

Senate Bill 329

By: Senators Robertson of the 29th, Hufstetler of the 52nd, Karinshak of the 48th, Harbison of the 15th and Rahman of the 5th

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 enact the "Motor Vehicle Title Loan Act"; to provide for legislative findings; to
3 provide for a short title; to provide for definitions; to authorize the Department of Banking
4 and Finance to license and regulate motor vehicle title lenders; to provide for procedures,
5 conditions, and limitations relative to motor vehicle title loans; to establish licensing
6 requirements; to authorize the department to use the Nationwide Multistate Licensing System
7 and Registry; to require the investigation and examination of applicants and licensees; to
8 provide for fees; to establish record keeping, bond, and reporting requirements; to require
9 approval of certain licensee changes; to establish procedures for unauthorized activities; to
10 provide for loan agreements; to limit terms and charges for motor vehicle title loans; to
11 provide for rights and requirements of lenders and borrowers in case of default; to provide
12 for prohibitions; to provide for criminal penalties; to allow certain legal actions; to amend
13 Chapter 47 of Title 43 and Title 44 of the Official Code of Georgia Annotated, relating to
14 used motor vehicle and used motor vehicle parts dealers and property, respectively, so as to
15 make conforming changes relative to pawnbrokers; to provide for related matters; to provide
16 for contingent effective dates; to provide for applicability; to repeal conflicting laws; and for
17 other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

20 The General Assembly finds and declares that the making of motor vehicle title loans
21 vitally affects the general economy of Georgia and the public interest and welfare of its
22 citizens; therefore, it is the policy of Georgia and the purpose of this chapter to:

- 23 (1) Ensure a sound system of making motor vehicle title loans through state-wide
24 licensing of motor vehicle title lenders by the Department of Banking and Finance;
25 (2) Establish licensing requirements for motor vehicle title lenders;

- 26 (3) Provide for the examination and regulation of motor vehicle title lenders by the
 27 Department of Banking and Finance; and
 28 (4) Ensure financial responsibility to the public.

29 **SECTION 2.**

30 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is
 31 amended by adding a new chapter to read as follows:

32 "CHAPTER 3A

33 ARTICLE 1

34 7-3A-1.

35 This chapter shall be known and may be cited as the 'Motor Vehicle Title Loan Act.'

36 7-3A-2.

37 As used in this chapter, the term:

38 (1) 'Annual percentage rate' means an annual percentage rate as determined pursuant to
 39 the federal Truth in Lending Act, 15 U.S.C. Section 1606, and its implementing
 40 regulations.

41 (2) 'Covered employee' means any employee of a licensee engaged in any function
 42 related to making title loans.

43 (3) 'Department' means the Department of Banking and Finance.

44 (4) 'Executive officer' means an individual who performs significant managerial,
 45 supervisory, or policy-making functions on behalf of an organization, including, but not
 46 limited to, the chief executive officer, president, chief financial officer, chief operating
 47 officer, secretary, and treasurer.

48 (5) 'Individual' means a natural person.

49 (6) 'License' means a license issued by the department under this chapter.

50 (7) 'Licensee' means a person that has obtained a license under this chapter.

51 (8) 'Misrepresent' means to make a false statement of a substantive fact or to engage in
 52 any conduct which leads to a false belief which is material to the transaction.

53 (9) 'Month' means the period of time from one date in a calendar month to the
 54 corresponding date in the following calendar month, but if there is no such corresponding
 55 date, then the last day of such following month.

56 (10) 'Motor vehicle' means every self-propelled vehicle intended primarily for use and
 57 operation on the public highways; provided, however, that such term shall not include a
 58 mobile home as such term is defined in Code Section 8-2-160.

59 (11) 'Motor vehicle title lender' or 'title lender' means any person that engages in the
 60 business of making motor vehicle title loans.

61 (12) 'Motor vehicle title loan' or 'title loan' means a loan secured by the title to a motor
 62 vehicle, but shall not include extensions of credit for the purpose of financing the
 63 purchase of a motor vehicle or of refinancing a purchase money loan that is secured by
 64 a lien on the motor vehicle.

65 (13) 'Motor vehicle title loan agreement' or 'loan agreement' means a written document
 66 that sets out the terms and conditions of the title loan.

67 (14) 'Nationwide Multistate Licensing System and Registry' means a licensing system
 68 developed and maintained by the Conference of State Bank Supervisors and the
 69 American Association of Residential Mortgage Regulators for the licensing and
 70 registration of certain persons engaged in nondepository activities.

71 (15) 'Owner' means a person that:

72 (A) Owns, directly or indirectly, a 10 percent or more interest in a corporation or any
 73 other form of business organization;

74 (B) Owns, directly or indirectly, 10 percent or more of the voting shares of any
 75 corporation or any other form of business organization; or

76 (C) Possesses, either directly or indirectly, the power to direct or cause the direction
 77 of the management or policies of a corporation or any other form of business
 78 organization, regardless of whether such person owns or controls such interest through
 79 one or more individuals or one or more proxies, powers of attorney, nominees,
 80 corporations, associations, limited liability companies, partnerships, trusts, joint stock
 81 companies, other entities or devices, or any combination thereof.

82 (16) 'Person' means any individual, sole proprietorship, corporation, limited liability
 83 company, partnership, trust, or any other group of individuals, however organized.

84 (17) 'Unique identifier' means a number or other identifier assigned by protocols
 85 established by the Nationwide Multistate Licensing System and Registry.

86 7-3A-3.

87 (a) No person shall engage in the business of making motor vehicle title loans in Georgia
 88 unless such person is licensed by the department in accordance with this chapter or exempt
 89 from licensure as provided in Code Section 7-3A-4.

90 (b) Any title loan made by a person without a license, unless such loan is made by a person
 91 exempt from licensure, shall be void, and any right to collect any money in connection with
 92 such loan shall be forfeited. The person making a loan voided pursuant to this Code
 93 section shall promptly refund any money paid and return to the borrower the motor vehicle
 94 title and, if applicable, the motor vehicle or its fair market value.

95 (c) Regardless of whether the person has a physical location in this state, no person shall
 96 engage in any device, subterfuge, or pretense to evade the requirements of this chapter
 97 through any method, including, but not limited to:

98 (1) Making loans disguised as a personal property, sale, or leaseback transaction;

99 (2) Disguising loan proceeds as a cash rebate for the pretextual installment sale of goods
 100 or services; and

101 (3) Making, offering, guaranteeing, assisting with, or arranging for a borrower to obtain
 102 a loan with a greater rate of interest than is permitted by this chapter through any method.

103 (d) Any borrower injured by a violation of this Code section may bring a civil action,
 104 within three years of discovering the violation, in a court of competent jurisdiction to
 105 recover the motor vehicle title, the motor vehicle or its fair market value, all amounts paid,
 106 and reasonable attorney's fees.

107 7-3A-4.

108 The requirements for licensure set forth in this chapter shall not apply to:

109 (1) Any state or federally chartered bank, credit union, savings and loan association, or
 110 savings, bank with deposits that are federally insured; or

111 (2) An individual employed by a licensee or any person exempt from the licensing
 112 requirements of this chapter when acting within the scope of employment and under the
 113 supervision of the licensee or exempted person as an employee and not as an independent
 114 contractor.

115 ARTICLE 2

116 7-3A-10.

117 Each applicant for an original or renewal license under this chapter shall:

118 (1) Submit an application in writing, under oath, and in such form as the department may
 119 prescribe;

120 (2) Furnish to the Nationwide Multistate Licensing System and Registry the following
 121 information:

122 (A) The legal name and principal office address of the applicant;

123 (B) The names and residence and business addresses of each owner and executive
 124 officer of the applicant;

125 (C) The address of each location where the applicant will engage in the business of
 126 making title loans in this state; and

127 (D) Any name under which the applicant will engage in the business of making title
 128 loans in this state;

- 129 (3) Submit such other data, financial statements, and pertinent information as the
130 department may require with respect to the applicant or its owners or executive officers;
131 and
132 (4) Pay a nonrefundable application and supervision fee as prescribed by rule or
133 regulation of the department.

134 7-3A-11.

135 (a) An applicant shall provide with its application a corporate surety bond issued by a
136 bonding company or insurance company authorized to do business in this state and
137 approved by the department.

138 (b) The bond shall:

139 (1) Be in a form satisfactory to the department;

140 (2) Be in the aggregate amount of \$25,000.00 for the primary location to be operated by
141 a licensee plus \$5,000.00 for each additional location to be operated by such licensee;

142 (3) Run to the State of Georgia for the benefit of the department or any claimant or
143 creditor against a licensee arising out of the licensee's business of making title loans;

144 (4) Require a licensee to pay any and all money for the benefit of any person damaged
145 by noncompliance of the licensee with this chapter, with rules, regulations, or orders
146 issued by the department pursuant to this chapter, or with any condition of the bond; and

147 (5) Require a licensee to pay any and all money that may become due and owing to any
148 creditor of or claimant against the licensee arising out of the licensee's business of making
149 title loans.

