

House Bill 184

By: Representatives Williamson of the 115th, Morris of the 156th, Fludd of the 64th, Knight of the 130th, Coomer of the 14th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance,
2 so to extensively revise said title; to provide for definitions relative to banking and finance;
3 to provide for standards of notice for the Department of Banking and Finance; to provide for
4 rules and regulations of the department; to provide for the granting of orders by the
5 commissioner regarding banks and credit unions; to clarify that the administrative
6 rule-making process does not apply to declaratory orders issued pursuant to the
7 commissioner's parity power; to provide for agreements between the department and law
8 enforcement or other regulatory agencies; to provide for the closing of financial institutions
9 in certain instances; to provide for the submission of certain documents to the department;
10 to provide for the type of bonds required to be held by banks and trust companies; to provide
11 for a waiver of certain requirements relative to the merger of bank holding companies; to
12 provide for a specific kind deposit insurance to be held by out-of-state credit unions; to
13 provide for the appointment of a conservator for credit unions in certain instances; to provide
14 for the powers and duties of such conservator; to provide for the payment of shares for initial
15 subscribers of credit unions; to provide for membership and duties of boards of directors for
16 credit unions; to provide for duties of supervisory committees for credit unions; to provide
17 for the merger, consolidation, and conversion of credit unions; to provide for the revoking
18 and granting of licenses for the sale of payment instruments; to provide for duties of a holder
19 of a license for the sale of payment instruments; to provide for limitations on liability and
20 prosecution in certain instances; to provide for procedures relative to licensing the cashing
21 of payment instruments; to provide for duties of a holder of a license for the cashing of
22 payment instruments; to provide for felonies and misdemeanors related to financial
23 institutions; to provide for the licensing of mortgage brokers and mortgage lenders; to
24 provide for definitions relative to merchant acquirer limited purpose banks; to provide for
25 use of fees; to provide for standards for the approval of charters for merchant acquirer limited
26 purpose banks; to prohibit those convicted of a felony from having certain associations with
27 merchant acquirer limited purpose banks; to provide for the gathering of conviction data by
28 the department in connection with charters of merchant acquirer limited purpose banks; to

29 provide for the deposit of funds in merchant acquirer limited purpose banks; to provide for
30 related matters; to repeal conflicting laws; and for other purposes.

31 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

32 **SECTION 1.**

33 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is
34 amended in Code Section 7-1-4, relating to definitions, by revising paragraphs (21), (31), and
35 (32) as follows:

36 "(21) 'Financial institution' means:

37 (A) A bank;

38 (B) A trust company;

39 (C) A building and loan association;

40 (D) A credit union;

41 (E) A corporation licensed to engage in the business of selling ~~checks~~ payment
42 instruments in this state on April 1, 1975, or so licensed pursuant to Article 4 of this
43 chapter;

44 (F) Business development corporations existing on April 1, 1975, pursuant to the
45 former 'Georgia Business Development Corporation Act of 1972,' approved April 3,
46 1972 (Ga. L. 1972, p. 798), or organized pursuant to Article 6 of this chapter;

47 (G) An international bank agency doing business in this state on April 1, 1975,
48 pursuant to the former 'International Bank Agency Act,' approved April 6, 1972 (Ga.
49 L. 1972, p. 1140), or authorized to do business in this state pursuant to Article 5 of this
50 chapter;

51 (H) In addition, as the context requires, a national bank, savings and loan association,
52 or federal credit union for the purpose of the following provisions:

53 (i) Code Section 7-1-2, relating to findings of the General Assembly;

54 (ii) Code Section 7-1-3, relating to objectives of this chapter;

55 (iii) Code Section 7-1-8, relating to supplementary principles of law;

56 (iv) Code Section 7-1-37, relating to restrictions on officials and personnel;

57 (v) Code Section 7-1-70, relating to disclosure of information;

58 (vi) Code Section 7-1-90, relating to judicial review of department action;

59 (vii) Subsection (d) of Code Section 7-1-91, relating to orders to desist from conduct
60 illegal under the laws and regulations of this state;

61 (viii) Code Section 7-1-94, relating to the evidentiary results of examinations and
62 investigations;

63 (ix) Code Sections 7-1-111 and 7-1-112, relating to emergency closings;

- 64 (x) Code Sections 7-1-110 and 7-1-294, relating to permissive closings;
- 65 (xi) Code Section 7-1-133, relating to prohibited advertising;
- 66 (xii) Paragraph (11) of Code Section 7-1-261, relating to additional operational
67 powers of banks and trust companies;
- 68 (xiii) Paragraph (3) of subsection (a) of Code Section 7-1-394, relating to criteria to
69 be considered in approving new banks;
- 70 (xiv) Code Section 7-1-658, relating to loans;
- 71 (xv) Code Section 7-1-840, relating to criminal prosecutions; and
- 72 (xvi) Code Section 7-1-841, relating to application of Title 16 provisions;
- 73 ~~(I) For the purposes of Code Section 7-1-61, 'financial institution' shall also include a~~
74 A bank holding company as defined in Code Section 7-1-605 for the purposes of Code
75 Sections 7-1-61, 7-1-71, and 7-1-91;
- 76 ~~(J) For the purposes of paragraph (10) of Code Section 7-1-261, relating to agency~~
77 ~~relationships, 'financial institution' shall include banks~~ Banks chartered by states other
78 than Georgia for the purposes of paragraph (10) of Code Section 7-1-261, relating to
79 agency relationships; and
- 80 (K) ~~For~~ Federal credit unions for the purposes of Part 6 of Article 2 of this chapter,
81 relating to deposits, safe deposit agreements, and money received for transmission, and
82 Article 8 of this chapter, relating to multiple party deposit accounts, ~~'financial~~
83 ~~institution' shall also include federal credit unions."~~
- 84 "(31) 'Savings and loan association' means an association created pursuant to the Home
85 Owners' Loan Act ~~of 1933~~, 12 U.S.C. Sections 1461-~~1468~~1470, including a federal
86 savings bank.
- 87 (32) 'Savings bank' means a state chartered bank that has powers no greater than a state
88 bank as provided in this chapter but that may lend and invest in commercial loans in an
89 aggregate amount that does not exceed 50 percent of its total assets. Such bank may
90 elect, subject to department approval, or the department may require; that the savings
91 bank comply with selected provisions of the Home Owners' Loan Act ~~of 1933~~ that in the
92 judgment and discretion of the department would be consistent with the charter and
93 purpose of the bank. For the purposes of this paragraph, the term 'commercial loan'
94 means a loan for business, commercial, corporate, or agricultural purposes."

95 **SECTION 2.**

96 Said title is further amended by revising Code Section 7-1-6, relating to notices and waivers
97 of notices from the Department of Banking and Finance, as follows:

98 "7-1-6.

99 Except as otherwise expressly provided:

100 (1) Any notice required to be given under this chapter may be delivered in person by
 101 first-class mail; or ~~by telegram, charges prepaid, statutory overnight delivery~~ to the last
 102 known address of the person or corporation or to the registered office of the corporation.
 103 If the notice is sent by first-class mail or by telegraph statutory overnight delivery, it shall
 104 be deemed to have been given when deposited in the United States mail or with a
 105 ~~telegraph office. commercial firm regularly engaged in the business of document~~
 106 delivery;

107 (2) In addition to the methods of notice provided for in paragraph (1) of this Code
 108 section, notice of meetings, including annual and special meetings, may be delivered by
 109 electronic transmission, including but not limited to e-mails, pursuant to Code Section
 110 14-2-141;

111 (3) If such notice is of a meeting, it shall specify the place, day, and hour of the meeting.
 112 Notice of a meeting of shareholders shall be given not less than ten nor more than 60 days
 113 before the meeting. Notice of a special meeting shall specify the general nature of the
 114 business to be transacted;

115 ~~(2)~~(4) Any written notice required to be given under this chapter need not be given if
 116 there is a waiver thereof in writing signed by the person or on behalf of the corporation
 117 entitled to such notice or by their proxy, whether before or after the time when the notice
 118 would otherwise be required to be given, provided that no such waiver shall apply by its
 119 terms to more than one required notice;

120 ~~(3)~~(5) Attendance of a person, either in person or by proxy, at any meeting shall
 121 constitute a waiver of notice of such meeting, except where a person attends a meeting
 122 for the express purpose of objecting at the beginning of the meeting to the transaction of
 123 any business because the meeting was not lawfully called or convened; and

124 ~~(4)~~(6) If the language of a proposed resolution or a proposed plan requiring approval by
 125 shareholders is included in a written notice of a meeting of shareholders, the shareholders'
 126 meeting considering the resolution or plan may adopt it with such clarifying or other
 127 amendments as do not enlarge its original purpose without further notice to shareholders
 128 not present in person or by proxy."

