

The Senate Committee on Banking and Financial Institutions offered the following substitute to HB 781:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to
2 financial institutions, so as to clarify and remove superfluous language; to authorize the
3 department to approve payment of dividends by a bank or trust company under certain
4 conditions; to expand the department's authority to waive the residency requirement for bank
5 or trust company directors; to authorize a trust company and bank merger under certain
6 circumstances; to authorize Georgia banks to conduct certain activities at representative
7 offices outside of Georgia; to change registration and notice requirements for a bank or bank
8 holding company with a representative office; to reduce the number of days the department
9 has to approve or disapprove applications for a branch office; to eliminate the department's
10 authority to waive publication requirement for certain procedures; to add night depository
11 to list of extensions not requiring approval; to update restrictions on location of extensions;
12 to remove notification requirement for out-of-state banks establishing or acquiring additional
13 branches; to replace supervisory committee with audit committee; to change limitations on
14 loans by credit unions; to authorize the department to promulgate regulations related to
15 allowable credit union loans and obligations; to provide for credit union extensions and
16 restrictions thereof; to establish application requirements for credit union branch offices; to
17 eliminate notification methods relating to bond cancellation; to provide that the unique
18 identifier of certain licensees or registrants is not confidential; to reduce the number of days
19 for certain cease and desist orders to become final; to repeal Code Section 7-1-1003.1,
20 relating to physical place of business; to eliminate the notification requirement for a change
21 in ultimate equitable owner of mortgage brokers or mortgage lenders; to change advertising
22 content requirements for mortgage lenders and mortgage brokers; to reduce the number of
23 days for the process related to bond cancellation notice; to amend Chapter 6A of Title 7 of
24 the Official Code of Georgia Annotated, relating to the Georgia Fair Lending Act, so as to
25 update citations to federal regulations; to provide for related matters; to repeal conflicting
26 laws; and for other purposes.

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

28 **SECTION 1.**

29 Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial
30 institutions, is amended by revising paragraph (6) of Code Section 7-1-234, relating to
31 grounds for disapproving proposal, as follows:

32 "(6) In the case of trust companies, any individual who is an acquiring person party under
33 Code Section 7-1-232 or an individual ~~that who~~ is a director or officer of ~~such an~~
34 acquiring person party under Code Section 7-1-232 has unsatisfactory results from a
35 fingerprint record check report conducted by the Georgia Crime Information Center and
36 the Federal Bureau of Investigation. The department shall be authorized to obtain
37 conviction data with respect to any individual who is an acquiring person party or an
38 individual ~~that who~~ is a director or officer of ~~such person an acquiring party~~, and such
39 individual who is an acquiring person party or an individual ~~that who~~ is a director or
40 officer of ~~such person an acquiring party~~ shall provide express written consent to the
41 department to conduct a criminal background check and to use all information necessary
42 to run such check, including, but not limited to, a classifiable set of fingerprints. The
43 individual who is an acquiring person party or an individual ~~that who~~ is a director or
44 officer of ~~such person an acquiring party~~ shall be responsible for all fees associated with
45 the performance of such criminal background check; or"

46 **SECTION 2.**

47 Said chapter is further amended by revising paragraph (2) of subsection (a) of Code Section
48 7-1-460, relating to restrictions on payment of dividends and limitation of actions for
49 dividends or distributions, as follows:

50 "(2) The department may approve the payment of dividends by a ~~Subchapter S bank or~~
51 trust company, prior to the time such bank or trust company achieves cumulative
52 profitability;:

53 (A) For for the sole purpose of providing its the shareholders of a Subchapter S bank
54 with a source of funds to pay federal and state income taxes on the Subchapter S bank's
55 income that is taxable to those shareholders; or

56 (B) If a bank or trust company is profitable on an annual basis and the payment of such
57 dividend is consistent with standards of safety and soundness;"

58 **SECTION 3.**

59 Said chapter is further amended by revising Code Section 7-1-480, relating to board of
60 directors, as follows:

61 "7-1-480.

62 (a) Administration of the business and affairs of a bank or trust company shall be the
63 responsibility of a board of directors.

64 (b) Seventy-five percent of the directors shall be citizens of the United States and at least
65 a majority shall:

66 (1) Reside in Georgia; or

67 (2) Reside within 40 miles of any banking location authorized to offer a complete
68 banking or trust service.

69 (c) The residency requirements of paragraphs (1) and (2) of subsection (b) of this Code
70 section shall not apply to banks having branches in states other than Georgia, provided that
71 the residency of directors is consistent with the bank's articles of incorporation and bylaws.

72 (d) The department may waive or modify the requirements of subsection (b) of this Code
73 section ~~with respect to special purpose banks organized pursuant to subsection (c) of Code~~
74 ~~Section 7-1-394~~ relating to the residency requirements in the State of Georgia.

75 (e) Notwithstanding other provisions of this Code section, directors who were legally
76 qualified to serve on April 1, 1975, may continue to serve for such time as they are
77 continuously members of the board of directors of their bank or trust company."

78

SECTION 4.

79 Said chapter is further amended by revising subsection (a) of Code Section 7-1-530, relating
80 to authority to merge or consolidate, merger, consolidation, or share exchange across state
81 lines, and required provisions of the merger plan, as follows:

82 "(a) Upon compliance with the requirements of this part and other applicable laws and
83 regulations, including any branching and minimum age laws and regulations, banks or trust
84 companies may merge or consolidate, provided that ~~an institution exercising trust powers~~
85 ~~alone~~ a trust company may merge or consolidate ~~only~~ with ~~another such trust company~~ a
86 bank that is authorized to exercise trust powers so long as the resulting institution is a bank.

87 Upon compliance with the requirements of this part and other applicable laws and
88 regulations, including any branching and minimum age laws and regulations, a corporation
89 other than a bank or trust company may acquire all of the outstanding shares of one or more
90 classes or series of one or more banks or trust companies through a share exchange."