150 (c) Payments due under the bond shall include money owed to the department for fees for
151 investigation or examination or fines or penalties for noncompliance of the licensee with
152 this chapter or rules, regulations, or orders issued pursuant to this chapter.

153 (d) Claimants or creditors against the licensee may bring an action directly on the bond.

154 (e) In no event shall the aggregate liability of the surety exceed the principal sum of the
155 face amount of the bond.

156 (f) In the event that the principal sum of the bond is reduced by one or more recoveries or
157 payments thereon, a licensee shall:

158 (1) Provide a new or additional bond so that the total or aggregate principal sum of such
159 bond or bonds equals the sum required under subsection (b) of this Code section; or

160 (2) Provide an endorsement duly executed by the corporate surety reinstating the bond
161 to the required principal sum thereof.

162 (g) A bond shall not be canceled by either the licensee or the corporate surety except upon
163 notice to the department electronically through the Nationwide Multistate Licensing
164 System and Registry, and such cancellation shall be effective no sooner than 30 days after

165 receipt by the department of such notice and only with respect to any breach of condition
 166 occurring after the effective date of such cancellation.

167 7-3A-12.

168 (a) The department shall conduct an investigation of every applicant for licensure as it may
 169 deem necessary to ascertain whether it should issue such applicant a license. The
 170 department shall exercise its discretion in its consideration of an application for licensure
 171 pursuant to this chapter; provided, however, that the department shall not approve an
 172 application until it has satisfactorily ascertained that:

173 (1) The applicant is financially sound and responsible and able to engage in the business
 174 of making title loans in an honest, fair, and efficient manner and with the confidence and
 175 trust of the community; and

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

178 (b) No license shall be transferable or assignable.

179 (c) Each license shall expire on December 31 of each year.

180 (d) The department shall promulgate rules and regulations regarding the time frame by
 181 which all persons must submit an original or renewal application for licensure.

182 7-3A-13.

183 (a) The department is authorized to:

184 (1) Participate in the Nationwide Multistate Licensing System and Registry to facilitate
 185 the sharing of information and standardization of the licensing and application processes
 186 for persons subject to this chapter;

187 (2) Enter into operating agreements, information sharing agreements, interstate
 188 cooperative agreements, and other contracts necessary for the department's participation
 189 in the Nationwide Multistate Licensing System and Registry;

190 (3) Disclose or cause to be disclosed without liability, via the Nationwide Multistate
 191 Licensing System and Registry, applicant and licensee information, including, but not
 192 limited to, violations of this chapter and enforcement actions, to facilitate regulatory
 193 oversight;

194 (4) Request that the Nationwide Multistate Licensing System and Registry adopt an
 195 appropriate privacy, data security, and security breach notification policy that is in full
 196 compliance with existing state and federal law; and

197 (5) Establish and adopt, by rule and regulation, requirements for participation by
 198 applicants and licensees in the Nationwide Multistate Licensing System and Registry

199 upon the department's determination that each requirement is consistent with both the
 200 public interest and the purposes of this chapter.

201 (b) The department shall issue rules and regulations establishing a process whereby
 202 licensees may challenge information entered by the department into the Nationwide
 203 Multistate Licensing System and Registry.

204 (c) Regardless of its participation in the Nationwide Multistate Licensing System and
 205 Registry, the department shall retain full and exclusive authority over determinations of
 206 whether to grant, renew, suspend, or revoke licenses under this chapter. Nothing in this
 207 Code section shall be construed to reduce or otherwise limit such authority.

208 (d) Applicants and licensees shall pay the charges associated with their utilization of the
 209 Nationwide Multistate Licensing System and Registry.

210 ARTICLE 3

211 7-3A-20.

212 (a) Each licensee shall:

213 (1) Conspicuously post a copy of its license in each location where the licensee engages
 214 in the business of making title loans;

215 (2) Submit to the Nationwide Multistate Licensing System and Registry timely reports
 216 of condition, which shall be in such form and shall contain such information as the
 217 department and the Nationwide Multistate Licensing System and Registry may require;

218 (3) Clearly label all advertisements and any other documents required by rule or
 219 regulation of the department with its unique identifier;

220 (4) Make, keep, and use in its business such books, accounts, and records as the
 221 department may require to enforce the provisions of this chapter and the rules and
 222 regulations promulgated under it; and

223 (5) Make available to the department, upon request, any books, accounts, records, files,
 224 documents, evidence, or other information relating to the business of making title loans.

225 (b) Each licensee shall preserve any books, accounts, and records required to be made,
 226 kept, or used pursuant to this Code section or rule or regulation of the department for five
 227 years or such greater period of time as prescribed in rules and regulations of the
 228 department.

229 (c) A licensee may maintain any books, accounts, and records required to be made, kept,
 230 or used pursuant to this Code section:

231 (1) In photographic, electronic, or other similar form; and

232 (2) At a location outside of this state so long as such records are transmitted to a location
 233 designated by the department within ten days of a written request by the department.

234 7-3A-21.235 (a) A licensee shall send written notice to the department within ten days of the following:236 (1) Any knowledge or discovery of an act prohibited by Code Section 7-3A-44;237 (2) Any knowledge or discovery of the discharge of a covered employee for actual or
238 suspected misrepresentations, dishonest acts, or fraudulent acts;239 (3) Any knowledge or discovery of an administrative, civil, or criminal action initiated
240 by any governmental entity against the licensee or any owner, executive officer, or
241 covered employee; and242 (4) The filing of a petition by or against the licensee under the United States Bankruptcy
243 Code, 11 U.S.C. Sections 101 through 110, for bankruptcy reorganization or the filing of
244 a petition by or against the licensee for receivership or the making of a general
245 assignment for the benefit of its creditors.246 (b) A licensee shall send written notice to the department within 30 days of the following:247 (1) The commencement of any action brought against it relating to the business of
248 making title loans;249 (2) The commencement of any action involving a claim against the bond filed with the
250 department pursuant to Code Section 7-3A-11; and251 (3) The entry of any judgment against the licensee.252 (c) The corporate surety that issued a licensee a bond pursuant to Code Section 7-3A-11
253 shall send written notice to the department within ten days of paying any claim or judgment
254 to any creditor or claimant.255 (d) Any notice sent pursuant to this Code section shall be sent by registered or certified
256 mail or statutory overnight delivery and include sufficient details for the department to
257 identify any relevant creditor or claimant, claim, cause of action, judgment, payment, or
258 prohibited act.259 7-3A-22.260 (a) A licensee shall not engage in the business of making motor vehicle title loans at a
261 location in this state that was not included in the licensee's original or renewal application
262 unless the licensee has first received written approval from the department. To obtain such
263 approval, the licensee shall:264 (1) Submit an application to the department in such form as the department may
265 prescribe;266 (2) Provide such other information as the department may require concerning the
267 location; and268 (3) Pay a nonrefundable application fee as prescribed by rule or regulation of the
269 department.

270 (b) No person shall become an owner of any licensee through acquisition or other change
 271 in control unless the person has first received written approval from the department. To
 272 obtain such approval, such person shall:

273 (1) Submit an application to the department in such form as the department may
 274 prescribe;

275 (2) Provide such other information as the department may require concerning the
 276 financial responsibility, background, experience, and activities of the applicant or its
 277 owners and executive officers; and

278 (3) Pay a nonrefundable application fee as prescribed by rule or regulation of the
 279 department.

280 (c) The department may, by rule or regulation, prescribe additional requirements for
 281 approval of an application submitted pursuant to this Code section.

282 (d) The department shall grant or deny an application submitted pursuant to this Code
 283 section within 60 days from the date a completed application accompanied by the required
 284 fee is filed unless the period is extended by order of the department reciting the reasons for
 285 the extension.

286 (e) The department shall approve an application properly submitted pursuant to
 287 subsection (b) of this Code section if it finds that the applicant has the financial
 288 responsibility, character, reputation, experience, and general fitness to warrant a belief that
 289 the business will be operated efficiently and fairly, in the public interest, and in accordance
 290 with the law.

291 ARTICLE 4

292 7-3A-30.

293 (a) The department shall investigate and examine the affairs, businesses, premises, and
 294 records of any applicant, licensee, or any other title lender as often as it deems necessary
 295 to carry out the purposes of this chapter, regardless of whether such applicant, licensee, or
 296 other title lender acts or claims to act under any other licensing or registration requirement
 297 of this state.

