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| 1. Parrish 144th | 2. Stallings 100th | 3. Ragas 64th |
| 4. Floyd 138th | 5. Howard 118th | |

HB 1231

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**A BILL TO BE ENTITLED
AN ACT**

1 To amend Chapter 1 of Title 7 of the Official Code of
2 Georgia Annotated, relating to financial institutions, so as
3 to change certain definitions; to change certain notice
4 requirements for a merger when a party is a failed or
5 failing bank; to allow the Department of Banking and Finance
6 to modify certain qualifying or limiting requirements
7 imposed by this chapter; to expand certain operating powers
8 of banks and trust companies; to allow a bank to own or
9 lease certain real property; to allow a bank to elect to use
10 the federal limits on obligations of one person or
11 corporation instead of the state limits; to change
12 provisions relating to transacting business in securities by
13 banks; to change provisions relating to boards of directors
14 of banks to allow for exceptions to the residency
15 requirements, to allow for staggered terms, and to allow
16 nonpolicy-making regional boards; to change provisions
17 relating to disposal of nonconforming assets in a merger or
18 consolidation; to provide that the commissioner has
19 discretion in allowing the retention of certain
20 nonconforming assets after a national to state bank or trust
21 company conversion; to change provisions relating to branch
22 offices; to provide an additional exception to the five-year
23 age requirement for certain activities following an
24 acquisition; to provide for cooperation with other state
25 regulators regarding reports by branches established by
26 interstate banking and branching by merger; to change
27 provisions relating to criminal records checks for check
28 sellers, check cashers, and mortgage brokers and mortgage
29 lenders; to list additional situations when a check-cashing

30 license may be revoked or suspended; to provide that certain
31 entities are exempt from being licensed or registered as a
32 mortgage broker or mortgage lender if they follow certain
33 notification requirements; to provide for registration and
34 notification; to prohibit a person from purchasing, selling,
35 or transferring mortgage loan applications without a
36 license, registration, or exemption; to consolidate and
37 clarify the bonding and financial information requirements

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1 of mortgage brokers and mortgage lenders and to authorize a
2 letter of credit to substitute for a bond; to authorize the
3 department to provide for minimum education and experience
4 requirements for mortgage brokers; to change the dates for
5 filing or renewing a license or registration; to provide
6 that branch managers of mortgage brokers or mortgage lenders
7 must be approved by the department; to provide for certain
8 increased rule-making authority for the department in
9 certain situations; to correct certain references; to
10 provide an effective date; to provide for related matters;
11 to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 SECTION 1.

14 Chapter 1 of Title 7 of the Official Code of Georgia
15 Annotated, relating to financial institutions, is amended by
16 striking paragraph (21) of [Code Section 7-1-4](#), relating to
17 definitions, and inserting in lieu thereof a new paragraph
18 to read as follows:

19 "(21) 'Financial institution' means:

20 (A) A bank;

21 (B) A trust company;

22 (C) A building and loan association;

23 (D) A credit union;

24 (E) A corporation licensed to engage in the business
25 of selling checks in this state on April 1, 1975, or
26 so licensed pursuant to Article 4 of this chapter;

27 (F) Business development corporations existing on
28 April 1, 1975, pursuant to the former 'Georgia
29 Business Development Corporation Act of 1972,'
30 approved April 3, 1972 (Ga. L. 1972, p. 798), or
31 organized pursuant to Article 6 of this chapter;

32 (G) An international bank agency doing business in
33 this state on April 1, 1975, pursuant to the former
34 'International Bank Agency Act,' approved April 6,
35 1972 (Ga. L. 1972, p. 1140), or authorized to do
36 business in this state pursuant to Article 5 of this
37 chapter;

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1 (H) In addition, as the context requires, a national
2 bank, savings and loan association, or federal credit
3 union for the purpose of the following provisions:

4 (i) [Code Section 7-1-2](#), relating to findings of the
5 General Assembly;

6 (ii) [Code Section 7-1-3](#), relating to objectives of
7 this chapter;

8 (iii) [Code Section 7-1-8](#), relating to supplementary
9 principles of law;

10 (iv) [Code Section 7-1-37](#), relating to restrictions
11 on officials and personnel;

12 (v) [Code Section 7-1-70](#), relating to disclosure of
13 information;

14 (vi) [Code Section 7-1-90](#), relating to judicial
15 review of department action;

16 (vii) Subsection (d) of [Code Section 7-1-91](#),
17 relating to orders to desist from conduct illegal
18 under the laws and regulations of this state;

19 (viii) [Code Section 7-1-94](#), relating to the
20 evidentiary results of examinations and
21 investigations;

22 (ix) Code Sections 7-1-111 and 7-1-112, relating to
23 emergency closings;

24 (x) Code Sections 7-1-110 and 7-1-294, relating to
25 permissive closings;

26 (xi) [Code Section 7-1-133](#), relating to prohibited
27 advertising;

28 (xii) Paragraph (11) of [Code Section 7-1-261](#),
29 relating to additional operational powers of banks
30 and trust companies;

31 (xiii) Paragraph (3) of subsection (a) of Code
32 Section 7-1-394, relating to criteria to be
33 considered in approving new banks;

34 (xiv) [Code Section 7-1-658](#), relating to loans;

35 (xv) [Code Section 7-1-840](#), relating to criminal
36 prosecutions; and

37 (xvi) [Code Section 7-1-841](#), relating to application
38 of Title 16 provisions;

1 (I) For the purposes of [Code Section 7-1-61](#),
2 'financial institution' shall also include a bank

3 holding company as defined in [Code Section 7-1-605](#);
4 and

5 (J) For the purposes of paragraph (10) of Code Section
6 7-1-261, relating to agency relationships, 'financial
7 institution' shall include banks chartered by states
8 other than Georgia; and

9 (K) For the purposes of Part 6 of Article 2 of this
10 chapter, relating to deposits, safe deposit
11 agreements, and money received for transmission, and
12 Article 8 of this chapter, relating to multiple party
13 deposit accounts, 'financial institution' shall also
14 include federal credit unions."

15 SECTION 2.

16 Said chapter is further amended by striking subsection (b)
17 of [Code Section 7-1-7](#), relating to publication of notices or
18 advertisements, and inserting in lieu thereof a new
19 subsection to read as follows:

20 "(b) The department may waive or modify any requirement to
21 publish a notice:

22 (1) In order to facilitate a merger, consolidation, or
23 sale of assets pursuant to paragraph (3) of subsection
24 (c) of [Code Section 7-1-601](#), whether with an existing
25 bank or a bank newly organized as a successor to a
26 failing bank when one of the parties is a failed or
27 failing bank as determined by the commissioner;

28 (2) Whenever it determines that the public benefit is
29 not significantly served by a second or subsequent
30 publication in a situation where a series of
31 transactions would otherwise require multiple
32 publications;

33 (3) Where a similar publication required by another
34 state or federal regulator serves substantially the same
35 purpose;

36 (4) By regulation or order, whenever it determines that
37 a lesser number of publications will reduce
38 administrative burden and will adequately serve the

39 public benefit of the notice; or

40 (5) For other reasons of regulatory parity."

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1 SECTION 3.

2 Said chapter is further amended by striking Code Section
3 7-1-61, relating to rules and regulations, and inserting in
4 lieu thereof a new Code section to read as follows:

5 "7-1-61.

6 (a) The department shall have the authority to promulgate
7 rules and regulations to effectuate the objectives or
8 provisions of this chapter. Without limiting the
9 generality of the foregoing, the department is expressly
10 authorized to make rules and regulations, consistent with
11 this chapter, relating to organization, operations, and
12 powers of financial institutions to:

13 (1) Enable financial institutions existing under the
14 laws of this state to compete fairly with financial
15 institutions and others providing financial services in
16 this state existing under the laws of the United States,
17 other states, or foreign governments; or

18 (2) Protect financial institutions jeopardized or
19 challenged by new economic or technological conditions
20 or by significant changes in the legal environment.

21 (b) In the exercise of the discretion permitted by this
22 Code section, the commissioner shall consider:

23 (1) The ability of financial institutions to exercise
24 any additional powers in a safe and sound manner;

25 (2) The authority of national banks operating pursuant
26 to federal law, regulation, or authoritative
27 pronouncement;

28 (3) The powers of other entities providing financial
29 services in this state; and

30 (4) Any specific limitations on bank financial
31 institution operations or powers contained in this
32 chapter.

33 (c) In the further exercise of the discretion permitted by
34 this Code section and to provide parity with other
35 federally insured financial institutions, the commissioner
36 may, by specific order directed to an individual financial
37 institution or category of financial institutions, modify
38 or amend the following qualifying or limiting requirements
39 imposed on financial institutions by this chapter:

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1 (1) Collateral requirements and limits on the amount of
2 obligations owing to it from any one person or
3 corporation;

4 (2) Loan to value or other limitations in real estate
5 lending;

6 (3) Limitations on the amount of investments in stock or
7 other capital securities of a corporation or other
8 entity; and

9 (4) Limitations on the amount of bank acceptances to be
10 issued.