129 SECTION 3.

130 Said title is further amended in Code Section 7-1-61, relating to rules and regulations of the
 131 department, by revising subsection (e) as follows:

132 "~~(e) To provide parity with other federally insured financial institutions, the commissioner~~
 133 ~~may, by specific order directed to an individual financial institution or category of financial~~
 134 ~~institutions, modify or amend the following qualifying or limiting requirements imposed~~
 135 ~~on financial institutions by this chapter:~~

136 ~~(1) Collateral requirements and limits on the amount of obligations owing to it from any~~
 137 ~~one person or corporation;~~
 138 ~~(2) Loan to value or other limitations in lending;~~
 139 ~~(3) Limitations on the amount of investments in stock or other capital securities of a~~
 140 ~~corporation or other entity;~~
 141 ~~(4) Limitations on the amount of bank acceptances to be issued; and~~
 142 ~~(5) If Georgia law has been determined to be federally preempted, other limitations or~~
 143 ~~restrictions on financial institutions contained in this chapter.~~
 144 ~~No such order will be issued unless the commissioner determines that such activity will not~~
 145 ~~present undue safety and soundness risks to the financial institution or institutions involved.~~
 146 ~~In making such a determination, the commissioner shall consider the financial condition~~
 147 ~~and regulatory safety and soundness ratings of the institution or institutions affected and~~
 148 ~~the ability of management to administer and supervise the activity. Any such order~~
 149 ~~pursuant to this subsection will be available for public review."~~

150 **SECTION 4.**

151 Said title is further amended by adding a new Code section to read as follows:

152 "7-1-61.1.

153 (a) For purposes of this Code section, the term 'power' means any banking or corporate
 154 power, right, benefit, privilege, or immunity of a financial institution, the deposits of which
 155 are federally insured, as set forth in any federal statute or any regulation, ruling, circular,
 156 bulletin, order, or interpretation issued by the Office of the Comptroller of the Currency,
 157 Federal Deposit Insurance Corporation, National Credit Union Administration, or Federal
 158 Reserve System.

159 (b) To provide parity with financial institutions whose deposits are federally insured, the
 160 commissioner may, by specific order directed to an individual bank or credit union or
 161 category of banks or credit unions, grant any power conferred upon a financial institution,
 162 subject to the supervision of the federal government, to:

163 (1) State chartered banks and credit unions to enable such banks and credit unions to
 164 compete; and

165 (2) Subsidiaries of state chartered banks and credit unions to the same extent powers are
 166 granted to subsidiaries of national banks or federal credit unions to enable such
 167 subsidiaries of state chartered banks and credit unions to compete.

168 (c) No order provided for in subsection (b) of this Code section shall be issued unless the
 169 commissioner determines that such activity will not present undue safety and soundness
 170 risks to the banks or credit unions involved. In making such determination, the
 171 commissioner shall consider the financial condition and regulatory safety and soundness

172 ratings of the banks or credit unions affected and the ability of management to administer
 173 and supervise the activity. The department shall make any order issued pursuant to this
 174 Code section available for public review."

175 **SECTION 5.**

176 Said title is further amended by revising Code Section 7-1-78, relating to agreements by the
 177 department with other regulatory authorities, as follows:

178 "7-1-78.

179 (a) The department may, at its discretion, enter into cooperative or reciprocal agreements
 180 with other supervisory or regulatory authorities or law enforcement and may furnish to
 181 such ~~authorities~~ entities information contained in the examinations, reports, and institution
 182 files, provided that the information is to be used for confidential, regulatory purposes.

183 (b) Furnishing information as permitted by this Code section shall not be deemed to
 184 change the confidential character of the information furnished.

185 (c) The department may accept reports of examination and other records from such
 186 ~~authorities~~ entities in lieu of conducting its own examination.

187 (d) Any examination reports, reports of investigation, or other information obtained from
 188 such entities shall be deemed the property of the providing entity and not available for
 189 public review. Any requests for such information shall be made to the providing entity.

190 (e) The department may take such actions as are reasonably necessary, either
 191 independently or with such ~~regulatory agencies~~ entities, to facilitate the regulation of
 192 financial services providers doing business in this state."

193 **SECTION 6.**

194 Said title is further amended by revising Code Section 7-1-111, relating to emergency
 195 closings of financial institutions, as follows:

196 "7-1-111.

197 Whenever it appears to the Governor that the welfare of ~~the~~ this state or any region thereof
 198 or the welfare and security of any financial institution or the lives of the employees of the
 199 financial institution or the safety of the funds of depositors and property of the shareholders
 200 are endangered or placed in jeopardy by any impending or existing emergency or other
 201 catastrophe, including, but not limited to, economic crises, hurricanes, tornadoes, fire
 202 hazards, disruption or failure of utility, transportation, communication, or information
 203 systems, or civil disorders, the Governor may proclaim that ~~a financial emergency exists~~
 204 and an emergency exists, which shall authorize the emergency closing of any impacted
 205 financial institutions. The Governor may also proclaim that any financial institution or
 206 type of financial institution shall be subject to special regulation as herein provided until

207 the Governor, by a like proclamation, declares the period of such emergency to have
 208 terminated. The department may also declare financial emergencies in specific cases for
 209 cause shown, and its declaration shall remain in effect until terminated by the Governor or
 210 the commissioner, whichever occurs first."

211 **SECTION 7.**

212 Said title is further amended in Code Section 7-1-113, relating to voluntary dissolution of
 213 financial institutions prior to the commencement of business, by revising subsections (b) and
 214 (c) as follows:

215 "(b) The articles of dissolution shall be delivered ~~in duplicate~~ to the department together
 216 with the filing fee required by Code Section 7-1-862. If the department is satisfied that the
 217 financial institution has not conducted any business other than organizational business and;
 218 if it finds that the articles of dissolution satisfy the requirements of this chapter, it shall
 219 deliver them with its written approval to the Secretary of State and notify the financial
 220 institution of its action. If the department shall disapprove the articles of dissolution, it
 221 shall give written notice to the financial institution of its disapproval and a general
 222 statement of the reasons for its decision. The decision of the department shall be
 223 conclusive, except as it may be subject to judicial review under Code Section 7-1-90.

224 (c) If the department determines that a financial institution has not conducted any business
 225 other than organizational business and; if articles of dissolution satisfying the requirements
 226 of this chapter are not delivered ~~in duplicate~~ to the department together with the filing fee
 227 as required by Code Section 7-1-862, the department may make written demand upon the
 228 financial institution to immediately provide articles of dissolution or to provide cause why
 229 such dissolution should not be pursued directly by the department. If the financial
 230 institution fails to provide articles of dissolution as required within 60 days from the date
 231 of demand by the department, the department may seek dissolution of the financial
 232 institution in organization directly from the Secretary of State's office."

