

The House Committee on Banks and Banking offers the following substitute to HB 811:

A BILL TO BE ENTITLED
AN ACT

To extensively amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, so as to update, modernize, and streamline numerous Code sections to provide for efficient regulation of banks, trust companies, credit unions, merchant acquirer limited purpose banks, and the mortgage lending industry; to update and eliminate certain provisions to comply with federal law; to update certain provisions to comply with federal court decisions; to revise powers and duties of the Department of Banking and Finance; to delete all appearances of and references to the term "building and loan associations"; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

Department of Banking and Finance generally

SECTION 1-1.

Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is amended by revising Code Section 7-1-36, relating to oath and bond of commissioner, deputy commissioner, and examiners within the Department of Banking and Finance, as follows:

"7-1-36.

(a) Before entering ~~upon the duties of their offices~~ office, the commissioner, ~~each deputy commissioner, and each examiner~~ shall take an oath before the Governor or one of the Justices of the Supreme Court to support the Constitution of the United States and the Constitution of Georgia and to execute faithfully the duties of ~~their respective offices~~, his or her office, which oath shall be in writing and subscribed to by the commissioner, ~~each deputy commissioner, or each examiner, as the case may be~~, and filed in the Governor's office ~~in the case of the commissioner and filed in the commissioner's office in the case of each deputy commissioner and each examiner~~. Each of them shall also give bond to the

~~State of Georgia with security or securities approved by the Governor in the sum of \$50,000.00 in the case of the commissioner and in the sum of \$10,000.00 in all other cases, conditioned as follows~~ Before entering their respective offices, each deputy commissioner and examiner shall take an oath of office before the commissioner to support the Constitution of the United States and the Constitution of Georgia and to execute faithfully the duties of their respective offices which shall be in writing and subscribed by the deputy commissioner or examiner and filed with the department.

(b) The commissioner, each deputy commissioner, and each examiner shall:

(1) ~~That the officer will faithfully~~ Faithfully discharge, execute, and perform all and singular the duties required of such officer and which may be required by the Constitution and laws of the State of Georgia;

(2) ~~That the officer will faithfully~~ Faithfully account for all moneys that may be received by such officer from time to time by virtue of his office; and

(3) ~~That the officer will safely~~ Safely deliver to the successor of such office all books, moneys, vouchers, accounts, and effects whatever belonging to said office.

~~(b) The surety on the bonds shall be a regular incorporated surety company or companies qualified to do business in the State of Georgia, and the premium on the bonds shall be paid as other expenses of the department. Notwithstanding the foregoing, the requirements of this subsection as to surety may be fulfilled by the participation of the department in any surety bond program covering other state officials and employees which provides the required level of surety whether such surety is underwritten by a company qualified to do business in this state or by a self-insurance surety bond program established by law.~~

~~(c) Notwithstanding the foregoing, the oath of office of any deputy commissioner or examiner may be administered by the commissioner."~~

SECTION 1-2.

Said title is further amended by revising Code Section 7-1-42, relating to enforcement of payment of fees, as follows:

"7-1-42.

In the event any financial institution shall fail or refuse to pay on demand ~~the amount fixed as fees for examinations~~ any amount owed to the department, including, but not limited to, outstanding fees, the department may proceed through the Attorney General to collect the same by action at law."

SECTION 1-3.

Said title is further amended by revising Code Section 7-1-68, relating to reports to department, publication of summaries, and penalty for noncompliance, as follows:

"7-1-68.

(a) The department may require reports on the condition of or any particular facts concerning any financial institution at any time the department deems it necessary or advisable.

(b) The form of all reports, the information to be contained in them, and the date on which they shall be due shall be prescribed by the department. The reports shall be verified by the oath or affirmation of the president, secretary, or other managing officer of the institution.

~~(c) Every financial institution shall publish annually abstract summaries of two of its reports of condition designated for this purpose by the department and shall file proof of such publication with the department. Such publication shall be made only once in a newspaper of general circulation in the county of the main office of the institution. The department may waive this requirement, in whole or in part, with respect to financial institutions which make their financial statements readily available to the public, including their customer base, and with respect to a class of financial institutions which does not do business with the public generally and may limit the required publication to the customer base served by the institution.~~

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

SECTION 1-4.

Said title is further amended by repealing and reserving Code Sections 7-1-96 and 7-1-97, relating to liability on bonds for nonperformance of duty and costs of actions by or against department, respectively.

SECTION 1-5.

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

"7-1-111.

Whenever it appears to the Governor that the welfare of this state or any region thereof or the welfare and security of any financial institution or the lives of the employees of the financial institution or the safety of the funds of depositors and property of the shareholders are endangered or placed in jeopardy by any impending or existing emergency or other catastrophe, including, but not limited to, economic crises, hurricanes, tornadoes, fire hazards, disruption or failure of utility, transportation, communication, or information systems, or civil disorders, the Governor may proclaim that an emergency exists, ~~which shall authorize the emergency closing of any impacted~~ and such state of emergency proclamation shall authorize financial institutions to elect to close. The Governor may also proclaim that any financial institution or type of financial institution shall be subject to special regulation as herein provided until the Governor, by a like proclamation, declares the period of such emergency to have terminated. The department may declare emergencies in specific cases for cause shown, and its declaration shall remain in effect until terminated by the Governor or the commissioner, whichever occurs first."

SECTION 1-6.

Said title is further amended in Code Section 7-1-680, relating to definitions relative to the sale of payment instruments, by adding a new paragraph to read as follows:

"(26) 'Virtual currency' means a digital representation of monetary value that does not have legal tender status as recognized by the United States government. The term does not include the software or protocols governing the transfer of the digital representation of monetary value. The term also does not include units of value that are issued in an affinity or rewards program and that cannot be redeemed for money or virtual currencies. Neither does the term include an affinity or rewards program tied to a credit, debit, or prepaid card that awards points for purchases or other transactions, which points can be redeemed for dollar denominated credit to a checking, credit card, or prepaid account, or for a gift card, goods, travel, or services."

SECTION 1-7.

Said title is further amended by revising Code Section 7-1-690, relating to enforcement of restrictions on the sale of payment instruments, as follows:

"7-1-690.

(a) Without limiting the power conferred by Article 1 of this chapter, the department may make reasonable rules and regulations, not inconsistent with law, for the interpretation and enforcement of this article.

(b) The department is authorized to enact rules and regulations that apply solely to persons engaged in money transmission or the sale of payment instruments involving virtual currency. The department shall enact such rules and regulations it finds necessary to:

(1) Foster the growth of businesses engaged in money transmission or the sale of payment instruments involving virtual currency in Georgia and spur state economic development;

(2) Ensure the continued solvency, safety, soundness, and prudent conduct of persons engaged in money transmission or the sale of payment instruments involving virtual currency;

(3) Ensure fair, timely, and equitable fulfillment of the financial obligations of such persons;

(4) Protect customers of businesses engaged in money transmission or the sale of payment instruments involving virtual currency from financially impaired or insolvent providers of such services;

(5) Encourage high standards of honesty, transparency, fair business practices, and public responsibility;

(6) Eliminate financial fraud, other criminal abuse, and unethical conduct in the industry; and

(7) Ensure businesses engaged in money transmission or the sale of payment instruments involving virtual currency provide customers with timely and understandable information in order that customers may make informed decisions about virtual currency products and services."

PART II

Banks and trust companies

SECTION 2-1.

Said title is further amended by repealing and reserving Code Section 7-1-11, relating to registration of nonresident corporations.

SECTION 2-2.

Said title is further amended by repealing and reserving Code Section 7-1-239.5, relating to fee for instruments drawn on other institutions.

SECTION 2-3.

Said title is further amended in Code Section 7-1-290, relating to powers as surety or guarantor, by revising paragraph (3) of subsection (c) as follows:

"(3) Pledging or otherwise granting security interests in their assets to secure public funds deposited in the bank or another bank, including, but not limited to, deposits made pursuant to a pledging pool."

SECTION 2-4.

Said title is further amended by revising Code Section 7-1-370, relating to deposits by banks, as follows:

"7-1-370.

(a) Subject to the restrictions of subsection (b) of this Code section and of Code Section 7-1-371 in regard to reserve funds, a ~~bank~~ financial institution may deposit its funds in any depository which is:

(1) Selected by, or in any manner authorized by, its directors;

(2) Authorized by law to receive deposits; and

(3) In the case of a depository located in the United States, one which has deposit insurance issued by ~~or equivalent to deposit insurance provided by~~ a federal public body to depositories of the type involved.

(b) If a director of the ~~bank~~ financial institution has a relationship to a depository as either:

(1) An officer or director; or

(2) An owner of 5 percent or more of the shares of the depository,

the depository shall be approved by a majority of the directors other than the director who has such relationship."

SECTION 2-5.

Said title is further amended by revising Code Section 7-1-371, relating to legal reserve requirements, notice of deficiency, penalty, and effect of deficiency, as follows:

"7-1-371.

(a) For the purposes of the reserve requirement imposed by subsection ~~(b)~~(c) of this Code section and the composition of the required reserve fund under subsection (d) of this Code section, the term:

(1) 'Demand deposits' means the aggregate of deposits which can be required to be paid on demand or within less than 30 days after demand;

(2) 'Reserve agent' means a depository of a ~~bank~~ financial institution selected as provided in Code Section 7-1-370 ~~and approved by the department~~ for the deposit of funds included in the required reserve fund.

(b) A financial institution which is governed by 12 C.F.R. 204 shall maintain, at all times, a reserve fund in accordance with the applicable federal requirements.

~~(c) A bank financial institution which is not a member of the Federal Reserve System governed by 12 C.F.R. 204 shall maintain, at all times, a reserve fund in an amount fixed by regulation of the department, but in no case shall such reserve be required in excess of:~~

~~(1) In the case of a savings bank, 5 percent of total deposits; and~~

~~(2) In the case of a commercial bank, the aggregate of 15 percent of demand deposits and 5 percent of other deposits.~~

The amount of the required reserve for each day shall be computed on the basis of average daily deposits covering such biweekly or shorter periods as shall be fixed by regulation of the department.

~~(c) A bank which is a member of the Federal Reserve System shall maintain at all times a reserve fund in accordance with the requirements applicable to a member bank under the laws of the United States.~~

(d) In the case of a ~~commercial bank~~ financial institution which is not governed by 12 C.F.R. 204, such portion of the reserve fund against deposits as shall be fixed by regulation of the department shall consist of United States coin and currency on hand or on deposit, subject to call without notice, in a reserve agent. The balance of such reserve fund shall be kept in obligations of:

~~(1) The United States, the Federal National Mortgage Association, a federal land bank, a federal home loan bank, a bank for cooperatives, a federal intermediate credit bank, or the State of Georgia~~ General obligations of the United States or of a subsidiary corporation of the United States government fully guaranteed by such government, or to obligations issued by the Federal Land Bank, Federal Home Loan Banks, Federal Intermediate Credit Bank, Bank for Cooperatives, Federal Farm Credit Banks regulated by the Farm Credit Administration, Federal Home Loan Mortgage Corporation, or Federal National Mortgage Association; or

~~(2) Obligations of the State of Georgia or any instrumentality of this state; or~~

~~(3) Other issuers whose obligations are marketable and approved by regulation of the department for the purpose of this Code section.~~

~~(e) In the case of a savings bank, the reserve fund shall consist of:~~

~~(1) United States coin and currency on hand or on deposit, subject to call without notice, in a reserve agent, in a total amount not less than 1 percent of the deposits of the savings bank; and~~

~~(2) Securities permitted under subsection (d) of this Code section.~~

(f) All assets which are part of the reserve fund required by this Code section shall be owned absolutely by the ~~bank~~ financial institution and shall not be pledged, assigned, or

hypothecated in any manner or subject to setoff. The value of all securities which constitute a part of a ~~bank's~~ financial institution's reserve fund shall be computed at the current market value thereof.