11 No such order will be issued unless the commissioner
12 determines that such activity will not present undue
13 safety and soundness risks to the financial institution or
14 institutions involved. In making such a determination,
15 the commissioner shall consider the financial condition
16 and regulatory safety and soundness ratings of the
17 institution or institutions affected and the ability of
18 management to administer and supervise the activity. Any
19 such order pursuant to this subsection will be available
20 for public review.

21 (c)(d) Rules and regulations promulgated by the department
 22 may provide for controls, registration, or restrictions
 23 reasonably necessary to:

24 (1) Prevent unfair or deceptive business practices which
 25 are prohibited under [Code Section 10-1-393](#);

26 (2) Prevent deceptive or misleading business practices
 27 by financial services providers which may occur by way
 28 of alternate delivery systems for the provision of
 29 financial products and services such as the Internet or
 30 other telecommunication capabilities; or

31 (3) Prevent or control unfair or deceptive business
 32 practices which would operate to the detriment of any
 33 competing business or enterprise or to persons utilizing
 34 the services of any financial institution, its
 35 subsidiary, or affiliate.

36 (d)(e) All rules and regulations shall be promulgated in
 37 accordance with Chapter 13 of Title 50, the 'Georgia
 38 Administrative Procedure Act,' including the requirements
 39 for hearing as stated in that chapter. Regulations issued
 40 under this or other provisions of this chapter may make
 41 appropriate distinctions between types of financial

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1 institutions and may be amended, modified, or repealed
 2 from time to time."

3 SECTION 4.

4 Said chapter is further amended by striking paragraphs (5)
 5 and (11) of [Code Section 7-1-261](#), relating to additional
 6 operating powers of banks and trust companies, and inserting
 7 in lieu thereof new paragraphs to read as follows:

8 "(5) To acquire and hold real property to the extent
 9 permitted by Code Section Sections 7-1-262, 7-1-282, and

10 7-1-286;"

11 "(11) To have and exercise all powers necessary,
12 convenient, or incidental to effect any and all purposes
13 for which the bank or trust company and its subsidiaries
14 and affiliates is organized, provided that the
15 commissioner may establish approval procedures by
16 regulation for additional powers as needed to satisfy
17 the objectives of this chapter. Powers shall include
18 but not be limited to: sale of securities, annuities,
19 and other investment products upon the order of and for
20 the account of its customers, subject to applicable
21 federal or state securities requirements; sale of
22 insurance subject to state insurance laws, regulations,
23 and licensing requirements, applicable federal laws, and
24 applicable departmental regulations and policies; sale
25 or lease of excess computer capacity; expansion of
26 customer services through the use of technology; other
27 powers including those bank and trust powers authorized
28 to subsidiaries of the bank or trust company pursuant to
29 subparagraph (c)(2)(F) of Code Section 7-1-288; and
30 other such powers to carry on banking, trust, or other
31 activities determined by the commissioner to be
32 financial in nature or incident or complementary to such
33 financial activities and consistent with the objectives
34 of this chapter and the regulations of the department."

35 SECTION 5.

36 Said chapter is further amended by striking Code Section
37 7-1-282, relating to direct leasing of personal property by
38 banks, and inserting in lieu thereof a new Code section to
39 read as follows:

1 "7-1-282.

2 Subject Notwithstanding any other provision of law to the
3 contrary and subject to such regulations as the department
4 may prescribe, a bank may:

5 (1) Become become the owner and lessor of personal
6 property acquired upon the specific request and for the
7 use of a customer and may incur such additional
8 obligations as may be incident to becoming an owner and
9 lessor of such property. At the end of any lease, the
10 bank shall, within six months, enter into a new lease
11 with respect to the property or dispose of it. The
12 leasing shall constitute an indebtedness under Code
13 Section 7-1-285 and shall be subject to the lending
14 limitations of such Code section.

15 (2) Become the owner and lessor of certain public real
16 property and facilities. A bank may purchase or
17 construct a municipal building, school building, or
18 other similar state, local, or other governmental
19 authority facility if, as holder of legal title, such
20 purchase is for the purpose of leasing the facility to a
21 municipality or other public or governmental authority
22 which has the authority to enter into such lease, is
23 authorized to levy taxes or is backed by the taxing
24 authority of another political subdivision, and has the
25 resources sufficient to make lease payments as they come
26 due. The lease agreement must provide that the lessee
27 will become the owner of the building or facility upon
28 the expiration of the lease."

29 SECTION 6.

30 Said chapter is further amended by striking subsection (d)
31 of [Code Section 7-1-285](#), relating to limits on obligations
32 of one person or corporation, and inserting in lieu thereof
33 two new subsections to read as follows:

34 "(d) In lieu of following the limitations contained in
35 subsections (a) through (c) of this Code section, a bank
36 may petition the department for approval to utilize limits
37 applicable to national banks regarding obligations of a
38 single person or corporation.

39 (e) The department may, by regulation not inconsistent
40 with this Code section, prescribe definitions of and

41 requirements for transactions included in or excluded from
42 the indebtedness to which this Code section applies. The

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1 department may also by regulation prescribe less
2 restrictive limitations than those listed in subsections
3 (a) through (c) of this Code section for banks meeting
4 certain financial and management criteria. In addition,
5 the department may, by regulation or otherwise, specify
6 that the liabilities of a group of one or more persons or
7 corporations or both shall be considered as owed by one
8 person or corporation for the purposes of this Code
9 section because the group relies substantially on a common
10 source for the payment of its obligations or makes common
11 use of funds received by it."

12 SECTION 7.

13 Said chapter is further amended by striking subsection (d)
14 of [Code Section 7-1-286](#), relating to real estate loans, and
15 inserting in lieu thereof a new subsection to read as
16 follows:

17 "(d) Notwithstanding any other provisions of this chapter
18 and otherwise subject to regulations of the department, a
19 bank or trust company may acquire, directly or indirectly,
20 an ownership interest in real estate incidental to the
21 financing of the purchase, development, or improvement of
22 such real estate, provided:

23 (1) The amount of such ownership interest shall not
24 exceed 25 percent of the appraised value of the real
25 estate;

26 (2) The amount of such ownership interest when
27 aggregated with the amount financed shall not exceed the
28 limitations prescribed by this Code section and Code
29 Section 7-1-285;

30 (3) The ownership interest shall be terminated upon

31 substantial repayment of the financing in the manner
32 prescribed in [Code Section 7-1-263](#), relating to the
33 divestiture of real estate interest; and

34 (4) Any time real estate owned by a bank or trust
35 company pursuant to the provisions of Section 4 of this
36 Act this subsection is held or disposed of pursuant to
37 the provisions of [Code Section 7-1-263](#), said action to
38 hold or dispose shall be reported in writing annually to
39 the stockholders. Said report shall include disclosure
40 of any real estate acquired by foreclosure or the taking
41 by a deed in lieu of foreclosure and the name or names

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1 of the corporation or individuals from whom title was
2 taken."

3 SECTION 8.

4 Said chapter is further amended by striking subsection (c)
5 of [Code Section 7-1-288](#), relating to transactions by banks
6 in corporate stock and securities, and inserting in lieu
7 thereof two new subsections to read as follows:

8 "(c) Notwithstanding any other provisions of law to the
9 contrary, a bank may acquire and hold for its own account:

10 (1) Shares of stock of a federal reserve bank without
11 limitation of amount;

12 (2) Shares of stock of:

13 (A) Any state or federal government sponsored
14 instrumentality for the guarantee, underwriting, or
15 marketing of residential housing or financing of
16 residential housing;

17 (B) A business development corporation or small
18 minority business development corporation authorized

19 under Article 6 of this chapter;

20 (C) An agricultural credit corporation duly organized
21 under the laws of this state having authority to make
22 loans to farmers of this state for agricultural
23 purposes under programs administered by the federal
24 farm credit system;

25 (D) A bank service corporation created to provide
26 support services for one or more financial
27 institutions;

28 (E)(i) A banking institution bank principally
29 engaged in foreign or international banking or
30 banking in a dependency or insular possession of the
31 United States, either directly or through the
32 agency, ownership, or control of local institutions
33 in foreign countries or in such dependencies or
34 insular possessions, including the stock of one or
35 more corporations existing pursuant to Section 25(a)
36 of the Federal Reserve Act, provided that, before a
37 bank may purchase a majority interest in any such
38 banking institution, it shall enter into an
39 agreement with the department to restrict its
40 operations in such manner as the department may
41 prescribe; and provided, further, that, if the

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1 department determines that said restrictions have
2 not been complied with, it may order the disposition
3 of said stock upon reasonable notice; or.