233 **SECTION 8.**

234 Said title is further amended in Code Section 7-1-116, relating to the articles of dissolution
 235 of financial institutions after the commencement of business, by revising subsection (b) as
 236 follows:

237 "(b) The articles of dissolution shall be delivered to the department ~~in duplicate~~ together
 238 with the filing fee required by Code Section 7-1-862. If the department finds that the
 239 articles satisfy the requirements of this chapter, it shall deliver its written approval to the
 240 Secretary of State with a copy of the articles of dissolution attached."

241 **SECTION 9.**

242 Said title is further amended in Code Section 7-1-392, relating to articles of incorporation for
 243 banks and trust companies, by revising subsection (c) as follows:

244 "(c) The incorporators shall file with the department, ~~in triplicate~~, the articles, together
 245 with the fee required by Code Section 7-1-862. Such filing shall constitute an application
 246 for a certificate of incorporation. Immediately upon the filing of the articles, the
 247 department shall certify ~~one~~ a copy thereof and return it to the applicants, who shall, in
 248 conformity with Code Section 7-1-7 and on the next business day following the filing of
 249 the articles, transmit for publication a copy of the articles or, in lieu thereof, a statement in
 250 substantially the following form:

251 'An application for a certificate of incorporation of a (bank, trust company, or bank and
 252 trust company) to be known as the _____ and to be located at
 253 _____ in _____ County, Georgia, will be made to the
 254 Secretary of State of Georgia by (names and addresses of incorporators) in accordance
 255 with Chapter 1 of Title 7 of the Official Code of Georgia Annotated, ~~known as the~~
 256 "Financial Institutions Code of Georgia." A copy of the articles of incorporation of ~~said~~
 257 such proposed (bank, trust company, or bank and trust company) and the application have
 258 been filed with the Department of Banking and Finance. The following persons have
 259 been proposed as the initial directors: (names and addresses of proposed directors).'

260 to the newspaper which is the official organ of the county where the main office will be
 261 located. The articles or ~~the~~ statement must be published once a week for two consecutive
 262 weeks with the first publication occurring within ten days of receipt by the newspaper of
 263 the articles or statement."

264 **SECTION 10.**

265 Said title is further amended by revising Code Section 7-1-489, relating to bonds for banks
 266 and trust companies, as follows:

267 "7-1-489.

268 Any director who is authorized to handle money or negotiable assets on behalf of a bank
 269 or trust company and all officers and employees of a bank or trust company shall be
 270 bonded by a regularly incorporated surety company authorized to do business in this state,
 271 and the bank or trust company may pay the cost of such fidelity bonds. The form, amount,
 272 and surety of such fidelity bonds shall be such as are approved by the board of directors;
 273 but the department may require an additional amount or new or additional surety."

274 **SECTION 11.**

275 Said title is further amended in Code Section 7-1-512, relating to the execution and filing of
 276 articles of amendment for banks and trust companies, by revising subsection (b) as follows:

277 "(b) The articles of amendment shall be filed with the department ~~in triplicate~~ together
 278 with:

279 (1) The fee required by Code Section 7-1-862; and

280 (2) As soon as possible, a publisher's affidavit as proof of publication of the
 281 advertisement required by Code Section 7-1-513."

282 **SECTION 12.**

283 Said title is further amended in Code Section 7-1-532, relating to filing of articles of merger,
 284 share exchange, or consolidation for banks and trust companies, by revising subsections (a)
 285 and (f) as follows:

286 "(a) Upon adoption of the plan of merger, share exchange, or consolidation as provided in
 287 Code Section 7-1-531, the parties to the merger, share exchange, or consolidation shall file
 288 ~~in duplicate~~ with the department articles of a merger, share exchange, or consolidation as
 289 required by this Code section, together with the fee required by Code Section 7-1-862."

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

293 **SECTION 13.**

294 Said title is further amended in Code Section 7-1-551, relating to filing of articles of
 295 conversion, merger, or consolidation from a national bank to a state bank or trust company,
 296 by revising subsection (a) as follows:

297 "(a) The party or parties desiring to consummate a conversion, merger, or consolidation
 298 authorized by Code Section 7-1-550 shall, upon requisite approval of the plan by their
 299 directors and shareholders, file with the department, ~~in triplicate~~, articles of conversion,
 300 merger, or consolidation, together with the fee required by Code Section 7-1-862."

301 **SECTION 14.**

302 Said title is further amended in Code Section 7-1-608, relating to acquisitions, formations,
 303 and mergers of bank holding companies, by adding a new subsection to read as follows:

304 "(d) The commissioner may waive the three-year age requirement contained in paragraph
 305 (2) of subsection (a) of this Code section if the commissioner determines that the proposed
 306 acquisition will result in material improvement of the safety and soundness of an institution
 307 that is in less than satisfactory condition at the time of the proposed acquisition. No such

308 waiver will be authorized unless the commissioner determines that the proposed acquisition
 309 will not present undue safety and soundness risks to the financial institutions involved. In
 310 making such determination, the commissioner shall consider the financial condition and
 311 regulatory safety and soundness ratings of the institutions affected and the ability of
 312 management to administer and supervise the resulting institution."

313 **SECTION 15.**

314 Said title is further amended in Code Section 7-1-628.3, relating to prohibited interstate
 315 merger transactions, by revising subsection (b) as follows:

316 "(b) An interstate merger transaction shall not be permitted under this part unless the
 317 Georgia bank shall have been in existence and continuously operating or incorporated as
 318 a bank on the date of such merger or acquisition for a period of at least three years, subject
 319 to any applicable exception contained in ~~subsection (b)~~ of Code Section 7-1-608."

320 **SECTION 16.**

321 Said title is further amended in Code Section 7-1-630, relating to the filing of articles of
 322 incorporation by a credit union, by revising subsections (c) and (e) as follows:

323 "(c) The subscribers shall file the articles ~~in triplicate~~ with the department together with
 324 the fee specified in Code Section 7-1-862. The department shall certify ~~one~~ a copy of the
 325 articles and return it to the subscribers."

326 "(e) The subscriber shall file with the department ~~two copies~~ a copy of the proposed
 327 bylaws setting forth the following:

328 (1) The date of the annual meeting, the manner of conducting the same, the number of
 329 members constituting a quorum and regulations as to voting, and the manner of
 330 notification of the meeting, which shall comply with Code Section 7-1-6, except that, if
 331 the credit union maintains an office and the board of directors so determines, notice of
 332 the annual meeting or of any special meeting may be given by posting such notice in a
 333 conspicuous place in the office of the credit union at least ten days prior to such meeting;

334 (2) The number of directors, which must be not less than five nor more than 25, all of
 335 whom must be members, and their powers and duties, together with the duties of the
 336 officers elected by the board of directors;

337 (3) The qualifications for membership of those coming within the initial common bond
 338 as required by this article;

339 (4) The conditions under which shares may be issued, paid for, transferred, and
 340 withdrawn; deposits received and withdrawn; loans made and repaid; and funds otherwise
 341 invested; and

342 (5) The charges which shall be made, if any, for failure to meet obligations punctually;
 343 whether or not the credit union shall have the power to borrow; the method of receipting
 344 for money; the manner of accumulating a reserve; the manner of determining and paying
 345 interest and dividends; and such other matters consistent with this article as may be
 346 requisite to the organization and operation of the proposed credit union."

347 **SECTION 17.**

348 Said title is further amended in Code Section 7-1-634, relating to the filing of amendments
 349 to articles of incorporation by a credit union, by revising subsection (b) as follows:

350 "(b) Every proposed amendment of the articles shall be filed ~~in triplicate~~ with the
 351 department together with the fee specified in Code Section 7-1-862. Proposed amendments
 352 of the bylaws shall be filed with the department."

353 **SECTION 18.**

354 Said title is further amended in Code Section 7-1-635.1, relating to out-of-state credit unions,
 355 by revising paragraph (3) of subsection (a) as follows:

356 "(3) Has deposit insurance issued by a federal public body that is comparable to that
 357 required for credit unions chartered in this state."