~~(g)(f)~~ A ~~bank~~ financial institution shall give written notice to the department, in the manner prescribed by the department for such notice, of any deficiency in the amount or form of the reserve fund required by this Code section within three business days after the close of any scheduled averaging period during which such deficiency occurs. ~~A bank shall pay to the department a penalty of \$50.00 for each day after the time fixed for the giving of notice in which it fails to give such notice, provided that the department may relieve a bank of this penalty for good cause shown.~~

~~(h)(g)~~ Immediately following the closing of any scheduled averaging period during which a deficiency in the required reserve occurs, the ~~bank~~ financial institution will take immediate action to restore the deficiency; and, until such deficiency is restored, the ~~bank~~ financial institution shall not make any new loans or discounts other than by discounting or purchasing bills of exchange at sight; nor shall any dividend be declared out of the profits of such ~~bank~~ financial institution. Any ~~bank~~ financial institution failing to restore its reserve to the required amount within 30 days after the closing of the averaging period in which the deficiency occurs may have its business and assets taken over by the department as provided in Part 7 of Article 1 of this chapter."

SECTION 2-6.

Said title is further amended by revising Code Section 7-1-372, relating to remission of checks at par, collection charge, and service charge, as follows:

"7-1-372.

A commercial bank ~~shall pay all checks drawn on it at par and shall make no charge for the payment of such checks; provided, however,~~ it may deduct a reasonable collection charge covering its actual expenses from the remittance for any check forwarded to it for collection and remittance as a special collection item and may impose a service charge as authorized by Code Section 44-12-196, relating to when an instrument on which a banking or financial organization is directly liable is presumed abandoned."

SECTION 2-7.

Said title is further amended in Code Section 7-1-530, relating to authority to merge or consolidate state banks and trust companies, by revising subsection (a) as follows:

"(a) Upon compliance with the requirements of this part and other applicable laws and regulations, including any branching and minimum age laws and regulations, ~~one or more~~ banks or trust companies may merge or consolidate, provided that an institution exercising

trust powers alone may merge or consolidate only with another such trust company. Upon compliance with the requirements of this part and other applicable laws and regulations, including any branching and minimum age laws and regulations, a corporation other than a bank or trust company may acquire all of the outstanding shares of one or more classes or series of one or more banks or trust companies through a share exchange."

SECTION 2-8.

Said title is further amended by revising Code Section 7-1-591, relating to representative offices of banks or bank holding companies domiciled in state, as follows:

"7-1-591.

A bank domiciled in this state and operating under ~~its~~ the laws of this state or the laws of the United States or a subsidiary or agent of such bank may establish a representative office anywhere in the state upon registering with the department. A bank holding company domiciled in this state and operating under ~~its~~ the laws of this state or the laws of the United States or a nonbank subsidiary or agent of such bank holding company may establish a representative office anywhere in this state upon registering with the department."

SECTION 2-9.

Said title is further amended by revising Code Section 7-1-592, relating to representative offices of banks or bank holding companies domiciled outside of state, as follows:

"7-1-592.

A bank or bank holding company domiciled in this state and operating under the laws of the United States or domiciled outside this state and operating under the laws of such other state or territory or of the United States, or its subsidiary or agent, may establish representative offices anywhere in this state, provided that such bank or bank holding company conforms to the requirements of its primary regulator."

SECTION 2-10.

Said title is further amended in Code Section 7-1-593, relating to registration of bank or bank holding company with representative office in state, by revising subsection (a) as follows:

"(a) A bank or bank holding company domiciled in this state and having a representative office located in this state shall register with the department annually on forms prescribed by the department. Such registration shall be filed according to regulations issued by the department, ~~shall be accompanied by a registration fee prescribed by regulations of the department~~, and shall list the names of all its Georgia representative offices, the street address of the offices, the nature of the business to be transacted in or through the offices,

and such other information as the department may require. The department may consolidate these requirements ~~and those for agency relationships~~ with the holding company registration required in Parts 18, 19, and 20 of this article."

SECTION 2-11.

Said title is further amended by repealing and reserving Code Section 7-1-594, relating to registration of banks or bank holding companies conducting agency relationships.

SECTION 2-12.

Said title is further amended in Code Section 7-1-601, relating to bank branch offices, by revising paragraph (3) of subsection (a) as follows:

"(3) A bank may acquire a branch office from another bank without acquisition of the entire bank. ~~However, an out-of-state bank with no lawfully established branch office in Georgia may not directly or indirectly make such an acquisition; or"~~

SECTION 2-13.

Said title is further amended in Code Section 7-1-602, relating to applications for bank branch offices, by revising subsection (b) as follows:

"(b) After receipt of a complete application, the department shall have 90 days within which to approve or disapprove such application. ~~Under normal circumstances and workload, the department will issue an approval or disapproval of a branch office within 21 days or after the end of the public comment period, whichever is later."~~

SECTION 2-14.

Said title is further amended in Code Section 7-1-603, relating to extensions of banking locations, automated teller machines, cash dispensing machines, point-of-sale terminals, and other extensions, by revising paragraph (1) of subsections (b) and (c) as follows:

"(1) 'Automated teller machine' means electronic equipment which performs routine banking transactions including, but not limited to, the taking of deposits for the public at locations off premises of a bank's main or branch office under regulations prescribed by the commissioner. This term includes electronic equipment that utilizes, or has the capability to utilize, live video chat with offsite bank personnel who may assist with banking services, including, but not limited to, account initiation."

"(1) Any ~~Georgia state~~ federally insured bank or credit union may operate automated teller machines throughout the this state. ~~Any bank not otherwise doing a lawful banking business in this state may operate automated teller machines throughout this state, provided such automated teller machines are unstaffed and not combined with a staffed~~

333 ~~facility.~~ These machines may be operated individually by any bank or credit union or
334 jointly on a cost-sharing basis by two or more banks or ~~other financial institutions~~ credit
335 unions;"

336 **SECTION 2-15.**

337 Said title is further amended by revising Code Section 7-1-604, relating to banking business
338 prohibited except as allowed by Title 7, as follows:

339 "7-1-604.

340 No bank shall carry on or conduct or do a banking business in this state except in
341 accordance with the provisions of this title ~~which govern entry into this state to conduct~~
342 ~~such a business~~ or federal law directly applicable to the bank. 'A banking business' A
343 'banking business' is the business which a bank is authorized to do pursuant to this title."

344 **SECTION 2-16.**

345 Said title is further amended by revising Code Section 7-1-607, relating to registration,
346 reporting, examinations, and control of bank holding companies, as follows:

347 "7-1-607.

348 (a) On July 1, 1976, and annually thereafter on dates established by the commissioner,
349 each bank holding company that controls a bank shall register with the commissioner on
350 forms provided or prescribed by him or her, which may include such information with
351 respect to the financial condition, operation, management, and intercompany relationships
352 of the bank holding company and its subsidiaries and related matters as the commissioner
353 may deem necessary or appropriate to carry out the purposes of this part.

354 (b) The commissioner is authorized to issue such regulations and orders as may be
355 necessary to enable him or her to administer and carry out the purposes of this Code section
356 ~~and prevent evasions thereof, and for the purpose of lessening the regulatory burden to~~
357 ~~waive certain requirements associated with the annual reporting requirements for bank~~
358 ~~holding companies that do not have their principal place of business in Georgia and do not~~
359 ~~own Georgia banks.~~

360 (c) The commissioner from time to time may require reports under oath to keep him or her
361 informed as to whether the provisions of this Code section and such regulations and orders
362 thereunder issued by him or her have been complied with; may make examinations of each
363 bank holding company and each subsidiary thereof, the cost of which may be assessed
364 against and paid by such holding company; and shall, as far as possible, use the reports of
365 examination made by the Office of the Comptroller of the Currency, Federal Deposit
366 Insurance Corporation, or the Board of Governors of the Federal Reserve System for the
367 purposes of this Code section.

368 (d) Bank holding companies that control a bank and subsidiaries or affiliates thereof shall
 369 be regulated, controlled, and examined by the commissioner to the same extent that he or
 370 she regulates, controls, and examines state banks ~~and other financial institutions~~ under his
 371 or her jurisdiction, which would be in addition to the authority of the Federal Reserve
 372 Board as fixed by the laws of the United States. The commissioner is authorized, directed,
 373 and required to promulgate, with precision, rules and regulations and investment
 374 procedures in the regulation, examination, and control of bank holding companies ~~doing~~
 375 ~~business in this state~~ that control a bank."

376 **SECTION 2-17.**

377 Said title is further amended by revising Code Section 7-1-620, relating to part purpose, as
 378 follows:

379 "7-1-620.

380 This part governs the acquisition of banks having banking offices in Georgia by bank
 381 holding companies controlling bank subsidiaries having banking offices outside this state.
 382 It further governs the acquisition of banks having banking offices outside this state by bank
 383 holding companies controlling bank subsidiaries having banking offices in Georgia. It sets
 384 forth application, notice, ~~registration~~, and other related requirements. Acquisitions of
 385 banks having banking offices only in Georgia by bank holding companies controlling only
 386 bank subsidiaries having banking offices solely in Georgia are governed by the provisions
 387 of Code Sections 7-1-605 through 7-1-608."

388 **SECTION 2-18.**

389 Said title is further amended in Code Section 7-1-621, relating to definitions relative to
 390 interstate acquisitions of banks and bank holding companies, by revising paragraphs (2), (7),
 391 (12), (15), and (23) as follows:

392 "(2) 'Bank' means any ~~insured institution~~ 'insured bank' as such term is defined in 12
 393 U.S.C. Section 1813(h) ~~Section 3(h)~~ of the Federal Deposit Insurance Act, ~~12 U.S.C.~~
 394 ~~Section 1813(h)~~ or any institution eligible to become such, provided that the term 'bank'
 395 shall not include any 'foreign bank' (which is defined as in 12 U.S.C. Section 3101 of the
 396 International Banking Act of 1978). The term 'bank' as used in this part shall include any
 397 ~~building and loan association~~, savings and loan association; or state savings and loan
 398 association as such terms are defined in Code Section 7-1-4 and shall include federal
 399 savings banks and similar banking entities chartered under the laws of any state and
 400 whose deposits are insured under a federal deposit insurance program."

"(7) 'Control' means that which is set forth ~~either in Code Section 7-1-605 or Section 2(a) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841(a).~~"

"(12) 'Home state' means any state in the United States:

(A) With respect to a state bank, the state by which the bank is chartered;

(B) With respect to a national bank, the state in which the main office of the bank is located; or

(C) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. Section ~~3101(c)~~3103(c) of the International Banking Act."

