

House Bill 902

By: Representatives Ehrhart of the 36<sup>th</sup> and Hilton of the 95<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance,  
2 so as to transfer duties, powers, responsibilities, and other authority relative to industrial  
3 loans from the Industrial Loan Commissioner to the Department of Banking and Finance; to  
4 change the description of such loans to small consumer finance loans; to revise a short title;  
5 to provide for a purpose; to provide for definitions; to provide for procedures, conditions, and  
6 limitations relative to issuing small consumer finance loans; to provide for applicability; to  
7 provide for exemptions; to provide for the establishment of a small consumer finance loan  
8 commissioner; to provide for powers, duties, and employees relative to such commissioner;  
9 to provide for procedures and conditions for and limitations on licensing of persons issuing  
10 small consumer finance loans; to provide for punishments for violation of laws, rules, or  
11 regulations relative to such loans; to amend the Official Code of Georgia Annotated so as to  
12 conform cross-references; to provide for related matters; to repeal conflicting laws; and for  
13 other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 SECTION 1.

16 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is  
17 amended by revising Chapter 3, relating to industrial loans, as follows:

18 "CHAPTER 3

19 7-3-1.

20 This chapter shall be known and may be cited as the 'Georgia ~~Industrial~~ Small Consumer  
21 Finance Loan Act.'

22 7-3-2.

23 (a) The purpose of this chapter is to authorize and provide regulation of the business of  
 24 making ~~loans of \$3,000.00 or less~~ small consumer finance loans, as defined in Code  
 25 Section 7-3-3, and to bring within the regulation of this chapter and within its provisions  
 26 all small consumer finance loans of \$3,000.00 or less, whether or not made by a person  
 27 organized or operating under the provisions and authority of some other statute, except  
 28 those persons and loans expressly exempted by the terms of this chapter. Even though  
 29 authorized by other statutes of force, such loans and the persons making them, unless  
 30 expressly exempted by the terms of this chapter, shall be within the operation of this  
 31 chapter in accordance with its terms.

32 (b) The functions and duties of the office of the Commissioner of Insurance relative to this  
 33 chapter are hereby transferred to the department effective July 1, 2018. All action taken  
 34 by the office of the Commissioner of Insurance prior to that date shall be considered valid,  
 35 and the department shall, as of July 1, 2018, assume all ongoing and continuing obligations  
 36 pursuant to this chapter. All personnel, supplies, records, materials, furniture, furnishings,  
 37 books, equipment, and services of the office of the Commissioner of Insurance utilized  
 38 pursuant to the authority granted under this chapter shall be transferred to the department  
 39 on July 1, 2018. Any action or investigation pending pursuant to the authority granted  
 40 under this chapter shall remain in full force and effect and any powers relating to such  
 41 action or investigation shall be transferred to the department on July 1, 2018.

42 (c) Rules, orders, actions, and regulations previously adopted which relate to functions  
 43 performed by the office of the Commissioner of Insurance pursuant to this chapter which  
 44 were transferred under this chapter to the department shall remain of full force and effect  
 45 as rules, orders, actions, and regulations of the department until amended, repealed, or  
 46 superseded by rules, orders, actions, or regulations adopted by the department.

47 (d) All property, real and personal, funds, accounts receivable, contracts, liabilities, and  
 48 obligations, as well as all appropriated funds of the office of the Commissioner of  
 49 Insurance for purposes of enforcing this chapter as of July 1, 2018, shall become the  
 50 property, funds, accounts receivable, contracts, liabilities, obligations, and appropriated  
 51 funds of the department on such date. Funds for the functions transferred to the department  
 52 pursuant to this chapter may be transferred to the department as provided in Code Section  
 53 45-12-90.

54 7-3-3.

55 As used in this chapter, the term:

56 (1) 'Commissioner' means the ~~Industrial Loan Commissioner~~ small consumer finance  
 57 loan commissioner.

- 58 (2) 'Control' or 'controlling' means the direct or indirect possession of power to direct or  
 59 cause the direction of management and policies of a person.
- 60 (3) 'Covered employee' means any employee of a licensee engaged in any function  
 61 related to making small consumer finance loans.
- 62 (4) 'Department' means the Department of Banking and Finance.
- 63 (5) 'Executive officer' means the chief executive officer, president, chief financial officer,  
 64 chief operating officer, each vice president with responsibility involving policy-making  
 65 functions for a significant aspect of a person's business, secretary, treasurer, or any other  
 66 individual performing similar managerial or supervisory functions with respect to any  
 67 organization, whether incorporated or unincorporated.
- 68 (6) 'Individual' means a natural person.
- 69 ~~(2)~~(7) 'License' means a single license issued or required under this chapter.
- 70 ~~(3)~~(8) 'Licensee' means a person to whom one or more licenses under this chapter have  
 71 been issued.
- 72 ~~(4) 'Loan' means any advance of money in an amount of \$3,000.00 or less under a~~  
 73 ~~contract requiring repayment and any and all renewals or refinancing thereof or any part~~  
 74 ~~thereof.~~
- 75 (9) Nation-wide Multistate Licensing System and Registry' means a licensing system  
 76 developed and maintained by the Conference of State Bank Supervisors and the  
 77 American Association of Residential Mortgage Regulators for the licensing and  
 78 registration of certain persons engaged in nondepository activities.
- 79 ~~(5)~~(10) 'Person' means individuals, copartnerships, associations, corporations, and all  
 80 other legal and commercial entities any individual, sole proprietorship, corporation,  
 81 limited liability company, partnership, trust, or any other group of individuals, however  
 82 organized.
- 83 (11) 'Small consumer finance loan' means a contract or agreement to extend credit in an  
 84 amount of \$3,000.00 or less, including the renewal or refinancing of any such extension  
 85 of credit.
- 86 (12) 'Ultimate equitable owner' means a person that:
- 87 (A) Owns, directly or indirectly, a 10 percent or more interest in a corporation or any  
 88 other form of business organization;
- 89 (B) Owns, directly or indirectly, 10 percent or more of the voting shares of any  
 90 corporation or any other form of business organization; or
- 91 (C) Exerts control, directly or indirectly, over a corporation or any other form of  
 92 business organization, regardless of whether such person owns or controls such interest  
 93 through one or more individuals or one or more proxies, powers of attorney, nominees,

94 corporations, associations, limited liability companies, partnerships, trusts, joint stock  
 95 companies, other entities or devices, or any combination thereof.

96 (13) 'Unique identifier' means a number or other identifier assigned by protocols  
 97 established by the Nation-wide Multistate Licensing System and Registry.

98 7-3-4.

99 This chapter shall apply to all persons, as defined in Code Section 7-3-3, unless expressly  
 100 exempted in this chapter, engaged in the business of making small consumer finance loans  
 101 ~~in amounts of \$3,000.00 or less. On and after May 3, 1955, no.~~ No person within the  
 102 operation of this chapter shall charge, contract for, or receive, directly or indirectly, on or  
 103 in connection with any loan, any interest, charges, fees, compensation, or consideration  
 104 which is greater than the rates for same provided in this chapter or engage in the business  
 105 of making ~~such~~ small consumer finance loans ~~of \$3,000.00 or less~~ without a license from  
 106 the ~~Commissioner~~ commissioner as provided in this chapter. Persons engaged in the  
 107 business of making small consumer finance loans ~~of \$3,000.00 or less~~ who are not  
 108 exempted from the operation of this chapter may engage in such business and may make  
 109 such loans lawfully under this chapter, provided that they comply with this chapter.

110 7-3-5.

111 A loan and brokerage transaction or any other transaction by which money is paid or  
 112 agreed to be paid others by the borrower in order to obtain the small consumer finance loan  
 113 shall be subject in all respects to this chapter, if it ~~involves a transaction of \$3,000.00 or~~  
 114 ~~less and~~ is not otherwise specifically exempted by the terms of this chapter; and the interest  
 115 and money paid or agreed to be paid others by the borrower in order to obtain the small  
 116 consumer finance loan shall not exceed the charges authorized by this chapter, and the  
 117 application of Code Section 7-4-8 is modified accordingly.

118 7-3-6.

119 This chapter shall not apply to businesses ~~organized or operating~~ chartered or licensed  
 120 under the authority of any law of this state or of the United States relating to banks, trust  
 121 companies, ~~real estate loan or mortgage companies, federal~~ mortgage lenders, mortgage  
 122 brokers, savings and loan associations, savings banks, credit unions, and pawnbrokers or  
 123 to the transactions of such businesses, which businesses are expressly excluded from  
 124 regulation under this chapter and exempted from the operation of its provisions. This  
 125 chapter shall further not apply to banks or credit unions with deposits that are federally  
 126 insured and chartered under the authority of any state. This chapter also shall not apply to  
 127 the University System of Georgia or its educational units, to private colleges and

128 universities in this state and associations thereof, or to student loan transactions of such  
 129 educational entities, which educational entities and student loan transactions thereof are  
 130 expressly excluded from regulation under this chapter and exempted from the operation of  
 131 its provisions. It is expressly provided that no bank, trust company, national bank,  
 132 ~~insurance company, or real estate loan or mortgage company~~ credit union, savings bank,  
 133 pawnbrokers, mortgage lender, or mortgage broker authorized to do business in this state  
 134 shall be required to obtain a license under this chapter nor shall the University System of  
 135 Georgia or its educational units or private colleges and universities in this state and  
 136 associations thereof be required to obtain a license under this chapter. ~~It is further provided~~  
 137 ~~that persons making loans and charging interest thereon at a rate of not more than 8 percent~~  
 138 ~~simple interest per annum shall not be subject to this chapter or required to obtain a license~~  
 139 ~~under this chapter.~~

140 7-3-7.

141 (a) There is created the office of ~~Industrial Loan Commissioner~~ small consumer finance  
 142 loan commissioner; and the ~~Commissioner of Insurance of the State of Georgia~~  
 143 commissioner of banking and finance is designated and constituted the ~~Industrial Loan~~  
 144 ~~Commissioner~~ small consumer finance loan commissioner under this chapter and is  
 145 invested with all of the powers and authority provided for such ~~Commissioner~~  
 146 commissioner. In addition to those powers specifically enumerated, it shall be ~~his~~ the  
 147 commissioner's duty and authority to supervise generally and to exercise regulatory powers  
 148 over the making of small consumer finance loans of ~~\$3,000.00 or less in the State of~~  
 149 Georgia in this state by persons governed and regulated by this chapter.

