater rate of interest on
 12 third-party payment accounts than is allowed to be paid by commercial banks."

13 SECTION 17.

14 Said chapter is further amended by revising Code Section 7-1-681, relating to license
 15 required for selling checks, as follows:

16 "7-1-681.

17 No person or corporation, other than a bank or trust company, a credit union, a savings and
 18 loan association, or a savings bank, whether state or federally chartered, the deposits of
 19 which are federally insured, the authorized agent of a licensee, or the United States Postal
 20 Service shall engage in the business of selling or issuing checks without having first
 21 obtained a license under this article. This restriction applies to any nonresident person or
 22 corporation that engages in this state in the business of selling or issuing checks through
 23 a branch, subsidiary, affiliate, or agent in this state. A license for the sale of checks or
 24 money orders shall also qualify as a license for the business of money transmission. The
 25 provisions of this article shall also apply to the business of money transmission unless
 26 specifically excluded."

27 SECTION 18.

28 Said chapter is further amended by revising Code Section 7-1-682, relating to qualifications
 29 of licensees to sell checks or money orders, as follows:

30 "7-1-682.

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

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

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

4 (b) In addition to the qualifications set forth in subsection (a) of this Code section, the
5 department may require a licensee to maintain investments having an aggregate market
6 value at least equal to the amount of outstanding checks issued or sold, ~~or for money~~
7 ~~transmitters, equal to the outstanding orders to transmit but not yet paid for by the licensee~~
8 ~~pursuant to this article.~~ The department may promulgate regulations establishing those
9 investments which shall be deemed permissible investments for the purpose of complying
10 with this subsection. Permissible investments, even if commingled with other assets of the
11 licensee, shall be deemed by operation of law to be held in trust for the benefit of the
12 purchasers and holders of the licensee's outstanding checks in the event of bankruptcy of
13 the licensee.

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

1 ~~deemed to refer to a person owning or controlling 10 percent or more of the total~~
2 ~~outstanding stock of the corporation in which such person is a stockholder.~~

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

31 (e) Every applicant and licensee shall be authorized and required to obtain and maintain
32 the results of background checks on employees and agents working in or for the applicant
33 or licensee. Such background checks shall be handled by the Georgia Crime Information
34 Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia
35 Crime Information Center. Applicants and licensees shall be responsible for any applicable
36 fees charged by the Georgia Crime Information Center. An applicant or licensee shall only
37 employ a person whose background data has been checked and been found to be

1 satisfactory prior to the initial date of hire. This provision does not apply to directors,
 2 officers, partners, agents, or ultimate equitable owners of 10 percent or more or to persons
 3 who direct the company's affairs or establish policy, whose background must have been
 4 investigated through the department before taking office, beginning employment, or
 5 securing ownership. Upon receipt of information from the Georgia Crime Information
 6 Center that is incomplete or that indicates an employee has a criminal record in any state
 7 other than Georgia, the employer shall submit to the department two complete sets of
 8 fingerprints of such person, together with the applicable fees and any other required
 9 information. The department shall then submit such fingerprints as provided in
 10 subsection (d) of this Code section.

11 (f) Such license issued by the department shall be kept conspicuously posted in the place
 12 of business of the licensee. Such license shall not be transferable, assignable, or subject
 13 to a change of ownership."

14 **SECTION 19.**

15 Said chapter is further amended by revising Code Section 7-1-683, relating to license
 16 application for check sellers, as follows:

17 "7-1-683.

18 (a) Each application for a license shall be in writing and under oath to the department, in
 19 such form as it may prescribe, and shall include the following:

20 (1) The legal name and principal office address of the corporation applying for the
 21 license;

22 (2) The name, residence, and business address of each director or equivalent official and
 23 of each officer who will be involved in selling checks in this state;

24 (3) The date and place of incorporation;

25 (4) If the applicant has one or more branches, subsidiaries, affiliates, agents, or other
 26 locations at or through which the applicant proposes to engage in the business of selling
 27 or issuing checks within the State of Georgia, the complete name of each and the address
 28 of each such location;

29 (5) The location where its initial registered office will be located in this state; and

30 (6) Such other data, financial statements, and pertinent information as the department
 31 may require with respect to the applicant, its directors, trustees, officers, members,
 32 branches, subsidiaries, affiliates, or agents and any individual who directs the affairs or
 33 establishes policy for the applicant or licensee.

34 (b) The application shall be filed together with the following financial requirements:

