

House Bill 141 (COMMITTEE SUBSTITUTE)

By: Representatives Mills of the 25th and Hill of the 21st

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to
2 financial institutions, so as to update definitions; to provide for penalties for failure to
3 provide requested information by financial institutions; to include bank holding companies
4 in the definition of financial institutions; to include credit unions in restricted nomenclature;
5 to broaden the definition of legal lending limit; to provide for payment of dividends by
6 Subchapter S banks; to change the amount of par value; to provide for the investigative
7 powers of the Department of Banking and Finance; to provide for immunity from civil
8 liability for proper disclosure of information; to change certain provisions relative to the
9 renewal of licenses; to update the records required to be retained by a licensee; to prohibit
10 employment of persons that have a final cease and desist order entered against them; to
11 provide for transmittal of certain monies within five days; to provide that mobile check
12 cashing facilities are subject to regulation; to provide for related matters; to provide for an
13 effective date; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

16 Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial
17 institutions, is amended by revising paragraph (24) of Code Section 7-1-4, relating to
18 definitions relative to financial institutions, as follows:

19 "(24) 'Net assets' means the amount by which the total assets exceed the total debts of a
20 financial institution. Total assets shall include but not be limited to both tangible and
21 intangible assets (~~except good will~~), including prepaid expenses, prepaid taxes, and
22 accrued income using book values determined in accordance with generally accepted
23 accounting principles applicable to financial institutions. Total assets shall not include
24 intangible assets in the form of good will, core deposit intangibles, or other intangible
25 assets related to the purchase, acquisition, or merger of a bank charter. Total debts shall
26 include all liabilities, other than contingent liabilities, including accrued expenses,

27 deferred or unearned income, and valuation reserves, all determined in accordance with
 28 generally accepted accounting principles applicable to financial institutions."

29 **SECTION 2.**

30 Said chapter is further amended by revising subsection (d) of Code Section 7-1-68, relating
 31 to reports to the Department of Banking and Finance and publication of summaries, as
 32 follows:

33 "(d) Any financial institution which fails to prepare or publish any report or to furnish any
 34 proof of publication, in accordance with this Code section, or fails to provide any facts or
 35 information requested under subsection (a) of this Code section, shall pay the department
 36 a penalty of \$100.00 for each day after the time fixed by the department for filing such
 37 report, making such publication, or furnishing such proof of publication, but the department
 38 may, in its discretion, relieve any financial institution from the payment of such penalty,
 39 in whole or in part, if good cause be shown. If a financial institution fails to pay a penalty
 40 from which it has not been relieved, the department may, through the Attorney General,
 41 maintain an action at law to recover it."

42 **SECTION 3.**

43 Said chapter is further amended by revising subsection (h) of Code Section 7-1-91, relating
 44 to orders by the Department of Banking and Finance, as follows:

45 "(h) The term 'financial institution' as used in this Code section shall include a bank
 46 holding company as defined in Code Section 7-1-605 and those entities required to be
 47 licensed pursuant to Article 4A of this chapter and any officer, director, employee, agent,
 48 or other person participating in the conduct of the affairs of the financial institution subject
 49 to the orders issued pursuant to this Code section."

50 **SECTION 4.**

51 Said chapter is further amended by adding a new subsection (a.1) and revising subsection (c)
 52 of Code Section 7-1-243, relating to restrictions on using bank and trust nomenclature, as
 53 follows:

54 "(a.1) Except as provided in subsection (c) of this Code section, no person or corporation
 55 except a credit union or a federal credit union shall use the words 'credit union', or any
 56 other similar name indicating that the business done is that of a credit union upon any sign
 57 at its place of business or elsewhere, or upon any of its letterheads, billheads, blank checks,
 58 blank notes, receipts, certificates, circulars, advertisements, or any other written or printed
 59 matter."

60 "(c) Nothing in this Code section shall be construed to:

61 (1) Prevent the use of the words 'banks,' 'banker,' 'banking,' 'banker's,' 'trust,' or any
 62 similar word in a context clearly not purporting to refer to a banking or a trust business
 63 or to a business primarily engaged in the lending of money, underwriting or sale of
 64 securities, acting as a financial planner, financial service provider, investment or trust
 65 adviser, or acting as a loan broker;

66 (1.1) Prevent the use of the words 'credit union', or any similar word in a context clearly
 67 not purporting to refer to a credit union or to a business primarily engaged in the lending
 68 of money, or accepting shares or deposits or acting as a loan broker;

69 (2) Prohibit advertisement in media distributed in or transmitted into this state by persons
 70 or corporations lawfully engaged in the banking, credit union, or trust business outside
 71 of this state; or

72 (3) Prevent any person or corporation from continuing to use its name legally in use on
 73 April 1, 1989."