91

SECTION 5.

92 Said chapter is further amended by revising Code Section 7-1-591, relating to establishment
93 of representative office by bank or bank holding company domiciled in state, as follows:

94 "7-1-591.

95 (a) A bank domiciled in this state and operating under the laws of this state or a subsidiary
96 or agent of such bank may establish a representative office anywhere in the state upon
97 registering with the department. A bank holding company domiciled in this state and
98 operating under the laws of this state or a nonbank subsidiary or agent of such bank holding
99 company may establish a representative office anywhere in this state upon registering with
100 the department.

101 (b) Subject to any limitation or restrictions of the host state and upon registering the
102 representative office with the department, a Georgia chartered bank may conduct any
103 activities at any representative office outside Georgia that are authorized by Georgia law
104 or that are permissible for a bank chartered by the host state where the representative office
105 is located, except to the extent such activities are expressly prohibited by the laws of this
106 state or by any regulation or order of the commissioner applicable to the Georgia chartered
107 bank and except where the activity is one that requires approval from the department, in
108 which case such approval must be secured; provided, however, that the commissioner may
109 waive any prohibition or requirement for approval if he or she determines, by order or
110 regulation, that the involvement of out-of-state representative offices of the Georgia
111 chartered bank in particular activities would not threaten the safety or soundness of such
112 bank."

113

SECTION 6.

114 Said chapter is further amended by revising Code Section 7-1-593, relating to registration of
115 bank or bank holding company having representative office in state, as follows:

116 "7-1-593.

117 (a) A bank or bank holding company domiciled in this state and having a representative
118 office ~~located in this state~~ shall register such representative office with the department
119 ~~annually on forms prescribed by the department. Such registration shall be filed according~~
120 ~~to regulations issued by the department and shall list the names of all its Georgia~~
121 ~~representative offices, the street address of the offices, the nature of the business to be~~
122 ~~transacted in or through the offices, and such other information as the department may~~
123 ~~require. The department may consolidate these requirements with the holding company~~
124 ~~registration required in Parts 18, 19, and 20 of this article. Prior to closing a representative~~
125 office, such bank or bank holding company must post notice of the closing as required by
126 Code Section 7-1-110.1.

127 (b) The department may review the operations of any representative office annually or at
128 such greater frequency as it deems necessary to assure that the office does not transact a
129 banking business."

130

SECTION 7.

131 Said chapter is further amended by revising Code Section 7-1-602, relating to applications
 132 for branch offices, as follows:

133 "7-1-602.

134 (a) Application to establish a branch office shall be made to the department in such form
 135 as it may prescribe from time to time. The department shall exercise its discretion in its
 136 consideration of the application; but the department shall not approve the application until
 137 it has ascertained to its satisfaction that the public need and advantage will be promoted by
 138 the establishment of the proposed branch office, based upon the following factors:

- 139 (1) Reasonable opportunity for the proposed branch office to generate a sufficient profit;
 140 (2) The character and fitness of the board of directors and management of the bank to
 141 command the confidence of the community and to warrant the belief that the business of
 142 the bank or trust company at the branch office will be honestly and efficiently conducted;
 143 (3) The adequacy of the capital structure of the bank or trust company, particularly in
 144 view of the anticipated business to be generated by the proposed branch office; and
 145 (4) The overall financial condition and safety and soundness of the applicant bank or
 146 trust company.

147 Where the department by rule, regulation, or written policy has provided for expedited
 148 processing of applications or for notice procedures, it may abbreviate its review of these
 149 criteria.

150 (b) After receipt of a complete application, the department shall have ~~90~~ 30 days within
 151 which to approve or disapprove such application.

152 (c) The department may approve an application contingent upon the satisfaction of
 153 additional conditions, including the submission of information such as the date of opening
 154 and the capital outlay for the branch office. If the approval of a federal regulatory agency
 155 is required with respect to the branch office, the department may at its option withhold its
 156 written approval or disapproval until such federal approval is granted or denied or may
 157 withdraw its approval if the federal agency fails to act or refuses to grant approval. If the
 158 department disapproves the branch office, it shall notify the applicant of its disapproval and
 159 state generally in writing the unfavorable factors influencing its decision. The decision of
 160 the department is final, except that it may be subject to judicial review as provided in Code
 161 Section 7-1-90.

162 (d) The department may provide by regulation that a bank which meets certain financial
 163 and managerial criteria may, in lieu of application, file a written notification with the
 164 department at a time to be specified in such regulation. ~~The department may waive~~
 165 ~~publication requirements for such a procedure.~~

166 (e) All lawfully established banking locations existing on July 1, 1999, other than a bank's
167 main office, shall be known and shall qualify as branch offices.

168 (f) In the event of merger or consolidation of two or more banks, pursuant to Parts 14
169 and 15 of this article, the surviving or resulting bank shall designate a main office and may
170 retain and continue to operate any or all banking locations of each constituent bank as
171 branch offices ~~so long as they are consistent with and authorized by this part~~. In the event
172 of the purchase of substantially all of the assets of a bank, subject to the review and
173 approval by the commissioner of such transaction, the purchasing bank may retain and
174 continue to operate any or all banking locations of the selling bank as branch offices ~~so
175 long as they are consistent with and authorized by this part~~.

176 (g) The department's approval may be revoked if conditions in the approval have not been
177 satisfied or if other violations of law occur as a result of the branch office's opening or
178 operation."

179

SECTION 8.

180 Said chapter is further amended by revising Code Section 7-1-603, relating to extension of
181 existing banking locations, automated teller machines, cash dispensing machines,
182 point-of-sale terminals, and other extensions, as follows:

183 "7-1-603.

184 (a) An approved banking location may have an extension, which is not a branch or main
185 office, at which banking activities may occur. The extensions described in this Code
186 section do not require approval but may have certain restrictions or required notifications.