358 **SECTION 19.**

359 Said title is further amended by designating Part 2 of Article 3 of Chapter 1, relating to the
 360 operation and regulation of credit unions, as Part 3 and adding a new part to read as follows:

361 "Part 2

362 7-1-640.

363 (a) The department may, in its discretion, appoint itself or a third party as conservator for
 364 a credit union when the credit union:

365 (1) Is insolvent or in an unsafe and unsound condition;

366 (2) Has suspended payment of obligations without authority of law;

367 (3) Has violated its articles or an order, statute, rule, or regulation and the department
 368 determines that its continued control of its own affairs threatens injury to the public, the
 369 financial community, members, or creditors; or

370 (4) Requests the department, by its board of directors, to appoint a conservator for the
 371 benefit of members or creditors.

372 (b) The right of the department to act as conservator of a credit union shall be in addition
 373 to all other rights, remedies, and powers of the department.

374 (c) The department may, in its discretion, before or after taking conservatorship, petition
375 the principal court of a credit union for the appointment of a conservator pursuant to Code
376 Section 7-1-643.

377 (d) The conservator shall conduct the business of the credit union and take steps toward
378 the removal of the causes and conditions that have necessitated the appointment of a
379 conservator. The conservator shall be immediately authorized to:

380 (1) Assume all powers of the members, directors, officers, and committees of the credit
381 union;

382 (2) Take charge of the credit union and all of its property, books, records, and effects;

383 (3) Take any and all actions to operate the credit union in its own name or to conserve
384 its assets as directed by the department, including, but not limited to, terminating or
385 adopting any executory contracts to which the credit union may be a party;

386 (4) Take all necessary measures to preserve, protect, and recover any assets or property
387 of the credit union, including any claim or cause of action belonging to or which may be
388 asserted by the credit union, and administer the same in its own name as conservator;

389 (5) File, prosecute, and defend any suit that has been filed or may be filed by or against
390 the credit union that is deemed by the conservator to be necessary to protect all interested
391 parties or any property affected thereby;

392 (6) Exercise all rights, powers, and duties conferred on the credit union by this chapter;
393 and

394 (7) Take any other actions that are necessary or incidental to carrying out the role of
395 conservator.

396 (e) The conservator shall make reports to the department from time to time as may be
397 required by the department.

398 7-1-641.

399 (a) The department shall, immediately after appointing a conservator, file with the
400 principal court of a credit union a certificate to be known as a certificate of appointment.

401 (b) The certificate of appointment shall set forth the basis for the department's appointment
402 of a conservator and state the name of the conservator.

403 (c) If the department does not appoint a conservator prior to the date of the filing of the
404 certificate of appointment or it appoints a new or additional conservator, the department
405 shall file a supplement to the certificate of appointment setting forth such facts.

406 (d) The certificate of appointment and any supplement will be listed in the judgment index
407 in the name of the credit union as defendant and the department as plaintiff.

408 7-1-642.

409 (a) All costs incident to conservatorship will be charged against the assets of the credit
410 union to be allowed and paid as the department may determine.

411 (b) The department, its employees, and third parties acting as conservators are not subject
412 to liability for actions related to a conservatorship, including, but not limited to, the
413 appointment of a conservator, and no department funds shall be required to be expended
414 on behalf of the credit union, its creditors, employees, or members, or any other party or
415 entity.

416 7-1-643.

417 (a) Whenever any court, upon the initiation of the department or other person entitled by
418 law to institute such proceedings, determines that a conservator should be appointed, for
419 any reason whatsoever, it shall appoint the department as conservator. Except as provided
420 in subsection (c) of this Code section, such court shall appoint only the department as
421 conservator of a credit union.

422 (b) When appointed conservator by a court, the department shall serve in the same manner
423 and with the same limitations and shall have the same rights, powers, and duties as if it
424 were to become conservator without appointment by a court pursuant to Code Section
425 7-1-640. No court shall impose upon the department as conservator any duties or
426 restrictions in conflict with this chapter.

427 (c)(1) In any proceeding for the appointment of a conservator of a credit union whose
428 shares are insured by a public body of the United States, the court may, upon the
429 recommendation of the department, whether or not the department is a party, appoint
430 such public body as conservator.

431 (2) If a public body accepts the appointment, it shall have all the rights, powers, and
432 duties of the department as conservator under this chapter and all the rights, powers, and
433 duties as conferred by other applicable law.

434 (3) The posting of a bond shall not be required when a public body acts as conservator.

435 7-1-644.

436 (a) If the department appoints a conservator other than a public body of the United States
437 that insures the shares of a credit union, an employee of the department, or the department
438 itself, the conservator and any assistants shall provide a bond, payable to the credit union
439 and executed by a surety company authorized to do business in this state.

440 (b) The amount of such bond shall be approved by the department and be in an amount to
441 ensure the faithful discharge of duties in connection with the conservatorship and take into
442 account the amount of money under the control of the conservator.

- 443 (c) The cost of such bond shall be paid from the assets of the credit union.
 444 (d) Any person injured by a breach of the conditions on such bond has a right to bring a
 445 civil remedy in order to seek to collect on such bond.
 446 (e) A bond of a credit union shall be deemed satisfactory if the department determines it
 447 covers a conservator and any assistants.

448 7-1-645.

449 (a) No later than ten days after the date a conservator is appointed pursuant to Code
 450 Section 7-1-640, a credit union may apply to its principal court for an order requiring the
 451 department to show cause why it should not be enjoined from continuing the
 452 conservatorship.

453 (b) If at any time the department determines that a credit union is not in a condition to
 454 continue business under a conservator, the department may appoint a receiver in
 455 accordance with Code Section 7-1-150.

456 (c) A conservator may conduct the business of a credit union and take steps toward the
 457 removal of the causes and conditions that have necessitated the appointment of a
 458 conservator until such time as:

459 (1) The department shall permit such credit union to continue business subject to such
 460 terms and conditions as may be imposed by the department;

461 (2) Such credit union is liquidated in accordance with the provisions of subsection (b)
 462 of this Code section; or

463 (3) Otherwise ordered by the principal court of such credit union.

464 (d) Except as provided in this chapter, no court shall take any action, except at the request
 465 of the department, to restrain or affect the exercise of powers or functions of a conservator."

466 **SECTION 20.**

467 Said title is further amended in Code Section 7-1-651, relating to membership and shares of
 468 credit unions, by revising subsection (a) as follows:

469 "(a) The membership of the credit union shall consist of the initial subscribers and such
 470 other persons within the field of membership as may have subscribed to one share, which
 471 has been paid by a person or the credit union, and have paid for same together with the
 472 required entrance fee and complied with all other requirements contained in the bylaws.
 473 No subscriber or other member shall hold more than one share out of any class of shares.
 474 The bylaws may provide for separate classes of shares for borrowers and depositors and
 475 for the par value of each share for each class, but in no event shall the par value be less than
 476 \$1.00."

477

SECTION 21.

478 Said title is further amended in Code Section 7-1-655, relating to the boards of directors,
 479 credit and supervisory committees, and executive directors for credit unions, by revising
 480 subsection (a) as follows:

481 "(a) At the first annual meeting, the members shall elect from among their number a board
 482 of directors of no less than five nor more than 25 and at each annual meeting thereafter
 483 shall elect successors to the members of the board of directors whose terms of office expire
 484 at such annual meeting."

485

SECTION 22.

486 Said title is further amended by revising Code Section 7-1-656, relating to duties of directors
 487 of credit unions, as follows:

488 "7-1-656.