74 SECTION 5.

75 Said chapter is further amended by revising subsections (b) and (e) of Code Section 7-1-285,
 76 relating to limits on obligations to one person or corporation, as follows:

77 "(b) Except as provided in subsection (c) of this Code section, a bank shall not directly or
 78 indirectly make loans to any one person or corporation which in aggregate exceed 15
 79 percent of the statutory capital base of the bank unless the entire amount of such loans is
 80 secured by good collateral or other ample security and does not exceed 25 percent of the
 81 statutory capital base. Except as otherwise indicated in subsection (c) of this Code section,
 82 the purchase or discount of agreements for the payment of money or evidences of
 83 indebtedness shall be regarded as indirect loans to the person or corporation receiving the
 84 proceeds of such transactions. ~~In estimating loans to any individual person, all amounts~~
 85 ~~loaned to firms and partnerships of which he is a member shall be included.~~ In estimating
 86 the legal lending limit for any individual person, loans to related corporations, partnerships,
 87 and other entities shall be combined subject to regulations established by the department."

88 "(e) The department may, by regulation not inconsistent with this Code section, prescribe
 89 definitions of and requirements for transactions included in or excluded from the
 90 indebtedness to which this Code section applies. The department may also by regulation
 91 prescribe less restrictive limitations than those listed in subsections (a) through (c) of this
 92 Code section for banks meeting certain financial and management criteria. In addition, the
 93 department may, by regulation or otherwise, specify that the liabilities of a group of one
 94 or more persons or corporations or both shall be considered as owed by one person or
 95 corporation for the purposes of this Code section because the group relies substantially on
 96 a common source for the payment of its obligations or makes common use of funds

97 received by it, or meets other criteria established by the department for the combination of
 98 indebtedness for legal lending limitation purposes."

99 **SECTION 6.**

100 Said chapter is further amended by revising paragraph (2) of subsection (a) of Code Section
 101 7-1-460, relating to restrictions on payment of dividends and limitation of actions for
 102 dividends or distributions, as follows:

103 "(2) Dividends may not be declared or paid at any time that the bank or trust company
 104 does not have the paid-in capital and appropriated retained earnings required by Code
 105 Section 7-1-411, except the department may approve the payment of dividends by a
 106 Subchapter S bank, prior to cumulative profitability, for the sole purpose of providing its
 107 shareholders with a source of funds to pay federal and state income taxes on the
 108 Subchapter S bank's income that is taxable to those shareholders;"

109 **SECTION 7.**

110 Said chapter is further amended by revising subsection (a) of Code Section 7-1-651, relating
 111 to membership of credit unions, as follows:

112 "(a) The membership of the credit union shall consist of the initial subscribers and such
 113 other persons within the field of membership as may have subscribed to one share and have
 114 paid for same together with the required entrance fee and complied with all other
 115 requirements contained in the bylaws. No subscriber or other member shall hold more than
 116 one share out of any class of shares. The bylaws may provide for separate classes of shares
 117 for borrowers and depositors and for the par value of each share for each class but in no
 118 event shall the par value be less than ~~\$5.00~~ \$1.00."

119 **SECTION 8.**

120 Said chapter is further amended by adding new subsections (c) through (h) of Code Section
 121 7-1-684.1, relating to examination of books and records of licensees by the Department of
 122 Banking and Finance, as follows:

123 "(c) The department, in its discretion, may:

124 (1) Make such public or private investigations within or outside of this state as it deems
 125 necessary to determine whether any person has violated this article or any rule,
 126 regulation, or order under this article, to aid in the enforcement of this article, or to assist
 127 in the prescribing of rules and regulations pursuant to this article;

128 (2) Require or permit any person to file a statement in writing, under oath or otherwise
 129 as the department determines, as to all the facts and circumstances concerning the matter
 130 to be investigated;

131 (3) Disclose information concerning any violation of this article or any rule, regulation,
132 or order under this article, provided the information is derived from a final order of the
133 department; and

134 (4) Disclose the imposition of an administrative fine or penalty under this article.