150 (b) The ~~Commissioner~~ commissioner is granted power and authority to make all rules and  
 151 regulations not inconsistent with this chapter which in his or her judgment shall be  
 152 necessary and appropriate to accomplish the purposes and objectives of this chapter,  
 153 including, without limitation, the power and authority to make such rules and regulations  
 154 regulating and controlling the manner in which small consumer finance loans of ~~\$3,000.00~~  
 155 ~~or less~~ may be made under this chapter. Such rules and regulations shall be promulgated  
 156 ~~pursuant to public hearing after notice of such hearing is advertised at least once in one~~  
 157 ~~newspaper in Atlanta, Georgia, having general state-wide circulation not less than ten days~~  
 158 ~~prior to such hearing. In addition, such rules and regulations shall be promulgated in~~  
 159 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure ~~Act.~~ Act,'  
 160 including the requirements for hearing as stated in that chapter. Such rules and regulations  
 161 so promulgated by the ~~Commissioner~~ commissioner in his or her discretion, consistent with  
 162 the terms of this chapter and other applicable statutes, shall have the full force and effect  
 163 of law. The ~~Commissioner~~ commissioner shall have the authority to designate and employ

164 and compensate ~~agents~~ examiners and employees in the manner other ~~agents~~ examiners and  
 165 employees are employed by ~~his~~ the department to assist ~~him~~ the commissioner in the  
 166 discharge of his or her duties under this chapter; and the ~~Commissioner~~ commissioner is  
 167 authorized and empowered to delegate to an assistant, ~~or~~ deputy, examiner, or employee  
 168 the authority to act in his place and stead in his absence or disability the commissioner's  
 169 stead.

170 (c) The Commissioner is authorized to provide for training programs and seminars at such  
 171 places, at such times, and in such manner as he or she shall deem advisable. Such  
 172 programs and seminars shall be for the purpose of acquainting licensees and employees  
 173 thereof with this chapter, with the rules and regulations promulgated thereunder, and with  
 174 such other matters relative to the business authorized to be carried on by a licensee under  
 175 this chapter as the ~~Commissioner~~ commissioner shall deem necessary.

176 7-3-8.

177 (a) All persons engaged in the business of making loans of \$3,000.00 or less in the State  
 178 of Georgia small consumer finance loans in this state, unless expressly exempted  
 179 therefrom, shall be required to obtain a license under this chapter. Application for license  
 180 shall be made to the Commissioner in writing, under oath, on forms prescribed by the  
 181 Commissioner and shall give the location from which the business is to be conducted and  
 182 shall give the names of the persons connected with the business together with any other  
 183 information required by the Commissioner. The application shall be accompanied by a fee  
 184 of \$250.00 to cover the cost of investigation of the applicant and by a license fee of  
 185 \$500.00. Said license shall expire on the last day of the calendar year in which granted,  
 186 subject to renewal pursuant to Code Section 7-3-10. The Commissioner shall collect fees  
 187 and costs as provided in this chapter and shall issue his receipt for all sums collected by  
 188 him and periodically, not less than once in each quarter of each year, at such times as may  
 189 be convenient, shall pay into the state treasury all sums collected by him.

190 (b) Each applicant for a license under this chapter shall:

191 (1) Submit an application in writing, which is made under oath and in such form as the  
 192 department may prescribe;

193 (2) Furnish to the Nation-wide Multistate Licensing System and Registry the following  
 194 information:

195 (A) The legal name and principal office address of the person applying for the license;

196 (B) The names and residence and business addresses of each director, ultimate  
 197 equitable owner, and executive officer;

198 (C) If the applicant has one or more branches or other locations at or through which the  
199 applicant proposes to engage in the business of making small consumer finance loans  
200 within this state, the complete address of each such location; and

201 (D) The location where the initial registered office will be located in this state; and

202 (3) Submit such other data, financial statements, and pertinent information as the  
203 department may require with respect to the applicant, its directors, trustees, officers,  
204 partners, agents, covered employees, members, ultimate equitable owners, or agents.

205 (c) The application for licensure shall be filed together with:

206 (1) An investigation and supervision fee established by rule or regulation which shall not  
207 be refundable but which, if the license is granted, shall satisfy the fee requirement for the  
208 first licensed year or the remaining part thereof;

209 (2) Items required by other provisions of this chapter, including but not limited to Code  
210 Section 7-3-11; and

211 (3) Other information as may be required by the department.

212 (d) The department shall pay all fees received from licensees and applicants related to  
213 applications, licenses, and renewals to the Office of the State Treasurer; provided, however,  
214 that the department may net such fees to recover the cost of participation in the  
215 Nation-wide Multistate Licensing System and Registry.

216 (e) The department shall enact rules and regulations regarding the time frame by which all  
217 persons must submit an original or renewal application for licensure through the  
218 Nation-wide Multistate Licensing System and Registry.

219 7-3-9.

220 An applicant shall provide with its application a corporate surety bond issued by a bonding  
221 company or insurance company authorized to do business in this state and approved by the  
222 department. The surety bond shall be in the aggregate amount of \$25,000.00 for each  
223 location operated by a licensee if the licensee operates three or fewer locations, plus  
224 \$10,000.00 per location for the fourth and fifth locations operated by the licensee, plus  
225 \$5,000.00 for each location operated by the licensee in excess of the fifth location. The  
226 bond shall be in a form satisfactory to the department and shall run to the State of Georgia  
227 for the benefit of the department or any claimant against the licensee arising out of the  
228 licensee's business of making small consumer finance loans. The condition of the bond  
229 shall require the licensee to pay any and all moneys for the benefit of any person damaged  
230 by noncompliance of a licensee with this chapter, with the rules and regulations enacted  
231 pursuant to this chapter, or with any condition of the bond or to pay any and all moneys  
232 that may become due and owing any creditor of or claimant against the licensee arising out  
233 of the licensee's business of making small consumer finance loans. Damage payments due

234 under the bond include moneys owed to the department for fees, fines, or penalties. In no  
235 event shall the aggregate liability of the surety exceed the principal sum of the face amount  
236 of the bond. Claimants or creditors against the licensee may bring an action directly on the  
237 surety bond.

238 ~~(a) Upon the filing of the application and the payment of the fees provided in Code Section~~  
239 ~~7-3-8, the Commissioner shall cause an investigation to be made. Notwithstanding any~~  
240 ~~provision of Chapter 13 of Title 50, entitled the 'Georgia Administrative Procedure Act,'~~  
241 ~~to the contrary, if the Commissioner has any doubt of the applicant meeting the standards~~  
242 ~~of subsection (b) of this Code section, he shall issue a proposed order to be effective upon~~  
243 ~~a later date without a hearing, unless any person subject to the order requests a hearing~~  
244 ~~within ten days after receipt of the proposed order. Failure to make the request shall~~  
245 ~~constitute a waiver of the right to a hearing pursuant to this Code section. The proposed~~  
246 ~~order issued by the Commissioner shall contain or shall be accompanied by a notice of~~  
247 ~~opportunity for a hearing which shall clearly explain that the hearing must be requested~~  
248 ~~within ten days of receipt of the proposed order and notice. The proposed order and notice~~  
249 ~~shall be served in person by the Commissioner or his agent or by registered or certified~~  
250 ~~mail or statutory overnight delivery, return receipt requested. The Commissioner or such~~  
251 ~~person as he designates shall hear evidence at such hearing and the hearing shall be~~  
252 ~~conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative~~  
253 ~~Procedure Act.' The cost of such hearing and of recording and transcribing the evidence~~  
254 ~~may, in the discretion of the Commissioner, be charged to the person seeking such license.~~

255 ~~(b) If the Commissioner shall find that:~~

256 ~~(1) The financial responsibility, character, and general fitness of the applicant are such~~  
257 ~~as to command the confidence of the public and to warrant a belief that the business will~~  
258 ~~not be operated unfairly or unlawfully contrary to the purposes of this chapter; and~~

259 ~~(2) Allowing the applicant to engage in business will promote the convenience and~~  
260 ~~advantage of the community in which the licensed office is to be located;~~

261 ~~the Commissioner shall grant such application and issue to the applicant a license which~~  
262 ~~shall be authority to engage in the business of making loans pursuant to said license in~~  
263 ~~accordance with this chapter.~~

264 ~~(c) Any demand for a hearing pursuant to this Code section shall specify in what respects~~  
265 ~~such person is aggrieved and the grounds to be relied upon as a basis for the relief to be~~  
266 ~~demand at the hearing. Unless postponed by mutual consent, the hearing shall be held~~  
267 ~~within 30 days after receipt by the Commissioner of the demand for a hearing.~~

268 ~~(d) In the event any person shall purchase substantially all the assets used in a particular~~  
269 ~~office of any existing licensee, the purchaser shall file an application for license; but, if the~~  
270 ~~licensee selling such assets shall surrender his license for such location to the~~

271 ~~Commissioner, the purchaser shall not be required, in order to obtain a license, to show that~~  
272 ~~the convenience and advantage of the community in which the licensed office will be~~  
273 ~~located will be promoted by the establishment or continuance of the proposed business of~~  
274 ~~making loans.~~

275 ~~(e) The Commissioner shall grant or deny an application for a license made under this~~  
276 ~~chapter within 60 days from the date of the filing of such application.~~

277 7-3-10.

278 (a) The department is authorized to:

279 (1) Participate in the Nation-wide Multistate Licensing System and Registry in order to  
280 facilitate the sharing of information and standardization of the licensing and application  
281 processes for persons subject to this chapter;

282 (2) Enter into operating agreements, information sharing agreements, interstate  
283 cooperative agreements, and other contracts necessary for the department's participation  
284 in the Nation-wide Multistate Licensing System and Registry;

285 (3) Disclose or cause to be disclosed without liability, via the Nation-wide Multistate  
286 Licensing System and Registry, applicant and licensee information, including, but not  
287 limited to, violations of this chapter and enforcement actions, to facilitate regulatory  
288 oversight;

289 (4) Request that the Nation-wide Multistate Licensing System and Registry adopt an  
290 appropriate privacy, data security, and security breach notification policy that is in full  
291 compliance with existing state and federal law; and

292 (5) Establish and adopt, by rule and regulation, requirements for participation by  
293 applicants and licensees in the Nation-wide Multistate Licensing System and Registry,  
294 upon the department's determination that each requirement is consistent with both the  
295 public interest and the purposes of this chapter.

296 (b) The department shall enact rules and regulations establishing a process whereby  
297 licensees may challenge information entered by the department into the Nation-wide  
298 Multistate Licensing System and Registry.