489 (a) The board of directors shall be responsible for the affairs, funds, and records of the
 490 credit union and shall meet as often as necessary, but at least once during ten different
 491 months of each calendar year. Unless the bylaws specifically reserve any or all of the
 492 duties to the members, it shall be the special duty of the directors:

493 (1) To act upon all applications for membership or approve the actions of an officer
 494 without loan granting authority, designated by the board of directors to approve
 495 applications for membership;

496 (2) To determine from time to time rates of interest and dividends which shall be allowed
 497 on deposits and charged on loans consistent with this article and other applicable laws
 498 and to authorize any interest refunds on such classes of loans and under such conditions
 499 as the board prescribes;

500 (3) To fix the amount of the fidelity bond which shall be required of all officers,
 501 employees, agents, or members having custody of funds, properties, or records; provided,
 502 however, that the amount of such fidelity bond shall not be less than such minimum
 503 requirements as shall be prescribed by regulation of the department and shall be in such
 504 form as may from time to time be approved by the department;

505 (4) To fix within the restrictions imposed by statute the maximum amount of deposits
 506 which may be made by and the maximum amount that may be loaned to any one member;

507 (5) To fill vacancies on the board of directors, credit committee, and supervisory
 508 committee until the election and qualification of a successor;

509 (6) To have charge of the investment of funds of the credit union other than loans to
 510 members within the restrictions imposed by statute or delegate investment authority to
 511 a qualified committee or officer as designated by the board of directors; ~~and~~

512 (7) To appoint any committees deemed necessary; and

513 (8) To perform such other duties as the members may from time to time authorize.

514 (b) Unless otherwise provided in the articles or bylaws of a credit union:

515 (1) A majority of all directors shall constitute a quorum for the transaction of business
 516 and actions of a majority of those present at a meeting at which a quorum is present shall
 517 be deemed as actions of the board of directors;

518 (2) The board of directors may designate three or more of its number to constitute a
 519 credit committee, supervisory committee, or other committees which, to the extent
 520 provided in a resolution, shall have and exercise the authority of the board of directors
 521 with regard to the business of a credit union; and

522 (3) Any action authorized to be taken at a meeting of the board of directors or a credit,
 523 supervisory, or other committee may be taken without a meeting if the action is set forth
 524 in writing and approved and signed by all directors or all members of the credit,
 525 supervisory, or other committee entitled to vote with respect to the underlying subject
 526 matter.

527 (c) No director, officer, or committee member of a credit union shall:

528 (1) Receive anything of value for procuring or attempting to procure any loan from or
 529 investment by such credit union;

530 (2) Purchase, or directly or indirectly be interested in purchasing, from the credit union
 531 a promissory note or other evidence of indebtedness issued by the credit union for less
 532 than face value; or

533 (3) Purchase or sell any other asset to the credit union except:

534 (A) Upon terms not less than favorable to the credit union than those offered other
 535 persons or corporations; and

536 (B) With prior approval of the board of directors or a committee thereof authorized to
 537 act for the board, unless the transaction is made in the regular course of business.

538 (d) No director shall be eligible to vote concerning any purchase or sale when such
 539 director is or would be a party to the transaction.

540 (e) The provisions of Code Section 7-1-490 relative to the responsibilities of directors and
 541 officers and the delegation of investment decisions shall be applicable to the duties of
 542 directors, credit and supervisory committee members, and officers of credit unions."

543 **SECTION 23.**

544 Said title is further amended by revising Code Section 7-1-657, relating to duties of
 545 supervisory committees and comprehensive annual audits of credit unions, as follows:

546 "7-1-657.

547 (a) The supervisory committee shall be responsible for securing a comprehensive audit of
 548 the credit union at least once each year. Except as provided for in subsection (c) of this

549 Code section, the ~~The~~ committee ~~may~~ shall employ the services of ~~an independent~~
 550 ~~accountant or firm of such accountants or the internal auditors of any sponsoring group,~~
 551 ~~concern, or association of credit unions to make such comprehensive audit a licensed,~~
 552 independent public accountant or firm of such accountants to make such comprehensive
 553 audit. The results of the audit shall be submitted to the board, and the committee shall
 554 present a summary of the results of the audit to the membership. The committee shall
 555 make recommendations to the board for the correction of any deficiencies disclosed by the
 556 audit. The annual audit shall include a confirmation of the share, deposit, and loan
 557 accounts of the members and such other procedures as the department might require. The
 558 annual audit shall be preserved with the records of the credit union, and a copy of such
 559 audit shall be filed with the department.

560 (b) The supervisory committee, from time to time, may conduct or cause to be conducted
 561 other audit functions or reviews of operations or may make or cause to be made an
 562 inspection of the assets and the liabilities of the credit union. The committee shall report
 563 the results of any such reviews to the board of directors and shall be responsible for making
 564 specific recommendations to the board regarding any unsafe, unsound, or unauthorized
 565 activities discovered.

566 (c) If a credit union has assets of less than \$15 million, the supervisory committee may
 567 employ the services of any independent accountant or firm of such accountants or the
 568 internal auditors of any sponsoring group, concern, or association of credit unions approved
 569 by the department to conduct the audit mandated by subsection (a) of this Code section."

570 **SECTION 24.**

571 Said title is further amended by revising Code Section 7-1-667, relating to mergers of credit
 572 unions, as follows:

573 "7-1-667.

574 (a) A credit union may, with the approval of the department and in accordance with such
 575 uniform rules and regulations as it shall make and promulgate, be merged with another
 576 credit union under the articles of such credit union. Such merger may occur regardless of
 577 whether the credit unions serve the same field of membership, so long as there is adopted
 578 a, upon any plan agreed upon by the majority of the board of each credit union joining the
 579 merger and approved by not less than ~~two-thirds~~ a majority of the members of each credit
 580 union present and eligible to vote at meetings called for that purpose. The department may
 581 allow waiver of the member vote if, in its judgment, the merger is necessary to protect the
 582 safety and soundness of either or both credit unions. All property, property rights, and
 583 interests of the merging credit union ~~so merging shall, upon merger, shall, upon merger,~~
 584 be transferred to and vested in the continuing credit union ~~under whose articles the merger~~

585 ~~is effected~~ without deed, endorsement, or other instrument of transfer; and the debts and
 586 obligations of the merging credit union ~~so merging~~ shall be deemed to have been assumed
 587 by the continuing credit union ~~under whose articles the merger is effected~~; and thereafter
 588 the articles of the merging credit union ~~so merging~~ shall be void.

589 (b) The provisions of Article 8 of Chapter 4 of Title 14, relating to merger and
 590 consolidation, shall no longer be applicable to credit unions.

591 (c) For purposes of this Code section, the term 'credit union' shall include a federal credit
 592 union.

593 (d) When a credit union merges with another credit union, one shall be designated as the
 594 continuing credit union by the credit unions participating in the merger. The participating
 595 credit union that is not the continuing credit union shall be designated as the merging credit
 596 union.

597 (e) The department may disapprove of a merger if it finds the merger would not be
 598 consistent with safe and sound practices.

599 (f) The department shall, in its discretion, approve or disapprove a merger on the basis of
 600 its investigation and the criteria set forth in subsections (a) and (e) of this Code section.

601 The department shall give written notice to:

602 (1) The Secretary of State of its approval of a merger along with a copy of the notice of
 603 merger; and

604 (2) The parties to the plan of its decision and, in the event of disapproval, a statement in
 605 general of the reasons for its decision.

606 (g) The rights and privileges of the members of each merging credit union shall remain
 607 intact, provided that, if any person is a member of more than one of the participating credit
 608 unions, such person shall only be entitled to one set of membership rights in the continuing
 609 credit union."

610 SECTION 25.

611 Said title is further amended in Code Section 7-1-668, relating to conversion of credit unions,
 612 by revising subsection (d) as follows:

613 "(d)(1) Conversions by state chartered credit unions to financial institutions other than
 614 credit unions or financial institutions other than credit unions to state chartered credit
 615 unions shall be effected by approval of the department and compliance with any other
 616 applicable law. Procedures provided in subsection (b) of this Code section shall be
 617 followed for obtaining approval and effecting such conversions, provided that two-thirds
 618 of the members voting shall be required to approve a proposed conversion. The
 619 department may prescribe other requirements in order to protect the rights of members
 620 or the funds invested.

