

The Senate Committee on Finance offered the following substitute to SB 329:

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 **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) 'Covered employee' means any employee of a licensee engaged in any function
 39 related to making title loans.

40 (2) 'Department' means the Department of Banking and Finance.

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

45 (4) 'Individual' means a natural person.

46 (5) 'License' means a license issued by the department under this chapter.

47 (6) 'Licensee' means a person that has obtained a license under this chapter.

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

50 (8) 'Month' means the period of time from one date in a calendar month to the
 51 corresponding date in the following calendar month, but if there is no such corresponding
 52 date, then the last day of such following month.

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

56 (10) 'Motor vehicle title lender' or 'title lender' means any person that engages in the
 57 business of making motor vehicle title loans.

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

62 (12) 'Motor vehicle title loan agreement' or 'loan agreement' means a written document
63 that sets out the terms and conditions of the title loan.

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

68 (14) 'Owner' means a person that:

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

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

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

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

81 (16) 'Unique identifier' means a number or other identifier assigned by protocols
82 established by the Nationwide Multistate Licensing System and Registry.

83 7-3A-3.

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

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

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

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

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

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

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

104 7-3A-4.

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

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

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

112 ARTICLE 2

113 7-3A-10.

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

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

117 (2) Furnish to the Nationwide Multistate Licensing System and Registry the following
 118 information:

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

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

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

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

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

131 7-3A-11.

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

135 (b) The bond shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

164 7-3A-12.

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

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

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

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

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

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

179 7-3A-13.

180 (a) The department is authorized to:

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

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

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

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

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

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

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

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

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

207 ARTICLE 3

208 7-3A-20.

209 (a) Each licensee shall:

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

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

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

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

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

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

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

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

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

231 7-3A-21.232 (a) A licensee shall send written notice to the department within ten days of the following:233 (1) Any knowledge or discovery of an act prohibited by Code Section 7-3A-44;234 (2) Any knowledge or discovery of the discharge of a covered employee for actual or
235 suspected misrepresentations, dishonest acts, or fraudulent acts;236 (3) Any knowledge or discovery of an administrative, civil, or criminal action initiated
237 by any governmental entity against the licensee or any owner, executive officer, or
238 covered employee; and239 (4) The filing of a petition by or against the licensee under the United States Bankruptcy
240 Code, 11 U.S.C. Sections 101 through 110, for bankruptcy reorganization or the filing of
241 a petition by or against the licensee for receivership or the making of a general
242 assignment for the benefit of its creditors.243 (b) A licensee shall send written notice to the department within 30 days of the following:244 (1) The commencement of any action brought against it relating to the business of
245 making title loans;246 (2) The commencement of any action involving a claim against the bond filed with the
247 department pursuant to Code Section 7-3A-11; and248 (3) The entry of any judgment against the licensee.249 (c) The corporate surety that issued a licensee a bond pursuant to Code Section 7-3A-11
250 shall send written notice to the department within ten days of paying any claim or judgment
251 to any creditor or claimant.252 (d) Any notice sent pursuant to this Code section shall be sent by registered or certified
253 mail or statutory overnight delivery and include sufficient details for the department to
254 identify any relevant creditor or claimant, claim, cause of action, judgment, payment, or
255 prohibited act.256 7-3A-22.257 (a) A licensee shall not engage in the business of making motor vehicle title loans at a
258 location in this state that was not included in the licensee's original or renewal application
259 unless the licensee has first received written approval from the department. To obtain such
260 approval, the licensee shall:261 (1) Submit an application to the department in such form as the department may
262 prescribe;263 (2) Provide such other information as the department may require concerning the
264 location; and265 (3) Pay a nonrefundable application fee as prescribed by rule or regulation of the
266 department.

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

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

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

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

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

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

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

288 ARTICLE 4

289 7-3A-30.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

333 (10) Take the depositions of witnesses; and

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

335 7-3A-31.

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

337 (1) Registered or certified mail or statutory overnight delivery, return receipt requested,
338 to the addressee's business or personal mailing address;
339 (2) Examiners appointed by the department; or
340 (3) The sheriff of the county where such witness resides or is found or where the person
341 in custody of any books, accounts, records, files, documents, or papers resides or is
342 found.