298 (b) The department may alter the frequency or scope of investigations or examinations
 299 through rules or regulations or waive an investigation or examination if it determines that,
 300 based on records submitted to the department and the past history of operations in this
 301 state, such investigation or examination is unnecessary.

302 (c) An applicant, licensee, or other title lender shall pay a fee as prescribed by rule or
 303 regulation of the department to cover the cost of an investigation or examination.

304 (d) In carrying out an investigation or examination pursuant to this Code section, the
305 department shall be authorized to:

306 (1) Conduct an on-site examination of any applicant, license, or other title lender at any
307 location without prior notice to the applicant, licensee, or other title lender;

308 (2) Access, receive, and use any books, accounts, records, files, documents, evidence,
309 or other information, including, but not limited to:

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

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

315 (C) Any other documents, information, or evidence the department deems relevant to
316 the investigation or examination, regardless of the location, possession, control, or
317 custody of such documents, information, or evidence;

318 (3) Enter into agreements or relationships with other government officials or regulatory
319 authorities to improve efficiencies and reduce regulatory burden by sharing resources,
320 documents, records, information, or evidence or by utilizing standardized or uniform
321 methods or procedures;

322 (4) Accept and rely on investigation or examination reports made by other government
323 officials or regulatory authorities within or outside this state, provided that such reports
324 provide information necessary to fulfill the responsibilities of the department under this
325 chapter;

326 (5) Accept and incorporate in any report of the department audit reports or portions of
327 audit reports made by an independent certified public accountant on behalf of an
328 applicant or licensee;

329 (6) Require or permit any person to file a statement in writing as to all the facts and
330 circumstances concerning any matter to be investigated pursuant to this chapter;

331 (7) Request any financial data relevant to the business of making motor vehicle title
332 loans;

333 (8) Administer oaths, call any party to testify under oath, and require the attendance of
334 witnesses;

335 (9) Require the production of books, accounts, records, files, documents, and papers;

336 (10) Take the depositions of witnesses; and

337 (11) Issue subpoenas for any witness or for the production of documentary evidence.

338 7-3A-31.

339 (a) A subpoena issued pursuant to Code Section 7-3A-30 may be served by:

- 340 (1) Registered or certified mail or statutory overnight delivery, return receipt requested,
341 to the addressee's business or personal mailing address;
342 (2) Examiners appointed by the department; or
343 (3) The sheriff of the county where such witness resides or is found or where the person
344 in custody of any books, accounts, records, files, documents, or papers resides or is
345 found.
- 346 (b) The department may issue and apply to enforce subpoenas in this state at the request
347 of any governmental agency, department, organization, or entity regulating the making of
348 title loans in another state if the activities constituting the alleged violation for which the
349 information is sought would be a violation of this chapter if the alleged activities had
350 occurred in this state.
- 351 (c) If any person refuses to obey a subpoena issued under this chapter, a superior court of
352 appropriate jurisdiction, upon application by the department, may issue to the person an
353 order requiring such person to appear before the court to show cause why such person
354 should not be held in contempt for refusal to obey the subpoena. Failure to obey a
355 subpoena may be punished as contempt by the court.

356 7-3A-32.

- 357 (a) The department shall not issue a license and may revoke a license if it finds that the
358 applicant or licensee or any owner, executive officer, or covered employee of the applicant
359 or licensee has been convicted of a felony in any jurisdiction or of a crime which, if
360 committed within this state, would constitute a felony under the laws of this state. For the
361 purposes of this article, a person shall be deemed to have been convicted of a crime if such
362 person shall have pleaded guilty or nolo contendere to a charge thereof before a court or
363 federal magistrate or shall have been found guilty thereof by the decision or judgment of
364 a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement
365 of sentence or the suspension thereof and regardless of whether first offender treatment
366 without adjudication of guilt pursuant to the charge was entered or an adjudication or
367 sentence was otherwise withheld or not entered on that charge, unless and until such plea
368 of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or
369 otherwise abrogated by lawful judicial process or until probation, sentence, or both
370 probation and sentence of a first offender have been successfully completed and
371 documented or unless the person convicted of the crime shall have received a pardon
372 therefor from the President of the United States or the governor or other pardoning
373 authority in the jurisdiction where the conviction occurred or shall have received an official
374 certification of pardon granted by the state's pardoning body where the conviction occurred

375 which removes the legal disabilities resulting from such conviction and restores civil and
376 political rights.

377 (b) The department shall be authorized to obtain conviction data with respect to any
378 applicant or licensee or any owner, executive officer, or covered employee of the applicant
379 or licensee. The department may submit directly to the Georgia Crime Information Center
380 two complete sets of fingerprints of such person, together with the required records search
381 fees and such other information as may be required. Fees for background checks that the
382 department administers shall be sent to the department by applicants and licensees together
383 with the fingerprints.

384 (c) Upon request by the department, each applicant or licensee or any owner, executive
385 officer, or covered employee of the applicant or licensee shall submit to the department two
386 complete sets of fingerprints, the required records search fees, and such other information
387 as may be required. Fees for background checks that the department administers shall be
388 submitted to the department by applicants or licensees together with two complete sets of
389 fingerprints. Upon receipt of fingerprints, fees, and other required information, the Georgia
390 Crime Information Center shall promptly transmit one set of fingerprints to the Federal
391 Bureau of Investigation for a search of bureau records and an appropriate report and shall
392 retain the other set and promptly conduct a search of its own records and records to which
393 it has access. The Georgia Crime Information Center shall notify the department in writing
394 of any derogatory finding, including, but not limited to, any conviction data regarding the
395 fingerprint records check, or if there is no such finding. All conviction data received by
396 the department or by the applicant or licensee shall be used by the party requesting such
397 data for the exclusive purpose of carrying out the responsibilities of this article, shall not
398 be a public record, shall be confidential, and shall not be disclosed to any other person or
399 agency except to any person or agency which otherwise has a legal right to inspect such
400 data. All such records shall be maintained by the department and the applicant or licensee
401 pursuant to laws regarding such records and the rules and regulations of the Federal Bureau
402 of Investigation and the Georgia Crime Information Center, as applicable. As used in this
403 Code section, 'conviction data' means a record of a finding, verdict, or plea of guilty or plea
404 of nolo contendere with regard to any crime, regardless of whether an appeal of the
405 conviction has been sought.

406 (d) Every applicant and licensee shall be authorized and required to obtain and maintain
407 the results of background checks on covered employees. Such background checks shall be
408 handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and
409 the rules and regulations of the Georgia Crime Information Center. Applicants and
410 licensees shall be responsible for any applicable fees charged by the Georgia Crime
411 Information Center. An applicant or licensee may only employ a person whose

412 background data has been checked and has been found to be in compliance with all lawful
 413 requirements prior to the initial date of hire. This provision does not apply to owners,
 414 executive officers, or covered employees of applicants or licensees, whose background
 415 shall have been investigated through the department before taking office, beginning
 416 employment, or securing ownership. Upon receipt of information from the Georgia Crime
 417 Information Center that is incomplete or that indicates a covered employee has a criminal
 418 record in any state other than Georgia, the employer shall submit to the department two
 419 complete sets of fingerprint cards for such person, together with the applicable fees and any
 420 other required information. The department shall submit such fingerprints as provided in
 421 subsection (c) of this Code section.

422 (e) Upon request by the department, an applicant or licensee shall take all steps necessary
 423 to have an international criminal history background check performed on any owners,
 424 executive officers, and covered employees of applicants and licensees. The results of such
 425 international criminal history background check shall be provided to the department.

426 (f) Applicants and licensees shall have the primary responsibility for obtaining background
 427 checks on covered employees. The department shall be entitled to review the files of any
 428 applicant or licensee to determine whether the required background checks have been run
 429 and whether all covered employees are qualified. The department shall be authorized to
 430 discuss the status of employee background checks with applicants, licensees, and
 431 authorized agents. Notwithstanding any other provisions in this article, the department
 432 shall retain the right to obtain conviction data on covered employees of applicants and
 433 licensees.

434 7-3A-33.

435 (a) The department may deny an application or suspend or revoke a license upon a finding
 436 that an applicant or a licensee has:

437 (1) Committed any fraud, engaged in any dishonest activities, or made any
 438 misrepresentation;

439 (2) Violated any provision of this chapter, any rule, regulation, or order issued by the
 440 department pursuant to this chapter, or any other law in the course of its business of
 441 making title loans;

442 (3) Made a false statement or failed to give a true reply in an application;

443 (4) Demonstrated incompetency or untrustworthiness to act as a title lender;

444 (5) Failed to pay within 30 days after it became final a judgment recovered in any court
 445 in an action arising out of the licensee's business of making title loans;

446 (6) Purposely withheld, deleted, destroyed, or altered information requested by the
 447 department or made misrepresentations to the department; or

448 (7) Operated in an unsafe or unsound manner.