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

4 (2) A corporate surety bond issued by a bonding company or insurance company
 5 authorized to do business in this state and approved by the department. The bond for
 6 check sellers shall be in the principal sum of \$100,000.00, and the bond for money
 7 transmitters shall be in the principal sum of \$50,000.00, ~~and in an additional principal~~
 8 ~~sum of \$5,000.00 for each location, in excess of one, at or through which the applicant~~
 9 ~~proposes to engage in this state in the business of selling or issuing checks, until the~~
 10 ~~principal sum shall aggregate \$250,000.00, provided that.~~ The amount of this bond shall
 11 be increased by an additional \$5,000.00 for each location, other than the licensee's
 12 primary place of business, at or through which the applicant proposes to engage in the
 13 business of selling or issuing checks in this state, until the principal sum of the bond shall
 14 total a maximum of \$250,000.00. In addition to the coverage provided for in this Code
 15 section, the department may require additional coverage for the adequate protection of
 16 check holders if the average daily balances outstanding ~~or, for money transmitters, for~~
 17 ~~check sellers or,~~ if the outstanding orders to transmit not yet paid for ~~by the licensee~~
 18 ~~money transmitters,~~ exceed \$250,000.00. Written reports that reveal a licensee's level
 19 of holdings shall be made at intervals during the year as required by regulations. If
 20 required by the department the additional coverage shall be limited to \$1,250,000.00 or
 21 the amount of the average daily balances or orders outstanding in the State of Georgia for
 22 the preceding year, whichever is ~~lesser~~ less. The total maximum amount of such bond
 23 coverage under this paragraph and paragraph (1) of this subsection will be \$1,500,000.00.
 24 The bond shall be in a form satisfactory to the department and shall run to the State of
 25 Georgia for the benefit of any check holders against the licensee or his or her agents. The
 26 condition of the bond shall be that the licensee will pay any and all moneys that may
 27 become due and owing any creditor of or claimant against the licensee arising out of the
 28 licensee's business of selling or issuing checks in this state, whether through its own act
 29 or the acts of an agent. The aggregate liability of the surety in no event shall exceed the
 30 principal sum of the bond. Claimants against the licensee may themselves bring an action
 31 directly on the bond. The liability arising under this paragraph shall be limited to the
 32 receipt, handling, transmission, and payment of money arising out of the licensee's
 33 business of selling or issuing checks in this state.

34 (c) As an option to the bond for check sellers, provided the department approves, in lieu
 35 of such corporate surety bond or bonds or of any portion of the principal thereof, the
 36 applicant may deposit with a Georgia state-chartered bank or trust company located in this
 37 state, as such applicant may designate and the department may approve, certificates of

1 deposit insured by a federal agency, bonds, notes, debentures, or other obligations of the
 2 United States or any agency or instrumentality thereof or guaranteed by the United States
 3 or of the State of Georgia ~~or of a municipality, county, school district, or instrumentality~~
 4 ~~of the State of Georgia or guaranteed by the state~~ to an aggregate amount, based upon
 5 principal amount or market value, whichever is lower, of not less than the amount of the
 6 required corporate surety bond or portion thereof. These assets shall be held to secure the
 7 same obligations as would the surety bond and must be dedicated by the licensee solely for
 8 the purpose of meeting the financial obligations required to maintain the check seller
 9 license in this state and may not be dedicated to meet check seller licensing requirements
 10 for other jurisdictions; but the licensee shall be entitled to receive all interest thereon and
 11 shall have the right, with the approval of the department, to substitute other assets approved
 12 by this Code section for those deposited and shall be required to do so on written order of
 13 the department made for good cause shown; provided, however, if the licensee substitutes
 14 assets more than once during the license period the department may charge a fee for the
 15 processing of such substitution to be prescribed by regulations of the department. In the
 16 event of the failure or insolvency of such licensee, the assets, any proceeds therefrom, and
 17 the funds deposited pursuant to this Code section shall be applied to the payment in full of
 18 claims arising out of transactions in this state for the sale or issuance of checks. Failure to
 19 properly maintain dedicated assets for the purpose of meeting the financial requirements
 20 for licensure may result in a fine, or the revocation or suspension of the license, at the
 21 discretion of the department. This subsection shall apply to check sellers only and not to
 22 money transmitters."

23 SECTION 20.

24 Said chapter is further amended in Code Section 7-1-686, relating to notice of action against
 25 licensees or change in number of locations, by revising subsection (b) as follows:

26 "(b) A licensee shall give notice to the department by registered or certified mail or
 27 statutory overnight delivery of any increase in the number of the name and address of any
 28 new or additional locations at which it engages in the business of selling or issuing checks
 29 over the number previously reported in either its original or renewal application and shall
 30 show to the department that the bond or assets required under Code Section 7-1-683 have
 31 been increased accordingly. This notice shall be given ~~quarterly, within 30 days after the~~
 32 ~~end of each calendar quarter~~; and, if not given, such new location will not be considered
 33 as included under the licensee's license under this article to the department by the licensee
 34 as follows:

35 (1) For the period January 1 through June 30 of each year, on the first business day of
 36 September; and

1 (2) For the period July 1 through December 31 of each year, on the first business day of
 2 March.

3 Failure to provide such notice shall be punished with a fine, other administrative action, or
 4 both. At any time the department is shown that a licensee has decreased the number of
 5 locations at or through which it proposes to engage in the business, the department may
 6 decrease the bond or security requirements accordingly."

7 **SECTION 21.**

8 Said chapter is further amended by revising Code Section 7-1-687, relating to agents of
 9 licensees, as follows:

10 "7-1-687.

11 A licensee may conduct its business at one or more locations in this state, so long as such
 12 locations have been included in the licensee's application and reports under Code Sections
 13 7-1-683 and 7-1-686, and through such agents as it may designate. The department may
 14 within ten days after application, for cause, refuse to approve a licensee's designation of
 15 an agent or, for cause, suspend a licensee's designation of an agent. In such cases the agent
 16 shall have the same procedural rights as are provided in this article for the denial,
 17 suspension, or revocation of a licensee's license. No additional license other than that
 18 obtained by the licensee shall be required of any duly reported agent of a licensee. An
 19 agent of a licensee shall sell or issue checks only at the location designated in the licensee's
 20 report to the department or at other locations of which the department first has been
 21 notified in writing."