299 (c) Regardless of its participation in the Nation-wide Multistate Licensing System and  
300 Registry, the department shall retain full and exclusive authority over determinations of  
301 whether to grant, renew, suspend, or revoke licenses issued under this chapter. Nothing in  
302 this Code section shall be construed to reduce or otherwise limit such authority.

303 (d) Information disclosed through the Nation-wide Multistate Licensing System and  
304 Registry is deemed to be disclosed directly to the department and subject to Code  
305 Section 7-1-70. Such information shall not be disclosed to the public and shall remain  
306 privileged and confidential pursuant to Code Section 7-1-70.

307 7-3-11.

308 (a) The department shall conduct an investigation of every applicant for licensure to  
309 determine the financial responsibility, experience, character, and general fitness of such  
310 applicant. The department may issue the applicant a license to engage in the business of  
311 making small consumer finance loans if the department determines to its general  
312 satisfaction that:

313 (1) The applicant is financially sound and responsible and able to engage in the business  
314 of making small consumer finance loans in an honest, fair, and efficient manner and with  
315 the confidence and trust of the community; and

316 (2) All conditions for licensure set forth in this chapter and in the rules and regulations  
317 of the department have been satisfied.

318 (b) The department shall not issue a license or may revoke a license if it finds that the  
319 applicant or licensee, any individual who is a director, trustee, member, officer, partner,  
320 agent, covered employee, or ultimate equitable owner of the applicant or licensee, or any  
321 individual who directs the affairs of or controls or establishes policy for the applicant or  
322 licensee has been convicted of a felony in any jurisdiction of this state or of a crime in  
323 another state which, if committed within this state, would constitute a felony under the laws  
324 of this state. For the purposes of this chapter, an individual shall be deemed to have been  
325 convicted of a crime if such individual shall have pleaded guilty or nolo contendere to a  
326 charge thereof before a court or federal magistrate or shall have been found guilty thereof  
327 by the decision or judgment of a court or federal magistrate or by the verdict of a jury.  
328 Such conviction shall be considered irrespective of the pronouncement of sentence or the  
329 suspension thereof and regardless of whether first offender treatment without adjudication  
330 of guilt pursuant to the charge was entered or an adjudication or sentence was otherwise  
331 withheld or not entered on that charge, unless and until such plea of guilty or such decision,  
332 judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful  
333 judicial process or until probation, sentence, or both probation and sentence of a first  
334 offender have been successfully completed and documented. Such conviction shall further  
335 be considered unless the individual convicted of the crime shall have received a pardon  
336 therefor from the President of the United States or the governor or other pardoning  
337 authority in the jurisdiction where the conviction occurred or shall have received an official  
338 certification of pardon granted by the state's pardoning body where the conviction occurred  
339 which removes the legal disabilities resulting from such conviction and restores civil and  
340 political rights.

341 (c)(1) The department shall be authorized to order criminal history record checks with  
342 respect to any applicant or licensee, any individual who is a director, trustee, member,  
343 officer, partner, agent, covered employee, or ultimate equitable owner of the applicant or

344 licensee, or any individual who directs the affairs of or controls or establishes policy for  
345 the applicant or licensee. Such criminal history record checks shall be requested by the  
346 department through the Georgia Crime Information Center and the Federal Bureau of  
347 Investigation and the department shall have the authority to receive the results of such  
348 criminal history record checks.

349 (2) Fingerprints shall be in such form and of such quality as shall be acceptable for  
350 submission to the Georgia Crime Information Center and the Federal Bureau of  
351 Investigation. It shall be the duty of each law enforcement agency in this state to  
352 fingerprint those individuals required to be fingerprinted by this Code section.

353 (3) Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit  
354 one set of fingerprints to the Federal Bureau of Investigation for a search of the bureau  
355 records, retain another set of fingerprints, and conduct a search of its own records and  
356 records to which it has access. The Georgia Crime Information Center shall notify the  
357 department in writing of any findings or if there are no such findings. All conviction data  
358 received by the department shall not be public record, shall be privileged, and shall not  
359 be disclosed to any other person or agency except to any person or agency which  
360 otherwise has a legal right to inspect the conviction data. All such information shall be  
361 maintained by the department in conformity with the requirements of the Georgia Crime  
362 Information Center and the Federal Bureau of Investigation. As used in this subsection,  
363 the term 'conviction data' means a record of a finding or verdict of guilty, a plea of guilty,  
364 or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of  
365 the conviction has been sought.

366 (4) At the discretion of the department, fees required for a criminal history record check  
367 by the Georgia Crime Information Center or the Federal Bureau of Investigation shall be  
368 paid by the department or by the applicant or licensee.

369 (5) The department may use the information obtained from fingerprinting and an  
370 individual's criminal history record check only for the purpose of verifying the  
371 identification of such individual and in the official determination of the fitness of such  
372 individual's qualification for initial or continuing licensure for the purpose of allowing  
373 or denying access to legally protected information.

374 (d) Every applicant and licensee shall be authorized and required to obtain and maintain  
375 the results of criminal history record checks on covered employees. Such checks shall be  
376 handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and  
377 the rules and regulations of the Georgia Crime Information Center. Applicants and  
378 licensees shall be responsible for any applicable fees charged by the Georgia Crime  
379 Information Center. An applicant or licensee may only employ individuals whose criminal  
380 history data have been checked and have been found to be in compliance with all lawful

381 requirements prior to the initial date of hire. This provision shall not apply to directors,  
382 officers, partners, or ultimate equitable owners of applicants or licensees or to individuals  
383 who direct the affairs of or control or establish policy for applicants or licensees, whose  
384 background shall have been investigated through the department before taking office,  
385 beginning employment, or securing ownership. Upon receipt of information from the  
386 Georgia Crime Information Center that is incomplete or that indicates a covered employee  
387 has a criminal record in any state other than Georgia, the licensee shall submit to the  
388 department two complete sets of fingerprint cards for such individual, together with the  
389 applicable fees and any other required information. The department shall submit such  
390 fingerprints as provided in subsection (c) of this Code section.

391 (e) Applicants and licensees shall have the primary responsibility for obtaining criminal  
392 history record checks on covered employees. The department shall be entitled to review  
393 the files of any applicant or licensee to determine whether the required checks have been  
394 run and whether all covered employees are qualified. The department shall be authorized  
395 to discuss the status of employee criminal history record checks with applicants and  
396 licensees. Notwithstanding any other provisions in this chapter, the department shall retain  
397 the right to obtain conviction data on covered employees of applicants and licensees.

398 7-3-12.

399 Each licensee shall submit to the Nation-wide Multistate Licensing System and Registry  
400 timely reports of condition, which shall be in such form and shall contain such information  
401 as the department and the Nation-wide Multistate Licensing System and Registry may  
402 require.

403 7-3-13.

404 The unique identifier of any licensee shall be clearly labeled on all advertisements and any  
405 other documents required by rule or regulation of the department.

406 ~~7-3-10~~ 7-3-14.

407 (a) A licensee may engage in the business of making small consumer finance loans at one  
408 or more locations in this state so long as each location is approved by the department and  
409 included in the licensee's application and reports as required by Code Section 7-3-8 and  
410 subsection (d) of Code Section 7-3-15.

411 (b) All licenses issued pursuant to this chapter shall expire on December 31 of each year,  
412 and each application for renewal shall be made annually on or before December 1 of each  
413 year. A license may be renewed by the filing of an application substantially conforming  
414 to the requirements of Code Section 7-3-8 and the department's rules and regulations. No

415 investigation fee shall be payable in connection with such renewal application. However,  
 416 an annual license fee established by rule or regulation of the department to defray the cost  
 417 of supervision shall be paid with each renewal application and shall not be refunded or  
 418 prorated.

419 ~~(a) No more than one place of business shall be maintained under the same license, but the~~  
 420 ~~Commissioner may issue more than one license to the same licensee.~~

421 ~~(b) Each such license issued shall be conspicuously displayed in the place of business for~~  
 422 ~~which granted and shall remain in full force and effect until surrendered, revoked, or~~  
 423 ~~suspended as provided by this chapter.~~

424 ~~(c) Every licensee shall, on or before December 20 of each year, pay to the Commissioner~~  
 425 ~~the sum of \$500.00 for each license held by him as an annual license fee for the succeeding~~  
 426 ~~calendar year.~~

427 ~~(d) If a licensee wishes to move his office within the county, he shall give the~~  
 428 ~~Commissioner written notice thereof, which notice shall specify the address or location to~~  
 429 ~~which the licensee desires to move and shall also set out, in such form as the Commissioner~~  
 430 ~~may require, facts and circumstances which it is contended will show that the removal to~~  
 431 ~~the new location will promote the convenience and advantage of that community.~~  
 432 ~~Thereafter, the Commissioner shall handle this request in the same manner in which he~~  
 433 ~~handles a new application under Code Section 7-3-9, insofar as that Code section is~~  
 434 ~~applicable.~~

435 7-3-15.

436 (a) A license issued pursuant to this chapter shall be kept conspicuously posted in the place  
 437 of business of the licensee.

438 (b) A license issued pursuant to this chapter shall not be transferable or assignable.

439 (c) No licensee shall engage in the business of making small consumer finance loans under  
 440 any name or names other than those authorized by the department in writing.

441 (d) A licensee shall give written notice to the department prior to the operation of any new  
 442 or additional locations that were not reported in either its original or renewal application.  
 443 The notice shall be in such form and contain such information as required by the  
 444 department.

445 7-3-16.