4 (ii) A banking institution which is engaged in
5 providing banking or other financial services to
6 such extent as is permitted by regulations of the
7 department to depository financial institutions
8 located primarily within this state and whose
9 ownership consists primarily of such depository
10 financial institutions A bank engaged in providing
11 banking or other financial services to depository
12 financial institutions, which bank's ownership
13 consists primarily of such depository financial

14 institutions;

15 (F) A corporation engaged in functions or activities
16 that the bank or trust company is authorized to carry
17 on, including, but not limited to: conducting a
18 safe-deposit business; holding real estate; acting as
19 a financial planner or investment advisor adviser;
20 offering of a full range of investment products;
21 promoting and facilitating international trade and
22 commerce; and exercising powers incidental to
23 financial activities as provided in paragraph (11) of
24 Code Section 7-1-261; in addition to functions or
25 activities which include exercising powers granted by
26 department regulations or exercising powers determined
27 by the commissioner to be financial in nature or
28 incidental to the provision of financial services, so
29 long as these activities do not pose undue risk to the
30 safety and soundness of the financial institution and
31 are consistent with the objectives of this chapter as
32 stated in Code Section 7-1-3; provided, however,
33 unless the bank is exempt, nothing contained in this
34 subparagraph shall relieve any such corporation from
35 undertaking registration, licensing, or other
36 qualification to engage in such functions or
37 activities as may otherwise be required by law; and

38 (G) Other corporations created pursuant to act of
39 Congress or pursuant to Chapter 3 of Title 14, known
40 as the 'Georgia Nonprofit Corporation Code,' for the
41 purpose of meeting the agricultural, housing, health,
42 transit, educational, environmental, or similar needs
43 where the department determines that investment
44 therein by banks is in the public interest,

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1 provided that the bank's investment in any such category
2 of stock under this paragraph shall not exceed 10
3 percent of its statutory capital base, except that, in
4 the case of stock acquired under subparagraph (F) of
5 this paragraph, such investment shall not exceed the

6 lesser of 10 percent of the total assets of the bank or
7 100 percent of the statutory capital base of the bank;
8 and provided, further, that no acquisitions may be made
9 pursuant to subparagraphs (D) through (G) of this
10 paragraph without the prior approval of the department;

11 (3) Shares of stock of small business investment
12 companies organized under acts of Congress and doing
13 business in this state, provided that the aggregate
14 investment by the bank in such shares shall not exceed 5
15 percent of its statutory capital base; and

16 (4) Shares of stock or partnership interests in a
17 corporation or partnership the primary business of
18 which, as determined by the department, is to promote
19 the public welfare or community development by engaging
20 in the development of low and moderate-income housing,
21 job training and job placement programs, credit
22 counseling, public education regarding financial
23 matters, small business development, and other similar
24 purposes. The ability to invest in such stock or
25 partnership interests shall also be subject to such
26 limitations and approval procedures as the department
27 deems necessary in order to assure that such investments
28 are not a safety and soundness concern.

29 (d) The department may by rule or regulation prescribe
30 less restrictive investment limitations than those
31 contained in this Code section for banks meeting certain
32 financial and management criteria."

33 SECTION 9.

34 Said chapter is further amended by striking Code section
35 7-1-480, relating to board of directors, and inserting in
36 lieu thereof a new Code section to read as follows:

37 "7-1-480.

38 (a) Administration of the business and affairs of a bank
39 or trust company shall be the responsibility of a board of
40 directors.

41 (b) Each director shall be a citizen of the United States
42 and at least a majority of the directors shall:

1 (1) Reside in Georgia; or

2 (2) Reside within 40 miles of any office in Georgia
3 banking location authorized to offer a complete banking
4 or trust service; provided, however, the.

5 (c) The residency requirements of subsection (b) of this
6 Code section shall not apply to banks having branches in
7 states other than Georgia provided the residency of
8 directors is consistent with the banks articles of
9 incorporation and bylaws.

10 (d) The department may waive or modify the requirements of
11 this subsection (b) of this Code section with respect to
12 special purpose banks organized pursuant to subsection (c)
13 of [Code Section 7-1-394](#).

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

19 SECTION 10.

20 Said chapter is further amended by striking Code Section
21 7-1-482, relating to the number, term, and compensation of
22 directors, and inserting in lieu thereof a new Code section
23 to read as follows:

24 "7-1-482.

25 (a) The articles or bylaws of any bank or trust company
26 may fix the number of directors of its policy-making board
27 at not less than five nor more than 25 and may provide
28 that the board may, within such limitation, increase or
29 decrease the number of directors by not more than two in
30 any one year, provided that nothing in this subsection
31 shall require a bank with a board of directors of less
32 than five on July 1, 1972, to increase its board to five

33 members.

34 (b) Except as otherwise provided in this chapter, each
 35 director shall be elected by the shareholders for a term
 36 of one year or for staggered terms as provided in Code
 37 Section 14-2-806, and shall serve until he or she resigns,
 38 is removed, or becomes disqualified or until his or her
 39 successor shall have been duly elected and qualified.

40 (c) Except as otherwise provided in the articles or
 41 bylaws, the board of directors may fix the compensation

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1 for directors; and a director may be a salaried officer of
 2 the bank or trust company.

3 (d) Notwithstanding the requirements of this Code section,
 4 the board of directors of a bank may appoint one or more
 5 nonpolicy-making regional boards of directors to consist
 6 of a number of persons to be determined by the board. The
 7 members of such regional boards may not set bank policy
 8 but may exercise certain powers, duties, and
 9 responsibilities as delegated by the board. Such regional
 10 board members shall have the same status as
 11 nonpolicy-making officers of the bank. All such
 12 delegations shall be documented in detail in the minutes
 13 of the board."

14 SECTION 11.

15 Said chapter is further amended by adding at the end of Code
 16 Section 7-1-530, relating to the authority to merge or
 17 consolidate, a new subsection to read as follows:

18 "(e) In the case of a merger of a Georgia state bank with
 19 another bank or banks, with the Georgia bank as the
 20 resulting bank, any assets or lines of business which
 21 accrue to the resulting bank which would not be allowed
 22 for a Georgia state bank shall be provided for in the plan
 23 of merger. Such plan shall include the proposal for
 24 disposal of such assets or the termination of such
 25 business or activity within a reasonable time as

26 determined by the department but in no event longer than
 27 four years from the date of merger, unless special
 28 permission for the activity is given pursuant to Code
 29 Section 7-1-628.6."

30 SECTION 12.

31 Said chapter is further amended by striking paragraph (5) of
 32 subsection (b) of [Code Section 7-1-555](#), relating to the
 33 effect of issuing a certificate of conversion for a national
 34 bank to state bank or trust company conversion, and
 35 inserting in lieu thereof a new paragraph (5) to read as
 36 follows:

37 "(5) The bank or trust company shall have the authority
 38 to engage only in such business and exercise only such
 39 powers as are then permissible upon original
 40 incorporation under this chapter and shall be subject to
 41 the same prohibitions and limitations as it would then
 42 be subject to upon original incorporation; provided,

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1 however, that if the converting institution owns or
 2 holds assets or engages in any business that would not
 3 be allowed of a state bank, then the plan of conversion
 4 shall include a plan for disposal of such nonconforming
 5 assets or the termination of such business within a
 6 reasonable time but in no event longer than four years
 7 from the date of conversion. If such nonconforming
 8 assets exist in states outside of Georgia, Code Section
 9 7-1-628.6 shall also apply, and the commissioner shall
 10 use his or her discretion in allowing the retention of
 11 such assets; and".

12 SECTION 13.

13 Said chapter is further amended by striking subsections (a)
 14 and (d) of [Code Section 7-1-602](#), relating to bank offices
 15 and bank facilities, and inserting in lieu thereof new
 16 subsections to read as follows:

17 "(a) Application to establish a branch office shall be
 18 made to the department in such form as it may prescribe
 19 from time to time. The department shall exercise its
 20 discretion in its consideration of the application; but
 21 the department shall not approve the application until it
 22 has ascertained to its satisfaction that the public need
 23 and advantage will be promoted by the establishment of the
 24 proposed branch office, based upon the following factors
 25 provided in paragraphs (3) through (7) of subsection (a)
 26 of [Code Section 7-1-394](#).:

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

29 (2) The character and fitness of the board of directors
 30 and management of the bank to command the confidence of
 31 the community and to warrant the belief that the
 32 business of the bank or trust company at the branch
 33 office will be honestly and efficiently conducted;

34 (3) The adequacy of the capital structure of the bank or
 35 trust company, particularly in view of the anticipated
 36 business to be generated by the proposed branch office;
 37 and

38 (4) The overall financial condition and safety and
 39 soundness of the applicant bank or trust company.

40 Where the department by rule, regulation, or written
 41 policy has provided for expedited processing of

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1 applications or for notice procedures, it may abbreviate
 2 its review of these criteria."

3 "(d) The department may provide by regulation that a bank
 4 which meets certain financial and managerial criteria may,
 5 in lieu of application, file a written notification with
 6 the department at a time to be specified in such

7 regulation. The department may waive publication
8 requirements for such a procedure."