187 (b) The following are extensions:

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

194 (2) 'Cash dispensing machine' means for the purposes of this part and as used in
195 paragraph (4) of subsection (b) of Code Section 7-1-241 an automated or electronic
196 terminal which dispenses cash or scrip redeemable for goods and services or for cash,
197 goods, and services. Such machines may provide account information but may not
198 initiate intrabank transactions other than those necessary and incidental to the dispensing
199 of cash.

200 (3) 'Night depository' means a drop box where customers can make deposits or payments
201 outside of normal banking hours.

202 ~~(3)~~(4) 'Point-of-sale terminal' means electronic equipment located in nonbank business
 203 outlets to record electronically ~~with~~ a bank transactions occurring as a result of the sale
 204 of goods or services.

205 For purposes of this Code section, the terms 'automated teller machine,' 'point-of-sale
 206 terminal,' ~~and~~ 'cash dispensing machine,' ~~and~~ 'night depository' shall not include personal
 207 communication devices such as telephones, computer terminals, modems, and other similar
 208 devices which are not accessible to the general public but are intended for use by a single
 209 bank customer. It is not the intent of this Code section to limit the ability of banks or other
 210 entities to utilize personal communication devices. The department may by regulation
 211 further define 'automated teller machine,' 'point-of-sale terminal,' 'cash dispensing
 212 machine,' 'night depository,' and 'personal communication device' consistent with the
 213 objectives set forth in Code Section 7-1-3.

214 (c) The following are restrictions on location of an extension:

215 (1) Any federally insured bank ~~or credit union~~ may operate automated teller machines
 216 throughout ~~this~~ the state. These machines may be operated individually by any bank ~~or~~
 217 ~~credit union~~ or jointly on a cost-sharing basis by two or more banks ~~or credit unions~~;

218 (2) Any bank may operate cash dispensing machines throughout the state. Access to and
 219 use of cash dispensing machines may be available to all banks in this state on an
 220 individual or a shared basis; ~~and~~

221 (3) A night depository may be located anywhere in the state; and

222 ~~(3)~~(4) A point-of-sale terminal may be located anywhere in the state.

223 (d) An extension not defined in subsection (b) of this Code section is permitted, provided
 224 that such extension is located within the boundary lines of a single contiguous area of
 225 property owned or leased by the bank and used as a banking location, or if it is within 200
 226 yards of such a banking location. Banking services may be performed at the extension.
 227 Written notification to the department is required for such extension."

228

SECTION 9.

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

231 "(c) An out-of-state bank that has established or acquired a branch in Georgia under this
 232 part may establish or acquire additional branches in Georgia to the same extent, but to no
 233 greater extent, that any Georgia bank may establish or acquire a branch in Georgia under
 234 applicable federal and state law. ~~Notification to the department from the bank is required~~
 235 ~~at the same time as the application is made to the federal regulator. A letter describing the~~
 236 ~~transaction shall constitute the required notification and may be written and sent by the~~
 237 ~~bank or the home state regulator."~~

238

SECTION 10.

239 Said chapter is further amended by revising paragraph (3) of subsection (b) of Code Section
 240 7-1-656, relating to duties of directors, meetings, prohibited activities, eligibility to vote,
 241 applicability of Code Section 7-1-490, and appointment of honorary director or director
 242 emeritus, as follows:

243 "(3) Any action authorized to be taken at a meeting of the board of directors or a credit,
 244 ~~supervisory audit~~, or other committee may be taken without a meeting if the action is set
 245 forth in writing and approved and signed by all directors or all members of the credit,
 246 ~~supervisory audit~~, or other committee entitled to vote with respect to the underlying subject
 247 matter."

248

SECTION 11.

249 Said chapter is further amended by revising Code Section 7-1-658, relating to loans, as
 250 follows:

251 "7-1-658.

252 (a) Credit unions may lend money to their members at reasonable rates of interest, which
 253 shall not exceed 1 1/4 percent each month on the unpaid balance, or such greater rates as
 254 shall be authorized for other financial institutions for such purposes as may be approved
 255 by the credit committee.

256 (b) Loans shall be supervised as follows:

257 (1) The credit committee shall have the general supervision of all loans to members. The
 258 credit committee shall hold such meetings as the business of the credit union may require
 259 and not less frequently than once each quarter to consider applications for loans.
 260 Reasonable notice of such meetings shall be given to all members of the committee.

261 Actions of the credit committee shall be reported to the board in such form as the board
 262 shall prescribe at each regular meeting of the board. No loan shall be made unless it is
 263 approved by a majority of the entire committee, except as provided in this Code section;

264 (2) The credit committee may appoint one or more employees to be loan officers and
 265 delegate to such persons the power to approve or disapprove loans to a borrower that do
 266 not in the aggregate exceed 5 percent of the net worth of the credit union subject to such
 267 limitations or conditions set forth in this Code section for loans generally and such further
 268 limitations and conditions as the credit committee prescribes. Records of loans approved
 269 shall be maintained in such form as the credit committee shall prescribe and shall be
 270 made available to the credit committee upon request. ~~All loans in excess of 50 percent~~
 271 ~~of a credit union's maximum loan limitation or such lower limit as the credit committee~~
 272 ~~shall establish shall be acted upon by the credit committee.~~ The credit committee may
 273 not appoint more than one of its members to be a loan officer. No person shall have the

274 authority to disburse funds of the credit union for any loan which has been approved by
275 such person;

276 (3) In lieu of a credit committee, the board of directors may appoint one or more loan
277 officers and delegate to such persons the power to approve or disapprove loans to a
278 borrower that do not in the aggregate exceed 5 percent of the net worth of the credit union
279 subject to such limitations or conditions set forth in this Code section for loans generally
280 and such further limitations and conditions as the board may ~~prescribes~~ prescribe. All
281 other duties of the credit committee as described in this article shall become the duties
282 of the board of directors. Records of loans approved shall be maintained by the loan
283 officers in such form as the board shall prescribe and a listing of all loans made, including
284 the name of the borrower and the amount of the loan, shall be submitted to the board at
285 each meeting; and

286 (4) Members may appeal a credit decision made by a loan officer to the credit committee
287 or to the board if denied by the credit committee. Where there is no credit committee,
288 appeal shall be made to the board.