446 (a) A licensee shall give written notice to the department by registered or certified mail of  
 447 any action which has been brought against it by any creditor or claimant where such action  
 448 relates to the activities authorized under this chapter or involves a claim against the bond  
 449 filed with the department under Code Section 7-3-9. The notice shall provide details

450 sufficient to identify the action and shall be sent within 30 days after the commencement  
451 of any such action. The licensee shall also give written notice to the department by  
452 registered or certified mail within 30 days of the entry of any judgment against the licensee.  
453 (b) The corporate surety shall, within ten days after it pays any claim to any creditor or  
454 claimant, give notice to the department by registered or certified mail of such payment with  
455 details sufficient to identify the claimant or creditor and the claim or judgment so paid.  
456 Whenever the principal sum of such bond is reduced by one or more recoveries or  
457 payments thereon, the licensee shall furnish a new or additional bond so that the total or  
458 aggregate principal sum of such bond or bonds shall equal the sum required under Code  
459 Section 7-3-9 or shall furnish an endorsement duly executed by the corporate surety  
460 reinstating the bond to the required principal sum thereof.  
461 (c) A bond filed with the department for the purpose of compliance with Code Section  
462 7-3-9 shall not be canceled by either the licensee or the corporate surety except upon notice  
463 to the department by registered or certified mail or statutory overnight delivery with return  
464 receipt requested, or electronically through the Nation-wide Multistate Licensing System  
465 and Registry, and such cancellation shall be effective no sooner than 30 days after receipt  
466 by the department of such notice and only with respect to any breach of condition occurring  
467 after the effective date of such cancellation.  
468 (d) A licensee shall give written notice to the department by registered or certified mail  
469 within ten days of the following:  
470 (1) Any knowledge or discovery of an act prohibited by Code Section 7-3-11 or  
471 subsection (a) of Code Section 7-3-30;  
472 (2) The discharge of any covered employee for actual or suspected misrepresentations,  
473 dishonest acts, or fraudulent acts;  
474 (3) Any knowledge or discovery of the discharge of a covered employee for actual or  
475 suspected misrepresentations, dishonest acts, or fraudulent acts;  
476 (4) Any knowledge or discovery of an administrative, civil, or criminal action initiated  
477 by any governmental entity against the licensee or any director, officer, partner, agent,  
478 covered employee, or ultimate equitable owner of the licensee, or any individual who  
479 directs the affairs of or controls or establishes policy for the licensee; or  
480 (5) The filing of a petition by or against the licensee under the United States Bankruptcy  
481 Code, 11 U.S.C. Sections 101 through 110, for bankruptcy reorganization or the filing of  
482 a petition by or against the licensee for receivership or the making of a general  
483 assignment for the benefit of its creditors.

484 ~~7-3-11~~ 7-3-17.

485 (a) Except as provided in this Code section, no person shall become an ultimate equitable  
 486 owner of any licensee through acquisition or other change in control or become an  
 487 executive officer of a licensee unless the person has first received written approval for such  
 488 acquisition, change in control, or designation as an executive officer from the department.

489 In order to obtain such approval, such person shall:

490 (1) File an application with the department in such form as the department may prescribe  
 491 from time to time;

492 (2) Provide such other information as the department may require concerning the  
 493 financial responsibility, background, experience, and activities of the applicant, its  
 494 directors and executive officers if a corporation, and its members, if applicable, and of  
 495 any proposed new directors, executive officers, members, or ultimate equitable owners  
 496 of the licensee; and

497 (3) Pay such application fees as the department may prescribe.

498 (b) The department may prescribe additional requirements for approval of such  
 499 acquisition, change in control, or designation as an executive officer through rules and  
 500 regulations.

501 (c) If the application provided for in this Code section is denied, the department shall  
 502 notify the applicant of the denial and the reasons for the denial.

503 ~~In the event a licensee does not begin the operation of business under such license within~~  
 504 ~~a period of 120 days from the date of the issuance of such license or in the event a licensee,~~  
 505 ~~after having begun the operation of business under the license, remains inactive in such~~  
 506 ~~business for a period of 120 days, such license shall be subject to suspension or revocation~~  
 507 ~~by the Commissioner after notice and hearing under the procedure provided in Code~~  
 508 ~~Section 7-3-24 for the revocation or suspension of licenses. Any order or decision of the~~  
 509 ~~Commissioner on such matter shall be subject to review as provided in Code~~  
 510 ~~Section 7-3-24.~~

511 ~~7-3-12~~ 7-3-18.

512 (a) Each licensee shall make, keep, and use in its business such books, accounts, and  
 513 records as the department may require to enforce the provisions of this chapter and the  
 514 rules and regulations promulgated under it. Each licensee shall preserve such books,  
 515 accounts, and records for five years or such greater period of time as prescribed in the  
 516 department's rules and regulations.

517 (b) Records required to be made, kept, and preserved pursuant to subsection (a) of this  
 518 Code section may be maintained in a photographic, electronic, or other similar form.

519 (c) Records required to be made, kept, and preserved pursuant to subsection (a) of this  
 520 Code section may be maintained at a location outside of this state so long as such records  
 521 are transmitted to a location designated by the department within ten days of the date of a  
 522 written request from the department to the licensee.

523 ~~(a) Each licensee shall keep and use in his business sufficient books and records to enable~~  
 524 ~~the Commissioner to determine whether or not the licensee is complying with this chapter~~  
 525 ~~or any other Act under which such licensee is operating, and such licensee shall preserve~~  
 526 ~~such record for at least four years after making the final entry thereon. The renewal or~~  
 527 ~~refinancing of a loan shall not constitute a final entry.~~

528 ~~(b) The Commissioner may, under rules and regulations promulgated by him under the~~  
 529 ~~procedure provided in Code Section 7-3-7, require annual reports from licensees to~~  
 530 ~~facilitate the performance of his duties and to regulate effectively the making of loans~~  
 531 ~~under this chapter.~~

532 ~~7-3-13~~ 7-3-19.

533 No person shall advertise, display, distribute, or broadcast in any manner whatsoever any  
 534 false, misleading, or deceptive statement or representation with regard to the rates, terms,  
 535 or conditions for small consumer finance loans subject to this chapter.

536 ~~7-3-14~~ 7-3-20.

537 Every licensee under this chapter may ~~loan~~ lend any sum of money not exceeding  
 538 \$3,000.00 for a period of 36 months and 15 days or less and may charge, contract for,  
 539 collect, and receive interest and fees and may require the fulfillment of conditions on such  
 540 small consumer finance loans as provided in this Code section:

541 (1) **Interest.** A licensee may charge, contract for, receive, and collect interest at a rate  
 542 not to exceed 10 percent per annum of the face amount of the contract, whether repayable  
 543 in one single payment or repayable in monthly or other periodic installments. On loan  
 544 contracts repayable in 18 months or less, the interest may be discounted in advance; and,  
 545 on contracts repayable over a greater period, the interest shall be added to the principal  
 546 amount of the loan. On all contracts, interest or discount shall be computed  
 547 proportionately on equal calendar months;

548 (2) **Loan fee.** In addition thereto, a licensee may charge, contract for, receive, or collect  
 549 at the time the loan is made a fee in an amount not greater than 8 percent of the first  
 550 \$600.00 of the face amount of the contract plus 4 percent of the excess; provided,  
 551 however, that such fee shall not be charged or collected on that part of a loan which is  
 552 used to pay or apply on a prior loan or installment of a prior loan from the same licensee  
 553 to the same borrower made within the immediately preceding six-month period; provided,

554 however, if the loan balance is \$300.00 or less, the said period shall be two months, not  
 555 six months; provided, further, that nothing contained in this paragraph and paragraph (1)  
 556 of this Code section shall be construed to permit charges, interest, or fees of any nature  
 557 whatsoever in the aggregate in excess of the charges, interest, and fees which would  
 558 constitute a violation of Code Section 7-4-18 and this chapter shall in no way affect Code  
 559 Section 7-4-18. If a borrower prepays his or her entire loan to a licensee and within the  
 560 following 15 days ~~makes~~ obtains a new loan ~~with~~ from that licensee and if this is done  
 561 within the six-month period or the two-month period above described, as may be  
 562 applicable, the fee may be charged only on the excess by which the face amount of the  
 563 new contract exceeds the amount which the borrower repaid to that licensee within the  
 564 said 15 day period;

565 (3) **Insurance premiums.** A licensee may charge and collect from the borrower  
 566 premiums actually paid or to be paid for insurance obtained for the borrower. A licensee  
 567 may accept as security on any loan or advance made under this chapter any one or any  
 568 combination of the following:

569 (A) Insurance on tangible property against substantial risks or loss;

570 (B) Reasonable insurance on the life and health of the principal party; or

571 (C) Reasonable insurance against accident of the principal party;

572 provided, however, that any such insurance shall be reasonably related to the type and  
 573 value of the property insured and to the amount and term of the loan and shall be obtained  
 574 from an insurance company authorized to conduct such business in the State of Georgia  
 575 and at rates lawfully filed by such company with the Commissioner of Insurance and  
 576 through a regular insurance agent licensed by the Commissioner of Insurance; provided,  
 577 further, that the amount of life, health, or accident insurance required as security for loans  
 578 made under this chapter shall not exceed the amount of the loan, including charges, to be  
 579 secured; and the premiums on such insurance required of the principal party obligated  
 580 shall be limited to premiums reasonably based upon reliable actuarial experience and  
 581 sound insurance practice; and the Commissioner of Insurance is authorized and directed  
 582 to promulgate rules and regulations to effectuate this provision related to insurance  
 583 obtained by the borrower in accordance with the spirit and intent thereof. It shall be the  
 584 duty of the Commissioner of Insurance from time to time under the foregoing direction,  
 585 ~~after public hearing in the manner provided in subsection (b) of Code Section 7-3-7 in~~  
 586 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,'  
 587 including the requirements for hearing as stated in that chapter, to determine and  
 588 promulgate the rates and maximum premiums permissible to be charged for life, health,  
 589 and accident insurance required as security for a loan made under this chapter and to  
 590 make regulations incident thereto necessary to effectuate the same; such premiums, when

591 thus established and as changed from time to time in the manner aforesaid, shall be the  
 592 maximum effective and permissible charges under this paragraph. Premiums paid or to  
 593 be paid pursuant to the authority of this paragraph shall not constitute interest. The  
 594 insurance company in turn may pay to the party writing the insurance policy sold in  
 595 connection with the loan a fee or commission in an amount which is reasonable in  
 596 relationship to the transaction and in no event in excess of the amount of fee or  
 597 commission customarily paid within the industry where comparable insurance is sold in  
 598 a transaction not involving credit, as determined by the Commissioner of Insurance;

599 (4) **Late charge.** A licensee may charge and collect from the borrower a late or  
 600 delinquent charge of \$10.00 or an amount equal to 5¢ for each \$1.00 of any installment  
 601 which is not paid within five days from the date such payment is due, whichever is  
 602 greater, provided that this late or delinquent charge shall not be collected more than once  
 603 for the same default; and

604 (5) **Maintenance charge.** In addition thereto, a licensee may contract for, charge,  
 605 receive, and collect a maintenance charge of \$3.00 for each month in the term of the loan  
 606 contract on each loan made, whether repayable in one single payment or repayable in  
 607 weekly, monthly, or other periodic installments. Refunds of unearned maintenance  
 608 charges shall be made in accordance with the method prescribed in Code Section ~~7-3-17~~  
 609 7-3-23, and such maintenance charges will be subject to paragraph (4) of this Code  
 610 section. Nothing contained in Code Section 7-4-18, as now or hereafter amended, shall  
 611 be construed to apply to this paragraph; and loans made in conformity with this paragraph  
 612 shall in no way constitute a violation of Code Section 7-4-18, as now or hereafter  
 613 amended.