"(15) 'Insured depository institution' shall have the same meaning as set forth in 12 U.S.C. Section 1813(c)(2) and (3) of the Federal Deposit Insurance Act, provided that the term 'insured depository institution' shall not include any 'foreign bank' (which is defined as in 12 U.S.C. Section 3101 of the International Banking Act of 1978)."

"(23) 'Subsidiary' means that which is set forth ~~either in Code Section 7-1-605 or Section 2 of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841.~~"

SECTION 2-19.

Said title is further amended in Code Section 7-1-623, relating to acquisitions by a bank or bank holding company not requiring department approval, by revising subsection (a) as follows:

"(a) Subject to any applicable restrictions or exceptions provided for in subsection (b) of Code Section 7-1-622, a bank holding company having a bank subsidiary with banking offices in Georgia may acquire a bank that does not have banking offices in this state, and a bank holding company, ~~which may or may not have an out-of-state bank subsidiary having only branch offices in Georgia,~~ may acquire an out-of-state bank with branch offices in Georgia, but shall notify the department at least 30 days prior to the consummation of the proposed transaction. The notification requirements of this subsection shall be satisfied by furnishing the department with a copy of the application or applications filed with applicable bank supervisory agencies seeking approval for the proposed transaction and such other information as the department shall request. In lieu of furnishing the entire application, the applicant may submit to the department a description of the transaction within the same time frame. In this event, the department shall request further information only if needed. The department may, for good cause shown, object to the transaction by letter to the bank holding company and to the appropriate federal or state regulator before consummation of the transaction. ~~Annual~~

437 ~~registration of the holding company with the department is required so long as it has~~
438 ~~banking offices in Georgia."~~

439 **SECTION 2-20.**

440 Said title is further amended by revising Code Section 7-1-624, relating to prohibited
441 acquisitions by a bank or bank holding company, as follows:

442 "7-1-624.

443 (a) Except as expressly permitted under this part, Part 20 of this article, or by federal law,
444 no bank holding company may acquire a bank or a bank holding company controlling a
445 bank ~~having banking offices in Georgia~~ chartered by the department.

446 (b) In the event any bank holding company makes an acquisition that is prohibited by this
447 part, the commissioner shall require such bank holding company to divest itself
448 immediately of its direct or indirect ownership or control of any Georgia banks or banking
449 offices located in Georgia. ~~In addition, the~~ The commissioner shall also have the power
450 to enforce any other prohibitions in this part by requiring divestitures of nonconforming
451 banks, bank holding companies, or assets. Alternatively, the commissioner shall have the
452 power to impose through the imposition of fines and penalties or ~~through the exercise of~~
453 such other remedies as are provided in this chapter, including, but not limited to, judicial
454 actions."

455 **SECTION 2-21.**

456 Said title is further amended in Code Section 7-1-628, relating to purpose and scope of part,
457 by revising subsections (b) and (c) as follows:

458 "(b) The scope of this part covers mergers where, upon consummation of the interstate
459 merger transaction, the resulting bank will have banking locations in Georgia and at least
460 one other state. It provides for certain approval, notice, ~~registration~~, and other
461 requirements. Mergers involving banks having present and resulting branches located only
462 in this state are governed by Parts 14 and 15 of this article. To the extent a bank
463 participating in an interstate merger transaction is owned or controlled by a bank holding
464 company, the applicable provisions of Part 19 of this article shall also apply.

465 (c) In authorizing the expansion of interstate banking to this state, and in the interests of
466 its citizens, the General Assembly finds that primary consideration should be given to the
467 following:

- 468 (1) Affording protection and promoting convenience to bank depositors and other
469 customers of financial institutions in this state;
470 (2) Preserving the advantages of a sound dual banking system and the competitive
471 equality of state chartered institutions with federally chartered institutions; and

(3) ~~Supervising, regulating, and keeping records of all persons, firms, corporations, associations, and other business entities who furnish depository, lending, and associated financial services in this state; and~~

(4) Providing to the Department of Banking and Finance sufficient powers and responsibilities to implement these considerations."

SECTION 2-22.

Said title is further amended in Code Section 7-1-628.1, relating to definitions relative to interstate banking and branching by merger, by revising paragraphs (1), (6), (11), (14), and (22) as follows:

"(1) 'Bank' shall have the same meaning as ~~set forth~~ 'insured bank' in 12 U.S.C. Section 1813(h) of the Federal Deposit Insurance Act, provided that the term 'bank' shall not include any 'foreign bank' (which is defined as in 12 U.S.C. Section 3101 of the International Banking Act of 1978)."

"(6) 'Control' means that which is set forth ~~either~~ in Code Section 7-1-605 ~~or Section 2(a) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841(a).~~"

"(11) 'Home state' means:

(A) With respect to a state bank, the state by which the bank is chartered;

(B) With respect to a national bank, the state in which the main office of the bank is located; or

(C) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. Section ~~3101(c)~~ 3103(c) of the International Banking Act."

"(14) 'Insured depository institution' shall have the same meaning as set forth in 12 U.S.C. Section 1813(c)(2) and (3) of the Federal Deposit Insurance Act, provided that the term 'insured depository institution' shall not include any 'foreign bank' (which is defined as in 12 U.S.C. Section 3101 of the International Banking Act of 1978)."

"(22) 'Subsidiary' means that which is set forth ~~either~~ in Code Section 7-1-605 ~~or Section 2 of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1841.~~"

SECTION 2-23.

Said title is further amended by revising Code Section 7-1-628.5, relating to requirements for out-of-state banks that are the result of an interstate merger transaction, as follows:

505 "7-1-628.5.

506 (a) An out-of-state bank that is to be the resulting bank of an interstate merger transaction
507 shall comply or assure compliance with the following requirements:

508 (1) Part 19 of this article, if applicable to the transaction shall require any holding
509 company of the resulting bank to comply with Code Sections 7-1-605 through 7-1-612;

510 (2) An out-of-state bank that will be the resulting bank pursuant to an interstate merger
511 transaction involving a Georgia state bank shall notify the commissioner of the proposed
512 merger not later than the date on which it files an application for an interstate merger
513 transaction with the responsible federal bank supervisory agency, provide such
514 information as required by rule or regulation or as the commissioner may otherwise
515 specify, and pay any filing fee required by regulation;

516 (3) Prior to consummation of the merger, the resulting bank shall provide the
517 commissioner with satisfactory evidence of all required approvals from all relevant bank
518 supervisory agencies; and

519 (4) Prior to consummation of the merger, the out-of-state bank shall certify to the
520 department that while it has a branch or any other location in Georgia, it will maintain
521 deposit insurance issued by a federal public body. An out-of-state bank holding company
522 that may be the owner of the resulting bank shall provide satisfactory evidence to the
523 commissioner of compliance with applicable requirements of Article 15 of Chapter 2 of
524 Title 14 of the Georgia Business Corporation Code, 'Foreign Corporations,' and shall
525 notify the department of its location, any changes in its initial registered office within this
526 state, and the name of its registered agent at such location. An out-of-state resulting bank
527 shall notify the department of the location of its initial office, any subsequent registered
528 office, and the name of its current registered agent;

529 (5) ~~Each bank or bank holding company attempting to establish interstate branches in~~
530 ~~Georgia shall provide to the department a certification that all applicable Georgia laws~~
531 ~~and regulations have been satisfied or a copy of the Uniform Interagency Branch~~
532 ~~Application. The department may, if appropriate and after its own investigation, provide~~
533 ~~to the applicable state or federal regulator a certificate of compliance or a statement of~~
534 ~~noncompliance with Georgia law, together with any advisory comments; and~~

535 (6) ~~The out-of-state bank must certify to the department that while it maintains a branch~~
536 ~~in Georgia it will meet the conditions set forth in this part and comply with all applicable~~
537 ~~Georgia laws and any rules issued under the laws of this state, as well as any orders or~~
538 ~~directives issued to the bank by the commissioner.~~

539 (b) ~~In order to facilitate the cooperation between state regulatory authorities, an~~
540 ~~out-of-state state bank that is the resulting bank of an interstate merger transaction shall~~
541 ~~comply or assure compliance with the following additional requirements:~~

~~(1) The supervisor of the out-of-state state bank must agree to share with the commissioner examination reports prepared by the supervisor and any other information deemed necessary by the commissioner regarding such bank. The exam reports from any other state shall be considered to be the other state's property and shall be protected as confidential by Georgia law; and~~

~~(2) The out-of-state state bank must agree to make available to the commissioner any information that may be deemed necessary to protect Georgia consumers."~~

SECTION 2-24.

Said title is further amended in Code Section 7-1-628.6, relating to powers of out-of-state banks branching into Georgia, by revising subsection (a) as follows:

~~"(a) An out-of-state state bank which establishes and maintains one or more branches in Georgia under this part may conduct any activities at such branch or branches that are authorized under the law of this state for Georgia state banks, and if an activity is one that requires the prior approval of the commissioner, such approval must be secured prior to commencing such activity."~~

SECTION 2-25.

Said title is further amended in Code Section 7-1-628.8, relating to restrictions on de novo branches, by revising subsections (b) and (c) as follows:

~~"(b) No out-of-state bank shall establish or maintain a de novo branch in this state unless such bank has lawfully established a branch in Georgia, and then only~~ An out-of-state bank that does not have a branch in Georgia and that meets the requirements of this article may establish and maintain a de novo branch in this state to the extent that any Georgia bank could establish such a de novo branch.

~~(c) By enacting this Code section and Code Section 7-1-628.9, the General Assembly intends to permit entry into Georgia only by acquisition of or merger with an entire bank, subject to the three-year rule contained in Code Sections 7-1-608, 7-1-622, and 7-1-628.3~~ A Georgia state bank may establish and maintain a de novo branch in another state. Such Georgia state bank shall comply with the provisions of this article, including, but not limited to, obtaining approval from the department prior to establishing the branch."

SECTION 2-26.

Said title is further amended by revising Code Section 7-1-628.9, relating to restrictions on purchase of branches, as follows:

"7-1-628.9.

~~(a) Unless otherwise expressly permitted by Georgia law or regulation, no bank may acquire a branch of any other bank in Georgia without the acquisition of the entire bank, unless the acquiring bank could lawfully establish a branch in the geographic area where the branch to be acquired is located~~ An out-of-state bank that does not have a branch in Georgia and that meets the requirements of this article may establish and maintain a branch in this state through the acquisition of a branch.

(b) A Georgia state bank may establish and maintain a branch in another state through the acquisition of a branch in compliance with the provisions of this article, including, but not limited to, obtaining approval from the department prior to acquiring the branch."

PART III

Credit unions

SECTION 3-1.

Said title is further amended in Code Section 7-1-630, relating to initial subscribers, articles of incorporation, and filing requirements for credit unions, by revising paragraph (1) of subsection (e) as follows:

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

SECTION 3-2.