449 (b) The department shall not issue a license and shall revoke a license if it determines that
450 the applicant or licensee is not financially sound or responsible or not able to engage in the
451 business of making title loans in an honest, fair, and efficient manner and with the
452 confidence and trust of the community.

453 (c) The department shall not issue a license and may suspend or revoke a license if an
454 applicant or licensee was subject to, or employs any person subject to, a final cease and
455 desist order or license revocation under this chapter within the preceding five years. Each
456 applicant or licensee shall, before hiring an employee, examine the department's public
457 records to determine that such employee is not subject to such a cease and desist order or
458 license revocation.

459 (d) The department shall not issue a license and may suspend or revoke a license if it finds
460 that any owner or executive officer of the applicant or licensee has been an owner or
461 executive officer of a licensee whose application has been denied or license has been
462 revoked or suspended within the preceding five years.

463 7-3A-34.

464 (a) Notice of the department's intention to enter an order denying an application or
465 suspending or revoking a license shall be sent to the applicant or licensee in writing by
466 registered or certified mail or statutory overnight delivery addressed to the principal office
467 of such applicant or licensee. If a person refuses to accept service of such notice, the notice
468 shall be served by the department under any other method of lawful service, and the person
469 shall be liable to the department for a sum equal to the actual costs incurred to serve the
470 notice. Such liability shall be paid upon notice and demand by the department and shall
471 be assessed and collected in the same manner as other fees or fines administered by the
472 department.

473 (b) Within 20 days of the date of the notice issued pursuant to subsection (a) of this Code
474 section, the applicant or licensee may request in writing a hearing to contest the order. If
475 no such hearing is requested, the department shall enter a final order stating the grounds
476 for the denial, suspension, or revocation. Such final order shall be effective on the date of
477 issuance, and the department shall send a copy thereof promptly by mail addressed to the
478 principal office of such applicant or licensee.

479 (c) A decision by the department denying an application for licensure or an order of the
480 department suspending or revoking a license shall be subject to review in accordance with
481 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that judicial
482 review shall be available solely in the superior court of the county of domicile of the
483 department.

484 (d) The department may pursue any administrative action initiated under this chapter
485 against an applicant or a licensee to its conclusion, regardless of whether an applicant or
486 a licensee withdraws its application or whether a licensee does not renew or surrenders its
487 license.

488 (e) The suspension, revocation, or expiration of a license shall not alter, ameliorate, or void
489 the duties, defenses, and liabilities of either a borrower or licensee under any existing
490 agreement or contract entered into by the licensee prior to such suspension, revocation, or
491 expiration.

492 7-3A-35.

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

495 (1) Except as provided in paragraphs (2) and (3) of this subsection, a person has violated
496 any law of this state or any rule, regulation, or order of the department. Such cease and
497 desist order shall be final 20 days from the date of issuance unless the person to whom
498 it is issued requests a hearing in writing within such 20 day period;

499 (2) A person without a license is engaging in or has engaged in activities requiring
500 licensure under this chapter. Such cease and desist order shall be final 30 days from the
501 date of issuance without the opportunity for an administrative hearing. If such person
502 obtains a license or submits to the department evidence of exemption from licensure
503 within the 30 day period, the department shall rescind the order; or

504 (3) A licensee has received a notice of bond cancellation under Code Section 7-3A-11.
505 Such cease and desist order shall be final 20 days from the date of issuance without the
506 opportunity for an administrative hearing. If the required bond is reinstated or replaced
507 and documentation evidencing such is submitted to the department within the 20 day
508 period, the department shall rescind the order. In the event such cease and desist order
509 becomes final, the license shall terminate.

510 (b) Any cease and desist order authorized by this Code section shall be in writing, sent by
511 registered or certified mail or statutory overnight delivery, and addressed to the person's
512 business address or, if the person is an individual, to either the business address or the
513 individual's personal address. Any cease and desist order sent to the authorized address
514 that is returned to the department as 'refused' or 'unclaimed' shall be deemed as received
515 and lawfully served.

516 (c) Any hearing authorized under paragraph (1) of subsection (a) of this Code section shall
517 be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
518 Procedure Act.'

519 (d) Judicial review of a final decision of the department issued pursuant to paragraph (1)
520 of subsection (a) of this Code section shall be in accordance with Chapter 13 of Title 50,
521 the 'Georgia Administrative Procedure Act,' except that judicial review shall be available
522 solely in the superior court of the county of domicile of the department.

523 (e) Judicial review of a final decision of the department issued pursuant to paragraph (2)
524 or (3) of subsection (a) of this Code section shall be in accordance with Code Section
525 7-1-90, except that judicial review shall be available solely in the superior court of the
526 county of domicile of the department.

527 7-3A-36.

528 (a) Whenever a person fails to comply with the terms of a final order or decision of the
529 department issued pursuant to this chapter, the department may, through the Attorney
530 General, petition any superior court of this state having jurisdiction over one or more
531 defendants for an order directing such person to obey the order of the department within
532 a period of time as shall be fixed by the court. Upon the filing of such petition, the court
533 shall allow a motion to show cause why it should not be granted. After a hearing upon the
534 merits or after failure of such person to appear when ordered, the court shall grant the
535 petition of the department upon a finding that the order of the department was properly
536 issued.

537 (b) Any person who violates the terms of any final order or decision issued pursuant to this
538 chapter shall be liable for a civil penalty not to exceed \$1,000.00. Each day the violation
539 continues shall constitute a separate offense. In determining the amount of the penalty, the
540 department shall take into account the appropriateness of the penalty relative to the size of
541 the financial resources of such person, the good faith efforts of such person to comply with
542 the order, the gravity of the violation, the history of previous violations by such person, and
543 such other factors or circumstances that contributed to the violation. The department may
544 reduce any penalty which is subject to imposition or has been imposed pursuant to this
545 Code section. Such penalty shall be final except as to judicial review as provided in Code
546 Section 7-1-90, except that judicial review shall be available solely in the superior court
547 of the county of domicile of the department.

548 (c) The department may bring an appropriate civil action to enforce any provision of this
549 chapter or rule, regulation, decision, or order issued pursuant to this chapter, whether by
550 injunction or otherwise, in the superior court of this state having jurisdiction over one or
551 more of the defendants.

552 (d) The department may prescribe by rule or regulation administrative fines for violations
553 of this chapter or rules, regulations, decisions, or orders issued pursuant to this chapter.

554 7-3A-37.

555 (a) Except as provided in this Code section, information obtained by the department
556 pursuant to this chapter, which shall include any information disclosed through the
557 Nationwide Multistate Licensing System and Registry, is confidential as provided in Code
558 Section 7-1-70.

559 (b) In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70, the
560 department is authorized to share information obtained under this chapter with other
561 regulatory or law enforcement authorities. In the case of such sharing, the safeguards to
562 confidentiality already in place within such agencies or authorities shall be deemed
563 adequate. A designated employee or agent of the department may disclose such
564 information as is necessary to conduct a civil or administrative investigation or proceeding
565 related to the business of making title loans.

566 (c) The department is authorized to make the following information available to the public
567 on the department's website, upon receipt by the department of a written request, or in the
568 Nationwide Multistate Licensing System and Registry:

569 (1) The name, business address, and telephone number, facsimile number, and unique
570 identifier of a licensee;

571 (2) The names and titles of the executive officers of a licensee;

572 (3) The names of the owners of a licensee;

573 (4) The name, business address, telephone number, and facsimile number of all locations
574 of a licensee;

575 (5) The terms of or a copy of any bond filed by a licensee;

576 (6) Information concerning any violation of this chapter or any rule, regulation, or order
577 issued pursuant to this chapter, provided that such information is derived from a final
578 order of the department; and

579 (7) The imposition of an administrative fine or penalty under this chapter.

580 7-3A-38.

581 (a) Except in the case of malice, fraud, or bad faith, no person shall be subject to civil
582 liability arising out of furnishing the department with information required pursuant to this
583 chapter. No civil cause of action of any nature shall arise against such person:

584 (1) For any information relating to suspected prohibited conduct furnished to or received
585 from law enforcement officials, their agents, or employees or to or from other regulatory
586 authorities;

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

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

590 (b) Neither the department nor its employees or agents shall be subject to civil liability,
 591 and no civil cause of action of any nature shall exist against the department or its
 592 employees or agents arising out of the performance of activities or duties pursuant to this
 593 chapter.

594 ARTICLE 5

595 7-3A-40.

596 (a) Every title loan shall be a term loan providing for repayment of the principal and
 597 interest in substantially equal and consecutive monthly installments.