9 SECTION 14.

10 Said chapter is further amended by striking subsection (b)
11 of [Code Section 7-1-608](#), relating to unlawful acquisitions
12 by bank holding companies and exceptions, and inserting in
13 lieu thereof a new subsection to read as follows:

14 "(b) Notwithstanding the provisions of this Code section,
15 the following activities are permitted. These activities
16 regarding acquisitions by purchase and by formation are to
17 be considered exceptions to the five-year age requirement
18 contained in paragraph (2) of subsection (a) of this Code
19 section:

20 (1) A bank holding company may acquire all or
21 substantially all of the shares of a bank or trust
22 company organized solely for the purpose of facilitating
23 the acquisition of a federal or state chartered bank,
24 savings and loan association, savings bank, building and
25 loan association, or other corporation doing a banking
26 business in this state or the trust department of such
27 institutions, which has been in existence and
28 continuously operating or incorporated as such an
29 institution or exercising trust powers for the minimum
30 period prescribed in subsection (a) of this Code
31 section;

32 (2) A company may become a bank holding company by
33 virtue of acquiring control of a bank if neither the
34 company, nor any other company controlled by or
35 controlling such company, controls any other bank
36 domiciled in this state or elsewhere;

37 (3) A bank holding company registered with the
38 department and lawfully owning a bank or a branch of a
39 bank which was formed by the acquisition and subsequent
40 merger of a Georgia bank, which bank or branch that does
41 a lawful banking business in this state, may acquire
42 control through formation of a de novo bank in Georgia,

1 provided that departmental approval and any required
2 federal approvals are obtained. No out-of-state bank
3 holding company may enter Georgia to do a banking
4 business by formation of a de novo bank; and

5 (4) A de novo bank established or formed pursuant to
6 paragraph (3) of this subsection shall be subject to the
7 five-year age requirement contained in paragraph (2) of
8 subsection (a) of this Code section. A bank holding
9 company may, however, merge or consolidate a de novo
10 bank which may be less than five years old and that is
11 established pursuant to paragraph (3) of this subsection
12 into another bank owned by that holding company."

13 SECTION 15.

14 Said chapter is further amended by striking paragraph (20)
15 of [Code Section 7-1-621](#), relating to definitions applicable
16 to interstate acquisitions of banks and bank holding
17 companies, and inserting in lieu thereof a new paragraph to
18 read as follows:

19 "(20) 'Principal place of business' of a bank holding
20 company means the state of charter in which the
21 aggregate deposits of the bank subsidiaries of such bank
22 holding company are largest."

23 SECTION 16.

24 Said chapter is further amended by striking paragraph (19)
25 of [Code Section 7-1-628.1](#), relating to definitions
26 applicable to interstate banking and branching by merger,
27 and inserting in lieu thereof a new paragraph to read as
28 follows:

29 "(19) 'Principal place of business' of a bank holding
30 company means the state of charter in which the
31 aggregate deposits of the bank subsidiaries of such bank
32 holding company are largest."

33 SECTION 17.

34 Said chapter is further amended by striking subsections (e)
35 through (g) of [Code Section 7-1-628.7](#), relating to
36 examinations of and reports by branches established by
37 interstate banking and branching by merger, and inserting in
38 lieu thereof five new subsections to read as follows:

39 "(e) If appropriate in the discretion of the commissioner
40 and pursuant to an interstate agreement with the pertinent
41 host state regulator for the purpose of facilitating the

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1 regulation and supervision of a multistate Georgia state
2 bank, the department may approve and collect from its
3 chartered bank, as agent and home state regulator,
4 examination and supervision fees assessed by a state where
5 the Georgia bank has a branch and may remit such fees to
6 the assessing out-of-state regulator. Such fees shall not
7 be considered revenue payable to the State of Georgia.

8 (f) In order to facilitate or implement interstate efforts
9 to regulate and supervise a multistate Georgia state bank,
10 the department may adjust its normal supervision
11 examination fee assessment schedule and other rates and
12 charges. Such adjustment may include any examination and
13 supervision fees assessed by host state regulators,
14 pursuant to subsection (e) of this Code section, as a part
15 of the standard supervision and examination assessment.

16 (e)(g) The commissioner may enter into joint examinations
17 or joint enforcement actions with other bank supervisory
18 agencies having concurrent jurisdiction over any branch in
19 Georgia of an out-of-state state bank or any branch of a
20 Georgia state bank in any host state, provided that the
21 commissioner may at any time take such actions
22 independently if he or she deems such actions to be
23 necessary or appropriate to carry out his or her
24 responsibilities under this part or to ensure compliance
25 with the laws of this state, but provided further that, in
26 the case of an out-of-state state bank, the commissioner
27 shall recognize the exclusive authority of the home state

28 regulator over corporate governance matters and the
29 primary responsibility of the home state regulator with
30 respect to safety and soundness matters.

31 (f)(h) Each out-of-state bank that maintains one or more
32 branches in this state may be assessed and, if assessed,
33 shall pay supervisory and examination fees in accordance
34 with the laws of this state and regulations of the
35 department.

36 (g)(i) Any examinations or reports originated by Georgia
37 or by another bank supervisory agency shall be deemed and
38 treated as confidential according to Georgia law, and such
39 confidentiality shall not be affected by the sharing of
40 the examination or reports. The department shall not be
41 obligated to provide or disclose such examinations or
42 reports to any third party."

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1 SECTION 18.

2 Said chapter is further amended by adding at the end of Code
3 Section 7-1-682, relating to qualifications and investments
4 required of licensed sellers of checks or money orders, a
5 new subsection to read as follows:

6 "(c) The department shall be authorized to obtain
7 conviction data with respect to any applicant or any
8 person who is a director, officer, partner, agent,
9 employee, or ultimate equitable owner of 10 percent or
10 more of the applicant. Upon receipt of information from
11 the Georgia Crime Information Center that is incomplete or
12 that indicates an applicant or any person who is a
13 director, officer, partner, agent, employee, or ultimate
14 equitable owner of 10 percent or more of the applicant has
15 a criminal record in a state other than Georgia, the
16 department shall submit to the Georgia Crime Information
17 Center two complete sets of fingerprints of such applicant
18 or such person, the required records search fees, and such
19 other information as may be required. Upon receipt

20 thereof, the Georgia Crime Information Center shall
 21 promptly transmit one set of fingerprints to the Federal
 22 Bureau of Investigation for a search of bureau records and
 23 an appropriate report and shall retain the other set and
 24 promptly conduct a search of its own records and records
 25 to which it has access. The Georgia Crime Information
 26 Center shall notify the department in writing of any
 27 derogatory finding, including, but not limited to, any
 28 conviction data regarding the fingerprint records check,
 29 or if there is no such finding. All conviction data
 30 received by the department shall be used by the department
 31 for the exclusive purpose of carrying out its
 32 responsibilities under this article, shall not be a public
 33 record, shall be privileged, and shall not be disclosed to
 34 any other person or agency except to any person or agency
 35 which otherwise has a legal right to inspect the file.
 36 All such records shall be maintained by the department
 37 pursuant to laws regarding such records and the rules and
 38 regulations of the Federal Bureau of Investigation and the
 39 Georgia Crime Information Center, as applicable. As used
 40 in this subsection, 'conviction data' means a record of a
 41 finding, verdict, or plea of guilty or a plea of nolo
 42 contendere with regard to any crime, regardless of whether
 43 an appeal of the conviction has been sought."

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1 SECTION 19.

2 Said chapter is further amended by striking subsection (c)
 3 of [Code Section 7-1-702](#), relating to background
 4 investigations of check casher applicants, and inserting in
 5 lieu thereof a new subsection to read as follows:

6 "(c) The department shall be authorized to obtain
 7 conviction data with respect to any applicant or any
 8 person who is a director, officer, partner, agent,
 9 employee, or substantial stockholder ultimate equitable
 10 owner of 10 percent or more of the applicant. For such
 11 purpose, Upon receipt of information from the Georgia

12 Crime Information Center that is incomplete or that
 13 indicates an applicant or any person who is a director,
 14 officer, partner, agent, employee, or ultimate equitable
 15 owner of 10 percent or more of the applicant has a
 16 criminal record in a state other than Georgia, the
 17 department may shall submit to the Georgia Crime
 18 Information Center two complete sets of fingerprints of
 19 the such applicant or any person who is a director,
 20 officer, partner, agent, employee, or substantial
 21 stockholder of the applicant such person, the required
 22 records search fees, and such other information as may be
 23 required. Upon receipt thereof, the Georgia Crime
 24 Information Center shall promptly transmit one set of
 25 fingerprints to the Federal Bureau of Investigation for a
 26 search of bureau records and an appropriate report and
 27 shall retain the other set and promptly conduct a search
 28 of its own records and records to which it has access.
 29 The Georgia Crime Information Center shall notify the
 30 department in writing of any derogatory finding,
 31 including, but not limited to, any conviction data
 32 regarding the fingerprint records check, or if there is no
 33 such finding. All conviction data received by the
 34 department shall be used by it the department for the
 35 exclusive purpose of carrying out its responsibilities
 36 under this article, shall not be a public record, shall be
 37 privileged, and shall not be disclosed to any other person
 38 or agency except to any person or agency which otherwise
 39 has a legal right to inspect the file. All such records
 40 shall be maintained by the department pursuant to laws
 41 regarding such records and the rules and regulations of
 42 the Federal Bureau of Investigation and the Georgia Crime
 43 Information Center, as applicable. As used in this
 44 subsection, 'conviction data' means a record of a finding,
 45 or verdict, or plea of guilty or plea of guilty or a plea

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1 of nolo contendere with regard to any crime, regardless of
 2 whether an appeal of the conviction has been sought."