289 (c) Loans may be made to officers, directors, and committee members of the credit union
290 under the same general terms and conditions as to other members of the credit union;
291 provided, however, that no officer, director, committee member, or employee shall
292 participate in approving any loan in which he or she has a direct or indirect financial
293 interest. The approval of all loans to officers, directors, and committee members of the
294 credit union shall be reported to the board of directors at its next meeting.

295 (d) As used in this Code section, the term 'person' or 'corporation' includes, but is not
296 limited to, an individual, corporation, partnership, trust, association, joint venture, pool,
297 syndicate, sole proprietorship, or unincorporated organization.

298 ~~(d)(e) No credit union shall be authorized to lend to any individual borrower on an~~
299 ~~unsecured loan more than 1 percent of the first \$100,000.00 of its deposits and shares plus~~
300 ~~one-fourth of 1 percent of its deposits and shares over \$100,000.00. No credit union shall~~
301 ~~be authorized to lend to any individual borrower on a secured loan more than 10 percent~~
302 ~~of the first \$100,000.00 of its deposits and shares plus 4 percent of the next \$1 million of~~
303 ~~its deposits and shares plus 2 percent of its deposits and shares over \$1.1 million. Deposits~~
304 ~~and shares reflected in the statement of condition on the last calendar day of the preceding~~
305 ~~quarter, to the nearest \$100,000.00, shall be used to establish loan limits for the subsequent~~
306 ~~calendar quarter, provided that where a credit union has less than \$1 million in total shares~~
307 ~~and deposits, the nearest \$1,000.00 shall be used to establish these limits. Any credit union~~
308 ~~may make loans up to \$200.00 regardless of the amount of its shares and deposits. The~~
309 ~~amount loaned to any one borrower on an unsecured basis when added to the amount~~
310 ~~loaned to any one borrower on a secured basis shall not exceed the limitation set forth in~~

311 ~~this subsection for secured loans, such limitation being the maximum loan limit of the~~
 312 ~~credit union make loans to any one person or corporation where the aggregate of such loans~~
 313 ~~and obligations together exceeds 5 percent of the net worth of the credit union unless each~~
 314 ~~loan in excess of said 5 percent limit is approved in advance by the board of directors or~~
 315 ~~the credit committee subject to the provisions set forth in subsections (f) and (g) of this~~
 316 ~~Code section. Approval by the board of directors or credit committee shall be recorded in~~
 317 ~~the formal minutes of the actions of the board or the credit committee by name of borrower,~~
 318 ~~amount of loan, maturity of loan, general type of collateral, and such other information as~~
 319 ~~required pursuant to the rules and regulations of the department. Any action required by~~
 320 ~~this subsection may be taken as prescribed in Code Section 7-1-656, provided that the~~
 321 ~~minutes of the proceedings of the board of directors or credit committee reflect such action~~
 322 ~~and each director taking such action signs the minutes reflecting such action by no later~~
 323 ~~than the next regular meeting of the board or credit committee attended by such director.~~

324 ~~(e) For purposes of subsection (d) of this Code section:~~

325 ~~(1) 'Borrower' means the member who actually received the proceeds from a loan and~~
 326 ~~shall not include any obligation which he may incur by being an endorser, guarantor,~~
 327 ~~comaker, or similar obligor for another borrower;~~

328 ~~(2) 'Secured loan' means a loan for which adequate collateral is given. A secured loan~~
 329 ~~may include a loan for which there is an endorser, guarantor, comaker, or similar obligor.~~

330 ~~(f) Except as provided in subsection (g) of this Code section, a credit union shall not~~
 331 ~~directly or indirectly make loans or have obligations to any one person or corporation~~
 332 ~~which in aggregate exceed 5 percent of the net worth of the credit union at the time of~~
 333 ~~issuance of a binding commitment unless the entire amount of such loans and obligations~~
 334 ~~is secured by good collateral or other ample security and does not exceed 25 percent of the~~
 335 ~~net worth at the time of issuance of a binding commitment. Except as otherwise indicated~~
 336 ~~in subsection (g) of this Code section, the purchase or discount of agreements for the~~
 337 ~~payment of money or evidences of indebtedness shall be regarded as indirect loans to the~~
 338 ~~person or corporation receiving the proceeds of such transactions. In estimating the legal~~
 339 ~~lending limit for any one person or corporation, loans to related corporations, partnerships,~~
 340 ~~and other entities shall be combined subject to regulations established by the department.~~

341 ~~(g) The limitations of subsection (f) of this Code section shall not apply to:~~

342 ~~(1) Obligations of and obligations guaranteed by:~~

343 ~~(A) The United States;~~

344 ~~(B) The State of Georgia or a public body thereof authorized to levy taxes;~~

345 ~~(C) Any state of the United States or any public body thereof if the obligations or~~
 346 ~~guarantees are general obligations; or~~

347 (D) Any agency of this state as defined in subparagraph (a)(1)(A) of Code Section
 348 50-14-1;

349 (2) Obligations to the extent secured by:

350 (A) Obligations fully guaranteed by the United States;

351 (B) Guaranties or commitments or agreements to take over or purchase made by any
 352 public body of the United States or any corporation owned directly or indirectly by the
 353 United States; or

354 (C) Loan agreements between a local public agency or a public housing agency and an
 355 instrumentality of the United States pursuant to national housing legislation under
 356 which funds will be provided for payment of the obligations secured by such loan
 357 agreements;

358 (3) Obligations with respect to the sale of federal or correspondent funds to financial
 359 institutions having their deposits insured to the same extent as that required of similar
 360 institutions chartered in this state; and

361 (4) A renewal or restructuring of a loan as a new loan or extension of credit following
 362 the exercise by the credit union of reasonable efforts, consistent with safe and sound
 363 banking practices, to bring the loan into conformance with the lending limits of this Code
 364 section, unless:

365 (A) New funds are advanced by the credit union to the borrower, except as permitted
 366 under this Code section;

367 (B) A new borrower replaces the original borrower; or

368 (C) The department determines that a renewal or restructuring was undertaken as a
 369 means to evade the credit union's lending limit.