Said title is further amended in Code Section 7-1-650, relating to powers of credit unions, by revising subparagraph (D) of paragraph (4) and paragraphs (6) and (9) as follows:

"(D) By depositing its funds in banks, ~~building and loan associations~~, savings and loan associations, and credit unions; by purchasing certificates of deposit and savings certificates which such financial institutions are authorized to issue; and by selling or purchasing federal or correspondent (daily) funds or loan participations through such financial institutions; subject to limitations prescribed in regulations issued by the department; and"

"(6) It may undertake, with the approval of the department, other activities which are not inconsistent with this chapter or regulations adopted pursuant thereto, ~~including such powers as are afforded to federally chartered credit unions, either directly, through a~~

~~subsidiary corporation, or in cooperation with other credit unions; provided, however,~~
~~that~~ no such approval shall be granted unless the commissioner determines the activities
do not present undue safety and soundness risks to the credit union involved;"

"(9) ~~No real~~ Real estate acquired in the cases provided for by subparagraphs (B) and (C)
of paragraph (8) of this Code section and ~~no~~ real estate which has ceased to be used
primarily as credit union premises ~~shall~~ may be held ~~for a longer period~~ subject to a
determination by a majority vote of its directors at least once each year as to the
advisability of retaining any such property, provided that no such property may be held
for more than five years, unless the time shall be extended by without the prior written
approval of the department. Properties, other than real estate, which are acquired in
satisfaction of debts previously contracted and which a credit union is not otherwise
authorized to own shall be held for no longer than six months unless such time period is
extended by the department. Disposition of such property may be financed by the credit
union without the advance of additional funds irrespective of the purchasers' membership
in the credit union and of ordinarily applicable collateral margin requirements; and"

SECTION 3-3.

Said title is further amended in Code Section 7-1-655, relating to board of directors, credit
and supervisory committees, and officers of credit unions and removals from office, by
revising subsection (g) and adding new subsections as follows:

"(g) ~~Directors may be removed from office as provided in Code Section 7-1-485~~ The entire
board of directors or an individual director may be removed from office without cause by
the vote of a quorum of members at a properly called meeting.

(h) The board may remove a director from office if:

(1) The director is adjudicated an incompetent by a court or is convicted of a felony;

(2) The director does not, within 60 days of his or her election or such longer time as
may be specified in the bylaws, accept the office in writing or by attendance at a meeting
and fulfill other requirements for holding the office;

(3) The director fails to attend regular meetings of the board for six successive meetings
without having been excused by the board;

(4) The director was an employee or duly elected officer of the credit union and was
discharged or resigned at the request of the board for reasons relating to performance of
duties as an employee or officer of the credit union; or

(5) For any reason set forth in the bylaws of the credit union.

(i) The board of directors, by a two-thirds' vote of a quorum of the board, may suspend any
member of the credit union's board of directors, for cause, until the next membership
meeting, which shall be held not less than seven nor more than 60 days after such

suspension. The suspended person will be notified of the details of his or her suspension,
and shall have the right to request a meeting with the board to reconsider his or her
suspension prior to the membership meeting. Any suspended member of the board of
directors may be removed by a majority vote of a quorum of members at a properly called
meeting. At such meeting of the membership, the suspended person shall have the right
to make a presentation to the members and the suspension shall be acted upon by the
members at such meeting and the person shall be removed from, or restored to, the board.
(j) Vacancies in the board of directors, whether caused by removal or otherwise and
including vacancies resulting from an increase in the number of directors, may be filled by
the remaining members of the board, even though less than a quorum.
(k) The credit union shall immediately notify the department upon a change in president
or chief executive officer."

SECTION 3-4.

Said title is further amended in Code Section 7-1-669, relating to central credit union, by revising the introductory language of subsection (b) as follows:

"(b) The field of membership of a central credit union shall include credit unions organized and operating under this chapter, any other state credit union law, or under the Federal Credit Union Act. In addition, the field of membership may include:"

SECTION 3-5.

Said title is further amended in Code Section 7-1-670, relating to third-party payment services, by revising subsection (d) as follows:

"(d) A credit union that is approved to offer third-party payment services may apply to the department to offer other services, such as check-cashing services, sale of ~~money orders~~ payment instruments, or international remittances, which services are determined by the department to be safe, sound, convenient, and necessary and responsive to those consumers eligible for membership. The department may impose restrictions on these services if approved."

PART IV

Georgia merchant acquirer limited purpose bank

SECTION 4-1.

Said title is further amended by adding new Code sections to read as follows:

"7-9-5.1.

(a) The board of directors shall hold regular meetings at such times as may be fixed by the bylaws and shall, at all times, be subject to call by the chairperson of the board, the chief executive officer, the president, or any two members of the board. The board shall meet at least once in ten different months of each calendar year unless an alternative schedule is approved in writing by the department, but in no event shall the board meet less frequently than once in each calendar quarter.

(b) Unless otherwise provided in the articles or bylaws:

(1) A majority of all the directors in office shall constitute a quorum for the transaction of business; and actions of a majority of those present at a meeting at which a quorum is present shall be actions of the board;

(2) The board of directors may designate by resolution three or more of its number to constitute an executive committee or other committee which, to the extent provided in such resolution, shall have and exercise the authority of the board of directors in regard to the business of the merchant acquirer limited purpose bank; and

(3) Any action which may be taken at a meeting of the directors or of the members of an executive or other committee may be taken without a meeting if a consent or consents in writing setting forth the action shall be signed by all of the directors or all of the members of the executive or other committee and filed with the secretary of the merchant acquirer limited purpose bank.

7-9-5.2.

The board of directors shall have the power to adopt, amend, or repeal bylaws governing the regulation and management of affairs of the merchant acquirer limited purpose bank unless such power is reserved exclusively to the shareholders by the articles or bylaws previously adopted by shareholders; provided, however, that any bylaws adopted by the board of directors may be altered, amended, or repealed and new bylaws adopted by shareholders. Shareholders may prescribe that any bylaw or bylaws adopted shall not be altered, amended, or repealed by the board of directors. Copies of the bylaws and any change, addition, or amendment thereto shall be filed with the department immediately upon adoption by the directors or the shareholders.

7-9-5.3.

(a) A merchant acquirer limited purpose bank shall maintain a chief executive officer, chief information officer, chief risk officer, and such other officers the department may require by rule or regulation. A person may hold more than one office; provided, however, that no person shall serve as both chief executive officer and chief risk officer.

(b) Except as otherwise provided for in the articles or bylaws, the board of directors shall elect officers, fix their compensation, and fill vacancies. An officer elected or appointed by the board may be removed without prejudice to any contract right of such officer upon determination by the board that such removal is in the best interests of the merchant acquirer limited purpose bank. The merchant acquirer limited purpose bank shall immediately notify the department in writing upon a change in the position of chief executive officer or president.

(c) Officers of a merchant acquirer limited purpose bank shall have such authority and perform such duties as provided for in the bylaws adopted by the board.

(d) A merchant acquirer limited purpose bank may employ such agents or employees as necessary for the prompt and orderly discharge of its business.

7-9-5.4.

(a) Prior to assuming office, each director shall take an oath or affirmation that he or she will diligently and honestly perform his or her duties in the administration of the affairs of the merchant acquirer limited purpose bank; he or she will not permit a willful violation of law by the merchant acquirer limited purpose bank; and he or she meets the eligibility requirements of this chapter, the regulations of the department, and the articles and bylaws of the merchant acquirer limited purpose bank.

(b) Each director shall sign a copy of the oath required by this Code section and include such documentation in the meeting minutes. No director shall participate in the affairs of the board or receive any compensation for service as a director until such oath has been executed. Any person seeking to act in the capacity of a director before subscribing to the oath required by this Code section or otherwise qualifying for service pursuant to the bylaws of the merchant acquirer limited purpose bank or the laws and regulations governing the operations of the merchant acquirer limited purpose bank shall be liable for his or her actions to the same extent as if that person had qualified to serve as a director of the merchant acquirer limited purpose bank."

"7-9-11.1.

(a) Merchant acquirer limited purpose banks may merge or consolidate upon compliance with the requirements of this chapter and other applicable laws and regulations.

(b) A corporation other than a merchant acquirer limited purpose bank may be merged into or may be consolidated with a merchant acquirer limited purpose bank, provided that:

(1) The resulting institution of the merger or consolidation is a merchant acquirer limited purpose bank;

(2) The resulting institution of the merger or consolidation holds only assets and liabilities and is engaged only in activities which may be held or engaged in by a merchant acquirer limited purpose bank; and

(3) The merger or consolidation is not otherwise unlawful.

(c) A merger or consolidation pursuant to subsection (b) of this Code section shall be made by compliance with the requirements of this chapter. Title 14 shall not be applicable to such a merger or consolidation.

(d) In the case of a merger of a merchant acquirer limited purpose bank with any other corporation or corporations, with the merchant acquirer limited purpose bank as the resulting entity, any assets, lines of business, activities, or powers which may accrue to the resulting entity which would be prohibited for a merchant acquirer limited purpose bank shall be provided for in the plan of merger. Such plan shall include a proposal for the disposal of such prohibited assets or the termination of such prohibited line of business, activity, or power. The department shall review such plan to determine whether the prohibited asset, line of business, activity, or power should be a basis for denial of the requested merger or consolidation or phased out within a reasonable period of time, which shall be determined by the department.

7-9-11.2.

(a) The parties to a merger or consolidation of a merchant acquirer limited purpose bank shall:

(1) Adopt a plan stating the method, terms, and conditions of the merger or consolidation, including the rights under the plan of the shareholders of each of the parties and any agreement concerning the merger or consolidation. Such plan shall specify:

(A) The name that such merchant acquirer limited purpose bank shall have upon and after such merger or consolidation;

(B) The persons who shall constitute the board of directors of the merchant acquirer limited purpose bank after the merger or consolidation;

(C) The manner and basis of converting the shares of each merged or consolidated entity into shares or other securities or obligations of the surviving merchant acquirer limited purpose bank and, if any shares of any of the merged or consolidated entities are not to be converted solely into shares or other securities of the surviving merchant

acquirer limited purpose bank, the amount of cash or securities of any other corporation, or combination of cash and such securities, which is to be paid or delivered to the holders of such shares in exchange for, or upon the surrender of, such shares. Such cash or securities may be in addition to, or in lieu of, the shares or other securities of the surviving merchant acquirer limited purpose bank;

(D) Such other provisions with respect to the proposed merger or consolidation which are deemed desirable to the parties of the merger or consolidation plan; and

(E) Any other requirements of the department, adopted through rule or regulation, deemed essential to ensure protection of creditors or shareholders of the merging or consolidating entities;

(2) Adopt a merger or consolidation plan upon affirmative vote of at least:

(A) A majority of the directors; and

(B) At a meeting of shareholders, a majority of the shareholders entitled to cast votes or the majority of holders of outstanding shares of a class, if a class of shares is entitled to vote thereon as a class; and

(3) Include a copy or summary of the merger or consolidation plan and a full statement of the rights and remedies of dissenting shareholders, the method of exercising such rights, and any limitations on such rights and remedies in the meeting notice for which a merger or consolidation is to be voted upon.

(b) Any modification of a merger or consolidation plan which has been adopted shall be made by any method provided therein or, in the absence of such provision, by the same vote as required for adoption.

7-9-11.3.