22 **SECTION 22.**

23 Said chapter is further amended in Code Section 7-1-689, relating to denial, suspension, and
 24 revocation of license or designation of agent, by revising subsections (a) and (b) as follows:

25 "(a) The department may suspend or revoke an original or renewal license or the
 26 designation of an agent of a licensee on any ground on which it might refuse to issue an
 27 original license or for a violation of any provision of this article or any rule or regulation
 28 issued under this article or for failure of the licensee to pay, within 30 days after it becomes
 29 final, a judgment recovered in any court within this state by a claimant or creditor in an
 30 action arising out of the licensee's business in this state of selling or issuing checks. If a
 31 cease and desist order is issued by the department to a licensee who has been sent a notice
 32 of bond cancellation and if the required bond is reinstated or replaced and such
 33 documentation is delivered to the department within the 30 day period following the date
 34 of issuance of the order, the order shall be rescinded. If the notice of reinstatement of the
 35 bond is not received by the department within the 30 days, the license shall expire at the

1 end of the 30 day period and the licensee shall be required to make a new application for
 2 a license and pay all applicable fees.

3 ~~(b) No application for a license under this article shall be denied and no license granted~~
 4 ~~under this article shall be suspended or revoked unless the applicant or licensee is given a~~
 5 ~~reasonable opportunity to be heard by the department. For this purpose the department shall~~
 6 ~~give the applicant or licensee at least 20 days' written notice of the time and place of such~~
 7 ~~hearing by registered or certified mail or statutory overnight delivery addressed to the~~
 8 ~~principal place of business of such applicant or licensee. Any order of the department~~
 9 ~~denying, suspending, or revoking a license shall state the grounds upon which it is based~~
 10 ~~and shall not be effective for 20 days after its rendition. A copy thereof shall be forwarded~~
 11 ~~promptly by registered or certified mail or statutory overnight delivery addressed to the~~
 12 ~~principal place of business of such applicant or licensee. Notice of the department's~~
 13 ~~intention to enter an order denying an application for a license under this article or of an~~
 14 ~~order suspending or revoking a license under this article shall be given to the applicant or~~
 15 ~~licensee in writing, sent by registered or certified mail or statutory overnight delivery~~
 16 ~~addressed to the principal place of business of such applicant or licensee. Within 20 days~~
 17 ~~of the date of the notice of intention to enter an order of denial, suspension, or revocation~~
 18 ~~under this article, the applicant or licensee may request in writing a hearing to contest the~~
 19 ~~order. If a hearing is not requested in writing within 20 days of the date of such notice of~~
 20 ~~intention, the department shall enter a final order regarding the denial, suspension, or~~
 21 ~~revocation. Any final order of the department denying, suspending, or revoking a license~~
 22 ~~shall state the grounds upon which it is based and shall be effective on the date of issuance.~~
 23 ~~A copy thereof shall be forwarded promptly by registered or certified mail or statutory~~
 24 ~~overnight delivery addressed to the principal place of business of such applicant or~~
 25 ~~licensee. If a person refuses to accept service of the notice or order by registered or~~
 26 ~~certified mail or statutory overnight delivery, the notice or order shall be served by the~~
 27 ~~commissioner or the commissioner's authorized representative under any other method of~~
 28 ~~lawful service; and the person shall be personally liable to the commissioner for a sum~~
 29 ~~equal to the actual costs incurred to serve the notice or order. This liability shall be paid~~
 30 ~~upon notice and demand by the commissioner or the commissioner's representative and~~
 31 ~~shall be assessed and collected in the same manner as other fees or fines administered by~~
 32 ~~the commissioner."~~

33 SECTION 23.

34 Said chapter is further amended in Code Section 7-1-689.1, relating to issuance of cease and
 35 desist order for noncompliance by licensee, by revising subsections (a), (b), (c), and (e) as
 36 follows:

1 "(a) Whenever it shall appear to the department that any person ~~required to be licensed or~~
2 ~~registered under this article~~ has violated any law of this state or any order or regulation of
3 the department under this article or is operating without a required license, the department
4 may issue an initial written order requiring such person to cease and desist immediately
5 from such unauthorized practices. Such cease and desist order shall be final 20 days after
6 it is issued unless the person to whom it is issued makes a written request for a hearing
7 within such 20 day period. The hearing shall be conducted in accordance with Chapter 13
8 of Title 50, the 'Georgia Administrative Procedure Act.' A cease and desist order issued
9 to an unlicensed person that orders such person to cease doing business without the
10 appropriate license shall be final 30 days from the date of issuance and there shall be no
11 opportunity for an administrative hearing. If the proper license or evidence of exemption
12 for the time period cited in the order is obtained within the 30 day period, the order shall
13 be rescinded by the department. Any cease and desist order sent to the person at both his
14 or her personal and business addresses pursuant to this Code section that is returned to the
15 department as 'refused' or 'unclaimed' shall be deemed as received and sufficiently served.

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

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

1 "(e) For purposes of this Code section, the term 'person' includes ~~any~~ an individual, any
 2 entity required to be licensed, and a licensee, officer, director, employee, agent, or other
 3 person participating in the conduct of the affairs of the person subject to the orders issued
 4 pursuant to this Code section."

5 SECTION 24.

6 Said chapter is further amended in Code Section 7-1-692, relating to prohibited transactions,
 7 by adding a new subsection to read as follows:

8 "(c) No person required to be licensed under this article shall purposely withhold, delete,
 9 destroy, or alter information requested by an examiner or other official of the department
 10 or make false statements or material misrepresentations to the department."

11 SECTION 25.

12 Said chapter is further amended by revising Code Section 7-1-700, relating to definitions
 13 relevant to check cashers, as follows:

14 "7-1-700.

