

House Bill 1521

By: Representatives Miller of the 62nd, Draper of the 90th, Jackson of the 68th, Campbell of the 35th, and Westbrook of the 163rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 7 and Chapter 5 of Title 10 of the Official Code of Georgia
2 Annotated, relating to financial institutions and the "Georgia Uniform Securities Act of
3 2008," respectively, so as to remove an exemption from securities regulation for certain
4 financial institutions; to provide for notes as securities; to exempt certain notes as securities;
5 to provide for a rebuttable presumption; to provide for a short title; to provide for related
6 matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 This Act shall be known and may be cited as the "Ponzi Scheme Prevention Act."

10 **SECTION 2.**

11 Chapter 1 of Title 7 of the Official Code of Georgia annotated, relating to financial
12 institutions, is amended by repealing and reserving Code Section 7-1-787, relating to
13 exemption from securities regulation.

SECTION 3.

14
15 Chapter 5 of Title 10 of the Official Code of Georgia Annotated, relating to the "Georgia
16 Uniform Securities Act of 2008," is amended by adding a new Code section to read as
17 follows:

18 "10-5-6.

19 (a) All notes are presumed securities, subject to other provisions of law to the contrary,
20 unless the note is:

21 (1) Delivered in consumer financing;

22 (2) Secured by a mortgage on a home;

23 (3) A short-term note secured by a lien on a small business or some of its assets;

24 (4) Evidencing an unsecured loan based on a lender's trust in the character and credit of
25 a customer;

26 (5) A short-term note secured by an assignment of accounts receivable;

27 (6) A note which formalizes an open account debt occurred in the ordinary course of
28 business; or

29 (7) Evidencing loans by commercial banks for current operations.

30 (b) A note that is not listed in subsection (a) of this Code section may rebut the
31 presumption of being a security if it acts similar in function to one of the notes listed in
32 subsection (a) of this Code section. Factors to consider when determining if a note is
33 similar in function include:

34 (1) If the note is exchanged to facilitate the purchase and sale of a minor asset or
35 consumer good, to correct cash flow deficiencies, or to advance some other commercial
36 or consumer purpose;

37 (2) If the note is an instrument in which there is common trading for speculation or
38 investment;

39 (3) The reasonable expectations of the public; and

40 (4) Other factors, including but not limited to regulatory schemes significantly reducing
41 the risk of an instrument, which would render application of this chapter unnecessary."

42 **SECTION 4.**

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