(a) Upon adoption of the plan of merger or consolidation as provided in Code Section 7-9-11.2, parties to a merger or consolidation shall file with the department articles of a merger or consolidation pursuant to the requirements of this Code section together with the fee required by Code Section 7-1-862.

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

(1) The names of parties to a merger or consolidation plan and the name of the resulting merchant acquirer limited purpose bank;

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

(3) The votes by which the merger or consolidation plan was adopted, a copy of the notice of each meeting held in connection with such adoption, and the time and place such meeting or meetings were held;

(4) The names and addresses of the initial directors of the resulting merchant acquirer limited purpose bank;

(5) In the case of a merger, any amendments to the articles of the resulting merchant acquirer limited purpose bank;

(6) In the case of a consolidation, the requirements for articles of a new merchant acquirer limited purpose bank as provided for by paragraphs (4) through (8) of subsection (a) of Code Section 7-9-5; and

(7) The merger or consolidation plan.

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

(d) No later than the next business day after filing the articles of merger or consolidation with the department, parties to a merger or consolidation shall transmit for publication, to the publisher of a newspaper which is the official organ of the county where the main office of each party is located, a notice which shall contain a statement that the articles of merger or consolidation have been filed with the department, the names of entities which are parties to the proposed merger or consolidation, and, in the case of a merger, the proposed name of the surviving merchant acquirer limited purpose bank. The parties shall include in the notice a designated location where a copy of the articles of merger or consolidation may be examined. Such notice shall be published once a week for two consecutive weeks commencing within ten days after receipt of the notice by the newspaper.

(e) In the event a merger or consolidation plan is amended as provided for in Code Section 7-9-11.2, parties shall promptly file with the department an amendment to the articles of consolidation or merger reflecting such amendment of the merger or consolidation plan.

7-9-11.4.

In addition to the filing of articles of merger and consolidation under Code Section 7-9-11.3, the parties to a merger or consolidation plan shall also file with the department:

(1) An application including any information desired by the department in order to evaluate the proposed merger or consolidation, which shall be made available in the form specified by the department;

(2) Applicable fees established by regulation of the department to defray the expenses of the investigation required by Code Section 7-9-11.5; and

(3) If the merger or consolidation involves the adoption of a new name, a certificate issued by the Secretary of State reserving such name under Code Section 7-1-131.

7-9-11.5.

(a) Upon receipt of the articles of merger or consolidation and the filings required by Code Section 7-9-11.4, the department shall conduct such investigation as it may deem necessary to ascertain whether:

(1) The articles of merger or consolidation and supporting items satisfy the requirements of this chapter;

(2) The merger or consolidation plan and any modification thereof adequately protect the interests of creditors and shareholders;

(3) The requirements for a merger or consolidation under all applicable laws have been satisfied and the resulting merchant acquirer limited purpose bank would satisfy the applicable requirements of this chapter; and

(4) The merger or consolidation would not adversely impact the merchant acquirer limited purpose bank, entities engaged in merchant acquiring activities or settlement activities, or the payment card network. In making such a determination, the department will take into consideration competitive, financial, managerial, safety and soundness, compliance, and other concerns with respect to the merger or consolidation plan and all parties.

(b) Within 90 days after receipt of the articles of merger or consolidation and the filings required by Code Section 7-9-11.4 or within an additional period of not more than 30 days after an amendment to the application is received within the initial 90 day period, the department shall, in its discretion, approve or disapprove such articles on the basis of its investigation and the criteria set forth in subsection (a) of this Code section. Except as provided in Code Section 7-9-11.6, the department shall provide written notice of its approval along with a copy of the articles of merger or consolidation to the Secretary of State. The department shall provide parties to the merger or consolidation plan written notice of its decision and, in the event of disapproval, a general statement of explanation for its decision. The decision of the department shall be conclusive; provided, however, that such decision may be subject to judicial review as provided for in Code Section 7-1-90.

7-9-11.6.

Upon payment of all required taxes, fees, and charges, the Secretary of State shall issue to any resulting merchant acquirer limited purpose bank a certificate of merger or consolidation with the approved articles of merger or consolidation attached thereto, provided that the name of the resulting merchant acquirer limited purpose bank in a merger or consolidation has been reserved by a merging or consolidating party or is available on the records of the Secretary of State. The resulting merchant acquirer limited purpose bank shall retain a copy of such certificate, articles, and approval by the department.

7-9-11.7.

(a) A merger or consolidation of a merchant acquirer limited purpose bank shall become effective upon the issuance of a certificate of merger or consolidation by the Secretary of State.

(b) A certificate of merger or consolidation shall be conclusive evidence of satisfactory performance of all conditions precedent to a merger or consolidation and of the existence or creation of a merchant acquirer limited purpose bank, except as against the state.

(c) When a merger or consolidation becomes effective, each party to the merger or consolidation plan, except the resulting merchant acquirer limited purpose bank, shall cease to exist as a separate entity. Upon merger or consolidation, any parties to a merger or consolidation plan shall become a single corporation which shall be the merchant acquirer limited purpose bank and which shall have, without further act or deed, all property, rights, powers, duties, and obligations of each party to a merger or consolidation plan.

(d) The articles of a resulting merchant acquirer limited purpose bank established from a merger shall be the same as its articles prior to the merger with any change stated in the articles of merger. The articles of a resulting merchant acquirer limited purpose bank established from a consolidation shall be the same as its articles prior to the consolidation with any change stated in the articles of consolidation.

(e) A resulting merchant acquirer limited purpose bank shall be authorized to engage only in such business and exercise only such powers as are then permissible upon original incorporation under this chapter and shall be subject to the same prohibitions and limitations as it would then be subject to upon original incorporation.

(f) No liability of any party to a merger or consolidation plan or of its shareholders, directors, or officers shall be affected nor shall any lien on any property of a party to the plan be impaired by a merger or consolidation. Any claim existing or action pending by or against any party to a merger or consolidation plan may be prosecuted to judgment as if a merger or consolidation had not taken place or a resulting merchant acquirer limited

916 purpose bank may be substituted in place of such appropriate party of a plan of proposed
 917 merger or consolidation.

918 7-9-11.8.

919 (a) A shareholder of a merchant acquirer limited purpose bank which is a party to a plan
 920 of proposed merger or consolidation under this chapter who objects to such plan shall be
 921 entitled to the rights and remedies of a dissenting shareholder as determined under
 922 Chapter 2 of Title 14, known as the 'Georgia Business Corporation Code.'

923 (b) A resulting merchant acquirer limited purpose bank into which other or others have
 924 been merged or consolidated may require the return of original certificates of stock held
 925 by each shareholder in each or either of the merged or consolidated institutions, or in lieu
 926 thereof may:

927 (1) Issue to each shareholder new certificates for such number of shares of the resulting
 928 acquirer limited purpose bank; or

929 (2) Cause to be paid or delivered to each shareholder the amount of cash or securities of
 930 any other corporation or combination of cash and such securities as, under the plan of
 931 merger or consolidation, such shareholder is entitled to receive."

932 **PART V**

933 Criminal and related provisions

934 **SECTION 5-1.**

935 Said title is further amended in Code Section 7-1-840, relating to criminal prosecutions and
 936 assistance with law enforcement, by revising subsection (a) as follows:

937 "(a) Upon discovery, by report or otherwise, of any apparent violation of any state or
 938 federal criminal law which is perpetrated through a deposit or loan account maintained at
 939 or which utilizes a monetary instrument issued by a financial institution located in this state
 940 or of any state or federal criminal law which relates to a financial institution, the
 941 department shall ~~in its discretion either institute criminal proceedings in the manner~~
 942 ~~provided by law~~ or refer the matter to an appropriate law enforcement or prosecuting
 943 authority for further action. The ~~department~~ appropriate state prosecuting authority shall
 944 have the right to submit to the grand juries of the respective counties of the state, ~~or~~
 945 ~~otherwise seek an indictment of,~~ any criminal violations of the laws of Georgia known by
 946 it to have occurred in such counties, ~~or it may likewise submit to.~~ Similarly, any United
 947 States attorney may likewise submit to a grand jury, or otherwise seek an indictment of,
 948 any criminal violations of the laws of Georgia which also constitute violations of the laws
 949 of the United States applicable to such financial institution. ~~This provision~~ Nothing herein

950 shall ~~not~~ be so construed as to prevent the ~~commissioner~~ appropriate state prosecuting
951 authority or other persons from proceeding in such cases by affidavit and warrant."

952 **SECTION 5-2.**

953 Said title is further amended by revising Code Section 7-1-842, relating to felonies of
954 directors, officers, agents, and employees of financial institutions and aiding and abetting
955 false entries, as follows:

956 "7-1-842.

957 Any director, officer, agent, or employee of a financial institution who knowingly:

958 (1) Makes any false entry in any book, report, or statement of the financial institution or
959 who omits or concurs in omitting to make any material entry in its books or accounts with
960 intent in either case to injure or defraud the financial institution or any other company,
961 firm, or person or to deceive any officer of the financial institution, the commissioner, or
962 any examiner and every person who with like intent aids or abets any officer, director,
963 clerk, agent, or employee in making any false entry, report, or statement or omitting to
964 make any material entry on its books and accounts shall be guilty of a felony and, upon
965 conviction, shall be punished by imprisonment ~~and labor in the penitentiary~~ for not less
966 than one year nor more than ten years;.

967 (2) While in charge of or employed in a financial institution, allows it to receive a
968 deposit when he or she knows the financial institution to be insolvent shall be guilty of
969 a felony and, upon conviction, shall be punished by imprisonment ~~in the penitentiary~~ for
970 not less than one year nor more than ten years if loss or injury shall result to such
971 depositor;.

972 (3) By letterheads, newspaper advertisements, signs, circulars, or otherwise, represents
973 the capital stock of any financial institution to be in excess of the capital actually paid in
974 or who knowingly makes or concurs in making or publishing any written report, exhibit,
975 or statement of its affairs or pecuniary condition containing any material statement
976 therein which is false or who knowingly omits or concurs in omitting any statement
977 required by law or to be contained therein shall be guilty of a felony and, upon
978 conviction, shall be punished by imprisonment ~~and labor in the penitentiary~~ for not less
979 than one year nor more than five years;.

980 ~~(4) Violates or is involved in violating any provision of the charter or bylaws of said~~
981 ~~financial institution shall be guilty of a felony and, upon conviction, shall be punished by~~
982 ~~imprisonment and labor in the penitentiary for not less than one year nor more than five~~
983 ~~years;~~

984 ~~(5)~~ Uses information obtained through his or her association with the financial institution
985 which he or she serves as a director, officer, agent, or employee, which is not otherwise

986 publicly available, with the intent to realize personal gain or to cause financial harm to
987 another party shall be guilty of a felony and, upon conviction, shall be punished by a fine
988 not to exceed \$10,000.00 or twice the amount of improper gain realized, whichever is
989 less, or by imprisonment ~~and labor in the penitentiary~~ for not less than one year nor more
990 than five years, or both."