3 SECTION 20.

4 Said chapter is further amended by adding at the end of Code

5 Section 7-1-707, relating to suspension or revocation of a
6 check-cashing license, a new subsection to read as follows:

7 "(e)(1) Whenever it shall appear to the department that
8 any person required to be licensed or registered under
9 this article has violated any law of this state or any
10 order or regulation of the department, the department
11 may issue an initial written order requiring such person
12 to cease and desist immediately from such unauthorized
13 practices. Such cease and desist order shall be final
14 20 days after it is issued unless the person to whom it
15 is issued makes a written request within such 20 day
16 period for a hearing. The hearing shall be conducted in
17 accordance with Chapter 13 of Title 50, the 'Georgia
18 Administrative Procedure Act.' A cease and desist order
19 to an unlicensed person that orders such person to cease
20 doing a check-cashing business without the appropriate
21 license shall be final 30 days from the date of
22 issuance, and there shall be no opportunity for an
23 administrative hearing. If the proper license or
24 evidence of exemption is obtained within the 30 day
25 period, the order shall be rescinded by the department.

26 (2) Whenever a person required to be licensed under this
27 article shall fail to comply with the terms of an order
28 of the department which has been properly issued under
29 the circumstances, the department, upon notice of three
30 days to such person, may, through the Attorney General,
31 petition the principal court for an order directing such
32 person to obey the order of the department within the
33 period of time as shall be fixed by the court. Upon the
34 filing of such petition, the court shall allow a motion
35 to show cause why it should not be granted. Whenever,
36 after a hearing upon the merits or after failure of such
37 person to appear when ordered, it shall appear that the
38 order of the department was properly issued, the court
39 shall grant the petition of the department.

40 (3) Any person required to be licensed under this
41 article who violates the terms of any order issued
42 pursuant to this Code section shall be liable for a
43 civil penalty not to exceed \$1,000.00. Each day the

1 violation continues shall constitute a separate offense.
2 In determining the amount of penalty, the department
3 shall take into account the appropriateness of the
4 penalty relative to the size of the financial resources
5 of such person, the good faith efforts of such person to
6 comply with the order, the gravity of the violation, the
7 history of previous violations by such person, and such
8 other factors or circumstances as shall have contributed
9 to the violation. The department may at its discretion
10 compromise, modify, or refund any penalty which is
11 subject to imposition or has been imposed pursuant to
12 this Code section. Any person assessed as provided in
13 this subsection shall have the right to request a
14 hearing into the matter within ten days after
15 notification of the assessment has been served upon the
16 licensee involved; otherwise, such penalty shall be
17 final except as to judicial review as provided in Code
18 Section 7-1-90.

19 (4) Initial judicial review of the decision of the
20 department entered pursuant to this Code section shall
21 be available solely in the superior court of the county
22 of domicile of the department.

23 (5) For purposes of this Code section, the term 'person'
24 includes any officer, director, employee, agent, or
25 other person participating in the conduct of the affairs
26 of the person subject to the orders issued pursuant to
27 this Code section.

28 (6) In addition to any other administrative penalties
29 authorized by this article, the department may, by
30 regulation, prescribe administrative fines for
31 violations of this article and of any rules promulgated
32 by the department pursuant to this article."

33 SECTION 21.

34 Said chapter is further amended by striking Code Section
35 7-1-709, relating to the applicability of the check-cashing
36 article, and inserting in lieu thereof a new Code section to
37 read as follows:

38 "7-1-709.

39 (a) This article shall not apply to any bank, trust
40 company, credit union, building and loan association, or
41 savings and loan association which is chartered under the

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1 laws of this state or under federal law and domiciled in
2 this state.

3 (b) The provisions of Code Sections 7-1-701, 7-1-702, and
4 7-1-703, and of subsections (a) through (d) of Code
5 Section 7-1-707 shall not apply to persons, partnerships,
6 associations, or corporations engaged in the business of
7 cashing checks, drafts, or money orders:

8 (1) Incidental to the retail sale of goods or services
9 for a consideration of not more than 1 percent of the
10 face amount of the check, draft, or money order or \$1.00
11 per check, draft, or money order, whichever is greater,
12 and where the aggregate gross income received by such
13 person, partnership, association, or corporation as
14 consideration for the cashing of checks does not exceed
15 \$25,000.00 per annum for each business location; or

16 (2) Where the aggregate gross income received by such
17 person, partnership, association, or corporation as
18 consideration for the cashing of checks, drafts, or
19 money orders does not exceed the lesser of \$12,000.00
20 for each location at which checks are cashed or 5
21 percent of the total gross income from the retail sale
22 of goods or services by such person, partnership,
23 association, or corporation during its most recently
24 completed fiscal year.

25 In all other respects, such persons, partnerships,
26 associations, or corporations shall be deemed to be
27 licensees under this article.

28 (c) Persons, partnerships, associations, or corporations

29 claiming exemption under paragraph (2) of subsection (b)
30 of this Code section shall register with the department on
31 or before August 1 of each year certifying as to the basis
32 for such exemption. A single registration accompanied by
33 a registration fee to be established by regulations of the
34 department shall cover all locations operated by such
35 person, partnership, association, or corporation."

36 SECTION 22.

37 Said chapter is further amended in Article 13, relating to
38 licensing of mortgage lenders and mortgage brokers, by
39 striking paragraph (15) of [Code Section 7-1-1000](#), relating
40 to definitions, and inserting in lieu thereof a new
41 paragraph to read as follows:

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1 "(15) 'Registrant' means any person required to register
2 under subsection (b) of pursuant to Code Section
3 Sections 7-1-1001 and 7-1-1003.2."

4 SECTION 23.

5 Said article is further amended by striking Code Section
6 7-1-1001, relating to exemptions and registration of exempt
7 persons, and inserting in lieu thereof a new Code section to
8 read as follows:

9 "7-1-1001.

10 (a) The following persons shall not be required to obtain
11 a mortgage broker or mortgage lender license and shall not
12 be subject to the provisions of this article but may be
13 subject to registration or notification requirements,
14 unless otherwise provided by this article:

15 (1) Any lender authorized to engage in business as a
16 bank, credit card bank, savings institution, building
17 and loan association, or credit union under the laws of

18 the United States, any state or territory of the United
 19 States, or the District of Columbia, the deposits of
 20 which are federally insured;

21 (2) Any wholly owned subsidiary of any lender described
 22 in paragraph (1) of this subsection; provided, however,
 23 such subsidiary shall be subject to the filing of a
 24 notification statement in order to facilitate the
 25 department's handling of consumer inquiries. Such
 26 requirements are contained in [Code Section 7-1-1003.4](#).
 27 Any subsidiary which fails to file the notification
 28 statement or keep the information current will
 29 immediately be subject to the registration requirements
 30 of this article. In addition, any subsidiary that
 31 violates any applicable law of this article may be
 32 subject to a cease and desist order as provided for in
 33 [Code Section 7-1-1018](#);

34 (2.1) or any Any wholly owned subsidiary or affiliate of
 35 any bank holding company with banking offices in
 36 Georgia; provided, however, such subsidiary shall be
 37 subject to registration requirements in order to
 38 facilitate the department's handling of consumer
 39 inquiries. Such requirements are contained in Code
 40 Section 7-1-1003.3;

41 (3) An attorney at law licensed to practice law in
 42 Georgia who is not principally engaged in negotiating

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1 mortgage loans when such attorney renders services in
 2 the course of his or her practice as an attorney at law;

3 (4) A real estate broker or real estate salesperson not
 4 actively engaged in the business of negotiating mortgage
 5 loans; however, a real estate broker or real estate
 6 salesperson who receives any fee, commission, kickback,
 7 rebate, or other payment for directly or indirectly
 8 negotiating, placing, or finding a mortgage for others
 9 shall not be exempt from the provisions of this article;

10 (5) Any person performing any act relating to mortgage
11 loans under order of any court;

12 (6) Any natural person or the estate of or trust created
13 by a natural person making a mortgage loan with his or
14 her own funds for his or her own investment, including
15 those natural persons or the estates of or trusts
16 created by such natural persons who make a purchase
17 money mortgage for financing sales of their own
18 property;

19 (7) The United States of America, the State of Georgia
20 or any other state, and any agency, division, or
21 corporate instrumentality of any governmental entity,
22 including without limitation: the Georgia Housing and
23 Finance Authority, the Georgia Development Authority,
24 the Federal National Mortgage Association (FNMA), the
25 Federal Home Loan Mortgage Corporation (FHLMC), the
26 Government National Mortgage Association (GNMA), the
27 United States Department of Housing and Urban
28 Development (HUD), the Federal Housing Administration
29 (FHA), the Department of Veterans Affairs (VA), the
30 Farmers Home Administration (FmHA), and the Federal Land
31 Banks and Production Credit Associations Farm Credit
32 Administration and its chartered agricultural credit
33 associations;