15 As used in this article, the term:

16 (1) 'Check casher' means an individual, partnership, association, or corporation engaged
 17 in cashing checks, money orders, or other drafts for a fee. Such fee may be payable in
 18 cash, in the form of exchange of value in excess of regular retail value, in the form of
 19 mandatory purchase of goods or services by patrons ~~on a regular basis, which shall mean~~
 20 ~~the check casher conducts such services more than ten times in any calendar month, or~~
 21 in the form of the purchase of catalog items or coupons or other items indicating the
 22 ability to receive goods, services, or catalog items.

23 (2) 'Licensed casher of checks' means any individual, partnership, association, or
 24 corporation duly licensed by the Department of Banking and Finance to engage in
 25 business pursuant to the provisions of this article.

26 (3) 'Licensee' means a licensed casher of checks, drafts, or money orders.

27 (4) 'Registered casher of checks' or 'registrant' means any individual, partnership,
 28 association, or corporation engaged in cashing checks, money orders, or other drafts for
 29 a fee limited to the greater of \$2.00 or 2 percent of the face amount of the check. Such
 30 fee may be payable in cash, in the form of exchange of value in excess of regular retail
 31 value, in the form of mandatory purchase of goods or services by patrons, or in the form
 32 of the purchase of catalog items or coupons or other items indicating the ability to receive
 33 goods, services, or catalog items. A registered casher of checks shall not advertise its
 34 check cashing services and shall be duly registered by the Department of Banking and
 35 Finance to engage in business pursuant to the provisions of this article."

SECTION 26.

Said chapter is further amended by revising Code Section 7-1-701, relating to licensure of check cashers, as follows:

"7-1-701.

(a) No person, partnership, association, or corporation shall engage in the business of cashing checks, drafts, or money orders for a consideration without first obtaining a license or registration under this article. The term 'consideration' shall include any premium charged for the sale of goods in excess of the cash price of such goods.

(b) Each application for a license or registration shall be in writing and under oath to the department, in such form as the department may prescribe, and shall include the following:

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

(2) The location where the initial registered office of the applicant will be located in this state;

(3) The complete address of any other locations at which the applicant proposes to engage in cashing checks; and

(4) Such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(c) The application for license or registration shall be filed together with an investigation and supervision fee established by regulation which shall not be refundable but which, if the license or registration is granted, shall satisfy the fee requirement for the first license licensed or registered year or the remaining part thereof."

SECTION 27.

Said chapter is further amended by revising Code Section 7-1-702, relating to background investigation of applicants for check cashier's licenses, as follows:

"7-1-702.

(a) The department shall conduct an investigation of every applicant for license or registration to determine the financial responsibility, experience, character, and general fitness of the applicant. If the department determines to its general satisfaction:

(1) That the applicant is financially responsible and appears to be able to conduct the business of cashing checks in an honest, fair, and efficient manner and with the confidence and trust of the community; and

(2) That the granting of such application will promote the convenience and advantage of the area in which the business is to be conducted,

1 the department shall issue the applicant a license or registration to engage in the business
2 of cashing checks.

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

29 (c) The department shall be authorized to obtain conviction data with respect to any
30 applicant, licensee, or registrant or any person who is a director, officer, partner, agent,
31 employee, or ultimate equitable owner of 10 percent or more of the applicant, licensee, or
32 registrant or any individual who directs the affairs or establishes policy for the applicant,
33 licensee, or registrant. Upon receipt of information from the Georgia Crime Information
34 Center that is incomplete or that indicates an applicant, licensee, or registrant or any person
35 who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10
36 percent or more of the applicant, licensee, or registrant or any individual who directs the
37 affairs or establishes policy for the applicant, licensee, or registrant has a criminal record

1 in a state other than Georgia, the department shall submit to the Georgia Crime Information
2 Center two complete sets of fingerprints of such applicant or such person, the required
3 records search fees, and such other information as may be required. Fees for background
4 checks that the department administers shall be submitted to the department by applicants,
5 licensees, or registrants together with two complete sets of fingerprints. Upon receipt
6 thereof, the Georgia Crime Information Center shall promptly transmit one set of
7 fingerprints to the Federal Bureau of Investigation for a search of bureau records and an
8 appropriate report and shall retain the other set and promptly conduct a search of its own
9 records and records to which it has access. The Georgia Crime Information Center shall
10 notify the department in writing of any derogatory finding, including, but not limited to,
11 any conviction data regarding the fingerprint records check, or if there is no such finding.
12 All conviction data received by the department shall be used by the department for the
13 exclusive purpose of carrying out its responsibilities under this article, shall not be a public
14 record, shall be privileged, and shall not be disclosed to any other person or agency except
15 to any person or agency which otherwise has a legal right to inspect the file. All such
16 records shall be maintained by the department pursuant to laws regarding such records and
17 the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime
18 Information Center, as applicable. As used in this subsection, 'conviction data' means a
19 record of a finding, verdict, or plea of guilty or a plea of nolo contendere with regard to any
20 crime, regardless of whether an appeal of the conviction has been sought.