370 (h) The department may, by regulation not inconsistent with this Code section, prescribe
 371 definitions of and requirements for transactions included in or excluded from the
 372 indebtedness to which this Code section applies. The department may, by regulation or
 373 otherwise, specify that the liabilities of a group of one or more persons or corporations or
 374 both shall be considered as owed by one person or corporation for the purposes of this
 375 Code section because the borrowers within the group are related through common control
 376 or the group meets other criteria established by the department for the combination of
 377 indebtedness for legal lending limitation purposes.

378 ~~(f)~~(i) Except as provided in subsection (e) of this Code section, approval Approval of loans
 379 by the credit committee shall be evidenced, prior to disbursement of the loan proceeds, by
 380 a writing signed by a committee member stating that the committee has approved the loan.
 381 If the board appoints loan officers in lieu of a credit committee, it shall establish policies
 382 for approval of loans by those loan officers."

383

SECTION 12.

384 Said chapter is further amended by revising Code Section 7-1-664, which is reserved, as
385 follows:

386 "7-1-664.

387 (a) For purposes of this Code section, the term:

388 (1) 'Automated teller machine' means electronic equipment which performs routine
389 banking transactions, including, but not limited to, the taking of deposits for the public
390 at locations off premises of a credit union's main or branch office under regulations
391 prescribed by the commissioner. Such term includes electronic equipment that utilizes,
392 or has the capability to utilize, live video chat with offsite credit union personnel capable
393 of assisting with banking services, including, but not limited to, account initiation.

394 (2) 'Cash dispensing machine' means an automated or electronic terminal which
395 dispenses cash or scrip redeemable for goods and services or for cash, goods, and
396 services; provided, however, that such terminal is not capable of initiating intrabank
397 transactions other than those necessary and incidental to the dispensing of cash.

398 (3) 'Extension' means a location at which banking activity may occur but which is not
399 a branch or main office.

400 (4) 'Night depository' means a drop box where customers can make deposits or payments
401 outside of normal banking hours.

402 (5) 'Point-of-sale terminal' means electronic equipment located in non-credit union
403 business outlets to record electronically credit union transactions occurring as a result of
404 the sale of goods or services.

405 (b) A credit union location shall be authorized to operate an automated teller machine,
406 cash dispensing machine, night depository, or point-of-sale terminal without prior approval
407 of the department; provided, however, that such extension complies with the requirements
408 of this Code section and any rules and regulations of the department relating to notification.

409 (c) A credit union may operate an extension as follows:

410 (1) Any federally insured credit union may operate an automated teller machine at any
411 location in the state;

412 (2) Any credit union may operate a cash dispensing machine at any location in the state;

413 (3) Any credit union may operate an automated teller machine or a cash dispensing
414 machine individually or jointly with one or more credit unions;

415 (4) Any credit union may operate a night depository or point-of-sale terminal at any
416 location in the state;

417 (5) Any credit union may operate an extension not defined in subsection (a) of this Code
418 section, provided that such extension is located within 200 yards of the boundary lines
419 of a single contiguous area of property owned or leased by the credit union and used as

420 a credit union location. Prior to the operation of such extension, the credit union shall
 421 notify the department in writing; and
 422 (6) All other extensions must be approved by the department prior to the operation of
 423 such extension.
 424 (d) This Code section shall not apply to personal communication devices such as
 425 telephones, computer terminals, modems, and other similar devices which are not
 426 accessible to the general public but are intended for use by a single credit union member.
 427 The department may by regulation further define 'automated teller machine,' 'cash
 428 dispensing machine,' 'night depository,' 'point-of-sale terminal,' and 'personal
 429 communication device' consistent with the objectives set forth in Code Section 7-1-3."

430 **SECTION 13.**

431 Said chapter is further amended by revising Code Section 7-1-665, relating to subsidiary
 432 offices, as follows:

433 "7-1-665.

434 (a) For purposes of this Code section, the term:

435 (1) 'Branch office' means any location of a credit union other than the main office where
 436 financial services are offered to members.

437 (2) 'Main office' means the principal location of a credit union as such location appears
 438 in the records of the department.

439 (b) A credit union shall indicate its principal location with the department, and if it fails
 440 to do so, the department shall choose a location of such credit union to be the main office
 441 and shall so notify such credit union.

442 (c) A credit union shall not be prohibited from maintaining ~~may maintain~~ offices at
 443 locations other than its ~~principal offices~~ main office if the maintenance of such ~~branch~~
 444 offices shall be reasonably necessary to furnish service to its membership. The
 445 establishment of ~~additional~~ branch offices shall be subject to the prior approval of the
 446 department upon application to it in such form as it may prescribe by regulation.
 447 Participation in shared branching networks does not constitute the establishment of
 448 ~~additional~~ branch offices under this Code section.

449 (d) The department shall exercise its discretion in its consideration of an application to
 450 establish a branch office; provided, however, that the department shall not approve an
 451 application until it has satisfactorily ascertained that a need exists and the establishment of
 452 the proposed branch office would be advantageous to members. Such determination may
 453 be made upon consideration of the following factors:

454 (1) Reasonable opportunity for the proposed branch office to generate a sufficient profit;

455 (2) The character and fitness of the board of directors and management of the credit
456 union to command the confidence of the membership and to warrant the belief that the
457 business of the credit union at the branch office will be honestly and efficiently
458 conducted;

459 (3) The adequacy of the capital structure of the credit union, particularly in view of the
460 anticipated business to be generated by the proposed branch office; and

461 (4) The overall financial condition and safety and soundness of the applicant credit
462 union.