614 ~~7-3-15~~ 7-3-21.

615 No licensee shall charge, contract for, or receive any other or further amount in connection  
 616 with any small consumer finance loans authorized by this chapter in addition to those  
 617 provided in Code Section ~~7-3-14~~ 7-3-20, except the actual lawful fees paid to a public  
 618 official or agency of the state for filing, recording, or, on small consumer finance loans  
 619 over \$100.00, the amount of the lawful premiums, no greater than such fees, actually paid  
 620 for insurance against the risk of nonrecording or releasing any instrument securing the  
 621 small consumer finance loan; the court costs and attorney fees authorized by law incurred  
 622 in the collection of any contract in default; and the actual and reasonable expenses of  
 623 repossessing, storing, and selling any collateral pledged as security for any contract in  
 624 default. No licensee shall divide into separate parts any contract for the purpose or with  
 625 the effect of obtaining charges in excess of those authorized by this chapter.

626 ~~7-3-16~~ 7-3-22.

627 No small consumer finance loan shall be made by any licensee for the purpose of paying  
628 all or any part of the amount owed on any note, bill of sale to secure debt, title retention  
629 contract, conditional sales contract, or any other similar contract which has been purchased  
630 by or assigned or transferred to such licensee for a period of at least 90 days from the date  
631 of such purchase or transfer.

632 ~~7-3-17~~ 7-3-23.

633 Notwithstanding the provisions of any contract to the contrary, a borrower may at any time  
634 prepay all or any part of the unpaid balance to become payable under any installment  
635 contract. If the borrower ~~pays the time balance~~ prepays the small consumer finance loan  
636 in full before maturity, the licensee shall refund to ~~him~~ the borrower a portion of the  
637 prepaid interest, calculated in complete even months (odd days omitted), as follows: ~~The~~  
638 the amount of the refund shall represent at least as great a proportion of the total interest  
639 as the sum of the periodical time balance after the date of prepayment bears to the sum of  
640 all periodical time balances under the schedule of payments in the original contract. Where  
641 the amount of the refund due to anticipation of payment is less than \$1.00, no refund need  
642 be made. If the borrower has been required to purchase insurance coverage other than  
643 insurance coverage in a blanket policy when ~~he~~ the borrower has paid no acquisition cost,  
644 ~~he~~ the borrower shall have the option to continue such insurance in force for the balance  
645 of the policy period, with all rights transferred to the borrower or his or her assigns, in  
646 which event no refund of insurance premiums shall be made ~~to him~~.

647 ~~7-3-18~~ 7-3-24.

648 In addition to any applicable disclosure requirements, at the time the small consumer  
649 finance ~~At the time the~~ loan is made, each licensee under this chapter shall deliver to the  
650 borrower or, if there are ~~two or more~~ multiple borrowers, to one of ~~them~~ the borrowers a  
651 copy of the loan contract or a written itemized statement in the English language showing  
652 in clear terms the date and amount of the loan, a schedule of the payments or a description  
653 thereof, the type of security for the loan, the licensee's name and address, the actual amount  
654 of cash advanced to or on behalf of the borrower, the amount of each class of insurance  
655 carried and the premiums paid thereon, and the amount of interest and fees. Each licensee  
656 shall give a receipt for every cash payment made.

657 ~~7-3-19~~ 7-3-25.

658 (a) In addition to all other taxes, fees, license fees, fines, or other charges now or hereafter  
659 levied or assessed, there is levied a tax of 3 percent on the total amount of interest on any

660 small consumer finance loan collected by any person licensed under this chapter from any  
 661 borrower to whom such licensee has made a small consumer finance loan.

662 (b) Said tax is levied and assessed against the person so licensed and shall be paid by such  
 663 person and shall not be added in any manner as an additional fee or charge against the  
 664 borrower. Any person licensed under this chapter who adds such tax in any manner as an  
 665 additional fee or charge against the borrower shall be liable for the recovery of triple the  
 666 amount of such charge by action against the lender in any court of competent jurisdiction.

667 (c) As used in this Code section, the term 'interest collected' means the gross amount of  
 668 interest charged and collected on loan contracts, less any amount of unearned interest  
 669 refunded to borrowers and such interest on such portion of uncollectable accounts that are  
 670 charged off as bad debts by the licensee; except that, for those licensees whose records are  
 671 kept on an accrual basis, the 3 percent tax levied in subsection (a) of this Code section shall  
 672 be remitted on such portion of the interest as accrues during the taxable month period.

673 ~~7-3-20~~ 7-3-26.

674 The tax provided for in Code Section ~~7-3-19~~ 7-3-25 shall be remitted to the ~~Commissioner~~  
 675 ~~on or before the twentieth day of each month for the preceding calendar month~~ department  
 676 at the time and in the manner specified by rules and regulations of the department. The  
 677 ~~Commissioner~~ commissioner and his or her authorized ~~agents~~ examiners and employees  
 678 shall have the right to inspect all records of any person so licensed, and the ~~Commissioner~~  
 679 commissioner is authorized to promulgate rules and regulations relative to the enforcement  
 680 of Code Section ~~7-3-19~~ 7-3-25, this Code section, and Code Section ~~7-3-21~~ 7-3-27.

681 ~~7-3-21~~ 7-3-27.

682 (a) In the event any person fails or refuses to remit the tax required by Code Sections  
 683 7-3-25 and 7-3-26 within the time prescribed, the tax shall bear interest at the rate of 1  
 684 percent per month. Interest shall begin to accrue from the date the tax is due until the date  
 685 the tax is paid. For the purposes of this Code section, any period of less than one month  
 686 shall be considered to be one month.

687 (b) In the event any person fails or refuses to remit the tax required by Code Sections  
 688 ~~7-3-19 and 7-3-20~~ 7-3-25 and 7-3-26 within the time prescribed, there shall be added to the  
 689 tax a penalty equivalent to 25 percent of the tax but in no case shall the penalty so added  
 690 be less than \$5.00. In the event any person fraudulently remits the incorrect tax, there shall  
 691 be added to the tax a penalty equivalent to 50 percent of the tax but in no case shall the  
 692 penalty so added be less than \$5.00. The amounts so added as penalties shall be collected  
 693 as a part of the tax.

694 ~~7-3-22~~ 7-3-28.

695 (a) The department shall investigate and examine the affairs, businesses, premises, and  
 696 records of any licensee. The department may conduct such investigations or examinations  
 697 at least once every 24 months. The department may accept examination reports performed  
 698 and produced by other state or federal agencies in satisfaction of this requirement unless  
 699 the department determines that the examination reports are not available or do not provide  
 700 information necessary to fulfill the responsibilities of the department under this chapter.

701 (b) Notwithstanding subsection (a) of this Code section, the department may alter the  
 702 frequency or scope of investigations or examinations through rules or regulations  
 703 prescribed by the department. In addition, if the department determines that, based on  
 704 records submitted to the department and the past history of operations of the licensee in this  
 705 state, such investigations or examinations are unnecessary, then the department may waive  
 706 such investigations and examinations.

707 (c) In addition to any other authority set forth under this chapter, the department shall be  
 708 authorized to conduct investigations and examinations of applicants, licensees, and any  
 709 person who advertises, solicits, offers, or makes small consumer finance loans as follows:

710 (1) The department shall have the authority to access, receive, and use any books,  
 711 accounts, computer records, files, documents, information, or evidence, including, but not  
 712 limited to:

713 (A) Criminal, civil, and administrative history information, including data related to  
 714 charges that did not result in a conviction;

715 (B) Personal history and experience information, including, but not limited to,  
 716 independent credit reports obtained from a consumer reporting agency described in the  
 717 federal Fair Credit Reporting Act, 15 U.S.C. Section 1681a; and

718 (C) Any other documents, information, or evidence the department deems relevant to  
 719 the inquiry, examination, or investigation regardless of the location, possession, control,  
 720 or custody of such documents, information, or evidence;

721 (2) The department may review, investigate, or examine any licensee or person subject  
 722 to this chapter as often as necessary in order to carry out the purposes of this chapter;

723 (3) Each licensee or person subject to this chapter shall make available to the department,  
 724 upon request, any books, accounts, documents, files, computer records, evidence, or other  
 725 information relating to the activities of engaging in the business of making small  
 726 consumer finance loans;

727 (4) No licensee or person subject to investigation or examination under this chapter shall  
 728 knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, accounts,  
 729 documents, files, computer records, evidence, or other information; and

730 (5) In order to carry out the purposes of this Code section, the department may:

- 731 (A) Enter into agreements or relationships with other government officials or  
732 regulatory associations in order to improve efficiencies and reduce regulatory burden  
733 by sharing resources, documents, records, information, or evidence or by utilizing  
734 standardized or uniform methods or procedures;
- 735 (B) Accept and rely on examination or investigation reports made by other government  
736 officials within or outside this state; and
- 737 (C) Accept audit reports or portions of audit reports made by an independent certified  
738 public accountant on behalf of the licensee or person subject to this chapter covering  
739 the same general subject matter as the audit and may incorporate the audit report in the  
740 report of examination, report of investigation, or other writing of the department.
- 741 (d) Each licensee shall pay an examination fee as established by the rules and regulations  
742 of the department to cover the cost of an examination or investigation.
- 743 (e) The department, in its discretion, may:
- 744 (1) Make such public or private examination or investigation within or outside of this  
745 state as it deems necessary to determine whether any person has violated this chapter, any  
746 rule or regulation, or any order issued under this chapter to aid in the enforcement of this  
747 chapter or to assist in the promulgation of rules and regulations pursuant to this chapter;  
748 (2) Require or permit any person to file a statement in writing, under oath or otherwise,  
749 as to all the facts and circumstances concerning the matter to be investigated;  
750 (3) Request any financial data from an applicant or licensee; and  
751 (4) Conduct an on-site examination of a licensee at any location of the licensee without  
752 prior notice to the licensee.
- 753 (f) For the purpose of conducting any examination or investigation as provided in this  
754 Code section, the department shall have the power to administer oaths; to call any party to  
755 testify under oath in the course of such examinations or investigations; to require the  
756 attendance of witnesses; to require the production of books, accounts, records, documents,  
757 and papers; and to take the depositions of witnesses; and, for such purposes, the department  
758 is authorized to issue a subpoena for any witness or for the production of documentary  
759 evidence. Such subpoenas may be served by certified mail or statutory overnight delivery,  
760 return receipt requested, to the addressee's business or personal mailing address or by  
761 examiners appointed by the department or shall be directed for service to the sheriff of the  
762 county where such witness resides or is found or where the person in custody of any books,  
763 accounts, records, documents, or papers resides or is found.
- 764 (g) The department may issue and apply to enforce subpoenas in this state at the request  
765 of any governmental agency, department, organization, or entity regulating the making of  
766 small consumer finance loans in another state if the activities constituting the alleged

767 violation for which the information is sought would be a violation of this chapter if the  
768 alleged activities had occurred in this state.

