

House Bill 141 (AS PASSED HOUSE AND SENATE)

By: Representatives Mills of the 25<sup>th</sup> and Hill of the 21<sup>st</sup>

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 amend Code Section 10-1-393, relating to  
13 unlawful unfair or deceptive practices in consumer transactions an in trade and commerce,  
14 so as to provide further illustration of an unfair or deceptive trade practices applying to  
15 financial and other business institutions; to provide for related matters; to provide for an  
16 effective date; to repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

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

22 "(24) 'Net assets' means the amount by which the total assets exceed the total debts of a  
23 financial institution. Total assets shall include but not be limited to both tangible and  
24 intangible assets (~~except good will~~), including prepaid expenses, prepaid taxes, and  
25 accrued income using book values determined in accordance with generally accepted  
26 accounting principles applicable to financial institutions. Total assets shall not include

27 intangible assets in the form of good will, core deposit intangibles, or other intangible  
 28 assets related to the purchase, acquisition, or merger of a bank charter. Total debts shall  
 29 include all liabilities, other than contingent liabilities, including accrued expenses,  
 30 deferred or unearned income, and valuation reserves, all determined in accordance with  
 31 generally accepted accounting principles applicable to financial institutions."

32 **SECTION 2.**

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

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

45 **SECTION 3.**

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

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

53 **SECTION 4.**

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

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

61 blank notes, receipts, certificates, circulars, advertisements, or any other written or printed  
 62 matter."

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

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

69 (1.1) Prevent the use of the words 'credit union', or any similar word in a context clearly  
 70 not purporting to refer to a credit union or to a business primarily engaged in the lending  
 71 of money, or accepting shares or deposits or acting as a loan broker;

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

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

#### 77 **SECTION 5.**

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

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

91 "(e) The department may, by regulation not inconsistent with this Code section, prescribe  
 92 definitions of and requirements for transactions included in or excluded from the  
 93 indebtedness to which this Code section applies. The department may also by regulation  
 94 prescribe less restrictive limitations than those listed in subsections (a) through (c) of this  
 95 Code section for banks meeting certain financial and management criteria. In addition, the  
 96 department may, by regulation or otherwise, specify that the liabilities of a group of one

97 or more persons or corporations or both shall be considered as owed by one person or  
 98 corporation for the purposes of this Code section because the group relies substantially on  
 99 a common source for the payment of its obligations or makes common use of funds  
 100 received by it, or meets other criteria established by the department for the combination of  
 101 indebtedness for legal lending limitation purposes."

102 **SECTION 6.**

103 Said chapter is further amended by revising paragraph (2) of subsection (a) of Code Section  
 104 7-1-460, relating to restrictions on payment of dividends and limitation of actions for  
 105 dividends or distributions, as follows:

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

112 **SECTION 7.**

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

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

122 **SECTION 8.**

123 Said chapter is further amended by adding new subsections (c) through (h) of Code Section  
 124 7-1-684.1, relating to examination of books and records of licensees by the Department of  
 125 Banking and Finance, as follows:

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

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

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

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

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

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

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

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

160 (f) Examinations and investigations conducted under this article and information obtained  
161 by the department in the course of its duties under this article are confidential, except as  
162 provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition  
163 to the exceptions set forth in subsection (b) of Code Section 7-1-70, the department is  
164 authorized to share information obtained under this article with other state and federal  
165 regulatory agencies or law enforcement authorities. In the case of such sharing, the  
166 safeguards to confidentiality already in place within such agencies or authorities shall be  
167 deemed adequate. The commissioner or an examiner specifically designated may disclose

168 such limited information as is necessary to conduct a civil or administrative investigation  
 169 or proceeding. Information contained in the records of the department which is not  
 170 confidential and may be made available to the public either on the department's website or  
 171 upon receipt by the department of a written request shall include:

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

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

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

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

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

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

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

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

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

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

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

194 **SECTION 9.**

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

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

204 ~~existing license, the license sought to be renewed shall continue in force until the issuance~~  
 205 ~~by the department of the renewal license applied for or until 20 days after the department~~  
 206 ~~shall have refused to issue such renewal license."~~

207 **SECTION 10.**

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

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

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

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

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

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

224 **SECTION 11.**

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

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

229 (1) A record of each check sold;

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

232 (3) Settlement sheets received from agents;

233 (4) Bank statements and bank reconciliation records;

234 (5) Records of outstanding checks;

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

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

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

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

240 **SECTION 12.**

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

242 "7-1-689.2.

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

249 **SECTION 13.**

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

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

258 **SECTION 14.**

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

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

272 **SECTION 15.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

333 (5) The name, business address, telephone number, and fax number of all locations of  
 334 a licensee.

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

339 (1) For any information relating to suspected prohibited conduct furnished to or received  
 340 from law enforcement officials, their agents, or employees or to or from other regulatory  
 341 or licensing authorities;

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

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

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

349 **SECTION 16.**

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

351 "7-1-707.2.

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

358 **SECTION 17.**

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

360 "7-1-707.3.

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

363 **SECTION 18.**

364 Code Section 10-1-393, relating to unlawful unfair or deceptive practices in consumer  
365 transactions, is amended in subsection (b) by adding a new paragraph to read as follows:

366 "(34) For any person, firm, partnership, business, association, or corporation to willfully  
367 and knowingly accept or use an individual taxpayer identification number issued by the  
368 Internal Revenue Service for fraudulent purposes and in violation of federal law."

369 **SECTION 19.**

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

371 **SECTION 20.**

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