343 (b) The department may issue and apply to enforce subpoenas in this state at the request
344 of any governmental agency, department, organization, or entity regulating the making of
345 title loans in another state if the activities constituting the alleged violation for which the
346 information is sought would be a violation of this chapter if the alleged activities had
347 occurred in this state.

348 (c) If any person refuses to obey a subpoena issued under this chapter, a superior court of
349 appropriate jurisdiction, upon application by the department, may issue to the person an
350 order requiring such person to appear before the court to show cause why such person
351 should not be held in contempt for refusal to obey the subpoena. Failure to obey a
352 subpoena may be punished as contempt by the court.

353 7-3A-32.

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

372 which removes the legal disabilities resulting from such conviction and restores civil and
373 political rights.

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

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

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

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

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

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

431 7-3A-33.

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

434 (1) Committed any fraud, engaged in any dishonest activities, or made any
 435 misrepresentation;

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

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

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

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

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

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

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

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

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

460 7-3A-34.

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

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

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

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

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

489 7-3A-35.

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

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

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

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

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

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

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

520 (e) Judicial review of a final decision of the department issued pursuant to paragraph (2)
521 or (3) of subsection (a) of this Code section shall be in accordance with Code Section
522 7-1-90, except that judicial review shall be available solely in the superior court of the
523 county of domicile of the department.

524 7-3A-36.

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

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

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

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

551 7-3A-37.

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

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

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

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

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

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

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

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

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

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

577 7-3A-38.

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

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

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

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

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

591 ARTICLE 5

592 7-3A-40.

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

595 (b) A licensee may charge and collect interest on a motor vehicle title loan at a rate not to
596 exceed the maximum rate of interest allowed under Code Section 7-4-18.

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

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

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

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

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

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

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

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

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

620 7-3A-41.

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

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

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

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

627 (4) The loan amount;

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

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

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

633 (8) The borrower's mailing address;

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

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

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

640 NOTICE

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

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

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

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

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

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

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

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

663 7-3A-42.

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

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

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

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

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

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

677 7-3A-43.

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

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

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

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

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

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

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

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

713 7-3A-44.

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

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

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

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

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

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

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

745 7-3A-45.

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

749 7-3A-46.

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

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

756 7-3A-47.

757 Nothing in this chapter shall limit:

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

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

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

764 **SECTION 3.**

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

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

776 **SECTION 4.**

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

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

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

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

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

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

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

842

SECTION 5.

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

847 "43-47-3.

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

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

851 (2) Three members shall be appointed from the public at large and shall have no
852 connection whatsoever with the sale of used cars or parts;853 (3) The state revenue commissioner, or a designated agent, shall be a permanent ex
854 officio member and shall be authorized to vote on all matters before the board;855 ~~(4) Reserved;~~856 ~~(5)~~(4) One member shall be a representative of the automobile auction industry;857 ~~(6)~~(5) One member shall be an auto salvage pool operator;858 ~~(7)~~(6) Two members shall be used motor vehicle parts dealers who are not rebuilders;859 ~~(8)~~(7) One member shall be a rebuilder;860 ~~(9) One member shall be a pawnbroker as defined in Code Section 44-12-130 who is in
861 the business of pawning automobile titles and is licensed as a used car dealer; and~~862 ~~(10)~~(8) One member shall be a representative of the automobile insurance industry.

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

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

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

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

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

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

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

905 **SECTION 6.**

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

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

920 **SECTION 7.**

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

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

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

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

933 ~~(4)(2)(A)~~ During the first 90 days of any pawn transaction or extension or continuation
934 of the pawn transaction, a pawnbroker may charge for each 30 day period interest and

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

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

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

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

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

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

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

960 ~~(E)~~(D) In the event the pledgor or seller has lost or destroyed the original pawn ticket,
961 a pawnbroker may, at the time of redemption, charge a fee equal to not more than
962 \$2.00.

963 ~~(5)~~(3) No other charge or fee of any kind by whatever name denominated, ~~including but~~
964 ~~not limited to any other storage fee for a motor vehicle,~~ shall be made by a pawnbroker
965 except as set out in paragraph ~~(4)~~ (2) of this subsection.