769 (h) In case of refusal to obey a subpoena issued under this chapter to any person, a superior  
770 court of appropriate jurisdiction, upon application by the department, may issue to the  
771 person an order requiring him or her to appear before the court to show cause why he or  
772 she should not be held in contempt for refusal to obey the subpoena. Failure to obey a  
773 subpoena may be punished as contempt by the court.

774 (i) Examinations and investigations conducted under this chapter and facts and information  
775 obtained by the department in the course of its duties under this chapter are confidential,  
776 except as provided in this subsection, pursuant to the provisions of Code Section 7-1-70.  
777 In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70, the  
778 department is authorized to share information obtained under this chapter with other state  
779 and federal regulatory agencies or law enforcement authorities. In the case of such sharing,  
780 the safeguards to confidentiality already in place within such agencies or authorities shall  
781 be deemed adequate. The commissioner or an employee specifically designated may  
782 disclose such information as is necessary to conduct a civil or administrative investigation  
783 or proceeding. Information contained in the records of the department that is not  
784 confidential and may be made available to the public either on the department's website or  
785 upon receipt by the department of a written request shall include:

786 (1) The name, business address, and telephone, facsimile, and license numbers of a  
787 licensee;

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

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

790 (4) The business address of a licensee's registered agent for service;

791 (5) The name, business address, telephone number, and facsimile number of all locations  
792 of a licensee;

793 (6) The terms of or a copy of any bond filed by a licensee;

794 (7) Information concerning any violation of this chapter, any rule or regulation, or any  
795 order issued under this chapter, provided that the information is derived from a final order  
796 of the department; and

797 (8) Imposition of an administrative fine or penalty under this chapter.

798 (j) The authority to conduct an examination or investigation as provided for in this Code  
799 section shall remain in effect whether such licensee or person acts or claims to act under  
800 any licensing or registration law of this state or claims to act without such authority.

801 (k) In the absence of malice, fraud, or bad faith, a person is not subject to civil liability  
802 arising out of furnishing the department with information required by this chapter or

803 required by the department under the authority granted in this chapter. No civil cause of  
 804 action of any nature shall arise against such person:

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

808 (2) For any such information furnished to or received from other persons subject to the  
 809 provisions of this chapter; or

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

811 (1) The commissioner or any employee or agent of the department shall not be subject to  
 812 civil liability, and no civil cause of action of any nature shall exist against such persons  
 813 arising out of the performance of activities or duties under this chapter or by publication  
 814 of any report of activities under this Code section.

815 ~~(a) For the purpose of discovering violations of this chapter, the Commissioner or his duly~~  
 816 ~~authorized representative may from time to time examine the books, accounts, papers, and~~  
 817 ~~records of:~~

818 ~~(1) Any licensee;~~

819 ~~(2) Any person who advertises for, solicits, or holds himself out as willing to make loans~~  
 820 ~~in amounts of \$3,000.00 or less; or~~

821 ~~(3) Any person whom the Commissioner has reason to believe is violating or is about to~~  
 822 ~~violate the provisions of this chapter.~~

823 ~~(b) The Commissioner may subpoena witnesses, books, accounts, papers, and records;~~  
 824 ~~administer oaths; hold hearings; and take testimony under oath in conducting examinations~~  
 825 ~~and hearings authorized under this chapter.~~

826 ~~(c) The cost of any such examination, investigation, or hearing, in the discretion of the~~  
 827 ~~Commissioner, may be charged to the licensee or person examined subject to review by the~~  
 828 ~~superior court under Code Section 7-3-27. The examinations, investigations, or hearings~~  
 829 ~~provided for in this Code section may be conducted at the state capitol or, in the discretion~~  
 830 ~~of the Commissioner, in the county wherein the business of the licensee is located or where~~  
 831 ~~the person required to have a license under this chapter is engaging in the business of~~  
 832 ~~making loans or elsewhere, upon the consent of the parties involved.~~

833 ~~7-3-23~~ 7-3-29.

834 (a) The department may issue an order requiring a person to cease and desist immediately  
 835 from unauthorized activities whenever it shall appear to the department that:

836 (1) Except as provided in paragraphs (2) and (3) of this subsection, a person has violated  
 837 any law of this state or any order, rule, or regulation of the department, and such cease

838 and desist order shall be final 20 days from the date of issuance unless the person to  
839 whom it is issued makes a written request within such 20 day period for a hearing;  
840 (2) A person not licensed under this chapter is engaging in or has engaged in activities  
841 requiring licensure under this chapter, and such cease and desist order shall be final 30  
842 days from the date of issuance without the opportunity for an administrative hearing. If  
843 the proper license or evidence of exemption is obtained within such 30 day period, the  
844 order shall be rescinded by the department; or  
845 (3) A person licensed under this chapter has received a notice of bond cancellation under  
846 Code Section 7-3-16, and such cease and desist order shall be final 30 days from the date  
847 of issuance without the opportunity for an administrative hearing. In the event the cease  
848 and desist order becomes final, the license shall expire, and if a new license is desired,  
849 the licensee shall be required to make a new application for a license and pay all  
850 applicable fees as if such person had never been licensed. If the required surety bond is  
851 reinstated or replaced and such documentation is delivered to the department within the  
852 30 day period following the date of issuance of the order, the order shall be rescinded.  
853 (b) The cease and desist order authorized by this Code section shall be in writing, sent by  
854 registered or certified mail or statutory overnight delivery, and addressed to the person's  
855 business address or, if the person is an individual, to either the business address or the  
856 individual's personal address. Any cease and desist order sent to the authorized address  
857 that is returned to the department as 'refused' or 'unclaimed' shall be deemed as received  
858 and lawfully served.  
859 (c) Any hearing authorized under paragraph (1) of subsection (a) of this Code section shall  
860 be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative  
861 Procedure Act.'  
862 (d) Whenever a person shall fail to comply with the terms of a final order or decision of  
863 the department issued pursuant to this chapter, the department may, through the Attorney  
864 General and upon notice of three days to such person, petition the principal court, as  
865 defined in Code Section 7-1-4, for an order directing such person to obey the order of the  
866 department within the period of time as shall be fixed by the court. Upon the filing of such  
867 petition, the court shall allow a motion to show cause why it should not be granted. After  
868 a hearing upon the merits or after failure of such person to appear when ordered, the court  
869 shall grant the petition of the department upon a finding that the order of the department  
870 was properly issued.  
871 (e) Any person who violates the terms of any final order or decision issued pursuant to this  
872 chapter shall be liable for a civil penalty not to exceed \$1,000.00. Each day the violation  
873 continues shall constitute a separate offense. In determining the amount of the penalty, the  
874 department shall take into account the appropriateness of the penalty relative to the size of

875 the financial resources of such person, the good faith efforts of such person to comply with  
 876 the order, the gravity of the violation, the history of previous violations by such person, and  
 877 such other factors or circumstances as shall have contributed to the violation. The  
 878 department may at its discretion compromise or modify any penalty which is subject to  
 879 imposition or has been imposed pursuant to this Code section. Any person assessed as  
 880 provided in this subsection shall have the right to request a hearing into the matter within  
 881 ten days after notification of the assessment has been served upon the licensee involved;  
 882 otherwise, such penalty shall be final except as to judicial review as provided in Code  
 883 Section 7-1-90.

884 (f) The department may bring an appropriate civil action to enforce any provision of this  
 885 chapter, rule or regulation issued hereunder, or order of the department, whether by  
 886 injunction or otherwise, in the superior court of this state having jurisdiction over one or  
 887 more of the defendants.

888 (g) Initial judicial review of the final decision of the department issued pursuant to  
 889 paragraph (1) of subsection (a) of this Code section shall be in accordance with Chapter 13  
 890 of Title 50, the 'Georgia Administrative Procedure Act.' Judicial review of the final  
 891 decision of the department issued pursuant to paragraph (2) or (3) of subsection (a) of this  
 892 Code section shall be in accordance with Code Section 7-1-90.

893 (h) Judicial review of any final order or decision of the department entered pursuant to this  
 894 chapter shall be available solely in the superior court of the county of domicile of the  
 895 department.

896 (i) In addition to any other administrative penalties authorized by this chapter, the  
 897 department may, by rule or regulation, prescribe administrative fines for violations of this  
 898 chapter and any rules and regulations promulgated by the department pursuant to this  
 899 chapter.

900 ~~In the event the Commissioner shall find cause to believe that any person is violating this~~  
 901 ~~chapter or the rules and regulations promulgated by the Commissioner pursuant to this~~  
 902 ~~chapter, he shall make such investigation and have such hearings, before him or such~~  
 903 ~~person as he designates, as will permit him to determine the facts and then may issue a~~  
 904 ~~cease and desist order if he so determines. If such cease and desist order is thereafter~~  
 905 ~~violated by the person against whom it is issued, such violation shall constitute a public~~  
 906 ~~nuisance; and the Commissioner is authorized to seek, and the superior courts shall grant,~~  
 907 ~~injunctions against such person's further violating this chapter or the lawful rules and~~  
 908 ~~regulations promulgated by the Commissioner pursuant to this chapter. Such action for~~  
 909 ~~injunction may be maintained notwithstanding the existence of other legal remedies or the~~  
 910 ~~pendency or successful completion of a criminal prosecution as for a misdemeanor.~~

911 ~~7-3-24~~ 7-3-30.

912 (a) The department may suspend or revoke an original or renewal license issued pursuant  
 913 to this chapter if it finds that any ground or grounds exist which would require or warrant  
 914 the refusal of an application for the issuance or renewal of a license if such an application  
 915 were then before it. The department may also deny an application or suspend or revoke an  
 916 original or renewal license issued pursuant to this chapter if it finds that the licensee or  
 917 applicant has:

918 (1) Committed any fraud, engaged in any dishonest activities, or made any  
 919 misrepresentation;

920 (2) Violated any provisions of this chapter, any rule or regulation issued pursuant thereto,  
 921 any order issued by the department, or any other law in the course of its dealings as a  
 922 licensee;

923 (3) Made a false statement in an original or renewal application for licensure or failed  
 924 to give a true reply to a question in an original or renewal application;

925 (4) Demonstrated incompetency or untrustworthiness to act as a licensee;

926 (5) Failed to pay, within 30 days after it becomes final, a judgment recovered in any  
 927 court by a claimant or creditor in an action arising out of the licensee's business of  
 928 making small consumer finance loans;

929 (6) Purposely withheld, deleted, destroyed, or altered information requested by the  
 930 department or made false statements or misrepresentations to the department;

931 (7) Operated in an unsafe or unsound manner; or

932 (8) Failed or refused to remit the tax required by Code Sections 7-3-25 and 7-3-26 within  
 933 the required time period.