598 (b) A licensee may charge and collect interest on a motor vehicle title loan at an annual
 599 percentage rate not to exceed 36 percent per annum.

600 (c) Interest shall not accrue on the principal balance of a motor vehicle title loan after:

601 (1) The date a licensee takes possession of the motor vehicle securing the title loan
 602 pursuant to Code Section 7-3A-43; or

603 (2) The sixtieth day after the borrower has failed to make a monthly payment by the due
 604 date on a motor vehicle title loan as required by the loan agreement, unless the borrower
 605 is concealing the motor vehicle.

606 (d) In addition to the title loan principal and interest, a licensee shall not directly or
 607 indirectly charge, contract for, collect, receive, recover, or require a borrower to pay any
 608 fee, charge, or amount whatsoever except the reasonable costs of repossession and sale of
 609 the motor vehicle as provided for in Code Section 7-3A-43, but only if the licensee actually
 610 repossesses and sells the vehicle.

611 (e) For purposes of this subsection, the term 'refinance' means the replacement or revision
 612 of any existing loan agreement that results in an extension of additional principal to a
 613 borrower, regardless of whether the licensee made the existing loan. A licensee shall not
 614 refinance a loan made under this chapter unless all of the following conditions are met at
 615 the time the borrower submits an application to refinance:

616 (1) The borrower has repaid at least 60 percent of the outstanding principal remaining
 617 on the title loan;

618 (2) The borrower is current on all monthly payments plus all accrued interest for the
 619 outstanding title loan;

620 (3) The licensee underwrites the refinanced title loan in accordance with the
 621 requirements of this chapter; and

622 (4) The borrower has not previously refinanced the outstanding title loan more than once.

623 7-3A-41.

624 (a) Each motor vehicle title loan shall be evidenced by a motor vehicle title loan agreement
625 which shall include the following information:

626 (1) The name and address of the licensee location where the agreement was made;

627 (2) The name, address, and an email address of the department to which borrowers may
628 register complaints;

629 (3) The date of execution of the loan agreement;

630 (4) The loan amount;

631 (5) The annual percentage rate which shall be stated using the term 'annual percentage
632 rate';

633 (6) The amounts and scheduled due dates of the monthly installment payments of
634 principal and interest;

635 (7) The title loan's maturity date;

636 (8) The borrower's mailing address;

637 (9) The make, model, year, and vehicle identification number of the motor vehicle
638 securing the title loan; and

639 (10) Any other information relating to the title loan as the department may prescribe by
640 rule or regulation.

641 (b) The loan agreement shall contain the following notice in at least 12 point type
642 immediately above the borrower's signature:

643 NOTICE

644 This is a motor vehicle title loan agreement. It allows you to receive loan proceeds to
645 meet your immediate cash needs. It is not intended to meet your long-term financial
646 needs.

647 When using this loan, you should request the minimum amount required to meet your
648 immediate needs and you should repay the loan as quickly as possible to reduce the
649 amount of interest you are charged.

650 You will be required to pay the principal and interest on the loan in substantially equal
651 monthly installments. You should try to pay even more toward your principal balance
652 each month. Doing so will save you money.

653 You are pledging your motor vehicle as collateral for this loan. If you fail to repay the
654 loan pursuant to this agreement, we may repossess your motor vehicle.

655 Unless you conceal or intentionally damage the motor vehicle, or otherwise impair our
656 security interest by pledging the motor vehicle to a third party or pledging a motor
657 vehicle to us that is already subject to an undisclosed existing lien, your liability for
658 defaulting under this loan is limited to the loss of the motor vehicle.

659 If your motor vehicle is sold due to your default, you are entitled to any surplus obtained
660 at such sale beyond what is owed pursuant to this agreement except for reasonable costs
661 of repossessing and selling the motor vehicle.'

662 (c) A representative of the motor vehicle title lender and all owners of the motor vehicle
663 shall sign the loan agreement.

664 (d) The licensee shall give a duplicate original of the loan agreement to the borrower upon
665 execution.

666 7-3A-42.

667 (a) The licensee's security interest in a motor vehicle shall be promptly released when the
668 borrower's obligations under the loan agreement are satisfied in full. When releasing the
669 security interest in a motor vehicle, the licensee shall:

670 (1) Mark the original loan agreement with the word 'paid' or 'canceled,' return it to the
671 borrower, and retain a copy in its records;

672 (2) Take any action necessary to reflect the termination of its lien on the motor vehicle's
673 certificate of title; and

674 (3) Return the certificate of title to the borrower.

675 (b) The borrower shall be authorized to prepay the title loan prior to the maturity date by
676 paying the outstanding balance at any time without penalty.

677 (c) The borrower shall also be authorized to make partial payments on a title loan without
678 charge at any time prior to the date such amounts would otherwise be due, and the licensee
679 shall give the borrower signed, dated receipts for any cash payment made in person.

680 7-3A-43.

681 (a) Subject to the provisions of this chapter, upon default a licensee has the right to take
682 possession of and sell the motor vehicle securing the title loan. In taking possession, the
683 licensee or its agent may proceed by judicial action or without judicial action, provided that
684 possession can be taken without breach of the peace.

685 (b) The licensee, at least ten days prior to taking possession of the motor vehicle securing
686 a title loan, shall send to the borrower, by registered or certified mail or statutory overnight
687 delivery, written notice that: the title loan is in default; the licensee may take possession
688 of the motor vehicle unless the principal and interest owed under the loan agreement are

689 paid; and the date the licensee will take possession of the motor vehicle if payment is not
690 made. A licensee shall not take possession of a motor vehicle securing a title loan prior to
691 the date specified in such notice.

692 (c) At least 15 days prior to the sale of a motor vehicle, a licensee shall notify the borrower
693 of the date and time the motor vehicle is subject to sale and provide the borrower with a
694 statement of the amount owed, which shall specify the remaining principal owed, interest
695 accrued through the date the licensee took possession of the motor vehicle, any reasonable
696 expenses incurred by the licensee in taking possession of the motor vehicle, and the
697 reasonable projected cost to sell the motor vehicle.

698 (d) At any time prior to the sale of a motor vehicle, a licensee shall permit the borrower
699 to redeem the motor vehicle by tendering cash, a money order, or a certified check for the
700 remaining principal owed on the title loan, interest accrued through the date the licensee
701 took possession of the motor vehicle, and any reasonable expenses incurred by the licensee
702 in taking possession and preparing for the sale of the motor vehicle.

703 (e) Within 30 days of the sale of a motor vehicle, the licensee shall remit to the borrower
704 all proceeds from the sale which were in excess of the remaining principal and interest
705 owed on the title loan and reasonable expenses incurred by the licensee in taking
706 possession of and selling the motor vehicle. With the remission of funds to the borrower,
707 the licensee shall include a detailed receipt.

708 (f) Except in the case of a borrower concealing or intentionally damaging the motor
709 vehicle, impairing the security interest by pledging the motor vehicle to a third party,
710 pledging a motor vehicle that is already subject to an undisclosed existing lien, or
711 committing fraud, a licensee shall have no cause of action against a borrower for any
712 amount owed under a loan agreement or any deficiency resulting after the sale of a motor
713 vehicle.

714 (g) In taking possession and disposing of a motor vehicle by sale or otherwise, a licensee
715 shall at all times proceed in a commercially reasonable manner.

716 7-3A-44.

717 (a) No person shall make a motor vehicle tile loan in or from this state:

718 (1) For a term less than one month or more than 36 months;

719 (2) In an amount more than \$3,000.00;

720 (3) Based on false or missing material matter in a loan agreement;

721 (4) To an individual under the age of 18 years or who appears to be under the influence
722 of drugs or alcohol;

723 (5) That requires personal liability of the borrower or waives any provisions of this
724 chapter;

- 725 (6) That includes a charge for any type of insurance in connection with a loan agreement;
 726 (7) Under any name other than those authorized by the department in writing;
 727 (8) Based upon any misrepresentation or any false statement or document likely to
 728 influence, persuade, or induce a potential borrower to take a motor vehicle title loan;
 729 (9) Which misrepresents or conceals any factors, terms, or conditions; or
 730 (10) Which is fraudulent or not based in good faith or fair dealing.
- 731 (b) Any person who makes a motor vehicle title loan in or from this state shall:
- 732 (1) Securely store motor vehicles and motor vehicle titles in its possession pursuant to
 733 a loan agreement;
- 734 (2) Disburse funds in accordance with a title loan agreement;
- 735 (3) Account for or deliver to any person any personal property obtained in connection
 736 with a title loan which has come into the possession of a licensee and which is not the
 737 property of a licensee, or which the licensee is not in law or at equity entitled to retain;
- 738 (4) Be prohibited from collecting a debt by extortionate means;
- 739 (5) Be prohibited from improperly taking possession or attempting to improperly take
 740 possession of a motor vehicle;
- 741 (6) Be prohibited from knowingly withholding, deleting, destroying, or altering any
 742 books, accounts, records, files, documents, evidence, or other information requested by
 743 the department; and
- 744 (7) Be prohibited from making false statements or misrepresentations to the department
 745 or the Nationwide Multistate Licensing System or Registry or in connection with any
 746 investigation and examination conducted by the department or another governmental
 747 agency.