34 (8) Any person who makes a mortgage loan to an employee
35 of such person as an employment benefit;

36 (9) Any licensee under Chapter 3 of this title, the
37 'Georgia Industrial Loan Act,' provided that any
38 mortgage loan made by such licensee is for \$3,000.00 or
39 less;

40 (10) Nonprofit corporations making mortgage loans to
41 promote home ownership or improvements for the
42 disadvantaged;

1 (11) A natural person employed by a licensed mortgage

2 broker, a licensed mortgage lender, or any person
3 exempted from the licensing requirements of this article
4 when acting within the scope of employment and under the
5 supervision of the licensee or exempted person as an
6 employee and not as an independent contractor. To be
7 exempt, a natural person must be employed by only one
8 such employer;

9 (12) Any person who purchases mortgage loans from a
10 mortgage broker or mortgage lender solely as an
11 investment and who is not in the business of brokering,
12 making, purchasing, or servicing mortgage loans; or

13 (13) Any natural person who makes five or fewer mortgage
14 loans in any one calendar year. A person other than a
15 natural person who makes five or fewer mortgage loans in
16 any one calendar year shall not be exempt from the
17 licensing requirements of this article unless such
18 person applies for and is granted an exemption by the
19 department in accordance with regulations promulgated by
20 the department.

21 (b) In order to facilitate the department's handling of
22 consumer inquiries and to provide for orderly record
23 keeping, any person claiming an exemption under paragraph
24 (1) of subsection (a) of this Code section who has no
25 banking location in this state and any person claiming an
26 exemption under paragraph (2) of subsection (a) of this
27 Code section shall register initially with the department
28 and thereafter file an application for renewal of
29 registration with the department on or before October 1 of
30 each year providing the department with such information
31 as the department may prescribe by regulation, including,
32 but not limited to, the business addresses at which such
33 person engages in any business activities covered by this
34 article and a telephone number that customers may use to
35 contact such person. Registration under this subsection
36 shall be accompanied by a registration fee to be
37 established by regulation of the department. No person
38 required to register under this subsection shall transact
39 business in this state directly or indirectly as a
40 mortgage broker or a mortgage lender unless such person is
41 registered with the department."

32 mortgage licenses, and inserting in lieu thereof a new
33 subsection to read as follows:

34 "(c) The application shall be filed together with:

35 (1) Investigation and supervision fees established by
36 regulation. The investigation fee shall not be
37 refundable; provided, however, any supervision fee paid
38 at the time of the application shall be refunded if the
39 license is not granted; and

40 (2) The items required by Code Section 7-1-1003.2 A
41 corporate surety bond issued by a bonding company or

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1 insurance company authorized to do business in this
2 state and approved by the department, provided that such
3 bond is required by this paragraph or by subparagraph
4 (d)(2)(B) of Code Section 7-1-1004. The bond for a
5 mortgage broker shall be in the principal sum of
6 \$50,000.00 or such greater sum as the department may
7 require. The bond shall be in a form satisfactory to
8 the department and shall run to the State of Georgia for
9 the benefit of any persons damaged by noncompliance of a
10 licensee with any condition of such bond. Such bond
11 shall be continuously maintained thereafter in full
12 force. Such bond shall be conditioned upon the
13 applicant or the licensee conducting his or her licensed
14 business in conformity with this article and all
15 applicable laws. Any person who may be damaged by
16 noncompliance of a licensee with any condition of such
17 bond may proceed on such bond against the principal or
18 surety thereon, or both, to recover damages. The
19 provisions of this paragraph shall not apply to any
20 mortgage broker who provides the department with an
21 audited financial statement, which statement
22 demonstrates that the broker has a bona fide and
23 verifiable tangible net worth of \$25,000.00."

24 SECTION 26.

25 Said article is further amended by inserting three new Code
26 sections following [Code Section 7-1-1003.1](#), relating to
27 physical place of business, to read as follows:

28 "7-1-1003.2.

29 (a) Each licensed mortgage broker must provide the
30 department with a bond. The bond for a mortgage broker
31 shall be in the principal sum of \$50,000.00 or such
32 greater sum as the department may require. In lieu of a
33 bond, a mortgage broker may provide the department with an
34 audited financial statement that discloses that the broker
35 has a bona fide and verifiable tangible net worth of
36 \$25,000.00. All other mortgage brokers must, upon initial
37 application, submit an unaudited financial statement
38 certified to be true and correct by the mortgage broker.

39 (b) Except as otherwise provided in subsection (c) of this
40 Code section, the department shall not license or register
41 any mortgage lender unless the applicant or registrant
42 submits audited financial statements covering the most
43 recent fiscal year preceding the date of the application

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1 or registration and such other financial data as the
2 department may require that disclose that the applicant or
3 registrant has a bona fide and verifiable tangible net
4 worth of \$250,000.00 or such greater amount as the
5 department may reasonably require, which net worth must be
6 continuously maintained as a condition of licensure or
7 registration.

8 (c) The department may issue a mortgage lender's license
9 to an applicant with a bona fide and verifiable tangible
10 net worth of less than \$250,000.00 but not less than
11 \$100,000.00, provided that such applicant satisfies the
12 following requirements in support of an application for a
13 mortgage lender's license in addition to all other
14 applicable requirements for licensure under this article:

15 (1) The applicant shall certify that such applicant
16 transfers or assigns all mortgage loans funded with such
17 applicant's own funds, including, but not limited to,
18 draws on a warehouse line of credit to another mortgage
19 lender prior to the due date of the first payment by the
20 borrower but in no event later than 45 days after the
21 date of funding; and

22 (2) The applicant shall submit the following to the
23 department:

24 (A) Audited financial statements covering the
25 applicant's most recent fiscal year preceding the date
26 of the application and such other financial data as
27 the department may require that disclose that the
28 applicant has a bona fide and verifiable tangible net
29 worth of \$100,000.00 or such greater amount as the
30 department may reasonably require;

31 (B) A corporate surety bond in the principal amount of
32 \$100,000.00, which bond shall be in a form
33 satisfactory to the department, shall be issued by a
34 bonding company or insurance company authorized to do
35 business in this state and approved by the department,
36 and shall run to the State of Georgia for the benefit
37 of any person damaged by noncompliance of a licensee
38 with any condition of such bond. Such bond shall be
39 continuously maintained thereafter in full force.
40 Such bond shall be conditioned upon the applicant or
41 the licensee conducting his or her licensed business
42 in conformity with this article and all applicable
43 laws; and

1 (C) Evidence of having received approval to
2 participate as a mortgagee loan correspondent in the
3 mortgage insurance programs administered by the United
4 States Department of Housing and Urban Development.

5 (d) An irrevocable letter of credit from a federally
6 insured financial institution in form and terms acceptable

7 and payable to the department may be substituted for the
8 bond requirement for a mortgage broker or mortgage lender
9 license.

10 (e) Any person who may be damaged by noncompliance of a
11 licensee with any condition of a bond may proceed on such
12 bond against the principal or surety thereon, or both, to
13 recover damages.

14 (f) The department may promulgate rules and regulations
15 with respect to the definition of net worth and the
16 requirement for maintaining net worth as a condition of
17 licensure or registration.

18 7-1-1003.3.

19 (a) An application to register as a mortgage lender or
20 broker under this article shall be made in writing, under
21 oath, on a form provided by the department and shall be
22 renewed each year by April 1.

23 (b) The application shall include all of the items
24 requested of applicants for licenses in Code Section
25 7-1-1003.

26 7-1-1003.4.

27 (a) A notification statement shall contain the following:

28 (1) The name or names under which business will be
29 conducted in Georgia;

30 (2) The name and address of the parent financial
31 institution;

32 (3) The name, mailing address, telephone number, and fax
33 number of the person or persons responsible for handling
34 consumer inquiries and complaints;

35 (4) The name and address of the registered agent for
36 service of process in Georgia; and

37 (5) A statement signed by the president or chief
38 executive officer of the entity stating that the entity
39 will receive and process consumer inquiries and

1 complaints promptly, fairly, and in compliance with all
2 applicable laws.

3 (b) A notification statement shall be filed before
4 commencing to do a mortgage business in this state and
5 shall be updated by the entity as the information changes.
6 Any entity which fails to file the notification statement
7 or keep the information current will immediately be
8 subject to the registration requirements of Code Section
9 7-1-1003.3."

10 SECTION 27.

11 Said article is further amended by striking Code Section
12 7-1-1004, relating to investigation of a mortgage license
13 applicant, and inserting in lieu thereof a new Code section
14 to read as follows:

15 "7-1-1004.