135 (d)(1) For the purpose of conducting any investigation as provided in this Code section,
136 the department shall have the power to administer oaths, to call any party to testify under
137 oath in the course of such investigations, to require the attendance of witnesses, to require
138 the production of books, records, and papers, and to take the depositions of witnesses;
139 and for such purposes the department is authorized to issue a subpoena for any witness
140 or for the production of documentary evidence. Such subpoenas may be served by
141 certified mail or statutory overnight delivery, return receipt requested, to the addressee's
142 business mailing address, by examiners appointed by the department, or shall be directed
143 for service to the sheriff of the county where such witness resides or is found or where
144 the person in custody of any books, records, or paper resides or is found. The required
145 fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state
146 treasury for the use of the department in the same manner that other expenses of the
147 department are paid.

148 (2) The department may issue and apply to enforce subpoenas in this state at the request
149 of a government agency regulating sellers of checks or money transmitters of another
150 state if the activities constituting the alleged violation for which the information is sought
151 would be a violation of this article if the activities had occurred in this state.

152 (e) In case of refusal to obey a subpoena issued under this article to any person, a superior
153 court of appropriate jurisdiction, upon application by the department, may issue to the
154 person an order requiring him or her to appear before the court to show cause why he or
155 she should not be held in contempt for refusal to obey the subpoena. Failure to obey a
156 subpoena may be punished as contempt by the court.

157 (f) Examinations and investigations conducted under this article and information obtained
158 by the department in the course of its duties under this article are confidential, except as
159 provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition
160 to the exceptions set forth in subsection (b) of Code Section 7-1-70, the department is
161 authorized to share information obtained under this article with other state and federal
162 regulatory agencies or law enforcement authorities. In the case of such sharing, the
163 safeguards to confidentiality already in place within such agencies or authorities shall be
164 deemed adequate. The commissioner or an examiner specifically designated may disclose
165 such limited information as is necessary to conduct a civil or administrative investigation
166 or proceeding. Information contained in the records of the department which is not

167 confidential and may be made available to the public either on the department's website or
 168 upon receipt by the department of a written request shall include:

169 (1) The name, business address, and telephone, fax, and license numbers of a licensee
 170 or registrant;

171 (2) The names and titles of the principal officers;

172 (3) The name of the owner or owners thereof;

173 (4) The business address of a licensee's or registrant's agent for service;

174 (5) The terms of or a copy of any bond filed by a licensee or registrant; and

175 (6) The name, business address, telephone number, and fax number of all agents of a
 176 licensee.

177 (g) In the absence of malice, fraud, or bad faith, a person is not subject to civil liability
 178 arising from the filing of a complaint with the department or furnishing other information
 179 required by this Code section or required by the department under the authority granted in
 180 this article. No civil cause of action of any nature shall arise against such person:

181 (1) For any information relating to suspected prohibited transactions furnished to or
 182 received from law enforcement officials, their agents, or employees or to or from other
 183 regulatory or licensing authorities;

184 (2) For any such information furnished to or received from other persons subject to the
 185 provisions of this title; or

186 (3) For any such information furnished in complaints filed with the department.

187 (h) The commissioner or any employee or agent is not subject to civil liability, and no civil
 188 cause of action of any nature exists against such persons arising out of the performance of
 189 activities or duties under this article or by publication of any report of activities under this
 190 Code section."

191 **SECTION 9.**

192 Said chapter is further amended by revising Code Section 7-1-685, relating to renewal of
 193 licenses and the annual license fee, as follows:

194 "A license may be renewed for a period to be established by regulations of the department
 195 upon the filing of an application conforming to the requirements of Code Section 7-1-683
 196 with such modifications as the department may allow. No investigation fee shall be
 197 payable in connection with such renewal application; but an annual license fee established
 198 by regulation of the department to defray the cost of supervision shall be paid with each
 199 renewal application, which fee shall not be refunded or prorated if the renewal application
 200 is approved. ~~If a renewal application is filed with the department before expiration of an~~
 201 ~~existing license, the license sought to be renewed shall continue in force until the issuance~~

202 ~~by the department of the renewal license applied for or until 20 days after the department~~
 203 ~~shall have refused to issue such renewal license."~~

204 **SECTION 10.**

205 Said chapter is further amended by revising subsection (b) of Code Section 7-1-686, relating
 206 to a notice of action or change in number of locations by a licensee, as follows:

207 "(b) A licensee shall give notice to the department by registered or certified mail or
 208 statutory overnight delivery of the name and address of any new or additional locations at
 209 which it engages in the business of selling or issuing checks over the number previously
 210 reported in either its original or renewal application and shall show to the department that
 211 the bond or assets required under Code Section 7-1-683 have been increased accordingly.