21 ~~(d) Such license shall be kept conspicuously posted in the place of business of the licensee.~~
22 ~~Such license shall not be transferable or assignable.~~

23 ~~(e) A license issued pursuant to this article shall remain in force and effect through its~~
24 ~~expiration date unless earlier surrendered, suspended, or revoked pursuant to this article.~~

25 (d) Every applicant, licensee, and registrant shall be authorized and required to obtain and
26 maintain the results of background checks on employees working in the licensed business.
27 Such background checks shall be handled by the Georgia Crime Information Center
28 pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime
29 Information Center. Applicants, licensees, and registrants shall be responsible for any
30 applicable fees charged by the Georgia Crime Information Center. An applicant, licensee,
31 or registrant may only employ a person whose background data has been checked and been
32 found to be satisfactory prior to the initial date of hire. This provision does not apply to
33 directors, officers, partners, agents, or ultimate equitable owners of 10 percent or more or
34 to persons who direct the company's affairs or establish policy, whose background must
35 have been investigated through the department before taking office, beginning
36 employment, or securing ownership. Upon receipt of information from the Georgia Crime
37 Information Center that is incomplete or that indicates an employee has a criminal record

1 in any state other than Georgia, the employer shall submit to the department two complete
 2 sets of fingerprints for such person, together with the applicable fees and any other required
 3 information. The department shall submit such fingerprints as provided in subsection (c)
 4 of this Code section.

5 (e) Such license or registration shall be kept conspicuously posted in the place of business
 6 of the licensee or registrant. Such license or registration shall not be transferable,
 7 assignable, or subject to a change of ownership without prior application to and approval
 8 by the department.

9 (f) Except as otherwise specifically provided in this article, all licenses and registrations
 10 issued pursuant to this article shall expire on September 30 of each year, and application
 11 for renewal shall be made annually on or before August 1 of each year. Any new license
 12 or registration granted after July 1 in any year will not be required to be renewed until the
 13 next calendar year renewal period."

14 **SECTION 28.**

15 Said chapter is further amended in Code Section 7-1-704, relating to rules and regulations
 16 for enforcement of article and the examination of books and records of licensees, by revising
 17 subsections (b) through (d) as follows:

18 "(b) To assure compliance with the provisions of this article and in consideration of any
 19 application to renew a license or registration pursuant to the provisions of Code Section
 20 7-1-703, the department or its designated agent may examine the books and records of any
 21 licensee or registrant to the same extent as it is authorized to examine financial institutions
 22 under this chapter. Each licensee or registrant shall pay an examination fee as established
 23 by regulations of the department to cover the cost of such examination.

24 (c) To assure compliance with the provisions of this article, the department may review
 25 the fees charged and fee income of any person cashing checks for a fee who claims
 26 exemption from licensing or claims to be a registered cashier of checks. Each person
 27 ~~claiming exemption~~ who is reviewed shall pay an hourly fee as provided in departmental
 28 regulations when the review requires more than four examiner hours and the review results
 29 in a finding that a license or registration is required. The department, in its discretion, may
 30 permit the party claiming exemption or registration to supply to the department the
 31 necessary books and records for its review at department headquarters.

32 (d) The department shall remit all examination fees paid by licensees and registrants in
 33 accordance with Code Section 7-1-43, net of any cost paid to third parties authorized by
 34 the department to perform such examination services."

SECTION 29.

Said chapter is further amended by revising Code Section 7-1-705, relating to notice to be posted by licensee, record-keeping requirements, and check cashing procedures, as follows:
"7-1-705.

(a) In every location licensed or registered under this article, there shall be conspicuously posted and at all times displayed a notice stating the charges for cashing checks.

(b) Each licensee or registrant shall keep and use in its business such books, accounts, and records as the department may require to carry into effect the provisions of this article and the rules and regulations. Every licensee or registrant shall preserve such books, accounts, and records for at least two years.

(c) Before a licensee or registrant shall deposit with any bank a check, draft, or money order cashed by such licensee or registrant, the same must be endorsed with the actual name under which such licensee or registrant is doing business.

(d)(1) No licensee or registrant shall receive any check, draft, or money order with payment deferred pending collection. Payment shall be made immediately in cash for every check, draft, or money order accepted by the licensee or registrant.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, drafts may be accepted for collection with payment deferred where the licensee or registrant has posted a surety bond in the same manner as prescribed for check sales licensees under Code Section 7-1-683. The amount of the surety bond shall be \$10,000.00 for each location operated by the licensee or registrant if the licensee or registrant operates three or fewer locations. For a fourth or fifth location operated by a licensee or registrant, the amount of the surety bond shall be \$5,000.00 for each such location. For each location operated by a licensee or registrant in excess of a fifth location, the amount of the surety bond shall be \$1,000.00. In no event shall payment of a draft be deferred past the time that the licensee or registrant has collected on the draft. Upon collection, payment shall be made immediately to the party from whom the licensee or registrant accepted the draft.

(e) No licensee or registrant shall cash a check, draft, or money order made payable to a payee other than a natural person unless such licensee or registrant has previously obtained appropriate documentation from the executive entity of such payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.

(f) No licensee ~~shall indicate through advertising, signs, billhead, or otherwise that checks may be cashed~~ or registrant shall cash checks without identification of the bearer of such check, and any person seeking to cash a check shall be required to submit such reasonable identification as shall be prescribed by the department; provided, however, the provisions of this subsection shall not prohibit a licensee or registrant from cashing a check

1 simultaneously with the verification and establishment of the identity of the presenter by
2 means other than the presentation of identification.

3 (g) Within five business days after being advised by the payor financial institution that a
4 check, draft, or money order has been altered, forged, stolen, obtained through fraudulent
5 or illegal means, negotiated without proper legal authority, or represents the proceeds of
6 illegal activity, the licensee or registrant shall notify the department and the district
7 attorney for the judicial circuit in which the check was received. In the event a check,
8 draft, or money order is returned to the licensee or registrant by the payor financial
9 institution for any of the aforementioned reasons, the licensee or registrant may not release
10 the check, draft, or money order without the consent of the district attorney or other
11 investigating law enforcement authority."