966 ~~(6)~~(4) No fee or charge provided for in this Code section may be imposed unless a
967 disclosure regarding that fee or charge has been properly made as provided for in Code
968 Section 44-12-138.

969 ~~(7)~~(5)(A) Any interest, fees, or charges collected which are undisclosed, improperly
970 disclosed, or in excess of that allowed by this subsection may be recovered by the
971 pledgor or seller in an action at law in any superior court of appropriate jurisdiction.

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

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

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

987 **SECTION 8.**

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

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

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

995 (2) A statement as follows:

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

999 ~~(3) If the pawned item is a motor vehicle or motor vehicle certificate of title, a statement~~
 1000 ~~as follows:~~

1001 ~~'Failure to make your payment as described in this document can result in the loss of~~
 1002 ~~your motor vehicle. The pawnbroker can also charge you certain fees if he or she~~
 1003 ~~actually repossesses the motor vehicle.';~~

1004 ~~(4)~~(3) A statement that the length of the pawn transaction is 30 days and that it can only
 1005 be renewed with the agreement of both parties and only for 30 day incremental periods;

1006 ~~(5)~~(4) The annual percentage rate, computed in accordance with the federal Truth in
 1007 Lending Act and regulations under the federal Truth in Lending Act, for the first 30 days

1008 of the transaction, computed as if all interest and pawnshop charges were considered to
1009 be interest;

1010 ~~(6)~~(5) The annual percentage rate, computed in accordance with the federal Truth in
1011 Lending Act and regulations under the federal Truth in Lending Act, for each 30 day
1012 period in which the pawn transaction might be continued or extended, computed as if all
1013 interest and pawnshop charges were considered to be interest. For purposes of
1014 identifying the annual percentage rate after the second continuation or extension, a single
1015 statement which identifies an annual percentage rate for each possible 30 day period
1016 thereafter shall meet the requirements of this Code section;

1017 ~~(7)~~(6) A statement in dollar amounts of how much it will cost the ~~seller or pledgor or~~
1018 seller to redeem the merchandise in the first 30 day period of the transaction;

1019 ~~(8)~~(7) A statement in dollar amounts of how much it will cost the ~~seller or pledgor or~~
1020 seller to redeem the merchandise in any 30 day period after the first 30 day period of the
1021 pawn transaction, provided that all fees and charges have been kept current;

1022 ~~(9)~~(8) A statement of the specific maturity date of the pawn transaction;

1023 ~~(10)~~(9) A statement of how long, the grace period, the pledged goods may be redeemed
1024 after the specific maturity date and the dollar amount which will be required to redeem
1025 the pledged goods after the specific maturity date;

1026 ~~(11)~~(10) A statement that after the grace period the pledged goods become the property
1027 of the pawnbroker;

1028 ~~(12) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
1029 ~~a statement that the pawnbroker may not charge a storage fee for the motor vehicle unless~~
1030 ~~the pawnbroker repossesses the motor vehicle pursuant to a default;~~

1031 ~~(13) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
1032 ~~a statement that the pawnbroker may charge a storage fee for a repossessed motor vehicle~~
1033 ~~not to exceed \$5.00 per day, but only if the pawnbroker actually repossesses and actually~~
1034 ~~must store the motor vehicle;~~

1035 ~~(14) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
1036 ~~a statement that the pawnbroker may charge a repossession fee, not to exceed \$50.00, but~~
1037 ~~only if the pawnbroker actually repossesses the motor vehicle;~~

1038 ~~(15) If the pawn transaction involves a motor vehicle or motor vehicle certificate of title,~~
1039 ~~a statement that the pawnbroker may charge a fee to register a lien upon the motor vehicle~~
1040 ~~certificate of title, not to exceed any fee actually charged by the appropriate state to~~
1041 ~~register a lien upon a motor vehicle certificate of title, but only if the pawnbroker actually~~
1042 ~~places such a lien upon the motor vehicle certificate of title;~~

1043 ~~(16)~~(11) A statement that any costs to ship the pledged items to the pledgor or seller can
 1044 be charged to the pledgor or seller, along with a handling fee to equal no more than 50
 1045 percent of the actual costs to ship the pledged items; and
 1046 ~~(17)~~(12) A statement that a fee of up to \$2.00 can be charged for each lost or destroyed
 1047 pawn ticket."