748 7-3A-45.

749 Without limiting the power conferred by Chapter 1 of this title, the department may make
 750 reasonable rules and regulations, not inconsistent with law, for the interpretation and
 751 enforcement of this chapter.

752 7-3A-46.

753 (a) Any person who willfully engages in the business of making motor vehicle title loans
 754 without a license or exemption shall be guilty of a felony punishable as provided in Code
 755 Section 7-1-845.

756 (b) Any person who violates any of the provisions of this chapter shall be guilty of a
 757 misdemeanor, which shall be punishable by imprisonment for not more than one year or
 758 a fine of not more than \$1,000.00 or both.

759 7-3A-47.

760 Nothing in this chapter shall limit:

761 (1) Any statutory or common law right of any person to bring any action in any court for
 762 any act involved in the making of motor vehicle title loans;

763 (2) The right of the state to punish any person for any violation of law; or

764 (3) The authority of the Attorney General to take action pursuant to Part 2 of Article 15
 765 of Chapter 1 of Title 10, the 'Fair Business Practices Act of 1975,' or any other applicable
 766 law, in relation to motor vehicle title loans."

767 **SECTION 3.**

768 Said title is further amended by revising subsection (c) of Code Section 7-4-2, relating to
 769 legal rate of interest, maximum rate of interest generally, and certain items not considered
 770 interest, as follows:

771 "(c) Nothing contained in this Code section shall be construed to amend or modify the
 772 provisions of Chapter 3 of this title, the 'Georgia Industrial Loan Act,' Chapter 3A of this
 773 title, the 'Motor Vehicle Title Loan Act,' Article 1 of Chapter 1 of Title 10, the 'Retail
 774 Installment and Home Solicitation Sales Act,' Chapter 5 of this title, 'The Credit Card and
 775 Credit Card Bank Act,' Chapter 22 of Title 33, the 'Insurance Premium Finance Company
 776 Act,' Part 5 of Article 3 of Chapter 12 of Title 44, relating to pawnbrokers, and, except as
 777 provided in Code Section 7-4-3, Article 2 of Chapter 1 of Title 10, the 'Motor Vehicle Sales
 778 Finance Act.'"

779 **SECTION 4.**

780 Chapter 47 of Title 43 of the Official Code of Georgia Annotated, relating to used motor
 781 vehicle and used motor vehicle parts dealers, is amended by revising paragraphs (4) and (17)
 782 of Code Section 43-47-2, relating to definitions, as follows:

783 "(4) 'Financial institution' means a finance company or a banking institution or any
 784 subsidiary of a finance company or banking institution which engages solely in the
 785 financing or leasing of motor vehicles. Such term shall not mean a ~~pawnbroker as such~~
 786 ~~term is defined in Code Section 44-12-130~~ motor vehicle title lender, as defined in Code
 787 Section 7-3A-2."

788 "(17)(A) 'Used motor vehicle dealer,' 'used car dealer,' or 'licensee' means any person
 789 who, for commission or with intent to make a profit or gain of money or other thing of
 790 value, sells, exchanges, rents with option to purchase, offers, or attempts to negotiate
 791 a sale or exchange of an interest in used motor vehicles or who is engaged wholly or
 792 in part in the business of selling used motor vehicles, whether or not such motor
 793 vehicles are owned by such person. A motor vehicle wholesaler and a motor vehicle

794 broker shall be deemed to be a used motor vehicle dealer or a used car dealer for the
 795 purposes of this chapter. Any independent motor vehicle leasing agency which sells
 796 or offers for sale used motor vehicles shall be deemed to be a used motor vehicle dealer
 797 or a used car dealer for the purposes of this chapter. Any motor vehicle auction
 798 company selling or offering for sale used motor vehicles to independent motor vehicle
 799 dealers or to individual consumers shall be deemed to be a used motor vehicle dealer
 800 or used car dealer for the purposes of this chapter except as otherwise provided in
 801 division (x) of subparagraph (B) of this paragraph. Without limiting any of the
 802 foregoing, the sale of five or more used motor vehicles in any one calendar year shall
 803 be prima-facie evidence that a person is engaged in the business of selling used motor
 804 vehicles. A ~~pawnbroker~~ motor vehicle title lender, as defined in Code Section 7-3A-2,
 805 who disposes of all repossessed motor vehicles by selling or exchanging his or her
 806 interest in such motor vehicles only to licensees under this chapter shall not be
 807 considered a used motor vehicle dealer under this chapter as so long as such
 808 ~~pawnbroker~~ motor vehicle title lender does not otherwise engage in activities which
 809 would bring ~~him or her~~ such lender under the licensing requirements of this chapter.

810 (B) Used motor vehicle dealer or used car dealer does not include:

- 811 (i) Franchised motor vehicle dealers and their wholly owned and controlled
 812 subsidiaries operating in the county in which their franchise is located or operating
 813 as a direct dealer of a manufacturer;
- 814 (ii) Receivers, trustees, administrators, executors, guardians, or other persons
 815 appointed by or acting under the judgment or order of any court;
- 816 (iii) Public officers while performing their official duties;
- 817 (iv) Persons disposing of motor vehicles acquired for their own use when the same
 818 shall have been acquired and used in good faith and not for the purpose of avoiding
 819 the provisions of this chapter. Evidence of good faith, as provided in this division,
 820 shall consist of the fact that the vehicle is properly titled and registered in the name
 821 of the transferor;
- 822 (v) Financial institutions when the financial institution sells its repossessed or leased
 823 motor vehicles. Finance companies, for purposes of this chapter, shall not include a
 824 ~~pawnbroker as defined in Code Section 44-12-130~~ motor vehicle title lender, as
 825 defined in Code Section 7-3A-2;
- 826 (vi) Insurance companies ~~who~~ that sell motor vehicles to which they have taken title
 827 as an incident of payments made under policies of insurance;
- 828 (vii) Persons, firms, or corporations who act as agents for insurance companies for
 829 the purpose of soliciting insurance for motor vehicles;

- 830 (viii) Persons, firms, or corporations engaged in a business other than as a used car
 831 dealer, as defined in divisions (i) through (vii) of this subparagraph, who sell motor
 832 vehicles traded in as a part of the purchase price of an article other than a motor
 833 vehicle and which have not been acquired by direct purchase for cash, and which
 834 business is not for the purpose of violating this chapter;
- 835 (ix) Persons, firms, or corporations which sell only vehicles which will not be used
 836 primarily for transportation purposes, including, but not limited to, antique
 837 automobiles, classic automobiles, and automobiles sold solely as speculative
 838 investments. In determining whether a vehicle or vehicles will not be used primarily
 839 for transportation purposes, the board may rely on the representations, written or oral,
 840 made regarding the vehicles, but may also look at any other relevant evidence; or
- 841 (x) Persons licensed or companies registered under Chapter 6 of this title, relating to
 842 auctioneers, when auctioning used motor vehicles which are being disposed of under
 843 administration of an estate or when auctioning used motor vehicles and real property
 844 at the same sale when such vehicles and property are owned by a common owner."

845 **SECTION 5.**

846 Said chapter is further amended by revising Code Section 43-47-3, relating to creation of the
 847 State Board of Registration of Used Motor Vehicle Dealers and Used Motor Vehicle Parts
 848 Dealers, its composition, terms of office, vacancies, election of chairpersons, and divisions,
 849 as follows:

850 "43-47-3.

851 (a) There is created a State Board of Registration of Used Motor Vehicle Dealers and Used
 852 Motor Vehicle Parts Dealers. The board shall be ~~comprised~~ composed of ~~14~~ 13 members:

853 (1) Three members shall be independent used car dealers;

854 (2) Three members shall be appointed from the public at large and shall have no
 855 connection whatsoever with the sale of used cars or parts;

856 (3) The state revenue commissioner, or a designated agent, shall be a permanent ex
 857 officio member and shall be authorized to vote on all matters before the board;

858 ~~(4) Reserved;~~

859 ~~(5)~~(4) One member shall be a representative of the automobile auction industry;

860 ~~(6)~~(5) One member shall be an auto salvage pool operator;

861 ~~(7)~~(6) Two members shall be used motor vehicle parts dealers who are not rebuilders;

862 ~~(8)~~(7) One member shall be a rebuilder;

863 ~~(9) One member shall be a pawnbroker as defined in Code Section 44-12-130 who is in
 864 the business of pawning automobile titles and is licensed as a used car dealer; and~~

865 ~~(10)~~(8) One member shall be a representative of the automobile insurance industry.