12 SECTION 30.

13 Said chapter is further amended in Code Section 7-1-706, relating to check-cashing fees, by
14 designating the existing text as subsection (a) and by adding a new subsection to read as
15 follows:

16 "(b) No registered casher of checks shall charge check-cashing fees, except as otherwise
17 provided in this Code section, in excess of 2 percent of the face amount of the check or
18 draft or \$2.00, whichever is greater."

19 SECTION 31.

20 Said chapter is further amended by revising Code Section 7-1-707, relating to suspension or
21 revocation of check casher's license, as follows:

22 "7-1-707.

23 (a) The department may suspend or revoke any ~~licenses or~~ license or registration issued
24 pursuant to this article if, ~~after notice and a hearing:~~

25 (1) It shall find that the licensee or registrant ~~has:~~

26 (A) ~~Has committed~~ Committed any fraud, engaged in any dishonest activities, or made
27 any misrepresentation;

28 (B) ~~Has violated~~ Violated any provisions of the banking law or any regulation issued
29 pursuant thereto or has violated any other law in the course of ~~its or his~~ its, his, or her
30 dealings as a licensed or registered casher of checks;

31 (C) ~~Has made~~ Made a false statement in the application for such license or registration
32 or failed to give a true reply to a question in such application;

33 (D) ~~Has demonstrated his~~ Demonstrated his, her, or its incompetency or
34 untrustworthiness to act as a licensed or registered casher of checks; ~~or~~

1 (E) Purposely withheld, deleted, destroyed, or altered information requested by an
 2 examiner of the department or made false statements or material misrepresentations to
 3 the department; or

4 ~~(E)~~(F) ~~Has charged~~ Charged check-cashing fees, exclusive of direct costs of
 5 verification, in unconscionable amounts which do not adequately reflect:

6 (i) The level of risk associated with the cashing of checks of a particular class using
 7 ordinary prudence and commercially reasonable standards of identification and
 8 acceptance;

9 (ii) The cost of funds necessary to operate a check-cashing business; and

10 (iii) The extraordinary costs for security safeguards associated with the business
 11 location of the licensee or registrant; or

12 (2) It shall find that any ground or grounds exist which would require or warrant the
 13 refusal of an application for the issuance of the license if such an application were then
 14 before it.

15 ~~(b) No application for a license under this article shall be denied and no license granted~~
 16 ~~under this article shall be suspended or revoked unless the applicant or licensee is given a~~
 17 ~~reasonable opportunity to be heard by the department. For this purpose, the department~~
 18 ~~shall give the applicant or licensee at least 20 days' written notice of the time and place of~~
 19 ~~such hearing by registered or certified mail or statutory overnight delivery addressed to the~~
 20 ~~principal place of business of such applicant or licensee. A copy of such notice of hearing~~
 21 ~~shall be mailed to any association of licensees registered with the department for the~~
 22 ~~purpose of receiving such notices, and such association shall be permitted to participate in~~
 23 ~~the hearing, either on behalf of the applicant or in opposition to the application. Any order~~
 24 ~~of the department denying, suspending, or revoking a license shall state the grounds upon~~
 25 ~~which it is based and shall not be effective for 20 days after its rendition. A copy thereof~~
 26 ~~shall be forwarded promptly by registered or certified mail or statutory overnight delivery~~
 27 ~~addressed to the principal place of business of such applicant or licensee. Notice of the~~
 28 department's intention to enter an order denying an application for a license or registration
 29 under this article or of an order suspending or revoking a license or registration under this
 30 article shall be given to the applicant, licensee, or registrant, in writing, sent by registered
 31 or certified mail or statutory overnight delivery addressed to the principal place of business
 32 of such applicant, licensee, or registrant. Within 20 days of the date of the notice of
 33 intention to enter an order of denial, suspension, or revocation under this article, the
 34 applicant, licensee, or registrant may request in writing a hearing to contest the order. If
 35 a hearing is not requested in writing within 20 days of the date of such notice of intention,
 36 the department shall enter a final order regarding the denial, suspension, or revocation.
 37 Any final order of the department denying, suspending, or revoking a license or registration

1 shall state the grounds upon which it is based and shall be effective on the date of issuance.
 2 A copy thereof shall be forwarded promptly by registered or certified mail or statutory
 3 overnight delivery addressed to the principal place of business of such applicant, licensee,
 4 or registrant. If a person refuses to accept service of the notice or order by registered or
 5 certified mail or statutory overnight delivery, the notice or order shall be served by the
 6 commissioner or the commissioner's authorized representative under any other method of
 7 lawful service; and the person shall be personally liable to the commissioner for a sum
 8 equal to the actual costs incurred to serve the notice or order. This liability shall be paid
 9 upon notice and demand by the commissioner or the commissioner's representative and
 10 shall be assessed and collected in the same manner as other fees or fines administered by
 11 the commissioner.

12 (c) A decision of the department denying a license or registration, original or renewal,
 13 shall be conclusive, except that it may be subject to judicial review under Code Section
 14 7-1-90. A decision of the department suspending or revoking a license or registration shall
 15 be subject to judicial review in the same manner as a decision of the department to take
 16 possession of the assets and business of a bank under Code Section 7-1-155.

17 (d) The provisions of this Code section shall not apply when a license is denied or
 18 suspended as provided in Code Section 7-1-707.1.