212 This notice shall be given to the department by the licensee as follows:

213 (1) For the period January 1 through June 30 of each year, on or before the first business
 214 day of September; and

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

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

221 **SECTION 11.**

222 Said chapter is further amended by revising subsection (a) of Code Section 7-1-687.1,
 223 relating to records required to be kept by licensee for a five-year period, as follows:

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

226 (1) A record of each check sold;

227 (2) A general ledger which shall be posted at least monthly containing all assets,
 228 liabilities, capital, and income and expense accounts;

229 (3) Settlement sheets received from agents;

230 (4) Bank statements and bank reconciliation records;

231 (5) Records of outstanding checks;

232 (6) Records of each check paid; ~~and~~

233 (7) A list of the names and addresses of all of the licensee's agents;

234 (8) A copy of all Currency Transaction Reports that are required to be filed by the
 235 licensee; and

236 (9) For money transmitters, records of all money transmissions sent or received."

237 **SECTION 12.**

238 Said chapter is further amended by adding a new Code section to read as follows:

239 "7-1-689.2.

240 The department may not issue a license to an applicant and may revoke a license from a
 241 licensee if such person employs any other person against whom a final cease and desist
 242 order has been issued within the preceding five years if such order was based on a violation
 243 of this article. Each applicant and licensee shall, before hiring an employee, examine the
 244 department's public records to determine that such employee is not subject to a cease and
 245 desist order."

246 **SECTION 13.**

247 Said chapter is further amended by adding a new subsection (d) of Code Section 7-1-692,
 248 relating to prohibited actions by licensees, as follows:

249 "(d) All licensees or agents of licensees shall transmit monies received by them within five
 250 business days of receiving such monies, unless the licensee's written terms and conditions
 251 call for an agent to make an earlier transmission of funds. Failure to timely transmit funds
 252 shall subject the licensee to fines and may result in the revocation of its license. In the case
 253 of an agent, failure to timely transmit funds may result in the imposition of fines and the
 254 designation of a licensee's agent being refused or suspended by the department."

255 **SECTION 14.**

256 Said chapter is further amended by revising Code Section 7-1-703, relating to license
 257 renewal, as follows:

258 "A license ~~or registration~~ may be renewed for a period to be established by regulations of
 259 the department upon the filing of an application substantially conforming to the
 260 requirements of Code Section 7-1-701 with such modifications as the department may
 261 specify and as may be necessary. No investigation fee shall be payable in connection with
 262 such renewal application; but an annual license ~~or registration~~ fee established by regulation
 263 of the department to defray the cost of supervision shall be paid with each renewal
 264 application, which fee shall not be refunded or prorated if the renewal application is
 265 approved. ~~If a renewal application is filed with the department before expiration of an~~
 266 ~~existing license, the license sought to be renewed shall continue in force until the issuance~~
 267 ~~by the department of the renewal license applied for or until 20 days after the department~~
 268 ~~shall have refused to issue such renewal license."~~

269 **SECTION 15.**

270 Said chapter is further amended by revising subsection (b) and adding a new subsections (e)
 271 through (i) of Code Section 7-1-704, relating to enforcement of provisions by the Department
 272 of Banking and Finance, as follows:

273 "(b) To assure compliance with the provisions of this article and in consideration of any
 274 application to renew a license or registration pursuant to the provisions of Code Section
 275 7-1-703, the department or its designated agent may examine the books and records of any
 276 licensee or registrant to the same extent as it is authorized to examine financial institutions
 277 under this chapter. Each licensee or registrant shall pay an examination fee as established
 278 by regulations of the department to cover the cost of such examination. The department,
 279 in its discretion, may:

280 (1) Make such public or private investigations within or outside of this state as it deems
 281 necessary to determine whether any person has violated this article or any rule,
 282 regulation, or order under this article, to aid in the enforcement of this article, or to assist
 283 in the prescribing of rules and regulations pursuant to this article;

284 (2) Require or permit any person to file a statement in writing, under oath or otherwise
 285 as the department determines, as to all the facts and circumstances concerning the matter
 286 to be investigated;

287 (3) Disclose information concerning any violation of this article or any rule, regulation,
 288 or order under this article, provided the information is derived from a final order of the
 289 department; and

290 (4) Disclose the imposition of an administrative fine or penalty under this article."