866 (b) The members of the board referred to in paragraphs (1), (2), (4), (5), (6), (7), and (8);
867 ~~(9), and (10)~~ of subsection (a) of this Code section shall be appointed by the Governor and
868 shall take office on July 1, 1995, or as soon thereafter as appointed. The initial terms of
869 those 13 appointed members shall expire as follows: three on June 30, 1996; three on June
870 30, 1997; three on June 30, 1998; and four on June 30, 1999. Thereafter, the appointed
871 members of the board shall serve terms of four years. All members shall be residents of
872 this state. No more than two of the appointed members shall be from the same
873 congressional district. The terms of the two ex officio members shall be coextensive with
874 their terms of office.

875 (c) Any vacancies on the board shall be filled by the Governor for the remainder of the
876 unexpired term. The members of the board shall annually elect one of their number to
877 serve as chairperson for a term of two years. The board chairperson shall not also serve
878 contemporaneously as the chairperson of either division under this chapter. The first term
879 as chairperson of the board shall be served by a member or members elected from either
880 division under this chapter; thereafter, the chairperson for each succeeding term shall not
881 be elected from the same division as that of the chairperson from the immediately
882 preceding term. In the event a chairperson of the board is unable to complete his or her
883 term, his or her successor for the remainder of the term shall be elected from the same
884 division as was the chairperson who is unable to complete the term. The chairperson of the
885 board shall be an ex officio member of both divisions under this chapter; however, the
886 chairperson of the board shall not be counted for purposes of determining whether a
887 quorum is present in the division meeting for the division in which he or she is not a
888 regular member.

889 (d)(1) The board shall be composed of two divisions, a used car division and a used parts
890 division.

891 (2) The members of the used car division shall be the three independent used car dealers,
892 two of the members from the public at large, the state revenue commissioner or a
893 designated agent, and the representative of the automobile auction industry, ~~and the~~
894 ~~pawnbroker~~. All powers and duties relating to used car dealers which are not specifically
895 reserved to the board shall be assigned to the used car division. The used car division
896 shall elect one of its members to serve as chairperson of the division for a period of one
897 year.

898 (3) The members of the used parts division shall be the third member from the public at
899 large, the state revenue commissioner or a designated agent, the auto salvage pool
900 operator, the two used motor vehicle parts dealers who are not rebuilders, the rebuilder,
901 and the representative of the automobile insurance industry. All powers and duties
902 relating to used parts dealers which are not specifically reserved to the board shall be

903 assigned to the used parts division. The used parts division shall elect one of its members
904 to serve as chairperson of the division for a period of one year.

905 (4) The chairperson of the board shall determine which of the two members from the
906 public at large will serve in the used car division and which ~~shall~~ will serve in the used
907 parts division."

908 **SECTION 6.**

909 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
910 revising paragraph (5) of Code Section 44-12-130, relating to definitions relative to
911 pawnbrokers, as follows:

912 "(5) 'Pledged goods' means tangible personal property, not including, ~~without limitation,~~
913 ~~all types of motor vehicles or any motor vehicle certificate of title, which property that~~
914 is purchased by, deposited with, or otherwise actually delivered into the possession of a
915 pawnbroker in connection with a pawn transaction. ~~However, for purposes of this Code~~
916 ~~section, possession of any motor vehicle certificate of title which has come into the~~
917 ~~possession of a pawnbroker through a pawn transaction made in accordance with law~~
918 ~~shall be conclusively deemed to be possession of the motor vehicle, and the pawnbroker~~
919 ~~shall retain physical possession of the motor vehicle certificate of title for the entire~~
920 ~~length of the pawn transaction but shall not be required in any way to retain physical~~
921 ~~possession of the motor vehicle at any time. 'Pledged goods' shall not include choses in~~
922 ~~action, securities, or printed evidences of indebtedness."~~

923 **SECTION 7.**

924 Said title is further amended by revising subsection (a) of Code Section 44-12-131, relating
925 to duration of pawn transactions, prohibition of lease-back of motor vehicles, taking
926 possession of motor vehicles, restrictions on interest, fees, or charges, action to recover
927 excessive or undisclosed charges, and consequences of excessive charges, as follows:

928 "(a)(1) All pawn transactions shall be for 30 day periods but may be extended or
929 continued for additional 30 day periods.

930 (2) ~~A pawnbroker shall not lease back to the seller or pledgor any motor vehicle during~~
931 ~~a pawn transaction or during any extension or continuation of the pawn transaction.~~

932 (3) ~~Unless otherwise agreed, a pawnbroker has upon default the right to take possession~~
933 ~~of the motor vehicle. In taking possession, the pawnbroker or his agent may proceed~~
934 ~~without judicial process if this can be done without breach of the peace or may proceed~~
935 ~~by action.~~

936 (4)(2)(A) During the first 90 days of any pawn transaction or extension or continuation
937 of the pawn transaction, a pawnbroker may charge for each 30 day period interest and

938 pawnshop charges which together equal no more than 25 percent of the principal
939 amount advanced, with a minimum charge of up to \$10.00 per 30 day period.

940 (B) On any pawn transaction which is continued or extended beyond 90 days, a
941 pawnbroker may charge for each 30 day period interest and pawnshop charges which
942 together equal no more than 12.5 percent of the principal amount advanced, with a
943 minimum charge of up to \$5.00 per 30 day period.

944 ~~(C) In addition to the charges provided for in subparagraphs (A) and (B) of this~~
945 ~~paragraph, in a pawn transaction or in any extension or continuation of a pawn~~
946 ~~transaction involving a motor vehicle or a motor vehicle certificate of title, a~~
947 ~~pawnbroker may charge the following:~~

948 ~~(i) A fee equal to no more than any fee imposed by the appropriate state to register~~
949 ~~a lien upon a motor vehicle title, but only if the pawnbroker actually registers such a~~
950 ~~lien;~~

951 ~~(ii) No more than \$5.00 per day in storage fees, but only if an actual repossession~~
952 ~~pursuant to a default takes place on a vehicle which was not already in the~~
953 ~~pawnbroker's possession and only for each day the pawnbroker must actually retain~~
954 ~~possession of the motor vehicle; and~~

955 ~~(iii) A repossession fee of \$50.00 within 50 miles of the office where the pawn~~
956 ~~originated, \$100.00 within 51 to 100 miles, \$150.00 within 101 to 300 miles and a fee~~
957 ~~of \$250.00 beyond 300 miles, but only if an actual repossession pursuant to a default~~
958 ~~takes place on a vehicle which was not already in the pawnbroker's possession.~~

959 ~~(D)~~(C) If a pledgor or seller requests that the pawnbroker mail or ship the pledged item
960 to the pledgor or seller, a pawnbroker may charge a fee for the actual shipping and
961 mailing costs, plus a handling fee equal to not more than 50 percent of the actual
962 shipping and mailing costs.

963 ~~(E)~~(D) In the event the pledgor or seller has lost or destroyed the original pawn ticket,
964 a pawnbroker may, at the time of redemption, charge a fee equal to not more than
965 \$2.00.

966 ~~(5)~~(3) No other charge or fee of any kind by whatever name denominated, ~~including but~~
967 ~~not limited to any other storage fee for a motor vehicle,~~ shall be made by a pawnbroker
968 except as set out in paragraph ~~(4)~~ (2) of this subsection.

969 ~~(6)~~(4) No fee or charge provided for in this Code section may be imposed unless a
970 disclosure regarding that fee or charge has been properly made as provided for in Code
971 Section 44-12-138.

972 ~~(7)~~(5)(A) Any interest, fees, or charges collected which are undisclosed, improperly
973 disclosed, or in excess of that allowed by this subsection may be recovered by the
974 pledgor or seller in an action at law in any superior court of appropriate jurisdiction.

975 (B) In any such action in which the pledgor or seller prevails, the court shall also award
 976 reasonable attorney's fees, court costs, and any expenses of litigation to the pledgor or
 977 seller.

978 (C) Before filing an action under this Code section, the pledgor or seller shall provide
 979 the pawnbroker with a written notice by certified mail or statutory overnight delivery,
 980 return receipt requested, that such an action is contemplated, identifying any fees or
 981 charges which the pledgor or seller contends are undisclosed, improperly disclosed, or
 982 in excess of the fees and charges allowed by this Code section. If the court finds that
 983 during the 30 days following receipt of this notice the pawnbroker made a good faith
 984 ~~offer effort~~ to return any excess, undisclosed, or improperly disclosed charges, the court
 985 shall award reasonable attorney's fees, court costs, and expenses of litigation to the
 986 pawnbroker.