621 (2) In conversions by state chartered credit unions to financial institutions other than
 622 credit unions, procedures provided in subsection (b) of this Code section shall be
 623 followed for obtaining approval from the department and effecting such conversions,
 624 provided that two-thirds of the members voting shall be required to approve a proposed
 625 conversion.

626 (3) In conversions by financial institutions other than credit unions to state chartered
 627 credit unions, the department shall prescribe procedures for financial institutions to seek
 628 approval from the department to convert to a credit union. Such procedures shall include:

629 (A) The procedures provided in subsection (b) of this Code section;

630 (B) The submission of a conversion plan by the converting financial institution. A
 631 conversion plan shall include the following, where applicable:

632 (i) How the converting financial institution will comply with credit union
 633 membership requirements;

634 (ii) Plans for the divestment of its board of directors of stock options;

635 (iii) Plans for the divestment of capital stock;

636 (iv) Plans for the phase out of all impermissible investments;

637 (v) Plans for compliance with credit union business loan limitations; and

638 (vi) Any other such information as required by the department; and

639 (C) The converting financial institution shall perform a complete policy review to
 640 address appraisal restrictions, lending restrictions, investment restrictions, corporate
 641 structure restrictions, and power structure in order to ensure compliance with this article
 642 and regulations of the department.

643 (4) The department may authorize a credit union resulting from a charter conversion
 644 under this Code section to do the following:

645 (A) Complete any activities that the converting financial institution legally engaged in
 646 at the effective time of the charter conversion but that otherwise are not permitted for
 647 credit unions, provided that the transitional period during which such activities are
 648 carried out does not exceed five years after the effective date of the charter conversion;
 649 and

650 (B) Retain for the transitional period any assets that the converting financial institution
 651 legally held at the effective time of the charter conversion that otherwise may not be
 652 held by credit unions, provided that such transitional period during which such assets
 653 are retained does not exceed five years after the effective date of the charter
 654 conversion."

655 **SECTION 26.**

656 Said title is further amended in Code Section 7-1-684, relating to investigations and
 657 background checks for the granting and revoking of licensing for the sale of payment
 658 instruments, by repealing subsection (h) in its entirety.

659 **SECTION 27.**

660 Said title is further amended in Code Section 7-1-686, relating to the display,
 661 nonassignability, and notifications relative to licenses for the sale of payment instruments,
 662 by revising subsection (d) as follows:

663 "(d) A licensee shall give written notice to the department of its intent to operate any new
 664 or additional locations, including, but not limited to, locations operated by an authorized
 665 agent, not reported in either its original or renewal application. The required notice shall
 666 be ~~provided to the department no later than 30 days after the licensee or authorized agent~~
 667 ~~engages in the sale of payment instruments or money transmission at any new or additional~~
 668 ~~locations~~ in such form and contain such information as required by the department."

669 **SECTION 28.**

670 Said title is further amended by revising Code Section 7-1-697, relating to no limitation on
 671 common law liability or state prosecution, as follows:

672 "7-1-697.

673 Nothing in this article shall limit any statutory or common law right of any person to bring
 674 any action in any court for any act involved in the ~~cashing of~~ transmission of money or
 675 selling of payment instruments or the right of the state to punish any person for any
 676 violation of any law."

677 **SECTION 29.**

678 Said title is further amended in Code Section 7-1-703, relating to investigation and licensure
 679 for the cashing of payment instruments, by repealing subsection (g) in its entirety.

680 **SECTION 30.**

681 Said title is further amended in Code Section 7-1-704.1, relating to the posting and ability
 682 to transfer licenses to cash payment instruments, by revising subsection (d) as follows:

683 "(d) A licensee shall give written notice to the department ~~of its intent~~ prior to the operate
 684 operation of any new or additional locations not reported in either its original or renewal
 685 application which notice shall be in such form and contain such information as required by
 686 the department. ~~The required notice shall be provided to the department no later than 30~~
 687 ~~days after the licensee first cashed a payment instrument at any new or additional location."~~

688

SECTION 31.

689 Said title is further amended in Code Section 7-1-715, relating to applications for licenses
690 for international banking corporations, by revising subsection (a) as follows:

691 "(a) Every international banking corporation, before being licensed by the department to
692 transact a banking business in this state or before maintaining in this state any office to
693 carry on such business or any part thereof, shall subscribe and acknowledge and submit to
694 the department at its office a separate application, ~~in duplicate~~, which shall state:

695 (1) The name of such international banking corporation;

696 (2) The location by street and post office address and county where its business is to be
697 transacted in this state and the name of the person who shall be in charge of the business
698 and affairs of ~~such agency~~ the international bank agency;

699 (3) The location where its initial registered office will be located in this state;

700 (4) The amount of its capital actually paid in and the amount subscribed for and unpaid;
701 and

702 (5) The actual value of the assets of such international banking corporation, which must
703 be at least \$50 million in excess of its liabilities, and a complete and detailed statement
704 of its financial condition as of a date within 60 days prior to the date of such application,
705 provided ~~except~~ that the department, in its discretion, may, when necessary or
706 expedient, accept such statement of financial condition as of a date within 120 days prior
707 to the date of such application."

708

SECTION 32.

709 Said title is further amended in Code Section 7-1-845, relating to felonies and misdemeanors
710 relative to financial institutions, by revising subsection (a) as follows:

711 "(a) Any person or corporation, including any financial institution or its directors, officers,
712 agents, or employees, who shall perform the following acts or deeds shall be guilty of a
713 felony:

714 (1) Publishes or causes to be published any false statement, expressed either by printing
715 or writing or by signs, pictures, or the like, of or concerning any financial institution as
716 to the assets or liabilities of ~~said~~ such financial institution or as to its solvency or ability
717 to meet its obligations or as to its soundness or who shall publish or cause to be published
718 any other false statement so expressed, calculated to affect the credit or standing of ~~said~~
719 such financial institution or to cast suspicion upon its solvency, soundness, or ability to
720 meet its deposits or other obligations in due course;

721 (2) Falsely circulates any report or makes any false oral statement as to the assets or
722 liabilities of a financial institution or as to its solvency or ability to meet its obligations
723 or as to its soundness or who shall make any other false oral statement calculated to affect

724 the credit or standing of ~~said~~ such financial institution or to cast suspicion upon its
 725 solvency, soundness, or ability to meet its deposits or other obligations in due course;
 726 (3) Willfully engages in the business of:
 727 (A) A bank in violation of Code Section 7-1-241;
 728 (B) A trust company in violation of Code Section 7-1-242;
 729 (C) A credit union in violation of Code Section 7-1-633;
 730 (D) Selling ~~checks~~ payment instruments before receiving a license as required by Code
 731 Section 7-1-681;
 732 (E) An international bank agency before receiving the license required by Code Section
 733 7-1-713;
 734 (F) A business development corporation before approval of the department is granted
 735 under Code Section 7-1-743;
 736 (G) A building and loan association before its articles are approved; or
 737 (H) Transacting business either directly or indirectly as a mortgage loan originator,
 738 mortgage broker, or mortgage lender unless licensed by the department or exempt from
 739 licensing pursuant to Code Section 7-1-1001; or
 740 (4) Being an agent of a licensee or such agent's employee who is authorized to sell or
 741 issue ~~checks~~ payment instruments on behalf of a licensee, issues ~~checks~~ payment
 742 instruments directly or indirectly to or for his or her own benefit, or sells or issues ~~checks~~ payment
 743 payment instruments without accepting funds therefor or sells or issues ~~checks~~ payment
 744 instruments and willfully fails to remit to the licensee the proceeds from the sale or
 745 issuance of such ~~checks~~ payment instruments within five business days from the date of
 746 such sale or issuance."