463 Where the department by rule, regulation, or written policy has provided for expedited
464 processing of applications or for notice procedures, it may abbreviate its review of these
465 criteria.

466 (e) After receipt of a complete application, the department shall have 30 days within which
467 to approve or disapprove such application.

468 (f) The department may approve an application contingent upon the satisfaction of
469 additional conditions, including the submission of information such as the date of opening
470 and the capital outlay for the branch office. The department may revoke such contingent
471 approval if conditions in the approval have not been satisfied or if other violations of law
472 occur as a result of the branch office's opening or operation.

473 (g) If the department disapproves an application to establish a branch office, it shall notify
474 the applicant of its disapproval and state generally in writing the unfavorable factors
475 influencing its decision. The decision of the department is final, except that it may be
476 subject to judicial review as provided in Code Section 7-1-90.

477 (h) The department may provide by regulation that a credit union which meets certain
478 criteria may, in lieu of filing a branch application, file a written notification with the
479 department.

480 (i) In the event of merger or consolidation of two or more credit unions, the resulting credit
481 union shall indicate its main office with the department and may retain and continue to
482 operate as branch offices any or all credit union locations of the merged institutions which
483 had been approved by the department prior to such merger or consolidation. In the event
484 of the purchase of substantially all of the assets of a credit union, subject to the review and
485 approval by the department of such transaction, the purchasing credit union may retain and
486 continue to operate as branch offices any or all credit union locations of the selling credit
487 union which had been approved by the department prior to such purchase."

488

SECTION 14.

489 Said chapter is further amended by revising subsection (c) of Code Section 7-1-687, relating
 490 to notice of action against licensee by creditor or claimant and other notification
 491 requirements, as follows:

492 "(c) A bond filed with the department for the purpose of compliance with Code Section
 493 7-1-683.2 shall not be canceled by either the licensee or the corporate surety except upon
 494 notice to the department ~~by registered or certified mail, statutory overnight delivery with~~
 495 ~~return receipt requested, or~~ electronically through the Nationwide Multistate Licensing
 496 System and Registry, and such cancellation shall be effective no sooner than 30 days after
 497 receipt by the department of such notice and only with respect to any breach of condition
 498 occurring after the effective date of such cancellation."

499

SECTION 15.

500 Said chapter is further amended by revising paragraph (1) of subsection (l) of Code Section
 501 7-1-689, relating to record keeping, investigations and examinations by department,
 502 subpoenas, confidentiality, and limitations on civil liability, as follows:

503 "(1) The name, business address, and telephone, facsimile, and ~~license numbers~~ unique
 504 identifier of a licensee;"

505

SECTION 16.

506 Said chapter is further amended by revising paragraph (3) of subsection (a) of Code Section
 507 7-1-694, relating to cease and desist orders from unauthorized activities, civil penalties for
 508 violations, judicial review, and administrative fines, as follows:

509 "(3) A person licensed under this article has received a notice of bond cancellation under
 510 Code Section 7-1-687, which such cease and desist order shall be final ~~30~~ 20 days from
 511 the date of issuance, and there shall be no opportunity for an administrative hearing. In
 512 the event the cease and desist order becomes final, the license shall expire, and if a new
 513 license is desired, the licensee shall be required to make a new application for a license
 514 and pay all applicable fees as if it had never been licensed. If the required surety bond
 515 is reinstated or replaced and such documentation is delivered to the department within the
 516 ~~30~~ 20 day period following the date of issuance of the order, the order shall be rescinded."

517

SECTION 17.

518 Said chapter is further amended by revising paragraph (1) of subsection (l) of Code Section
 519 7-1-706, relating to record keeping obligations, investigations and examinations by the
 520 department, examination fees, administration of oaths and issuing of subpoenas,
 521 confidentiality, and civil liability, as follows:

522 "(1) The name, business address, and telephone, facsimile, and ~~license numbers~~ unique
 523 identifier of a licensee;"

524 **SECTION 18.**

525 Said chapter is further amended by repealing and reserving Code Section 7-1-1003.1, relating
 526 to physical place of business, as follows:

527 "7-1-1003.1.

528 ~~If the applicant for a mortgage broker license or a renewal of such license does not have~~
 529 ~~a physical place of business in Georgia, a license or renewal shall only be issued if the~~
 530 ~~applicant's home state does not require that in order to be licensed a mortgage broker shall~~
 531 ~~have a physical place of business in such home state. In either case, an applicant shall have~~
 532 ~~a registered agent and a registered office in this state. Reserved."~~

533 **SECTION 19.**

534 Said chapter is further amended by revising subsection (e) of Code Section 7-1-1006, relating
 535 to contents of license, posting of license, transferring of license, transacting business under
 536 other name, change of address, opening a new additional office without prior approval, and
 537 approval of branch manager, as follows:

538 "(e) For mortgage brokers and mortgage lenders, each licensee shall notify the department
 539 in writing of any change in the address of the principal place of business or of any
 540 additional location of business in Georgia, any change in registered agent or registered
 541 office, any change of executive officer; or contact person for consumer complaints, ~~or~~
 542 ~~ultimate equitable owner of 10 percent or more of any corporation or other entity licensed~~
 543 ~~under this article~~; or of any material change in the licensee's financial statement. Notice
 544 of changes shall be received by the department no later than 30 business days after the
 545 change is effective."