991 **PART VI**

992 Mortgage lenders and brokers

993 **SECTION 6-1.**

994 Said title is further amended by replacing "Nationwide Mortgage Licensing System and
995 Registry" with "Nation-wide Multistate Licensing System and Registry" wherever the former
996 phrase occurs in:

- 997 (1) Code Section 7-1-1000, relating to definitions relative to mortgage lenders and brokers;
998 (2) Code Section 7-1-1001, relating to registration requirements and exemptions for
999 mortgage lenders and brokers;
1000 (3) Code Section 7-1-1002, relating to transaction of lending business without a license
1001 and liability;
1002 (4) Code Section 7-1-1003.5, relating to Nationwide Mortgage Licensing System and
1003 Registry;
1004 (5) Code Section 7-1-1003.6, relating to privileged or confidential nature of information
1005 provided to the Nationwide Mortgage Licensing System and Registry;
1006 (6) Code Section 7-1-1004, relating to issuance or denial of license for a mortgage broker
1007 or lender;
1008 (7) Code Section 7-1-1004.1, relating to reports of condition by mortgage broker and
1009 lender;
1010 (8) Code Section 7-1-1004.2, relating to ability of mortgage broker and lender licensee to
1011 challenge information in the Nationwide Mortgage Licensing System and Registry;
1012 (9) Code Section 7-1-1005, relating to the renewal and expiration of licenses and
1013 registrations of mortgage lenders and brokers;
1014 (10) Code Section 7-1-1011, relating to annual fees set by department for mortgage loan
1015 originator, mortgage broker, and mortgage lender;
1016 (11) Code Section 7-1-1013, relating to the prohibition of certain acts by licensees and
1017 registrants; and
1018 (12) Code Section 7-1-1016, relating to regulations relevant to advertising by mortgage
1019 broker and mortgage lenders.

SECTION 6-2.

Said title is further amended in Code Section 7-1-1004, relating to issuance or denial of license for a mortgage broker or lender and prelicensing education requirements, by adding a new paragraph to subsection (e) and revising paragraphs (8) and (9) of subsection (g) as follows:

"(6) The department is authorized to enact rules and regulations related to the expiration of prelicensing education."

"(8) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license or the prelicensing education in the event the prelicensing education has expired pursuant to the rules and regulations of the department."

(9) An individual meeting the requirements of paragraphs (1) and (3) of subsection (e) of Code Section 7-1-1005 may make up any deficiency in continuing education as established by rule or regulation of the department."

PART VII

Building and loan associations and various changes

SECTION 7-1.

Said title is further amended in Code Section 7-1-4, relating to definitions relative to the Department of Banking and Finance and financial institutions generally, by revising paragraphs (7), (8), (17), and (21) as follows:

"(7) 'Bank' means a corporation existing under the laws of this state on April 1, 1975, or organized under this chapter and authorized to engage in the business of receiving deposits withdrawable on demand or deposits withdrawable after stated notice or lapse of time; 'bank' shall also include national banks located in this state for the purpose of Part 6 of Article 2 of this chapter, relating to deposits, safe-deposit agreements, and money received for transmission, and Article 8 of this chapter, relating to multiple deposit accounts; provided, however, that the term 'bank' shall not include a credit union, a building and loan association, a savings and loan association, or a licensee under Article 4 of this chapter; but 'Bank' shall include a federal or state credit union for the purposes of Part 6 of Article 2 of this chapter, provided that this inclusion is not intended to grant or expand any powers to credit unions not authorized in Part 6 of Article 2 of this chapter or by other law."

(8) 'Building and loan association' means such an association as defined in paragraph (1) of subsection (a) and subsections (b) and (c) of Code Section 7-1-770 Reserved."

1055 "(17) 'Depositor' means any person or corporation who shall deposit money or items for
 1056 the payment of money in any financial institution, which funds are subsequently
 1057 (allowing time for collections) withdrawable either on demand or after a stated notice or
 1058 lapse of time, whether interest is allowed thereon or not, and shall also include:

- 1059 (A) Holders of demand and time certificates of deposit;
- 1060 (B) Owners of certified or cashiers' checks and checks purchased from a licensee under
- 1061 Article 4 of this chapter; and
- 1062 (C) Shareholders in credit unions, federal credit unions, ~~building and loan associations,~~
- 1063 and savings and loan associations to the extent that funds paid in by them are
- 1064 withdrawable within the terms of this definition."

1065 "(21) 'Financial institution' means:

- 1066 (A) A bank;
- 1067 (B) A trust company;
- 1068 (C) ~~A building and loan association~~ Reserved;
- 1069 (D) A credit union;
- 1070 (E) A corporation licensed to engage in the business of selling payment instruments in
- 1071 this state on April 1, 1975, or so licensed pursuant to Article 4 of this chapter;
- 1072 (F) Business development corporations existing on April 1, 1975, pursuant to the
- 1073 former 'Georgia Business Development Corporation Act of 1972,' approved April 3,
- 1074 1972 (Ga. L. 1972, p. 798), or organized pursuant to Article 6 of this chapter;
- 1075 (G) An international bank agency doing business in this state on April 1, 1975,
- 1076 pursuant to the former 'International Bank Agency Act,' approved April 6, 1972 (Ga.
- 1077 L. 1972, p. 1140), or authorized to do business in this state pursuant to Article 5 of this
- 1078 chapter;
- 1079 (H) In addition, as the context requires, a national bank, savings and loan association,
- 1080 or federal credit union for the purpose of the following provisions:

- 1081 (i) Code Section 7-1-2, relating to findings of the General Assembly;
- 1082 (ii) ~~Code Section 7-1-3, relating to objectives of this chapter;~~
- 1083 ~~(iii)~~ Code Section 7-1-8, relating to supplementary principles of law;
- 1084 ~~(iv)~~(iii) Code Section 7-1-37, relating to restrictions on officials and personnel;
- 1085 ~~(v)~~(iv) Code Section 7-1-70, relating to disclosure of information;
- 1086 ~~(vi)~~(v) Code Section 7-1-90, relating to judicial review of department action;
- 1087 ~~(vii) Subsection (d) of Code Section 7-1-91, relating to orders to desist from conduct~~
- 1088 ~~illegal under the laws and regulations of this state;~~
- 1089 ~~(viii) Code Section 7-1-94, relating to the evidentiary results of examinations and~~
- 1090 ~~investigations;~~

1091 ~~(ix)~~(vi) Code Sections 7-1-111 and 7-1-112, relating to emergency closings and
 1092 business restrictions;
 1093 ~~(x) Code Sections 7-1-110 and 7-1-294, relating to permissive closings;~~
 1094 ~~(xi) Code Section 7-1-133, relating to prohibited advertising;~~
 1095 ~~(xii) Paragraph (11) of Code Section 7-1-261, relating to additional operational~~
 1096 ~~powers of banks and trust companies;~~
 1097 ~~(xiii)~~(vii) Paragraph (3) of subsection (a) of Code Section 7-1-394, relating to criteria
 1098 to be considered in approving new banks;
 1099 ~~(xiv) Code Section 7-1-658, relating to loans;~~
 1100 ~~(xv)~~(viii) Code Section 7-1-840, relating to criminal prosecutions; and
 1101 ~~(xvi)~~(ix) Code Section 7-1-841, relating to application of Title 16 provisions;
 1102 (I) A bank holding company as defined in Code Section 7-1-605 for the purposes of
 1103 Code Sections 7-1-61, 7-1-71, and 7-1-91;
 1104 (J) Banks chartered by states other than Georgia for the purposes of paragraph (10) of
 1105 Code Section 7-1-261, relating to agency relationships; and
 1106 (K) Federal credit unions for the purposes of Part 6 of Article 2 of this chapter, relating
 1107 to deposits, ~~safe deposit~~ safe-deposit agreements, and money received for transmission,
 1108 and Article 8 of this chapter, relating to ~~multiple-party deposit~~ multiple-party accounts."

1109 SECTION 7-2.

1110 Said title is further amended by revising Code Section 7-1-10, relating to rules of
 1111 construction relative to financial institutions, as follows:
 1112 "7-1-10.
 1113 (a) The rules of statutory construction contained in Chapter 3 of Title 1 shall apply to this
 1114 ~~chapter~~ title.
 1115 (b) Unless otherwise specifically indicated and to the full extent permitted by the
 1116 Constitution of Georgia, any reference in this ~~chapter~~ title to an existing statute or
 1117 regulation shall mean to such statute or regulation as has been or may in the future be
 1118 amended or have material added to it. If in any case such construction is not
 1119 constitutionally permissible, such reference shall mean to the statute or regulation as it
 1120 existed on ~~April 1, 1975~~ July 1, 2016.
 1121 (c) Any reference in this ~~chapter~~ title to an action by a superior court or other court shall
 1122 authorize a judge of such court to take such action in term or in vacation, whether present
 1123 in the county or absent from it."

SECTION 7-3.

Said title is further amended by revising Code Section 7-1-77, relating to approval by commissioner of state or federal rules and regulations affecting financial institutions, as follows:

"7-1-77.

Any rule, regulation, order, or administrative directive issued by a state or federal official, agency, or entity which is intended to be applicable to banks, banking associations, bank holding companies, ~~building and loan associations and~~ savings and loan associations, credit unions, or companies engaged in selling money orders or any other company or financial institution under the supervision of the commissioner and required to report to the commissioner or subject to rules and regulations issued by the commissioner shall be effective as to any such company or financial institution only after the rule, regulation, order, or other directive has been approved in writing by the commissioner. Nothing in this Code section shall be construed to modify, limit, or otherwise restrict the authority of the department to conduct an examination, bring a civil or administrative action, or otherwise enforce state or federal laws against a financial institution."

SECTION 7-4.