16 (a) Upon receipt of an application for license, the
17 department shall conduct such investigation as it deems
18 necessary to determine that the applicant and its
19 officers, directors, and principals are of good character
20 and ethical reputation; that the applicant demonstrates
21 reasonable financial responsibility; that the applicant
22 has reasonable policies and procedures to receive and
23 process customer grievances and inquiries promptly and
24 fairly; and that the applicant has and maintains a
25 registered agent for service in this state.

26 (b) The department shall not license any applicant unless
27 it is satisfied that the applicant may be expected to
28 operate its mortgage lending or brokerage activities in
29 compliance with the laws of this state and in a manner
30 which protects the contractual and property rights of the
31 citizens of this state.

32 (c) The department may establish by rule or regulation
33 minimum education or experience requirements for an

34 applicant for a mortgage broker license or renewal of such
35 a license. Except as otherwise provided in subsection (d)
36 of this Code section, the department shall not license or
37 register any mortgage lender unless the applicant or
38 registrant submits audited financial statements covering
39 the most recent fiscal year preceding the date of the
40 application or registration and such other financial data
41 as the department may require which disclose that the
42 applicant or registrant has a bona fide and verifiable

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1 tangible net worth of \$250,000.00 or such greater amount
2 as the department may require, which net worth must be
3 continuously maintained as a condition of licensure or
4 registration. The department may promulgate regulations
5 with respect to the definition of net worth and the
6 requirement for maintaining net worth as a condition of
7 licensure or registration.

8 (d) The department may issue a mortgage lender's license
9 to an applicant with a bona fide and verifiable tangible
10 net worth of less than \$250,000.00 but not less than
11 \$100,000.00, provided that such applicant satisfies the
12 following requirements in addition to all other applicable
13 requirements for licensure under this article:

14 (1) In support of an application for a mortgage lender's
15 license, the applicant shall certify that such applicant
16 transfers or assigns all mortgage loans funded with such
17 applicant's own funds, including, but not limited to,
18 draws on a warehouse line of credit, to another mortgage
19 lender prior to the due date of the first payment by the
20 borrower, but in no event later than 45 days after the
21 date of funding; and

22 (2) In support of an application for a mortgage lender's
23 license, the applicant shall submit the following to the
24 department:

25 (A) Audited financial statements covering the
26 applicant's most recent fiscal year preceding the date

27 of the application and such other financial data as
 28 the department may require that demonstrate that the
 29 applicant has a bona fide and verifiable tangible net
 30 worth of \$100,000.00 or such greater amount as the
 31 department may require;

32 (B) A corporate surety bond in the principal amount of
 33 \$100,000.00, which bond shall be issued by a bonding
 34 company or insurance company authorized to do business
 35 in this state and approved by the department, and
 36 which bond shall comply with the requirements for
 37 corporate surety bonds set forth in paragraph (2) of
 38 subsection (c) of [Code Section 7-1-1003](#); and

39 (C) Evidence of its approval to participate as a
 40 mortgagee loan correspondent in the mortgage insurance
 41 programs administered by the United States Department
 42 of Housing and Urban Development.

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1 (e)(d) The department may not issue or may revoke a
 2 license if it finds that the applicant, or any person who
 3 is a director, officer, partner, agent, employee, or
 4 ultimate equitable owner of 10 percent or more of the
 5 applicant, has been convicted of a felony involving moral
 6 turpitude in any jurisdiction or of a crime which, if
 7 committed within this state, would constitute a felony
 8 involving moral turpitude under the laws of this state.
 9 For the purposes of this article, a person shall be deemed
 10 to have been convicted of a crime if such person shall
 11 have pleaded guilty to a charge thereof before a court or
 12 federal magistrate, or shall have been found guilty
 13 thereof by the decision or judgment of a court or federal
 14 magistrate or by the verdict of a jury, irrespective of
 15 the pronouncement of sentence or the suspension thereof,
 16 unless such plea of guilty, or such decision, judgment, or
 17 verdict, shall have been set aside, reversed, or otherwise
 18 abrogated by lawful judicial process or unless the person
 19 convicted of the crime shall have received a pardon
 20 therefor from the President of the United States or the

21 Governor or other pardoning authority in the jurisdiction
22 where the conviction was had, or shall have received an
23 official certification or pardon granted by the State
24 Board of Pardons and Paroles which removes the legal
25 disabilities resulting from such conviction and restores
26 civil and political rights in this state.

27 (f)(e) The department shall be authorized to obtain
28 conviction data with respect to any applicant or any
29 person who is a director, officer, partner, agent,
30 employee, or ultimate equitable owner of 10 percent or
31 more of the applicant. Upon receipt of information from
32 the Georgia Crime Information Center that is incomplete or
33 that indicates an applicant or any person who is a
34 director, officer, partner, agent, employee, or ultimate
35 equitable owner of 10 percent or more of the applicant has
36 a criminal record in any state other than Georgia For such
37 purpose, the department may shall submit to the Georgia
38 Crime Information Center two complete sets of fingerprints
39 of the such applicant or any such person who is a
40 director, officer, partner, agent, employee, or ultimate
41 equitable owner of 10 percent or more of the applicant,
42 the required records search fees, and such other
43 information as may be required. Upon receipt thereof, the
44 Georgia Crime Information Center shall promptly transmit
45 one set of fingerprints to the Federal Bureau of

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1 Investigation for a search of bureau records and an
2 appropriate report and shall retain the other set and
3 promptly conduct a search of its own records and records
4 to which it has access. The Georgia Crime Information
5 Center shall notify the department in writing of any
6 derogatory finding, including, but not limited to, any
7 conviction data regarding the fingerprint records check,
8 or if there is no such finding. All conviction data
9 received by the department shall be used by the
10 department for the exclusive purpose of carrying out the
11 responsibilities of this article, shall not be a public
12 record, shall be privileged, and shall not be disclosed to
13 any other person or agency except to any person or agency

14 which otherwise has a legal right to inspect the file.
 15 All such records shall be maintained by the department
 16 pursuant to laws regarding such records and the rules and
 17 regulations of the Federal Bureau of Investigation and the
 18 Georgia Crime Information Center, as applicable. As used
 19 in this subsection, 'conviction data' means a record of a
 20 finding, or verdict, of guilty or plea of guilty or plea
 21 of nolo contendere with regard to any crime, regardless of
 22 whether an appeal of the conviction has been sought.

23 (g)(f) The department may deny a license or otherwise
 24 restrict a license if it finds that the applicant, or any
 25 person who is a director, officer, partner, agent, or
 26 ultimate equitable owner of 10 percent or more of the
 27 applicant, has had a license denied, revoked, or suspended
 28 within one year of the date of the application.

29 (h)(g) The department shall not issue a license to and may
 30 revoke a license from an applicant or licensee if such
 31 person employs any other person against whom a final cease
 32 and desist order has been issued within the preceding 12
 33 months, if such order was based on a violation of Code
 34 Section 7-1-1013 or based on the conducting of a mortgage
 35 business without a required license, or whose license has
 36 been revoked within 12 months of the date such person was
 37 hired.

38 (i)(h) Within 90 days after receipt of a completed
 39 application and payment of licensing fees prescribed by
 40 this article, the department shall either grant or deny
 41 the request for license.

42 (j)(i) A person shall not be indemnified for any act
 43 covered by this article or for any fine or penalty
 44 incurred pursuant to this article as a result of any

1 violation of the law or regulations contained in this
 2 article, due to the legal form, corporate structure, or
 3 choice of organization of such person, including but not
 4 limited to a limited liability corporation."

SECTION 28.

6 Said article is further amended by striking Code Section
7 7-1-1005, relating to renewal of mortgage licenses and
8 registrations, and inserting in lieu thereof a new Code
9 section to read as follows:

10 "7-1-1005.

11 (a) Except as otherwise specifically provided in this
12 article, all licenses and registrations issued pursuant to
13 this article shall expire on December 31 June 30 of each
14 year and application for renewal shall be made annually on
15 or before October April 1 of each year; provided, however,
16 that licenses and registrations issued for the calendar
17 year 2000 will expire on June 30, 2001.

18 (b) Any licensee or registrant making proper application,
19 including all supporting documents and all applicable fees
20 required by this article and any regulations promulgated
21 by the department, for a license or registration renewal
22 to operate during the following calendar license year and
23 filing the application prior to October April 1 shall be
24 permitted to continue to operate pending final approval or
25 disapproval of the application for the license or
26 registration renewal for the following year if final
27 approval or disapproval is not granted prior to January
28 July 1.

29 (c) No investigation fee shall be payable in connection
30 with the renewal application, but an annual license or
31 registration fee established by regulation of the
32 department to defray the cost of supervision shall be paid
33 with each renewal application, which fee shall not be
34 refunded or prorated if the renewal application is
35 approved.

36 (d) Any person holding a license or registration pursuant
37 to this article who fails to file a proper application for
38 a license or registration renewal for the following
39 license year, including the proper fee accompanying the
40 application, on or before October April 1 and who files an
41 application after October April 1 may be required to pay,
42 in addition to the license or registration fees, a fine in

1 an amount to be established by regulations promulgated by
2 the department."