546 **SECTION 20.**

547 Said chapter is further amended by revising subsection (c) of Code Section 7-1-1007, relating
 548 to licensee to give notice of certain actions brought against it by a creditor or borrower and
 549 notice to the department of cancellation of bond, as follows:

550 "(c) A bond filed with the department for the purpose of compliance with Code Section
 551 7-1-1003.2 or 7-1-1004 shall not be canceled by either the mortgage loan originator,
 552 mortgage broker, or mortgage lender or the corporate surety except upon notice to the
 553 department ~~by registered or certified mail, statutory overnight delivery with return receipt~~
 554 ~~requested~~, or electronically through the Nationwide Multistate Licensing System and
 555 Registry, the cancellation to be effective not less than 30 days after receipt by the

556 department of such notice and only with respect to any breach of condition occurring after
557 the effective date of such cancellation."

558 **SECTION 21.**

559 Said chapter is further amended by revising paragraph (1) of subsection (g) of Code Section
560 7-1-1009, relating to maintenance of books, accounts, and records, investigation and
561 examination of licensees and registrants by department, confidentiality, and exemptions from
562 civil liability, as follows:

563 "(1) For mortgage brokers and mortgage lenders, the name, business address, and
564 telephone, facsimile, and ~~license numbers~~ unique identifier of a licensee or registrant;"

565 **SECTION 22.**

566 Said chapter is further amended by revising Code Section 7-1-1016, relating to regulations
567 relative to advertising, as follows:

568 "7-1-1016.

569 In addition to such other rules, regulations, and policies as the department may promulgate
570 to effectuate the purpose of this article, the department shall prescribe regulations
571 governing the advertising of mortgage loans, including, without limitation, the following
572 requirements:

573 (1)(A) Advertisements for loans regulated under this article shall not be false,
574 misleading, or deceptive. No person whose activities are regulated under this article
575 shall advertise in any manner so as to indicate or imply that its interest rates or charges
576 for loans are in any way 'recommended,' 'approved,' 'set,' or 'established' by the state or
577 this article.

578 (B) An advertisement shall not include an individual's loan number, loan amount, or
579 other publicly available information unless it is clearly and conspicuously stated in
580 boldface type at the beginning of the advertisement that the person disseminating it is
581 not authorized by, in sponsorship with, or otherwise affiliated with the individual's
582 lender, which shall be identified by name. Such an advertisement shall also state that
583 the loan information contained therein was not provided by the recipient's lender; and

584 (2) All advertisements, including websites, disseminated by a licensee or a registrant in
585 this state by any means shall contain the name, ~~license number, Nation-wide Multistate~~
586 ~~Licensing System and Registry~~ which shall conform to a name on record with the
587 department, and unique identifier, and an office address of such licensee or registrant,
588 ~~which shall conform to a name and address on record with the department, and which~~
589 shall clearly indicate that the number was issued by the Nationwide Multistate Licensing
590 System and Registry, of the licensee or registrant.

591 ~~(3) No mortgage broker or mortgage lender licensee shall advertise its services in~~
 592 ~~Georgia in any media disseminated in this state, whether print or electronic, without the~~
 593 ~~words 'Georgia Residential Mortgage Licensee' or, for those advertisers licensed in more~~
 594 ~~than one state, a listing of Georgia as a state in which the advertiser is licensed."~~

595

SECTION 23.

596 Said chapter is further amended by revising subsection (a) of Code Section 7-1-1018, relating
 597 to cease and desist orders, enforcement procedure, civil penalty, and fines, as follows:

598 "(a) Whenever it shall appear to the department that any person required to be licensed or
 599 registered under this article or employed by a licensee or who would be covered by the
 600 prohibitions in Code Section 7-1-1013 has violated any law of this state or any order or
 601 regulation of the department, the department may issue an initial written order requiring
 602 such person to cease and desist immediately from such unauthorized practices. Such cease
 603 and desist order shall be final 20 days after it is issued unless the person to whom it is
 604 issued makes a written request within such 20 day period for a hearing. The hearing shall
 605 be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
 606 Procedure Act.' A cease and desist order to an unlicensed person that orders such person
 607 to cease doing a mortgage business without the appropriate license shall be final 30 days
 608 from the date of issuance, and there shall be no opportunity for an administrative hearing.
 609 If the proper license or evidence of exemption or valid employment status during the time
 610 of the alleged offense is delivered to the department within the 30 day period, the order
 611 shall be rescinded by the department. If a cease and desist order is issued to a person who
 612 has been sent a notice of bond cancellation and if the bond is reinstated or replaced and
 613 such documentation is delivered to the department within the ~~30~~ 20 day period following
 614 the date of issuance of the order, the order shall be rescinded. If the notice of reinstatement
 615 of the bond is not received within the ~~30~~ 20 days, the license shall expire at the end of the
 616 ~~30~~ 20 day period, and the person shall be required to make a new application for license
 617 and pay the applicable fees. In the case of an unlawful purchase of mortgage loans, such
 618 initial cease and desist order to a purchaser shall constitute the knowledge required under
 619 subsection (b) of Code Section 7-1-1002 for any subsequent violations. Any cease and
 620 desist order sent to the person at both his or her personal and business addresses pursuant
 621 to this Code section that is returned to the department as 'refused' or 'unclaimed' shall be
 622 deemed as received and sufficiently served."

SECTION 24.