19 (e)(1) Whenever it shall appear to the department that any person ~~required to be licensed~~
 20 ~~or registered under this article~~ has violated any law of this state or any order or regulation
 21 of the department under this article, the department may issue an initial written order
 22 requiring such person to cease and desist immediately from such unauthorized practices.
 23 Such cease and desist order shall be final 20 days after it is issued unless the person to
 24 whom it is issued makes a written request within such 20 day period for a hearing. The
 25 hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia
 26 Administrative Procedure Act.' A cease and desist order to an unlicensed or unregistered
 27 person that orders such person to cease doing a check-cashing business without the
 28 appropriate license or registration shall be final 30 days from the date of issuance, and
 29 there shall be no opportunity for an administrative hearing. If the proper license or
 30 registration or evidence of exemption is obtained within the 30 day period, the order shall
 31 be rescinded by the department. Any cease and desist order sent to the person at both his
 32 or her personal and business addresses pursuant to this Code section that is returned to
 33 the department as 'refused' or 'unclaimed' shall be deemed as received and sufficiently
 34 served.

35 (2) Whenever a person ~~required to be licensed under this article~~ shall fail to comply with
 36 the terms of an order of the department which has been properly issued under the
 37 circumstances, the department, upon notice of three days to such person, may, through

1 the Attorney General, petition the principal court for an order directing such person to
 2 obey the order of the department within the period of time as shall be fixed by the court.
 3 Upon the filing of such petition, the court shall allow a motion to show cause why it
 4 should not be granted. Whenever, after a hearing upon the merits or after failure of such
 5 person to appear when ordered, it shall appear that the order of the department was
 6 properly issued, the court shall grant the petition of the department.

7 (3) Any person ~~required to be licensed under this article~~ who violates the terms of any
 8 order issued pursuant to this Code section shall be liable for a civil penalty not to exceed
 9 \$1,000.00. Each day the violation continues shall constitute a separate offense. In
 10 determining the amount of penalty, the department shall take into account the
 11 appropriateness of the penalty relative to the size of the financial resources of such
 12 person, the good faith efforts of such person to comply with the order, the gravity of the
 13 violation, the history of previous violations by such person, and such other factors or
 14 circumstances as shall have contributed to the violation. The department may at its
 15 discretion compromise, modify, or refund any penalty which is subject to imposition or
 16 has been imposed pursuant to this Code section. Any person assessed as provided in this
 17 subsection shall have the right to request a hearing into the matter within ten days after
 18 notification of the assessment has been served upon the licensee or registrant involved;
 19 otherwise, such penalty shall be final except as to judicial review as provided in Code
 20 Section 7-1-90.

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

24 (5) For purposes of this Code section, the term 'person' includes any an individual, any
 25 entity required to be licensed or registered, licensees, registrants, or an officer, director,
 26 employee, agent, or other person participating in the conduct of the affairs of the person
 27 subject to the orders issued pursuant to this Code section.

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

31 SECTION 32.

32 Said chapter is further amended in Code Section 7-1-709, relating to applicability of article,
 33 by striking subsection (c) in its entirety and by revising subsection (b) in its entirety as
 34 follows:

35 "(b) This article shall not apply to any individual, partnership, association, or corporation
 36 which cashes checks for which no fee is charged."

1 examine the department's public records to determine that such employee is not subject to
2 the type of cease and desist order described in this subsection."

3 SECTION 35.

4 Said chapter is further amended in Code Section 7-1-1006, relating to contents of a mortgage
5 broker's license and posting requirements, by revising subsections (e) and (f) as follows:

6 "(e) Each licensee shall notify the department in writing of any change in the address of
7 the principal place of business or of any additional location of business in Georgia, any
8 change in registered agent or registered office, any change of ~~principal~~ executive officer,
9 ~~director~~, contact person for consumer complaints, or ultimate equitable owner of 10 percent
10 or more of any corporation or other entity licensed under this article, or of any material
11 change in the licensee's financial statement. ~~Notice of a change in address of the main~~
12 ~~office or an approved branch location shall be submitted no later than 15 days before the~~
13 ~~change is made.~~ Notice of ~~other~~ changes must be received by the department no later than
14 30 business days after the change is effective.

15 (f) No licensee shall open a new additional office in Georgia without prior approval of the
16 department. Applications for such additional office shall be made in writing on a form
17 prescribed by the department and shall be accompanied by payment of a \$350.00
18 nonrefundable application fee. The application shall be approved unless the department
19 finds that the applicant has not conducted business under this article efficiently, fairly, in
20 the public interest, and in accordance with law. The application shall be deemed approved
21 if notice to the contrary has not been mailed by the department to the applicant within 30
22 45 days of the date the application is received by the department."

23 SECTION 36.

24 Said chapter is further amended in Code Section 7-1-1008, relating to acquisition of 25
25 percent or more of the voting shares or of the ownership of any other entity licensed to
26 conduct business under the mortgage lenders and mortgage brokers article, is revised in the
27 introductory language of subsection (a) as follows:

28 "(a) Except as provided in this Code section, ~~on and after July 1, 1993,~~ no person shall
29 acquire directly or indirectly ~~25~~ 10 percent or more of the voting shares of a corporation
30 or ~~25~~ 10 percent or more of the ownership of any other entity licensed to conduct business
31 under this article unless it first:"

32 SECTION 37.

33 Said chapter is further amended in Code Section 7-1-1009, relating to maintenance of books,
34 accounts, and records; and investigation and examination of licensees and registrants by the

1 department, by revising subsection (a) and the introductory language of subsection (f) as
 2 follows:

3 "(a) Any person required to be licensed or registered under this article shall maintain at its
 4 offices or such other location as the department shall permit such books, accounts, and
 5 records as the department may reasonably require in order to determine whether such
 6 person is complying with the provisions of this article and rules and regulations adopted
 7 in furtherance thereof. Such books, accounts, and records shall be maintained ~~apart and~~
 8 ~~separate from any other business in which such~~ separately and distinctly from any other
 9 personal or unrelated business matters in which the person is involved."