934 (b) The department shall not issue a license to an applicant and may revoke a license if  
 935 such applicant or licensee is or was subject to, or employs any person subject to, a final  
 936 cease and desist order that was issued within the preceding five years, if such order was  
 937 based on a violation of this chapter. Each applicant or licensee shall, before hiring an  
 938 employee, examine the department's public records to determine that such employee is not  
 939 subject to a cease and desist order.

940 (c) The department shall not issue a license to an applicant and may revoke a license if  
 941 such applicant or licensee is or was subject to a licence revocation, or employs any person  
 942 whose license issued pursuant to this chapter was revoked, within the preceding five years.  
 943 Each applicant or licensee shall, before hiring an employee, examine the department's  
 944 public records to determine that such employee's license was not revoked.

945 (d) The department shall not issue a license to an applicant and may revoke a license if it  
 946 finds that any person who is a director, officer, partner, ultimate equitable owner of the  
 947 applicant or licensee, or any individual who directs the affairs of or controls or establishes

948 policy for the applicant or licensee, has been in one or more of those roles for a licensee  
949 whose application has been denied or license revoked or suspended within five years of the  
950 date of the application.

951 (e) Notice of the department's intention to enter an order denying an application for a  
952 license or suspending or revoking a license shall be given to the applicant or licensee in  
953 writing, sent by registered or certified mail or statutory overnight delivery addressed to the  
954 principal place of business of such applicant or licensee. If a person refuses to accept  
955 service of the notice by registered or certified mail or statutory overnight delivery, the  
956 notice of an order shall be served by the commissioner or the commissioner's authorized  
957 representative under any other method of lawful service, and the person shall be personally  
958 liable to the commissioner for a sum equal to the actual costs incurred to serve the notice  
959 of an order. This liability shall be paid upon notice and demand by the commissioner or  
960 the commissioner's authorized representative and shall be assessed and collected in the  
961 same manner as other fees or fines administered by the commissioner. Within 20 days of  
962 the date of the notice of intention to enter an order of denial, suspension, or revocation  
963 under this chapter, the applicant or licensee may request in writing a hearing to contest the  
964 order. If a hearing is not requested in writing within 20 days of the date of such notice of  
965 intention, the department shall enter a final order regarding the denial, suspension, or  
966 revocation. Any final order of the department denying, suspending, or revoking a license  
967 shall state the grounds upon which it is based and shall be effective on the date of issuance.  
968 A copy thereof shall be forwarded promptly pursuant to this subsection.

969 (f) A decision by the department denying an application for licensure or an order of the  
970 department suspending or revoking a license shall be subject to review in accordance with  
971 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

972 (g) Whenever the department initiates an administrative action against a current licensee  
973 or an applicant, the department may pursue such action to its conclusion despite the fact  
974 that a licensee may withdraw or fail to renew its license or an applicant may withdraw its  
975 application.

976 (h) The suspension, revocation, surrender, or expiration of a license shall not in and of  
977 itself alter, ameliorate, or void duties, defenses, and liabilities of both the borrower and  
978 licensee, including those related to the enforcement and collection of small consumer  
979 finance loans, under any existing contract entered into by the licensee prior to such  
980 suspension, revocation, surrender, or expiration of such license.

981 (i) The provisions of this Code section shall not apply when an application for a license  
982 is denied or a license is suspended as provided in Code Section 7-3-31.

983 ~~(a) The Commissioner, upon ten days' written notice in the form of a show cause order to~~  
984 ~~the licensee stating his contemplated action and in general the ground therefor and after~~

985 ~~giving the licensee a reasonable opportunity to be heard, subject to the right to review~~  
 986 ~~provided in Code Section 7-3-27, may by order in writing suspend or revoke any license~~  
 987 ~~issued under this chapter if the Commissioner shall find that:~~

988 (1) ~~The licensee has failed to pay the annual license fee or any fee required under this~~  
 989 ~~chapter; or~~

990 (2) ~~The licensee has violated any provision of this chapter or any rule or regulation~~  
 991 ~~promulgated by the Commissioner under this chapter or has violated the terms of any~~  
 992 ~~cease or desist order entered by the Commissioner under Code Section 7-3-23.~~

993 (b) ~~Any such suspension or revocation shall not become final pending and subject to the~~  
 994 ~~right of review provided in Code Section 7-3-27, but the court shall have and is granted~~  
 995 ~~power to enter such order as justice shall require pending hearing of such appeal. The court~~  
 996 ~~upon such appeal may tax the cost, including the cost of the hearing before the~~  
 997 ~~Commissioner, against the losing party.~~

998 (c) ~~No suspension, revocation, relinquishment, or expiration of any license shall invalidate,~~  
 999 ~~impair, or affect the legality or obligations of any preexisting contracts or prevent the~~  
 1000 ~~enforcement and collection thereof.~~

1001 7-3-31.

1002 (a) Where an applicant or licensee has been found to be a borrower in default, as defined  
 1003 in Code Section 20-3-295, such action shall be sufficient grounds for denial of an  
 1004 application or suspension of a license. In such actions, the hearing and appeal procedures  
 1005 provided for in said Code section shall be the only procedures required under this chapter.  
 1006 The department shall be permitted to share, without liability, information on its  
 1007 applications or other forms with appropriate state agencies to assist them in collecting  
 1008 outstanding student loan debt.

1009 (b) Where an applicant or licensee has been found to be noncompliant with an order for  
 1010 child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action shall be  
 1011 sufficient grounds for denial of an application or suspension of a license. In such actions,  
 1012 the hearing and appeal procedures provided for in Code Section 19-6-28.1 or 19-11-9.3  
 1013 shall be the only such procedures required under this chapter. The department shall be  
 1014 permitted to share, without liability, information on its applications or other forms with  
 1015 appropriate state agencies to assist them in recovering child support.

1016 ~~7-3-25~~ 7-3-32.

1017 (a) Any license shall be subject to suspension or revocation, after notice and hearing as  
 1018 provided for in Code Section ~~7-3-24~~ 7-3-30, in the event unreasonable collection tactics  
 1019 shall be willfully used by the licensee or any employee or agent thereof. Unreasonable

1020 collection tactics shall include, but not be limited to, any conduct by the licensee or any  
1021 employee or agent thereof which:

1022 (1) Causes the borrower or any member of his or her family to suffer bodily injury or  
1023 physical harm;

1024 (2) Constitutes a willful or intentional trespass by force of the borrower's home or ~~his~~  
1025 personal property without process of law;

1026 (3) Holds up the borrower to public ridicule or unreasonably degrades ~~him~~ the borrower  
1027 in the presence of ~~his~~ neighbors or business associates;

1028 (4) Involves use of printed material which simulates or resembles a summons, warrant,  
1029 or other legal process; or

1030 (5) Although otherwise lawful, occurs at an unreasonable hour of the night. Attempts  
1031 to make collections by means of personal visits, telephone calls, and the like shall be  
1032 deemed to occur at an unreasonable hour of the night if they occur between the hours of  
1033 10:00 P.M. and 5:00 A.M.

1034 ~~(b) Any order or decision of the Commissioner on the matter of suspension or revocation~~  
1035 ~~shall be subject to review as provided for in Code Section 7-3-27.~~

1036 ~~7-3-26.~~

1037 ~~In addition to all other penalties provided for under this chapter, the Commissioner shall~~  
1038 ~~have authority to place any licensee on probation for a period of time not to exceed one~~  
1039 ~~year for each and every act or violation of this chapter or of the rules and regulations of the~~  
1040 ~~Commissioner and may subject such licensee to a monetary penalty of up to \$1,000.00 for~~  
1041 ~~each and every act or violation of this chapter or of the rules and regulations of the~~  
1042 ~~Commissioner. If the licensee knew or reasonably should have known he was in violation~~  
1043 ~~of this chapter or the rules and regulations of the Commissioner, the monetary penalty~~  
1044 ~~provided for in this Code section may be increased to an amount up to \$5,000.00 for each~~  
1045 ~~and every act or violation.~~

1046 ~~7-3-27.~~

1047 ~~The decision of the Commissioner in granting or refusing to grant a license and in revoking~~  
1048 ~~or suspending such license and in any other order or decision authorized in this chapter~~  
1049 ~~shall be final, conclusive, and binding as to all determinations of fact made by him; but any~~  
1050 ~~applicant or licensee who deems himself aggrieved may have such decision reviewed under~~  
1051 ~~Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' for the review of~~  
1052 ~~contested cases.~~

1053 ~~7-3-28~~ 7-3-33.

1054 Nothing in this chapter shall be construed as repealing Code Section 7-4-4.

1055 ~~7-3-29~~ 7-3-34.

1056 (a) Any person and the several members, officers, directors, trustees, partners, agents, and  
 1057 employees of such person that willfully engage in the business of making small consumer  
 1058 finance loans without a license or exemption shall be guilty of a felony and punished as  
 1059 provided in Code Section 7-1-845.

1060 (b) Any person who ~~shall make loans under this chapter without first obtaining a license~~  
 1061 ~~or who shall make~~ makes a false statement under oath in an application for a license under  
 1062 this chapter or who ~~shall do business~~ engages in the business of making small consumer  
 1063 finance loans while the license of such person under this chapter is suspended or revoked  
 1064 shall be guilty of a misdemeanor; ~~and any.~~

1065 (c) Any contract made under this chapter by such a person guilty of a felony or  
 1066 misdemeanor under subsection (a) or (b) of this Code section shall be null and void.

1067 ~~(b)~~(d) Except as otherwise provided in this chapter, any duly licensed lender who fails to  
 1068 comply with this chapter in connection with a small consumer finance loan under this  
 1069 chapter shall be liable to the borrower or borrowers thereon for a single penalty in an  
 1070 amount equal to twice the amount of all interest and loan fees charged to said borrower or  
 1071 borrowers on the most recent loan made by the lender to said borrower or borrowers;  
 1072 provided, however, that the liability under this subsection shall not be less than \$100.00.