Said title is further amended by striking "a building and loan association,"; "building and loan associations,"; "'building and loan associations and"; ", building and loan association,"; "building and loan association,"; "building and loan"; "building and loan association or"; "a building and loan association or"; "or 'building and loan"; "building and loan or"; or "Georgia building and loan associations," wherever such term appears in:

- (1) Code Section 7-1-192, relating to notice to depositors and other creditors to present claims;
- (2) Code Section 7-1-310, relating to powers to act as fiduciary and in other representative capacities;
- (3) Code section 7-1-355, relating to agreements concerning safe deposits;
- (4) Code Section 7-1-608, relating to lawful and unlawful acquisitions, formation, and mergers of bank holding companies;
- (5) Code Section 7-1-740, relating to definitions relative to business development corporations;
- (6) Code Section 7-1-747, relating to applying for membership and loans by members of a business development corporation;
- (7) Code Section 7-1-758, relating to tax exemptions and state and local occupational license taxes;

- 1159 (8) Code Section 7-1-777, relating to principal and branch offices of building and loan
1160 associations and savings and loan associations;
- 1161 (9) Code Section 7-1-779, relating to use of term "savings and loan," "building and loan,"
1162 or other terms likely to mislead public as to nature of business;
- 1163 (10) Code Section 7-1-780, relating to lien on deposits to secure loans;
- 1164 (11) Code Section 7-1-786, relating to taxation of building and loan associations and
1165 savings and loan associations;
- 1166 (12) Code Section 7-1-787, relating to building and loan associations and savings and loan
1167 associations exemptions from securities regulations;
- 1168 (13) Code Section 7-1-788, relating to nondisqualification of interested notaries and other
1169 officers of building and loan associations and savings and loan associations;
- 1170 (14) Code Section 7-1-789, relating to deposits by minors, safe-deposit boxes, third-party
1171 payment accounts, and validity releases in building and loan associations and savings and
1172 loan associations;
- 1173 (15) Code Section 7-1-790, relating to deposits of fiduciaries in building and loan
1174 associations and savings and loan associations;
- 1175 (16) Code Section 7-1-791, relating to payment on death of depositor by building and loan
1176 associations and savings and loan associations;
- 1177 (17) Code Section 7-1-792, relating to deposits applied to funeral expenses of a depositor,
1178 building and loan association, or savings and loan association;
- 1179 (18) Code Section 7-1-793, relating to investment of funds in insured deposits in building
1180 and loan associations and savings and loan associations;
- 1181 (19) Code Section 7-1-795, relating to savings account books and certificates of building
1182 and loan associations and savings and loan associations;
- 1183 (20) Code Section 7-1-796, relating to insanity, incompetency, bankruptcy, or death of
1184 depositor in building and loan associations and savings and loan associations;
- 1185 (21) Code Section 7-1-940, relating to definitions relative to small minority business
1186 development corporations;
- 1187 (22) Code Section 7-1-947, relating to applicant for membership and loan requirements
1188 for small minority business development corporations;
- 1189 (23) Code Section 7-1-958, relating to tax exemptions, credits, privileges, and
1190 occupational license taxes for small minority business development corporations;
- 1191 (24) Code Section 7-1-1001, relating to registration requirements and exemptions for
1192 mortgage lenders and brokers; and
- 1193 (25) Code Section 7-3-6, relating to exemptions from chapter regarding industrial loans.

SECTION 7-5.

Said title is further amended in Code Section 7-1-241, relating to restrictions on engaging in banking business, by revising subsection (a) as follows:

"(a) No person or corporation may lawfully engage in this state in the business of banking or receiving money for deposit or transmission or lawfully establish in this state a place of business for such purpose, except a bank, a national bank, a credit union to the extent provided in Article 3 of this chapter, a licensee engaged in selling ~~checks~~ payment instruments to the extent permitted by Article 4 of this chapter, an international banking agency to the extent provided in Article 5 of this chapter, ~~a building and loan association to the extent provided in Article 7 of this chapter,~~ or a savings and loan association to the extent provided by the laws of the United States."

SECTION 7-6.

Said title is further amended by revising Code Section 7-1-289, relating to security for deposits, as follows:

"7-1-289.

(a) A bank may, ~~unless otherwise specifically approved in writing by the department,~~ pledge or otherwise grant security interests in its assets to secure deposits of:

(1) Public funds;

(2) Funds of a pension fund for employees of a public body of the state;

(3) Funds for which a public body of the state or an officer or employee thereof or any court of law is the custodian or trustee pursuant to statute;

(4) Funds held by the department as receiver;

(5) Funds which are required to be secured by law or by an order of a court;

(6) Its own fiduciary funds or the fiduciary funds of an affiliate. In either case, the funds shall be deposited with the pledging institution and held in its commercial department; and

(7) Public funds deposited in another bank.

(b) ~~A~~ Except for the deposits listed in subsection (a) of this Code section, a bank may not pledge or otherwise grant security interests in its assets as security for deposits ~~other than the deposits listed in subsection (a) of this Code section~~ unless otherwise specifically approved in writing by the department."

SECTION 7-7.

Said title is further amended in Code Section 7-1-293, relating to savings banks and state savings and loan associations, by revising subsections (c) through (e) and (h) as follows:

"(c) A savings bank shall provide its depositors with deposit insurance coverage pursuant to those deposit insurance provisions of this chapter applicable to commercial banks. A state savings and loan association shall provide its depositors, but not its shareholders, with deposit insurance coverage pursuant to those deposit insurance provisions of this chapter applicable to building and loan associations.

~~(d)(1) Unless specifically exempt therein, all rules and regulations promulgated by the department and applicable to commercial banks shall be applicable to a savings bank.~~

~~(2) The commissioner shall not approve an application of a financial institution requesting conversion to a commercial bank or a mutual savings bank unless such financial institution divests itself of all branches which were not lawfully established and in existence prior to July 1, 1996, or which do not conform with the branch banking laws of this state if established on or after July 1, 1996. Any federal mutual savings bank or federal mutual savings and loan association with a banking location in Georgia prior to July 1, 1996, which converts to a state charter, shall be entitled to retain the banking locations lawfully established in Georgia which conform to the limitations of this subsection Reserved.~~

(e) The conversion, merger, or consolidation of a federal savings and loan association or federal savings bank, including a federal mutual savings and loan association or federal mutual savings bank, shall be accomplished pursuant to the same procedures as are prescribed in this chapter for a conversion, merger, or consolidation involving a national bank, provided that ~~any federal mutual savings bank or federal mutual savings and loan association converting to a Georgia mutual savings bank must have been in existence on January 1, 1997, and must have had its main office in the State of Georgia; and provided, further, that~~ the approval of such conversion by the members of such association or bank shall be by such vote as is required in the articles of association and bylaws of such association or bank. A federal mutual savings and loan association or federal mutual savings bank shall upon conversion be and be known as a mutual savings bank. ~~Conversion of a building and loan association into a savings bank or state savings and loan association may be made with the approval of the department and an appropriate amendment of the articles of incorporation of the association.~~ In considering any plan for the conversion, merger, or consolidation of a federal savings and loan association or federal savings bank or conversion of a building and loan association, the department shall not approve the plan unless it is satisfied that such plan is fair and equitable to all borrowers, depositors, and shareholders."

"(h) Except as provided therein, Article 1 of this chapter and all other parts of this article shall apply to all mutual savings banks, savings banks, and state savings and loan associations and unless specifically exempt therein, all rules and regulations promulgated

1265 by the department applicable to banks shall be applicable to mutual savings banks, savings
1266 banks, and state savings and loan associations."

1267 **SECTION 7-8.**

1268 Said title is further amended in Code Section 7-1-353, relating to adverse claims to deposits
1269 and property held in safe deposit, by revising paragraph (1) of subsection (b) as follows:

1270 "(1) A court order, distraint, levy, garnishment, or other effective legal process;"

1271 **SECTION 7-9.**

1272 Said title is further amended in Code Section 7-1-436, relating to voting of shares of banks
1273 and trust companies, by revising subsections (c) and (h) as follows:

1274 "(c) The chairman of the board, chief executive officer, president, any vice-president, the
1275 secretary, or the treasurer of a corporation which is the holder of record of shares of a bank
1276 or trust company shall be deemed by the bank or trust company to have authority to vote
1277 such shares and to execute proxies and written waivers and consents in relation thereto,
1278 whether such shares are held in a fiduciary capacity or otherwise, unless, before a vote is
1279 taken or a waiver of consent is acted upon, it is made to appear by a certified copy of the
1280 bylaws or resolution of the board of directors or executive committee of the corporation
1281 holding such shares that such authority does not exist or is vested in some other officer or
1282 person. In the absence of such certification, a person executing any such proxies, waivers,
1283 or consents or presenting himself or herself at a meeting as one of such officers of a
1284 corporate shareholder shall, for the purposes of this Code section, be prima facie deemed
1285 to be duly elected, qualified, and acting as such officer and to be fully authorized; and, in
1286 the case of conflicting representation, the corporate shareholder shall be deemed to be
1287 represented by its senior officer in the order first stated in this subsection."

1288 "(h) Notwithstanding subsections (a) through (g) of this Code section, a corporation shall
1289 be protected from liability in relying on and treating the persons in whose names shares
1290 stand on the record of shareholders as the owners thereof for all purposes."

1291 **SECTION 7-10.**

1292 Said title is further amended in Code Section 7-1-441, relating to restrictions on derivative
1293 actions by shareholders of banks and trust companies, by revising subsection (a) as follows:

1294 "(a) In a derivative action involving a right which a bank or trust company may have
1295 properly asserted, but which its representatives wrongfully failed to enforce that has been
1296 brought by one or more shareholders of a bank or trust company to procure a judgment in
1297 its favor, ~~the representatives of the bank or trust company wrongfully having failed to~~
1298 ~~enforce a right which may properly be asserted by it~~, the complaint shall be verified and

shall allege that the plaintiff is a shareholder of record at the time of bringing the action.

It shall further allege:

(1) That the plaintiff had purchased his or her shares or was a shareholder of record at the time of the transaction of which he or she complains or that his or her shares thereafter devolved on him or her through one or more transfers by operation of law from one who was a holder of record or member at such time; or

(2) That the plaintiff is the holder of record of shares which at the time of the transaction of which he or she complains were held of record by a trustee of a trust in which the plaintiff held a beneficial interest or in which a beneficial interest was held by one from whom the shares have devolved upon the plaintiff through one or more transfers by operation of law."

SECTION 7-11.

Said title is further amended in Code Section 7-1-488, relating to officers, agents, employees, and employee share plans of banks and trust companies, by revising subsection (b) as follows:

"(b) Except as otherwise provided in the articles or bylaws, the board of directors shall elect the officers, fix their compensation, and fill vacancies, however occurring. An officer elected or appointed by the board may be removed by the board at any time, whenever in its judgment the best interests of the institution will be served thereby, without prejudice to any contract right of such officer. The department shall immediately be notified in writing when the individual holding the position of chief executive officer or president of the bank changes."

SECTION 7-12.

Said title is further amended in Code Section 7-1-600, relating to definitions relative to bank branches, offices, facilities, and holding companies, by revising paragraph (1) as follows:

"(1) 'Bank' means any moneyed corporation authorized by law to receive deposits of money and commercial paper, to make loans, to discount bills, notes, and other commercial paper, to buy and sell bills of exchange, and to issue bills, notes, acceptances, or other evidences of debt, and shall include incorporated banks, savings banks, banking companies, trust companies, and other corporations doing a banking business and may include corporations who provide some or all of the financial services listed in this paragraph by technological means in lieu of or in addition to traditional geographically based delivery systems but, unless the context otherwise indicates, shall not include national banks or ~~building and loan associations or similar associations or corporations;~~ provided, however, that Code Sections ~~7-1-590 through 7-1-594,~~ providing for the

~~registration of representative offices; Code Sections 7-1-601 and 7-1-602, regulating the~~
~~operation and establishment of bank branch offices; Code Section 7-1-603, regulating the~~
~~expansion of existing facilities; and Code Sections 7-1-604 through 7-1-608, restricting~~
~~the acquisition and ownership of bank shares or assets and regulating the operation of~~
~~banks and bank holding companies in this state, shall apply to national banks and all other~~
~~persons, corporations, or associations, by whatever authority organized, doing a banking~~
~~or trust business in this state. 'Bank' Such term shall include 'main office' and any 'branch~~
~~office,' unless the context indicates that it does not."~~

SECTION 7-13.

Said title is further amended in Code Section 7-1-605, relating to when a company is deemed to control shares in a bank holding company, by revising paragraph (2) of subsection (b) as follows:

"(2) 'Company' means any corporation, limited liability company, partnership, business trust, association, ~~or similar organization~~, commercial entity regardless of organizational structure, or any other trust unless by its terms it must terminate within 25 years or not later than 21 years and ten months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any state or any qualified family partnership as defined in the federal Bank Holding Company Act of 1956, as amended."