987 (D) No action shall be brought under this Code section more than two years after the
 988 pledgor or seller knew or should have known of the excess, undisclosed, or improperly
 989 disclosed charges."

990 **SECTION 8.**

991 Said title is further amended by revising subsection (b) of Code Section 44-12-138, relating
 992 to disclosure tickets and statements by pawnbrokers, as follows:

993 "(b) Every pawnbroker in every pawn transaction shall present the pledgor or seller with
 994 a written disclosure ticket or statement in at least nine-point type, appropriately completed,
 995 with no other written or pictorial matter except as provided in subsection (c) of this Code
 996 section, containing the following information:

997 (1) Information identifying the pawnbroker by name and address;

998 (2) A statement as follows:

999 "This is a pawn transaction. Failure to make your payments as described in this
 1000 document can result in the loss of the pawned item. The pawnbroker can sell or keep
 1001 the item if you have not made all payments by the specified maturity date.;"

1002 ~~(3) If the pawned item is a motor vehicle or motor vehicle certificate of title, a statement~~
 1003 ~~as follows:~~

1004 ~~"Failure to make your payment as described in this document can result in the loss of~~
 1005 ~~your motor vehicle. The pawnbroker can also charge you certain fees if he or she~~
 1006 ~~actually repossesses the motor vehicle.;"~~

1007 ~~(4)~~(3) A statement that the length of the pawn transaction is 30 days and that it can only
 1008 be renewed with the agreement of both parties and only for 30 day incremental periods;

1009 ~~(5)~~(4) The annual percentage rate, computed in accordance with the federal Truth in
 1010 Lending Act and regulations under the federal Truth in Lending Act, for the first 30 days

1011 of the transaction, computed as if all interest and pawnshop charges were considered to
 1012 be interest;

1013 ~~(6)~~(5) The annual percentage rate, computed in accordance with the federal Truth in
 1014 Lending Act and regulations under the federal Truth in Lending Act, for each 30 day
 1015 period in which the pawn transaction might be continued or extended, computed as if all
 1016 interest and pawnshop charges were considered to be interest. For purposes of
 1017 identifying the annual percentage rate after the second continuation or extension, a single
 1018 statement which identifies an annual percentage rate for each possible 30 day period
 1019 thereafter shall meet the requirements of this Code section;

1020 ~~(7)~~(6) A statement in dollar amounts of how much it will cost the ~~seller or pledgor or~~
 1021 seller to redeem the merchandise in the first 30 day period of the transaction;

1022 ~~(8)~~(7) A statement in dollar amounts of how much it will cost the ~~seller or pledgor or~~
 1023 seller to redeem the merchandise in any 30 day period after the first 30 day period of the
 1024 pawn transaction, provided that all fees and charges have been kept current;

1025 ~~(9)~~(8) A statement of the specific maturity date of the pawn transaction;

1026 ~~(10)~~(9) A statement of how long, the grace period, the pledged goods may be redeemed
 1027 after the specific maturity date and the dollar amount which will be required to redeem
 1028 the pledged goods after the specific maturity date;

1029 ~~(11)~~(10) A statement that after the grace period the pledged goods become the property
 1030 of the pawnbroker;

1031 ~~(12) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
 1032 ~~a statement that the pawnbroker may not charge a storage fee for the motor vehicle unless~~
 1033 ~~the pawnbroker repossesses the motor vehicle pursuant to a default;~~

1034 ~~(13) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
 1035 ~~a statement that the pawnbroker may charge a storage fee for a repossessed motor vehicle~~
 1036 ~~not to exceed \$5.00 per day, but only if the pawnbroker actually repossesses and actually~~
 1037 ~~must store the motor vehicle;~~

1038 ~~(14) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
 1039 ~~a statement that the pawnbroker may charge a repossession fee, not to exceed \$50.00, but~~
 1040 ~~only if the pawnbroker actually repossesses the motor vehicle;~~

1041 ~~(15) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
 1042 ~~a statement that the pawnbroker may charge a fee to register a lien upon the motor vehicle~~
 1043 ~~certificate of title, not to exceed any fee actually charged by the appropriate state to~~
 1044 ~~register a lien upon a motor vehicle certificate of title, but only if the pawnbroker actually~~
 1045 ~~places such a lien upon the motor vehicle certificate of title;~~

1046 ~~(16)~~(11) A statement that any costs to ship the pledged items to the pledgor or seller can
 1047 be charged to the pledgor or seller, along with a handling fee to equal no more than 50
 1048 percent of the actual costs to ship the pledged items; and
 1049 ~~(17)~~(12) A statement that a fee of up to \$2.00 can be charged for each lost or destroyed
 1050 pawn ticket."

1051 SECTION 9.

1052 Said title is further amended by revising Code Section 44-14-403, relating to lien of
 1053 pawnbroker, action for interference, grace period on pawn transactions, extension or
 1054 continuation of maturity date, and redemption of goods after maturity date, as follows:

1055 "44-14-403.

1056 (a) A pawnbroker shall have a lien on the pledged goods pawned for the money advanced,
 1057 interest, and pawnshop ~~charge~~ charges owed but not for other debts due to ~~him~~ the
 1058 pawnbroker. ~~He~~ The pawnbroker may retain possession of the pledged goods until ~~his~~ the
 1059 lien is satisfied and may have a right of action against anyone interfering therewith.

1060 (b)(1) There shall be a grace period of ten calendar days on all pawn transactions. ~~On~~
 1061 ~~pawn transactions involving motor vehicles or motor vehicle certificates of title, the grace~~
 1062 ~~period shall be 30 calendar days; on all other pawn transactions the grace period shall be~~
 1063 ~~ten calendar days.~~ In the event that the last day of the grace period falls on a day in
 1064 which the pawnbroker is not open for business, the grace period shall be extended
 1065 through the first day following upon which the pawnbroker is open for business. The
 1066 pawnbroker shall not sell the pledged goods during the grace period.

1067 (2) By agreement of the parties, the maturity date of the pawn transaction may be
 1068 extended or continued for 30 day periods, provided that the interest rates and charges as
 1069 specified in Code Section 44-12-131 are not exceeded. The grace period shall begin
 1070 running on the first day following the maturity date of the pawn transaction or on the first
 1071 day following the expiration of any extension or continuation of the pawn transaction,
 1072 whichever occurs later. All extensions or continuations of the pawn transaction shall be
 1073 evidenced in writing.

1074 (3) Pledged goods may be redeemed by the pledgor or seller within the grace period by
 1075 the payment of any unpaid accrued fees and charges, the repayment of the principal, and
 1076 the payment of an additional interest charge not to exceed 12.5 percent of the principal.
 1077 Pledged goods not redeemed within the grace period shall be automatically forfeited to
 1078 the pawnbroker by operation of this Code section, and any ownership interest of the
 1079 pledgor or seller shall automatically be extinguished as regards the pledged item.

1080 (4) Any attempt to circumvent the interest rates and charges as specified in Code Section
 1081 44-12-131 shall be null and void. A pawn transaction shall be considered to have been
 1082 extended or continued unless:

1083 (A) All charges, fees, and the principal have actually been paid or repaid on the
 1084 previous pawn transaction;

1085 (B) The pledged goods in the previous transaction, ~~including but not limited to a motor~~
 1086 ~~vehicle certificate of title,~~ have actually been restored to the possession of the pledgor
 1087 or seller; and

1088 (C) The pledged goods in the previous transaction have been removed from the
 1089 business premises of the pawnbroker and, ~~in the case of a motor vehicle certificate of~~
 1090 ~~title, any lien on the motor vehicle certificate of title has been removed or released."~~

1091 **SECTION 10.**

1092 (a) This Act shall become effective only if funds are specifically appropriated for the
 1093 purposes of this Act in an appropriations Act enacted by the General Assembly.

1094 (b) If funds are so appropriated, then this Act shall become effective:

1095 (1) On the date such funds are available for expenditure for purposes of promulgating
 1096 rules and regulations and obtaining licensing pursuant to Article 2 of Chapter 3A of
 1097 Title 7; and

1098 (2) 180 days after such funds are available for expenditure for all other purposes.

1099 **SECTION 11.**

1100 This Act shall apply to any motor vehicle title loan agreement entered into on or after the one
 1101 hundred and eightieth day following the date funds are specifically appropriated for the
 1102 purposes of this Act in an appropriations Act enacted by the General Assembly and are
 1103 available for expenditure.

1104 **SECTION 12.**

1105 All laws and parts of laws in conflict with this Act are repealed.