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

29 **SECTION 38.**

30 Said chapter is further amended in Code Section 7-1-1016, relating to regulations relative to
 31 advertising, by revising paragraphs (1) and (2) as follows:

32 "(1)(A) Advertisements for loans regulated under this article may not be false,
 33 misleading, or deceptive. No person whose activities are regulated under this article
 34 may advertise in any manner so as to indicate or imply that its interest rates or charges
 35 for loans are in any way 'recommended,' 'approved,' 'set,' or 'established' by the state or
 36 this article;

1 (B) An advertisement shall not include an individual's loan number, loan amount, or
 2 other publicly available information unless it is clearly and conspicuously stated in
 3 bold-faced type at the beginning of the advertisement that the person disseminating it
 4 is not authorized by, in sponsorship with, or otherwise affiliated with the individual's
 5 lender, which shall be identified by name. Such an advertisement shall also state that
 6 the loan information contained therein was not provided by the recipient's lender.

7 (2) All advertisements disseminated by a licensee or a registrant in this state by a
 8 ~~licensee or a registrant~~ any means shall contain the name, license number, and an office
 9 address of such licensee or registrant, which shall conform to a name and address on
 10 record with the department; and"

11 SECTION 39.

12 Said chapter is further amended in Code Section 7-1-1017, relating to suspension or
 13 revocation of licenses of mortgage lenders or mortgage brokers, by revising paragraph (1)
 14 of subsection (a) and subsection (b) as follows:

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

25 "(b) Notice of the department's intention to enter an order denying an application for a
 26 license or registration under this article or of an order suspending or revoking a license or
 27 registration under this article shall be given to the applicant, licensee, or registrant in
 28 writing, sent by registered or certified mail or statutory overnight delivery addressed to the
 29 principal place of business of such applicant, licensee, or registrant. Within 20 days of the
 30 date of the notice of intention to enter an order of denial, suspension, or revocation under
 31 this article, the applicant, licensee, or registrant may request in writing a hearing to contest
 32 the order. If a hearing is not requested in writing within 20 days of the date of such notice
 33 of intention, the department shall enter a final order regarding the denial, suspension, or
 34 revocation. Any final order of the department denying, suspending, or revoking a license
 35 or registration shall state the grounds upon which it is based and shall be effective on the
 36 date of issuance. A copy thereof shall be forwarded promptly by registered or certified

1 mail or statutory overnight delivery addressed to the principal place of business of such
 2 applicant, licensee, or registrant. If a person refuses to accept service of the notice or order
 3 by registered or certified mail or statutory overnight delivery, the notice or order shall be
 4 served by the commissioner or the commissioner's authorized representative under any
 5 other method of lawful service; and the person shall be personally liable to the
 6 commissioner for a sum equal to the actual costs incurred to serve the notice or order. This
 7 liability shall be paid upon notice and demand by the commissioner or the commissioner's
 8 representative and shall be assessed and collected in the same manner as other fees or fines
 9 administered by the commissioner."

10 SECTION 40.

11 Said chapter is further amended in Code Section 7-1-1018, relating to cease and desist orders
 12 against noncompliant mortgage lenders or mortgage brokers, by revising subsections (a) and
 13 (f) as follows:

14 "(a) Whenever it shall appear to the department that any person required to be licensed or
 15 registered or required to file a notification statement under this article or employed by a
 16 licensee or registrant pursuant to Code Section 7-1-1001 or who would be covered by the
 17 prohibitions in Code Section 7-1-1013 has violated any law of this state or any order or
 18 regulation of the department, the department may issue an initial written order requiring
 19 such person to cease and desist immediately from such unauthorized practices. Such cease
 20 and desist order shall be final 20 days after it is issued unless the person to whom it is
 21 issued makes a written request within such 20 day period for a hearing. The hearing shall
 22 be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
 23 Procedure Act.' A cease and desist order to an unlicensed person that orders them to cease
 24 doing a mortgage business without the appropriate license shall be final 30 days from the
 25 date of issuance, and there shall be no opportunity for an administrative hearing. If the
 26 proper license or evidence of exemption or valid employment status during the time of the
 27 alleged offense is delivered to the department within the 30 day period, the order shall be
 28 rescinded by the department. If a cease and desist order is issued to a person who has been
 29 sent a notice of bond cancellation and if the bond is reinstated or replaced and such
 30 documentation is delivered to the department within the 30 day period following the date
 31 of issuance of the order, the order shall be rescinded. If the notice of reinstatement of the
 32 bond is not received within the 30 days, the license shall expire at the end of the 30 day
 33 period and the person shall be required to make a new application for license and pay the
 34 applicable fees. In the case of an unlawful purchase of mortgage loans, such initial cease
 35 and desist order to a purchaser shall constitute the knowledge required under subsection
 36 (b) of Code Section 7-1-1002 for any subsequent violations. Any cease and desist order

1 sent to the person at both his or her personal and business addresses pursuant to this Code
2 section that is returned to the department as 'refused' or 'unclaimed' shall be deemed as
3 received and sufficiently served."

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

7 **SECTION 41.**

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

9 **SECTION 42.**

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