747 **SECTION 33.**

748 Said title is further amended in Code Section 7-1-1003, relating to applications for licenses
 749 for mortgage brokers and mortgage lenders, by revising subsection (c) as follows:

750 "(c) All applications filed under this Code section shall be filed together with:
 751 (1) Investigation and supervision fees established by regulation. ~~The investigation fee~~
 752 ~~shall not be refundable; provided, however, that any supervision fee paid at the time of~~
 753 ~~the application shall be refunded if the license is not granted;~~
 754 (2) The items required by Code Section 7-1-1003.2; and
 755 (3) Other information as may be required by the department."

756 **SECTION 34.**

757 Said title is further amended in Code Section 7-1-1017, relating to mortgage broker
 758 education, by revising subsection (b) as follows:

759 "(b)(1) Notice of the department's intention to enter an order denying an application for
 760 a license or registration under this article or of an order suspending or revoking a license
 761 or registration under this article shall be given to the applicant, licensee, or registrant in
 762 writing, sent by registered or certified mail or statutory overnight delivery addressed to
 763 the principal place of business of such applicant, licensee, or registrant. Within 20 days
 764 of the date of the notice of intention to enter an order of denial, suspension, or revocation
 765 under this article, the applicant, licensee, or registrant may request in writing a hearing
 766 to contest the order. If a hearing is not requested in writing within 20 days of the date of
 767 such notice of intention, the department shall enter a final order regarding the denial,
 768 suspension, or revocation. Any final order of the department denying, suspending, or
 769 revoking a license or registration shall state the grounds upon which it is based and shall
 770 be effective on the date of issuance. A copy thereof shall be forwarded promptly by
 771 registered or certified mail or statutory overnight delivery addressed to the principal place
 772 of business of such applicant, licensee, or registrant. If a person refuses to accept service
 773 of the notice or order by registered or certified mail or statutory overnight delivery, the
 774 notice or order shall be served by the commissioner or the commissioner's authorized
 775 representative under any other method of lawful service; and the person shall be
 776 personally liable to the commissioner for a sum equal to the actual costs incurred to serve
 777 the notice or order. This liability shall be paid upon notice and demand by the
 778 commissioner or the commissioner's representative and shall be assessed and collected
 779 in the same manner as other fees or fines administered by the commissioner.

780 (2) Notwithstanding the provisions of paragraph (1) of this subsection, the department
 781 may issue a notice of intent to suspend license to a mortgage loan originator when such
 782 mortgage loan originator is no longer sponsored by a licensed or registered mortgage
 783 broker or lender. If the mortgage loan originator is sponsored by a licensed or registered
 784 mortgage broker or lender within 30 days of the date of issuance of the notice of intent
 785 to suspend, such notice shall be rescinded. If the mortgage loan originator is not
 786 sponsored by a licensed or registered mortgage broker or lender within 30 days of the
 787 date of such issuance, the mortgage loan originator license shall automatically expire
 788 after 30 days and the person shall not act as a mortgage loan originator unless a new
 789 license application is submitted, all applicable fees are paid, and a license is issued by the
 790 department."

791 **SECTION 35.**

792 Said title is further amended in Code Section 7-9-2, relating to definitions relative to
 793 merchant acquirer limited purpose banks, by adding two new subsections to read as follows:

794 "(1.1) 'Control person' means any individual who directs the affairs or controls or
 795 establishes policy for a merchant acquirer limited purpose bank."

796 "(8.1) 'Merchant funds' means funds received by a merchant acquirer limited purpose bank
 797 as a result of its performance of clearing, settlement, or any other authorized activities
 798 which are ultimately payable to a merchant."

799 **SECTION 36.**

800 Said title is further amended in Code Section 7-9-4, relating to applications, fees, and
 801 employees of merchant acquirer limited purpose banks, by revising subsection (b) as follows:

802 "(b) The department shall, by regulation, prescribe annual examination fees, charter fees,
 803 registration fees, and supervision fees to be paid by each merchant acquirer limited purpose
 804 bank. In addition, the department may, by regulation, prescribe reasonable application and
 805 related fees, special investigation fees, hearing fees, and fees to provide copies of any book,
 806 account, report, or other paper filed in its office or for any certification thereof or for
 807 processing any papers as required by this title. The department, in its discretion, may
 808 require the payment of such fees in any manner deemed to be efficient, including collection
 809 through automated clearing-house arrangements or other electronic means, so that the state
 810 receives funds no later than the date the payment is required to be made. The department
 811 is authorized to net the fees authorized in this subsection to recover any costs incurred by
 812 the department related to any investigation or examination of a merchant acquirer limited
 813 purpose bank."

814 **SECTION 37.**

815 Said title is further amended in Code Section 7-9-5, relating to articles of incorporation and
 816 board of directors for merchant acquirer limited purpose banks, by revising subsection (c)
 817 as follows:

818 "(c) The applicant shall file with the department, ~~in triplicate,~~ the articles of incorporation,
 819 together with any fee required by the department. Such filing shall constitute an
 820 application for a charter and approval to operate as a merchant acquirer limited purpose
 821 bank. Immediately upon the filing of the articles of incorporation, the department shall
 822 certify ~~one~~ a copy thereof of the articles and return it to the applicant, who shall, in
 823 conformity with Code Section 7-1-7 and on the next business day following the filing of
 824 the articles, transmit for publication in the newspaper which is the official organ of the
 825 county where the merchant acquirer limited purpose bank will be located a copy of the
 826 articles or, in lieu thereof, a statement that reads substantially as follows:

827 'An application for a charter to operate as a merchant acquirer limited purpose bank to be
 828 known as the _____ and to be located at _____ in _____ County,

829 Georgia, will be made to the Secretary of State of Georgia in accordance with Chapter
 830 9 of Title 7 of the Official Code of Georgia Annotated, ~~known as~~ the "Georgia Merchant
 831 Acquirer Limited Purpose Bank Act." A copy of the articles of incorporation of the
 832 proposed merchant acquirer limited purpose bank and the application have been filed
 833 with the Department of Banking and Finance.'

834 The articles of incorporation or the statement must be published once a week for two
 835 consecutive weeks with the first publication occurring within ten days of receipt by the
 836 newspaper of the articles of incorporation or statement."

837 **SECTION 38.**

838 Said title is further amended by revising Code Section 7-9-7, relating to approval or
 839 disapproval of charter applications for merchant acquirer limited purpose banks, as follows:
 840 "7-9-7.

841 (a)(1) Upon receipt of the articles of incorporation and the filings and fees from the
 842 applicant as required under this chapter, the department shall conduct such investigation
 843 as it may deem necessary to ascertain whether it should approve the proposed merchant
 844 acquirer limited purpose bank. The department shall approve the charter of a merchant
 845 acquirer limited purpose bank if it determines in its discretion that:

846 (A) The articles of incorporation and supporting items satisfy the requirements of this
 847 chapter;

848 (B) The character and fitness of the applicant, directors, and proposed officers are such
 849 as to warrant the belief that the business of the proposed merchant acquirer limited
 850 purpose bank will be honestly and efficiently conducted; and

851 (C) The capital structure of the merchant acquirer limited purpose bank is adequate in
 852 relation to the amount and character of the anticipated business of the merchant acquirer
 853 limited purpose bank.

854 (2) Within 90 days after receipt of the articles of incorporation and the filings and fees
 855 from the applicant as required by this chapter, the department shall approve or disapprove
 856 the charter of the proposed merchant acquirer limited purpose bank. The department may
 857 impose conditions to be satisfied prior to the issuance of its approval of the charter of a
 858 merchant acquirer limited purpose bank. If the department, in its discretion, approves the
 859 charter of the proposed merchant acquirer limited purpose bank with or without
 860 conditions, it shall deliver its written approval of the articles of incorporation and charter
 861 to the Secretary of State and notify the applicant of its action. If the department, in its
 862 discretion, disapproves the charter of the proposed merchant acquirer limited purpose
 863 bank, it shall notify the applicant of its disapproval of the charter and state generally the
 864 unfavorable factors influencing its decision. The decision of the department shall be

865 conclusive, except that it may be subject to judicial review as provided in Code Section
866 7-1-90.