SECTION 7-14.

Said title is further amended in Code Section 7-1-611, relating to penalties for violations of certain provisions relative to banks and bank holding companies, as follows:

"7-1-611.

Any bank, bank holding company, or company (as defined in Code Section 7-1-605) which violates subsection (a) of Code Section 7-1-601 or any provision of Code Section 7-1-602, Code Section 7-1-603, or Code Sections 7-1-605 through 7-1-608 shall, ~~upon conviction,~~
~~be fined~~ be subject to civil monetary penalties of not less than \$500.00 nor more than \$5,000.00 unless it shall cease and desist therefrom within 60 days after notice of any such violation served on it by the department. Each day on which such violation occurs shall constitute a separate offense."

SECTION 7-15.

Said title is further amended by revising Code Section 7-1-770, relating to definitions relative to building and loan associations and savings and loan associations, as follows:

"7-1-770.

(a) As used in this article, ~~the term:~~

~~(1) 'Building and loan association' means a local mutual association existing under the laws of this state on April 1, 1975, or organized under this article without capital stock which:~~

~~(A) Is authorized to receive deposits but shall not have the power to offer third-party payment services except in the same manner and subject to the same provisions as are set forth in Code Section 7-1-670 for credit unions;~~

~~(B) Receives the greater portion of its funds from such deposits; and~~

~~(C) Lends the greater portion of its funds on the security of first liens or security titles on homes and on the security of first liens on its own deposits.~~

~~(2) 'Deposit' means any arrangement whereby a withdrawable interest is created in a building and loan association or whereby the building and loan association becomes indebted to a person transferring to it money, commercial paper, or similar items for the payment of money, whether called a 'share,' 'account,' 'certificate,' 'share account,' 'savings account,' 'deposit,' 'savings deposit,' 'deposit account,' or otherwise.~~

~~(b)(1) An association is 'local' within the meaning of this article if the greater portion of its investment in real estate loans is limited to loans on the security of a first lien or security title on real estate. Any such association may purchase real estate loans or interests in real estate loans which are made and owned by other associations qualified under the building and loan statutes of their respective states or from any savings and loan association to the extent authorized by the regulations of the department, provided that such regulations shall not permit the purchase of loans or interests in loans of any type or in any amounts (per individual loan or in the aggregate) which are not permitted by law to be purchased by savings and loan associations with principal offices in this state.~~

~~(c)(2) An association is 'mutual' if all depositors in such association participate in the income of such association and if all borrowers are privileged to vote at least one vote at any meeting of members, it being unnecessary that any borrower should subscribe to or purchase any shares or be entitled to participate in any way in the income of such association."~~

SECTION 7-16.

Said title is further amended by repealing and reserving:

(1) Code Section 7-1-771, relating to members and voting by a building and loan association;

- 1403 (2) Code Section 7-1-772, relating to presentation, contents, and execution of articles of
1404 a building and loan association;
- 1405 (3) Code Section 7-1-775, relating to filing and processing articles of incorporation and
1406 amendments for a building and loan association;
- 1407 (4) Code Section 7-1-776, relating to certificate of incorporation or amendment issued by
1408 the Secretary of State for building and loan association;
- 1409 (5) Code Section 7-1-778, relating to rules and regulations governing building and loan
1410 associations;
- 1411 (6) Code Section 7-1-782, relating to effect on conversion into savings and loan
1412 association;
- 1413 (7) Code Section 7-1-784, relating to previous conversions from a savings and loan
1414 association into a building and loan association;
- 1415 (8) Code Section 7-1-785, relating to effect of conversion into a building and loan
1416 association; and
- 1417 (9) Code Section 7-1-797, relating to building and loan association deposit insurance
1418 requirements and public notice.

1419 **SECTION 7-17.**

1420 Said title is further amended by revising Code Section 7-1-781, relating to conversion of a
1421 financial institution to a savings and loan, as follows:

1422 "7-1-781.

1423 Any ~~building and loan association~~ or other financial institution existing under the laws of
1424 this state doing a home financing business may convert itself into a savings and loan
1425 association in accordance with Section 5 of the Home Owners' Loan Act of 1933, 12
1426 U.S.C. Section 1464, upon a vote of 51 percent or more of the votes of the members cast
1427 at an annual meeting or at any special meeting called to consider such action."

1428 **SECTION 7-18.**

1429 Said title is further amended by revising Code Section 7-1-783, relating to previous
1430 conversions into savings and loan associations ratified, as follows:

1431 "7-1-783.

1432 Any ~~building and loan association~~ or corporation which has converted itself prior to April
1433 1, 1975, into a savings and loan association under the Home Owners' Loan Act of 1933 and
1434 has received a charter from the Federal Home Loan Bank Board shall be recognized as a
1435 savings and loan association, and its federal charter shall be given full credence by the
1436 courts of this state to the same extent as if such conversion had taken place under this
1437 article."

SECTION 7-19.

Said title is further amended in Code Section 7-1-841, relating to applicability of Title 16 to financial institutions, by revising subsection (a) as follows:

"(a) The following provisions of Title 16 are expressly made applicable to financial institutions, their directors, officers, agents, and employees and persons or corporations having dealings with, supervision over, or other contact with financial institutions:

(1) Article 2 of Chapter 7 of Title 16, relating to damage to property;

(2) Article 3 of Chapter 7 of Title 16, relating to arson and related offenses;

(3) Article 1 of Chapter 7 of Title 16, relating to burglary and related offenses;

(4) Chapter 9 of Title 16, relating to deceptive practices;

(5) Chapter 8 of Title 16, relating to theft, including robbery;

~~(6) Article 2 of Chapter 8 of Title 16, relating to robbery;~~

~~(7)~~ Article 1 of Chapter 10 of Title 16, relating to abuse of government office; and

~~(8)~~(7) Article 4 of Chapter 10 of Title 16, relating to perjury and other falsifications."

SECTION 7-20.

Said title is further amended by revising Code Section 7-1-843, relating to certain misdemeanors of directors, officers, agents, and employees of financial institutions, as follows:

"7-1-843.

Any officer, director, agent, or employee of any financial institution who shall perform the following acts or deeds shall be guilty of a misdemeanor:

(1) Advertises by any office sign or upon any letterhead, billhead, bank note, receipt, certificate, or circular or on any written or printed paper that the deposits in said financial institution are insured or guaranteed, unless such deposits in said financial institution are, in fact, insured and guaranteed as required by Code Sections 7-1-244, and 7-1-666, ~~and~~ ~~7-1-797~~ or regulation or action of the department pursuant thereto;

(2) Intentionally conceals from the directors of any financial institution or from the committee to whom the directors have delegated authority to pass on loans and discounts any discount or loan made for and in behalf of said financial institution or the purchase or sale of any evidence of indebtedness or agreement for the payment of money;

(3) Uses or applies any part of the capital or other funds of any financial institution to the purchase of shares of its own stock, unless such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith under Code Section 7-1-263 or is otherwise permitted by law;

(4) Concurs in any vote or act of the directors of such financial institution by which it is intended to declare a dividend or reduce or make a distribution of capital, except as

authorized by Code Section 7-1-460 or 7-1-461 or otherwise under this chapter or other applicable law;

(5) Discounts or receives any evidence of indebtedness or agreement for the payment of money in payment of any subscription for common or preferred shares or with intent to enable any shareholder to withdraw any part of the money paid by him for shares held in the financial institution;

(6) Knowingly and willfully issues, participates in issuing, or concurs in any vote of the directors to issue any increase of its capital beyond the amount of the capital thereof duly authorized by or in pursuance of law or who knowingly or willfully sells or agrees to sell or who is interested, directly or indirectly, in the sale of any such shares of stock of such financial institution or in any agreement to sell the same;

(7) Certifies any check, draft, or order where the drawer of such check, draft, or order does not have on deposit with the financial institution at the time of such certification an amount of money equal to the amount specified in such check, draft, or order or fails to charge or set aside such amount from the deposit of the drawer immediately for the purpose of paying such certified check, draft, or order when presented;

(8) Makes or consents to the making of any conveyance, assignment, transfer, mortgage, or lien with intent to hinder, delay, or defraud creditors, after insolvency of the financial institution or in contemplation thereof, whether the same is made to an innocent purchaser or to any other person."

SECTION 7-21.

Said title is further amended in Code Section 7-1-845, relating to miscellaneous acts by financial institutions and directors, officers, agents, and employees to be treated as felonies, by revising paragraph (3) of subsection (a) as follows:

"(3) Willfully engages in the business of:

(A) A bank in violation of Code Section 7-1-241;

(B) A trust company in violation of Code Section 7-1-242;

(C) A credit union in violation of Code Section 7-1-633;

(D) Selling payment instruments before receiving a license as required by Code Section 7-1-681;

(E) An international bank agency before receiving the license required by Code Section 7-1-713;

(F) A business development corporation before approval of the department is granted under Code Section 7-1-743; or

(G) ~~A building and loan association before its articles are approved; or~~

1510 ~~(H)~~ Transacting business either directly or indirectly as a mortgage loan originator,
 1511 mortgage broker, or mortgage lender unless licensed by the department or exempt from
 1512 licensing pursuant to Code Section 7-1-1001; or"

1513 **SECTION 7-22.**

1514 Said title is further amended in Code Section 7-1-911, relating to definitions relative to
 1515 records and reports of currency transactions, by revising paragraph (6) as follows:

1516 "(6) 'Financial institution' means:

1517 (A) A state or national bank;

1518 (B) A trust company;

1519 (C) A ~~building and loan association~~, state savings and loan association, or a federal
 1520 savings and loan association;

1521 (D) A state or federal credit union;

1522 (E) An international bank agency doing business in this state on April 1, 1975,
 1523 pursuant to the former 'International Bank Agency Act,' approved April 6, 1972 (Ga.
 1524 L. 1972, p. 1140), or authorized to do business in this state pursuant to Article 5 of this
 1525 chapter; or

1526 (F) A licensee under Article 4 or Article 4A of this chapter and such other persons as
 1527 may be engaged in the business of:

1528 (i) Cashing ~~checks~~ payment instruments for a fee; or

1529 (ii) Performing transactions by wire or other electronic means to facilitate the
 1530 movement or transfer of money."

1531 **SECTION 7-23.**

1532 Said title is further amended in Code Section 7-2-11, relating to supervision by the
 1533 department of credit union deposit insurance corporations, by revising subsection (a) as
 1534 follows:

1535 "(a) The corporation shall not be deemed an insurance company within the meaning of the
 1536 laws of the State of Georgia relating to insurance or providing for the supervision of
 1537 insurance companies, but it shall be subject to the exclusive supervision of the department.

1538 The department shall exercise the same powers and authority over the corporation as is
 1539 now or hereafter exercised over banks, and credit unions, ~~and building and loan~~
 1540 ~~associations~~ under its jurisdiction and shall issue such rules and regulations as shall be
 1541 necessary to carry out its responsibilities under this chapter."

1542

PART VIII

1543

Repealer

1544

SECTION 8-1.

1545

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