1073 ~~(c)~~(e) A lender duly licensed under this chapter has no liability under subsection ~~(b)~~ (d)  
 1074 of this Code section if, within 15 days after discovering an error or violation and prior to  
 1075 the institution of an action under this Code section or the receipt of written notice of the  
 1076 error or violation, the lender notifies the person concerned of the error or violation and  
 1077 makes ~~whatever~~ the necessary adjustments in the appropriate account ~~are necessary~~ to  
 1078 ensure that such person will not be required to pay charges in excess of those permitted by  
 1079 this chapter.

1080 ~~(d)~~(f) A lender may not be held liable in any action brought under this Code section for a  
 1081 violation of this chapter if the lender shows by a preponderance of the evidence that the  
 1082 violation was not intentional and resulted from a bona fide clerical or typographical error  
 1083 notwithstanding the maintenance of procedures reasonably adopted to avoid any such error  
 1084 and makes the necessary adjustments in the appropriate account to ensure that such person  
 1085 will not be required to pay charges in excess of those permitted by this chapter or other  
 1086 applicable law.

1087 ~~(e)~~(g) A claim of violation of this chapter against a duly licensed lender may be asserted  
 1088 in an individual action only and may not be the subject of a class action under Code Section

1089 9-11-23 or any other provision of law. A claim of violation of this chapter against an  
 1090 unlicensed lender may be asserted in a class action under Code Section 9-11-23 or any  
 1091 other provision of law.

1092 ~~(f)~~(h) If a contract is made in good faith in conformity with an interpretation of this chapter  
 1093 by the appellate courts of this state or in a rule or regulation officially promulgated by the  
 1094 Commissioner after public hearings, no provision in this Code section imposing any  
 1095 penalty shall apply, notwithstanding that, after such contract is made, such rule or  
 1096 regulation is amended, rescinded, or determined by judicial or other authority to be invalid  
 1097 for any reason.

1098 ~~(g)~~(i) Any lender duly licensed under this chapter who shall knowingly and willfully with  
 1099 intent to defraud a borrower make a contract in violation of this chapter shall be guilty of  
 1100 a misdemeanor, and the contract so made shall be null and void.

1101 ~~(h) No person may, more than one year after April 9, 1980, assert or contend offensively~~  
 1102 ~~or defensively in any court that a contract predating April 9, 1980, is null and void or is~~  
 1103 ~~illegal, void, invalid, or not good consideration for a renewal or refinanced contract. This~~  
 1104 ~~subsection is a statute of repose and limitation, barring such remedies, and only such~~  
 1105 ~~remedies, as of that date; provided, however, that after that date a borrower or borrowers~~  
 1106 ~~on a contract predating April 9, 1980, shall be entitled to the appropriate penalty provided~~  
 1107 ~~under subsections (a) through (g) of this Code section, but such right to said penalty shall~~  
 1108 ~~not in any way adversely affect the validity of any renewal or refinanced contract."~~

## 1109 SECTION 2.

1110 Code Section 7-4-19 of the Official Code of Georgia Annotated, relating to civil action to  
 1111 enforce chapter relative to interest and usury, is amended as follows:

1112 "7-4-19.

1113 The Department of Banking and Finance ~~or the Industrial Loan Commissioner~~ may bring  
 1114 an appropriate civil action to enforce any provision of this chapter whether by injunction  
 1115 or otherwise in any superior court of this state having jurisdiction over one or more  
 1116 defendants. In the case of a loan made pursuant to this chapter by a licensee under  
 1117 Chapter 3 of this title, relating to ~~industrial loans, such action shall be brought by the~~  
 1118 ~~Industrial Loan Commissioner. In the case of small consumer finance loans or any other~~  
 1119 ~~loan, the action shall be brought by the Department of Banking and Finance."~~

## 1120 SECTION 3.

1121 Code Section 16-17-1 of the Official Code of Georgia Annotated, relating to "payday  
 1122 lending" defined, legislative findings, prohibited activity, and no impairment of agencies with  
 1123 concurrent jurisdiction, is amended as follows:

1124 "16-17-1.

1125 (a) Without limiting in any manner the scope of this chapter, 'payday lending' as used in  
1126 this chapter encompasses all transactions in which funds are advanced to be repaid at a later  
1127 date, notwithstanding the fact that the transaction contains one or more other elements and  
1128 a 'payday lender' shall be one who engages in such transactions. This definition of 'payday  
1129 lending' expressly incorporates the exceptions and examples contained in subsections (a)  
1130 and (b) of Code Section 16-17-2.

1131 (b) Despite the fact that the Attorney General of the State of Georgia has opined in Official  
1132 Opinion 2002-3 entered on June 27, 2002, that payday lending is in violation of Georgia  
1133 law and despite the fact that ~~the Industrial Loan Commissioner has issued~~ cease and desist  
1134 orders against various payday lenders in the State of Georgia have been issued, the General  
1135 Assembly has determined that payday lending continues in the State of Georgia and that  
1136 there are not sufficient deterrents in the State of Georgia to cause this illegal activity to  
1137 cease.

1138 (c) The General Assembly has determined that various payday lenders have created certain  
1139 schemes and methods in order to attempt to disguise these transactions or to cause these  
1140 transactions to appear to be 'loans' made by a national or state bank chartered in another  
1141 state in which this type of lending is unregulated, even though the majority of the revenues  
1142 in this lending method are paid to the payday lender. The General Assembly has further  
1143 determined that payday lending, despite the illegality of such activity, continues to grow  
1144 in the State of Georgia and is having an adverse effect upon military personnel, the elderly,  
1145 the economically disadvantaged, and other citizens of the State of Georgia. The General  
1146 Assembly has further determined that substantial criminal and civil penalties over and  
1147 above those currently existing under state law are necessary in order to prohibit this activity  
1148 in the State of Georgia and to cause the cessation of this activity once and for all. The  
1149 General Assembly further declares that these types of loans are currently illegal and are in  
1150 violation of Code Section 7-4-2. The General Assembly declares that the use of agency or  
1151 partnership agreements between in-state entities and out-of-state banks, whereby the  
1152 in-state agent holds a predominant economic interest in the revenues generated by payday  
1153 loans made to Georgia residents, is a scheme or contrivance by which the agent seeks to  
1154 circumvent Chapter 3 of Title 7, the 'Georgia ~~Industrial~~ Small Consumer Finance Loan  
1155 Act,' and the usury statutes of this state.

1156 (d) Payday lending involves relatively small loans and does not encompass loans that  
1157 involve interstate commerce. Certain payday lenders have attempted to use forum selection  
1158 clauses contained in payday loan documents in order to avoid the courts of the State of  
1159 Georgia, and the General Assembly has determined that such practices are unconscionable  
1160 and should be prohibited.

1161 (e) Without limiting in any manner the scope of this chapter, the General Assembly  
 1162 declares that it is the general intent of this chapter to reiterate that in the State of Georgia  
 1163 the practice of engaging in activities commonly referred to as payday lending, deferred  
 1164 presentment services, or advance cash services and other similar activities are currently  
 1165 illegal and to strengthen the penalties for those engaging in such activities.

1166 (f) This chapter in no way impairs or restricts the authority granted to the commissioner  
 1167 of banking and finance, ~~the Industrial Loan Commissioner~~, or any other regulatory  
 1168 authority with concurrent jurisdiction over the matters stated in this chapter."

#### 1169 SECTION 4.

1170 Chapter 14 of the Title 45 of the Official Code of Georgia Annotated, relating to the  
 1171 Commissioner of Insurance, is amended by revising Code Section 45-14-3, relating to duties  
 1172 as Safety Fire Commissioner and Industrial Loan Commissioner, as follows:

1173 "45-14-3.

1174 The Commissioner of Insurance shall be the Safety Fire Commissioner ~~and the Industrial~~  
 1175 ~~Loan Commissioner.~~"

#### 1176 SECTION 5.

1177 Said chapter is further amended by revising Code Section 45-14-5, relating to seal, as  
 1178 follows:

1179 "45-14-5.

1180 The Commissioner of Insurance; and Safety Fire Commissioner, ~~and Industrial Loan~~  
 1181 ~~Commissioner~~ shall have an official seal for each office of such design as he or she shall  
 1182 select with the approval of the Governor."

#### 1183 SECTION 6.

1184 The Official Code of Georgia Annotated is amended by replacing "industrial loan" with  
 1185 "small consumer finance loan"; "industrial loans" with "small consumer finance loans"; and  
 1186 "Industrial Loan Commissioner" with "small consumer finance loan commissioner" wherever  
 1187 the former phrases occur in:

1188 (1) Code Section 7-4-19, relating to civil action to enforce chapter relative to interest and  
 1189 usury.

1190 (2) Code Section 10-1-2, relating to definitions and construction relative to retail installment  
 1191 and home solicitation sales.

1192 (3) Code Section 10-1-31, relating to definitions and construction relative to motor vehicle  
 1193 sales financing.

- 1194 (4) Code Section 10-1-33.1, relating to advancement of money for satisfaction of lease, lien,  
1195 or security interest in motor vehicle.
- 1196 (5) Code Section 10-1-42, relating to advancement of money to satisfy lease, lien, or security  
1197 interest in motor vehicle and inclusion in gross capitalized cost.
- 1198 (6) Code Section 10-5-2, relating to definitions relative to Georgia uniform securities.
- 1199 (7) Code Section 13-1-14, relating to collection of closing fees for contracts for the advance  
1200 of money or the extension of credit, refund of closing fees in certain instances, and limited  
1201 application.
- 1202 (8) Code Section 13-1-15, relating to when a convenience fee is appropriate.

1203

**SECTION 7.**

1204 The Official Code of Georgia Annotated is amended by replacing "Georgia Industrial Loan  
1205 Act" with "Georgia Small Consumer Finance Loan Act" wherever the former phrase occurs  
1206 in:

- 1207 (1) Code Section 7-1-1001, relating to registration requirements for mortgage lenders and  
1208 brokers and exemptions for certain persons and entities.
- 1209 (2) Code Section 7-4-2, relating to legal rate of interest, maximum rate of interest generally,  
1210 and certain items not considered interest.
- 1211 (3) Code Section 16-17-2, relating prohibition on loans of less than \$3,000.00, exceptions,  
1212 and penalty for violations.
- 1213 (4) Code Section 18-5-3, relating to exemption for debt adjustment by certain individuals  
1214 or entities.

1215

**SECTION 8.**

1216 All laws and parts of laws in conflict with this Act are repealed.