623

624 Chapter 6A of Title 7 of the Official Code of Georgia Annotated, relating to the Georgia Fair
625 Lending Act, is amended by revising paragraphs (12), (15), (16), (17), and (18) of Code
626 Section 7-6A-2, relating to definitions, as follows:

627 "(12) 'Points and fees' means:

628 (A) All items included in the definition of finance charge in 12 C.F.R. ~~226.4(a)~~
629 1026.4(a) and 12 C.F.R. ~~226.4(b)~~ 1026.4(b) except interest or the time price
630 differential. All items excluded under 12 C.F.R. ~~226.4(c)~~ 1026.4(c) are excluded from
631 points and fees, provided that for items under 12 C.F.R. ~~226.4(c)(7)~~ 1026.4(c)(7) the
632 creditor does not receive direct or indirect compensation in connection with the charge
633 and the charge is not paid to an affiliate of the creditor;

634 (B) All compensation paid directly or indirectly to a mortgage broker from any source,
635 including a broker that originates a loan in its own name in a table funded transaction,
636 including but not limited to yield spread premiums, yield differentials, and service
637 release fees, provided that the portion of any yield spread premium that is both
638 disclosed to the borrower in writing and used to pay bona fide and reasonable fees to
639 a person other than the creditor or an affiliate of the creditor for the following purposes
640 is exempt from inclusion in points and fees: fees for tax payment services; fees for
641 flood certification; fees for pest infestation and flood determination; appraisal fees; fees
642 for inspection performed prior to closing; credit reports; surveys; attorneys' fees, if the
643 borrower has the right to select the attorney from an approved list or otherwise; notary
644 fees; escrow charges, so long as not otherwise included under subparagraph (A) of this
645 paragraph; title insurance premiums; and fire and hazard insurance and flood insurance
646 premiums, provided that the conditions set forth in 12 C.F.R. ~~226.4(d)(2)~~ 1026.4(d)(2)
647 are met;

648 (C) Premiums or other charges for credit life, credit accident, credit health, credit
649 personal property, or credit loss-of-income insurance, debt suspension coverage or debt
650 cancellation coverage, whether or not such coverage is insurance under applicable law,
651 that provides for cancellation of all or part of a borrower's liability in the event of loss
652 of life, health, personal property, or income or in the case of accident written in
653 connection with a home loan and premiums or other charges for life, accident, health,
654 or loss-of-income insurance without regard to the identity of the ultimate beneficiary
655 of such insurance. In determining points and fees for the purposes of this paragraph,
656 premiums or other charges shall only include those payable at or before loan closing
657 and are included whether they are paid in cash or financed and whether the amount
658 represents the entire premium for the coverage or an initial payment;

659 (D) The maximum prepayment fees and penalties that may be charged or collected
 660 under the terms of the loan documents. Mortgage interest that may accrue in advance
 661 of payment in full of a loan made under a local, state, or federal government sponsored
 662 mortgage insurance or guaranty program, including a Federal Housing Administration
 663 program, shall not be considered to be a prepayment fee or penalty;

664 (E) All prepayment fees or penalties that are charged to the borrower if the loan
 665 refinances a previous loan made or currently held by the same creditor or an affiliate
 666 of the creditor;

667 (F) For open-end loans, points and fees are calculated in the same manner as for loans
 668 other than open-end loans, based on the minimum points and fees that a borrower
 669 would be required to pay in order to draw on the open-end loan an amount equal to the
 670 total credit line; and

671 (G) Points and fees shall not include:

672 (i) Taxes, filing fees, recording, and other charges and fees paid or to be paid to
 673 public officials for determining the existence of or for perfecting, releasing, or
 674 satisfying a security interest;

675 (ii) Bona fide and reasonable fees paid to a person other than the creditor or an
 676 affiliate of the creditor for the following: fees for tax payment services; fees for flood
 677 certification; fees for pest infestation and flood determination; appraisal fees; fees for
 678 inspections performed prior to closing; credit reports; surveys; attorneys' fees, if the
 679 borrower has the right to select the attorney from an approved list or otherwise; notary
 680 fees; escrow charges, so long as not otherwise included under subparagraph (A) of
 681 this paragraph; title insurance premiums; and fire and hazard insurance and flood
 682 insurance premiums, provided that the conditions in 12 C.F.R. ~~226.4(d)(2)~~
 683 1026.4(d)(2) are met;

684 (iii) Bona fide fees paid to a federal or state government agency that insures payment
 685 of some portion of a home loan, including, but not limited to, the Federal Housing
 686 Administration, the Department of Veterans Affairs, the United States Department of
 687 Agriculture for rural development loans, or the Georgia Housing and Finance
 688 Authority; and

689 (iv) Notwithstanding any provision to the contrary in this chapter, compensation in
 690 the form of premiums, commissions, or similar charges paid to a creditor or any
 691 affiliate of a creditor for the sale of: (I) title insurance; or (II) insurance against loss
 692 of or damage to property or against liability arising out of the ownership or use of
 693 property, provided that the conditions in 12 C.F.R. ~~226.4(d)(2)~~ 1026.4(d)(2) are met."

694 "(15) 'Servicer' means the same as set forth in ~~24 C.F.R.~~ 12 U.S.C. Section 3500.2.

695 (16) 'Servicing' means the same as set forth in ~~24 C.F.R.~~ 12 U.S.C. Section 3500.2.

696 (17) 'Threshold' means:

697 (A) Without regard to whether the loan transaction is or may be a 'residential mortgage
698 transaction' as that term is defined in 12 C.F.R. ~~226.2(a)(24)~~ 1026.2(a)(24), the annual
699 percentage rate of the loan is such that it equals or exceeds that set out in Section 152
700 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. Section
701 1602(aa), and the regulations adopted pursuant thereto by the Federal Reserve Board,
702 including Section 12 C.F.R. ~~226.32~~ 1026.32; or

703 (B) The total points and fees payable in connection with the loan, excluding not more
704 than two bona fide discount points, exceed: (i) 5 percent of the total loan amount if the
705 total loan amount is \$20,000.00 or more or (ii) the lesser of 8 percent of the total loan
706 amount or \$1,000.00 if the total loan amount is less than \$20,000.00.

707 (18) 'Total loan amount' means the amount calculated as set forth in 12 C.F.R. ~~226.32(a)~~
708 1026.32(a) and under the Official Staff Commentary of the Board of Governors of the
709 Federal Reserve System. For open-end loans, the total loan amount shall be calculated
710 using the total credit line available under the terms of the home loan as the amount
711 financed."

712

SECTION 25.

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