867 (b) No charter shall be issued if the department finds that the applicant, or any holding
868 company, control person, director, officer, partner, or employee of the applicant, has been
869 convicted of a felony in any jurisdiction or of a crime which, if committed within this state,
870 would constitute a felony under the laws of this state. No control person, director, officer,
871 partner, or employee of a merchant acquirer limited purpose bank shall have been
872 convicted of a felony in any jurisdiction or of a crime which, if committed within this state,
873 would constitute a felony under the laws of this state. For any merchant acquirer limited
874 purpose bank that is transacting business under a charter approved by the department, the
875 department shall have the suspension and removal powers provided for in Code Section
876 7-1-71 with respect to any control person, director, officer, partner, or employee of the
877 merchant acquirer limited purpose bank who has been convicted of a felony in any
878 jurisdiction or of a crime which, if committed within this state, would constitute a felony
879 under the laws of this state. For the purposes of this article, a person shall be deemed to
880 have been convicted of a crime if such person shall have pleaded guilty or nolo contendere
881 to a charge thereof before a court or federal magistrate or shall have been found guilty
882 thereof by the decision or judgment of a court or federal magistrate or by the verdict of a
883 jury, irrespective of the pronouncement of sentence or the suspension thereof, and
884 regardless of whether first offender treatment without adjudication of guilt pursuant to the
885 charge was entered, or an adjudication or sentence was otherwise withheld or not entered
886 on that charge, unless and until such plea of guilty or such decision, judgment, or verdict
887 shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or
888 until probation, sentence, or both probation and sentence of a first offender have been
889 successfully completed and documented, or unless the person convicted of the crime shall
890 have received a pardon thereon from the President of the United States or the governor or
891 other pardoning authority in the jurisdiction where the conviction occurred, or shall have
892 received an official certification of pardon granted by the state's pardoning body where the
893 conviction occurred which removes the legal disabilities resulting from such conviction and
894 restores civil and political rights.

895 (c) As used in this Code section, 'conviction data' means a record of a finding, verdict, or
896 plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether
897 an appeal of the conviction has been sought. The department shall be authorized to obtain
898 conviction data with respect to any applicant, holding company, merchant acquirer limited
899 purpose bank, or person who is a control person, director, officer, partner, or employee of
900 the applicant or merchant acquirer limited purpose bank. The department may directly
901 submit to the Georgia Crime Information Center two complete sets of fingerprints of such

902 person, together with the required records search fees and such other information as may
903 be required. Fees for background checks that the department administers shall be sent to
904 the department by applicants and merchant acquirer limited purpose banks together with
905 such fingerprints.

906 (d) Upon request by the department, each applicant, holding company, or merchant
907 acquirer limited purpose bank or any person who is a control person, director, officer,
908 partner, or employee of the applicant or merchant acquirer limited purpose bank shall
909 submit to the department two complete sets of fingerprints, the required records search
910 fees, and such other information as may be required. Fees for background checks that the
911 department administers shall be submitted to the department by applicants and merchant
912 acquirer limited purpose banks together with two complete sets of fingerprints, and the
913 department is authorized to net such fees to recover any costs incurred by the department
914 related to running the background checks. Upon receipt of fingerprints, fees, and other
915 required information, the Georgia Crime Information Center shall promptly transmit one
916 set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and
917 an appropriate report and shall retain the other set and promptly conduct a search of its own
918 records and records to which it has access. The Georgia Crime Information Center shall
919 notify the department in writing of any derogatory finding, including, but not limited to,
920 any conviction data regarding the fingerprint records check, or if there is no such finding.
921 All conviction data received by the department or by the applicant or merchant acquirer
922 limited purpose bank shall be used by the party requesting such data for the exclusive
923 purpose of carrying out the responsibilities of this article, shall not be a public record, shall
924 be confidential, and shall not be disclosed to any other person or agency except to any
925 person or agency which otherwise has a legal right to inspect the file. All such records
926 shall be maintained by the department and the applicant or merchant acquirer limited
927 purpose bank pursuant to laws regarding such records and the rules and regulations of the
928 Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable.

929 (e) Every applicant and merchant acquirer limited purpose bank shall be authorized and
930 required to obtain and maintain the results of background checks on employees. Such
931 background checks shall be handled by the Georgia Crime Information Center pursuant to
932 Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information
933 Center. Applicants and merchant acquirer limited purpose banks shall be responsible for
934 any applicable fees charged by the Georgia Crime Information Center. An applicant or
935 merchant acquirer limited purpose bank may only employ a person whose background data
936 has been checked and been found to be in compliance with all lawful requirements prior
937 to the initial date of hire. This provision does not apply to control persons, directors,
938 officers, or partners, whose backgrounds have been investigated through the department

939 before taking office, beginning employment, or securing ownership. Upon receipt of
 940 information from the Georgia Crime Information Center that is incomplete or that indicates
 941 an employee has a criminal record in any state other than Georgia, the employer shall
 942 submit to the department two complete sets of fingerprints for such person, together with
 943 the applicable fees and any other required information. The department shall submit such
 944 fingerprints as provided in subsection (d) of this Code section.

945 (f) Upon request by the department, an applicant or merchant acquirer limited purpose
 946 bank must take all steps necessary to have an international criminal history background
 947 check performed on any control person, director, officer, partner, or employee. The results
 948 of such international criminal history background check must be provided to the
 949 department.

950 (g) Applicants and merchant acquirer limited purpose banks shall have the primary
 951 responsibility for obtaining background checks on employees. The department shall be
 952 entitled to review the files of any applicant or merchant acquirer limited purpose bank to
 953 determine whether the required background checks have been run and whether all
 954 employees are qualified. The department shall be authorized to discuss the status of
 955 employee background checks with applicants or merchant acquirer limited purpose bank.
 956 Notwithstanding any other provisions in this article, the department shall retain the right
 957 to obtain conviction data on employees of applicants and merchant acquirer limited
 958 purpose banks.

959 (h) In the event the department denies an application to charter a merchant acquirer limited
 960 purpose bank or an application to own or control a merchant acquirer limited purpose bank,
 961 the applicant may submit a new application at any time following notice of final denial.
 962 The applicant shall not be prejudiced by any prior denials by the department."

963 **SECTION 39.**

964 Said title is further amended by adding a new Code section to read as follows:

965 "7-9-12.1.

966 (a) All merchant funds shall constitute a trust fund until paid to the individual merchant.
 967 A merchant acquirer limited purpose bank shall have a fiduciary duty to preserve and
 968 account for merchant funds, and merchant acquirer limited purpose banks shall be liable
 969 for merchant funds.

970 (b) All merchant funds shall be deposited immediately by the merchant acquirer limited
 971 purpose bank and shall remain in an account at a financial institution that is federally
 972 insured and authorized to do business in this state until paid over to the individual
 973 merchant; provided, however, that nothing in this Code section shall preclude a merchant
 974 acquirer limited purpose bank from making appropriate deductions for chargebacks, fees,

975 reserves, and other costs related to providing authorized merchant acquiring services owed
976 by the individual merchant prior to remitting the net amount to the individual merchant.
977 At the time of deposit into the account, the funds of the individual merchant in the account
978 shall be deemed to be the property of the individual merchant. The merchant acquirer
979 limited purpose bank shall maintain account records that identify individual merchants and
980 the total amount held for each individual merchant. Such records shall be maintained in
981 good faith and in the ordinary course of business and in a manner that can be readily
982 ascertained."

983

SECTION 40.

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