291 "(e)(1) For the purpose of conducting any investigation as provided in this Code section,
 292 the department shall have the power to administer oaths, to call any party to testify under
 293 oath in the course of such investigations, to require the attendance of witnesses, to require
 294 the production of books, records, and papers, and to take the depositions of witnesses;
 295 and for such purposes the department is authorized to issue a subpoena for any witness
 296 or for the production of documentary evidence. Such subpoenas may be served by
 297 certified mail or statutory overnight delivery, return receipt requested, to the addressee's
 298 business mailing address, by examiners appointed by the department, or shall be directed
 299 for service to the sheriff of the county where such witness resides or is found or where
 300 the person in custody of any books, records, or paper resides or is found. The required
 301 fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state
 302 treasury for the use of the department in the same manner that other expenses of the
 303 department are paid.

304 (2) The department may issue and apply to enforce subpoenas in this state at the request
 305 of a government agency regulating check cashing of another state if the activities

306 constituting the alleged violation for which the information is sought would be a violation
 307 of this article if the activities had occurred in this state.

308 (f) In case of refusal to obey a subpoena issued under this article to any person, a superior
 309 court of appropriate jurisdiction, upon application by the department, may issue to the
 310 person an order requiring him or her to appear before the court to show cause why he or
 311 she should not be held in contempt for refusal to obey the subpoena. Failure to obey a
 312 subpoena may be punished as contempt by the court.

313 (g) Examinations and investigations conducted under this article and information obtained
 314 by the department in the course of its duties under this article are confidential, except as
 315 provided in this subsection pursuant to the provisions of Code Section 7-1-70. In addition
 316 to the exceptions set forth in subsection (b) of Code Section 7-1-70, the department is
 317 authorized to share information obtained under this article with other state and federal
 318 regulatory agencies or law enforcement authorities. In the case of such sharing, the
 319 safeguards to confidentiality already in place within such agencies or authorities shall be
 320 deemed adequate. The commissioner or an examiner specifically designated may disclose
 321 such limited information as is necessary to conduct a civil or administrative investigation
 322 or proceeding. Information contained in the records of the department that is not
 323 confidential and may be made available to the public either on the department's website or
 324 upon receipt by the department of a written request shall include:

- 325 (1) The name, business address, and telephone, fax, and license numbers of a licensee
 326 or registrant;
 327 (2) The names and titles of the principal officers;
 328 (3) The name of the owner or owners thereof;
 329 (4) The business address of a licensee's or registrant's agent for service; and
 330 (5) The name, business address, telephone number, and fax number of all locations of
 331 a licensee.

332 (h) In the absence of malice, fraud, or bad faith, a person is not subject to civil liability
 333 arising from the filing of a complaint with the department or furnishing other information
 334 required by this Code section or required by the department under the authority granted in
 335 this article. No civil cause of action of any nature shall arise against such person:

- 336 (1) For any information relating to suspected prohibited conduct furnished to or received
 337 from law enforcement officials, their agents, or employees or to or from other regulatory
 338 or licensing authorities;
 339 (2) For any such information furnished to or received from other persons subject to the
 340 provisions of this title; or
 341 (3) For any such information furnished in complaints filed with the department.

342 (i) The commissioner or any employee or agent is not subject to civil liability, and no civil
343 cause of action of any nature exists against such persons arising out of the performance of
344 activities or duties under this article or by publication of any report of activities under this
345 Code section."

346 **SECTION 16.**

347 Said chapter is further amended by adding a new Code section to read as follows:

348 "7-1-707.2.

349 The department may not issue a license or registration to an applicant and may revoke a
350 license from a licensee or a registration from a registrant if such person employs any other
351 person against whom a final cease and desist order has been issued within the preceding
352 five years if such order was based on a violation of this article. Each applicant, licensee
353 and registrant shall, before hiring an employee, examine the department's public records
354 to determine that such employee is not subject to a cease and desist order."

355 **SECTION 17.**

356 Said chapter is further amended by adding a new Code section to read as follows:

357 "7-1-707.3.

358 The operation of a mobile check cashing facility must be conducted in accordance with the
359 rules of the department."

360 **SECTION 18.**

361 This Act shall become effective on July 1, 2009.

362 **SECTION 19.**

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