3 SECTION 29.

4 Said article is further amended by striking Code Section
5 7-1-1006, relating to the contents, posting, and
6 transference of a license and operating additional offices,
7 and inserting in lieu thereof a new Code section to read as
8 follows:

9 "7-1-1006.

10 (a) Each license issued under this article shall state the
11 address of the principal place of business or main office
12 in Georgia or elsewhere and the name of the licensee.

13 (b) A licensee shall post a copy of such license in a
14 conspicuous place in each place of business of the
15 licensee.

16 (c) A license may not be transferred or assigned.

17 (d) No licensee shall transact business under any name
18 other than that designated in the license.

19 (e) Each licensee shall notify the department in writing
20 of any change in the address of the principal place of
21 business or of any additional location of business in
22 Georgia, any change in registered agent or registered
23 office, any change of principal officer, director, contact
24 person for consumer complaints, or ultimate equitable
25 owner of 10 percent or more of any corporation or other
26 entity licensed under this article, or of any material
27 change in the licensee's financial statement. Notice of a
28 change in address or an addition of a new location shall
29 be submitted no later than 15 days before the change is
30 made. Notice of other changes must be received by the
31 department no later than 30 business days after the change
32 is effective.

33 (f) No licensee shall open an additional office in Georgia
 34 without prior approval of the department. Applications
 35 for such approval additional office shall be made in
 36 writing on a form prescribed by the department and shall
 37 be accompanied by payment of a \$350.00 nonrefundable
 38 application fee. The application shall be approved unless
 39 the department finds that the applicant has not conducted
 40 business under this article efficiently, fairly, in the
 41 public interest, and in accordance with law. The

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1 application shall be deemed approved if notice to the
 2 contrary has not been mailed by the department to the
 3 applicant within 30 days of the date the application is
 4 received by the department. After approval, the applicant
 5 shall give written notice to the department within ten
 6 days of the commencement of business at the additional
 7 office.

8 (g) All branch managers in Georgia must be approved by the
 9 department. A licensee may place a new branch manager
 10 subject to the department's approval but must file for
 11 approval within 15 days of the placement and must remove
 12 the person immediately should the department deny
 13 approval."

14 SECTION 30.

15 Said article is further amended by striking subsection (b)
 16 of [Code Section 7-1-1009](#), relating to maintenance of books,
 17 accounts, and records and investigation of licensees and
 18 registrants by the department, and inserting in lieu thereof
 19 a new subsection to read as follows:

20 "(b) The department may, by its designated officers and
 21 employees, as often as it deems necessary, but at least
 22 once every 24 months, investigate and examine the affairs,
 23 business, premises, and records of any person required to
 24 be licensed or registered under this article insofar as
 25 such affairs, business, premises, and records pertain to

19 the payment of any such penalty, in whole or in part, if
 20 good cause is shown. If a licensee or registrant fails to
 21 pay a penalty from which it has not been relieved, the
 22 department may, through the Attorney General, maintain an
 23 action at law to recover it.

24 (b)(a) Each mortgage broker licensed or registered under
 25 this article shall submit to the department initially and
 26 at the time of renewal an unaudited financial statement
 27 certified to be true and correct by the mortgage broker;
 28 provided, however, that if the mortgage broker is using
 29 its net worth and not a surety bond or letter of credit to
 30 meet the requirements for licensure in Code Section
 31 7-1-1003 7-1-1003.2, the mortgage broker shall submit to
 32 the department with the initial application for licensure
 33 and with any renewal applications an audited financial
 34 statement. The department may require the mortgage broker
 35 to have made an audit of the books and affairs of the
 36 licensed or registered business and submit to the
 37 department an audited financial statement if the
 38 department finds that such an audit is necessary to
 39 determine whether the mortgage broker is complying with
 40 the provisions of this article and the rules and
 41 regulations adopted in furtherance of this article.

42 (c)(b) Each mortgage lender licensed or registered under
 43 this article shall at least once each year have made an

1 audit of the books and affairs of the licensed or
 2 registered business and submit to the department at
 3 renewal an audited financial statement, except that a
 4 mortgage lender licensed or registered under this article
 5 which is a subsidiary shall comply with this provision by
 6 annually providing a consolidated audited financial
 7 statement of its parent company and a financial statement,
 8 which may be unaudited, of the licensee or registrant
 9 which is prepared in accordance with generally accepted
 10 accounting principles. An audit must be less than 15
 11 months old to be acceptable. The department may by
 12 regulation establish additional minimum standards for

13 audits and reports under this Code section."

14 SECTION 32.

15 Said article is further amended by striking Code Section
16 7-1-1013, relating to prohibition of certain acts, and
17 inserting in lieu thereof a new Code section to read as
18 follows:

19 "7-1-1013.

20 It is prohibited for any person transacting a mortgage
21 business in or from this state, including any person
22 required to be licensed or registered under this article
23 and any person exempted from the licensing or registration
24 requirements of this article under Code Section 7-1-1001,
25 to:

26 (1) Misrepresent the material facts or make false
27 statements or promises likely to influence, persuade, or
28 induce an applicant for a mortgage loan, a mortgagee, or
29 a mortgagor to take a mortgage loan, or pursue a course
30 of misrepresentation to the department or anyone through
31 agents or otherwise;

32 (2) Misrepresent or conceal or cause another to
33 misrepresent or conceal material factors, terms, or
34 conditions of a transaction to which a mortgage lender
35 or broker is a party, pertinent to an applicant or
36 application for a mortgage loan or a mortgagor;

37 (3) Fail to disburse funds in accordance with a written
38 commitment or agreement to make a mortgage loan;

39 (4) Improperly refuse to issue a satisfaction of a
40 mortgage loan;

1 (5) Fail to account for or deliver to any person any

2 personal property obtained in connection with a mortgage
3 loan such as money, funds, deposit, check, draft,
4 mortgage, or other document or thing of value which has
5 come into the possession of the mortgage lender or
6 broker and which is not the property of the mortgage
7 lender or broker, or which the mortgage lender or broker
8 is not in law or at equity entitled to retain;

9 (6) Engage in any transaction, practice, or course of
10 business which is not in good faith or fair dealing, or
11 which operates a fraud upon any person, in connection
12 with the attempted or actual making of, purchase of, or
13 sale of any mortgage loan;

14 (7) Engage in any fraudulent home mortgage underwriting
15 practices;

16 (8) Induce, require, or otherwise permit the applicant
17 for a mortgage loan or mortgagor to sign a security
18 deed, note, loan application, or other pertinent
19 financial disclosure documents with any blank spaces to
20 be filled in after it has been signed, except blank
21 spaces relating to recording or other incidental
22 information not available at the time of signing;

23 (9) Make, directly or indirectly, any residential
24 mortgage loan with the intent to foreclose on the
25 borrower's property. For purposes of this paragraph,
26 there is a presumption that a person has made a
27 residential mortgage loan with the intent to foreclose
28 on the borrower's property if the following
29 circumstances can be demonstrated:

30 (A) Lack of substantial benefit to the borrower;

31 (B) Lack of probability of full payment of the loan by
32 the borrower; and

33 (C) A significant proportion of similarly foreclosed
34 loans by such person; or

35 (10) Provide an extension of credit or collect a
36 mortgage debt by extortionate means.; or

37 (11) Purposely withhold, delete, destroy, or alter
38 information requested by an examiner of the department

39 or make false statements or material misrepresentations
40 to the department during the course of an examination or

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1 on any application or renewal form sent to the
2 department."

3 SECTION 33.

4 Said article is further amended by striking subsection (a)
5 of [Code Section 7-1-1018](#), relating to cease and desist
6 orders, and inserting in lieu thereof a new subsection to
7 read as follows:

8 "(a) Whenever it shall appear to the department that any
9 person required to be licensed, or registered, or required
10 to file a notification statement under this article or any
11 person employed by a licensee or registrant pursuant to
12 [Code Section 7-1-1001](#) has violated any law of this state
13 or any order or regulation of the department, the
14 department may issue an initial written order requiring
15 such person to cease and desist immediately from such
16 unauthorized practices. Such cease and desist order shall
17 be final 20 days after it is issued unless the person to
18 whom it is issued makes a written request within such 20
19 day period for a hearing. The hearing shall be conducted
20 in accordance with Chapter 13 of Title 50, the 'Georgia
21 Administrative Procedure Act.' A cease and desist order
22 to an unlicensed person that orders them to cease doing a
23 mortgage business without the appropriate license shall be
24 final 30 days from the date of issuance, and there shall
25 be no opportunity for an administrative hearing. If the
26 proper license or evidence of exemption or valid
27 employment status is obtained within the 30 day period,
28 the order shall be rescinded by the department. In the
29 case of an unlawful purchase of mortgage loans, such
30 initial cease and desist order to a purchaser shall
31 constitute the knowledge required under subsection (b) of
32 [Code Section 7-1-1002](#) for any subsequent violations."

33

SECTION 34.

34 This Act shall become effective upon its approval by the
35 Governor or upon its becoming law without such approval.

36

SECTION 35.

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