1048 **SECTION 9.**

1049 Said title is further amended by revising Code Section 44-14-403, relating to lien of
 1050 pawnbroker, action for interference, grace period on pawn transactions, extension or
 1051 continuation of maturity date, and redemption of goods after maturity date, as follows:

1052 "44-14-403.

1053 (a) A pawnbroker shall have a lien on the pledged goods pawned for the money advanced,
 1054 interest, and pawnshop ~~charge~~ charges owed but not for other debts due to ~~him~~ the
 1055 pawnbroker. ~~He~~ The pawnbroker may retain possession of the pledged goods until ~~his~~ the
 1056 lien is satisfied and may have a right of action against anyone interfering therewith.

1057 (b)(1) There shall be a grace period of ten calendar days on all pawn transactions. ~~On~~
 1058 ~~pawn transactions involving motor vehicles or motor vehicle certificates of title, the grace~~
 1059 ~~period shall be 30 calendar days; on all other pawn transactions the grace period shall be~~
 1060 ~~ten calendar days.~~ In the event that the last day of the grace period falls on a day in
 1061 which the pawnbroker is not open for business, the grace period shall be extended
 1062 through the first day following upon which the pawnbroker is open for business. The
 1063 pawnbroker shall not sell the pledged goods during the grace period.

1064 (2) By agreement of the parties, the maturity date of the pawn transaction may be
 1065 extended or continued for 30 day periods, provided that the interest rates and charges as
 1066 specified in Code Section 44-12-131 are not exceeded. The grace period shall begin
 1067 running on the first day following the maturity date of the pawn transaction or on the first
 1068 day following the expiration of any extension or continuation of the pawn transaction,
 1069 whichever occurs later. All extensions or continuations of the pawn transaction shall be
 1070 evidenced in writing.

1071 (3) Pledged goods may be redeemed by the pledgor or seller within the grace period by
 1072 the payment of any unpaid accrued fees and charges, the repayment of the principal, and
 1073 the payment of an additional interest charge not to exceed 12.5 percent of the principal.
 1074 Pledged goods not redeemed within the grace period shall be automatically forfeited to
 1075 the pawnbroker by operation of this Code section, and any ownership interest of the
 1076 pledgor or seller shall automatically be extinguished as regards the pledged item.

1077 (4) Any attempt to circumvent the interest rates and charges as specified in Code Section
 1078 44-12-131 shall be null and void. A pawn transaction shall be considered to have been
 1079 extended or continued unless:

1080 (A) All charges, fees, and the principal have actually been paid or repaid on the
 1081 previous pawn transaction;

1082 (B) The pledged goods in the previous transaction, ~~including but not limited to a motor~~
 1083 ~~vehicle certificate of title,~~ have actually been restored to the possession of the pledgor
 1084 or seller; and

1085 (C) The pledged goods in the previous transaction have been removed from the
 1086 business premises of the pawnbroker and, ~~in the case of a motor vehicle certificate of~~
 1087 ~~title, any lien on the motor vehicle certificate of title has been removed or released."~~

1088 **SECTION 10.**

1089 (a) This Act shall become effective only if funds are specifically appropriated for the
 1090 purposes of this Act in an appropriations Act enacted by the General Assembly.

1091 (b) If funds are so appropriated, then this Act shall become effective:

1092 (1) On the date such funds are available for expenditure for purposes of promulgating
 1093 rules and regulations and obtaining licensing pursuant to Article 2 of Chapter 3A of
 1094 Title 7; and

1095 (2) 180 days after such funds are available for expenditure for all other purposes.

1096 **SECTION 11.**

1097 This Act shall apply to any motor vehicle title loan agreement entered into on or after the one
 1098 hundred and eightieth day following the date funds are specifically appropriated for the
 1099 purposes of this Act in an appropriations Act enacted by the General Assembly and are
 1100 available for expenditure.

1101 **SECTION 12.**

1102 All laws and parts of laws in conflict with this Act are repealed.