House Bill 891 (AS PASSED HOUSE AND SENATE)
By: Representatives Williamson of the 115th, Williams of the 148th, and Frazier of the 126th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial institutions, so as to provide for numerous updates; to remove and change reporting requirements for certain personnel of the Department of Banking and Finance regarding the use of financial institutions; to prohibit certain changes in control of financial institutions; to allow the department to extend the period for approval of certain proposed acquisitions; to change certain references to 'bank' to 'financial institutions'; to expand certain notice requirements; to authorize certain mergers of limited liability companies with banks and trust companies; to provide for requirements for establishing a representative office; to provide for requirements and limitations for the activities of certain representative offices; to update provisions relative to bank holding companies; to provide for notification requirements; to remove the department's requirement to consider the convenience and needs of the community for approval of certain transactions; to provide for requirements for interstate acquisitions of banks and bank holding companies; to authorize credit unions to provide third-party payment and check-cashing services and act as sellers of payment instruments and international remittances; to authorize the department to approve alternative schedules for board meetings; to exempt certain obligations from limitations on credit union loans; to remove the requirement to use registered or certified mail for certain notices; to authorize the department to disapprove a change in control by executive officers in certain instances; to
exempt certain acquisitions by passive investors from application requirements and to provide requirements for such acquisitions; to exempt certain acquisitions by licensees from application requirements and establish requirements for such acquisitions; to authorize the department to access, receive, and use international investigative background reports; to authorize the department to use, hire, contract, or employ analytical systems, methods, or software; to update requirements for certain exemptions from licensing by the department as a mortgage loan originator, mortgage broker, or mortgage lender; to exempt from licensing persons who engage in certain transactions with closed mortgage loans; to change the calculation for fees for certain exempt persons; to clarify and remove superfluous language; to update terminology; to remove outdated language; to correct a cross-reference; to amend Chapter 3 of Title 7 of the Official Code of Georgia Annotated, relating to installment loans, so as to include servicing of installment loans to the activity regulated under the chapter; to exempt from regulation certain government entities and certain retail and credit transactions; to change the per loan fee structure for such loans; to clarify that the department may issue cease and desist orders to persons that are not licensed; to amend Chapter 6A of Title 7 of the Official Code of Georgia Annotated, relating to the "Georgia Fair Lending Act," so as to update a citation to a federal regulation; to make conforming changes; to provide for definitions; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial institutions, is amended by revising subsections (c), (d), and (g) of Code Section 7-1-37, relating to restrictions on commissioner, deputy commissioners, and examiners, as follows:
(c) Notwithstanding the provisions of subsection (a) of this Code section, the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or examiners employed by the department may borrow money from and otherwise deal with any financial institution or subsidiary thereof existing under the laws of the United States or of any state other than this state, provided that the obligee financial institution or subsidiary is not examined or regulated by the department. For the purposes of this subsection, a financial institution shall not be considered regulated solely because it is required to file an exemption from licensing under Code Section 7-1-1001 or solely because it is owned or controlled by another bank or corporation which is or may be examined or regulated by the department. All extensions of credit, including but not limited to such permitted loans, which obligate the commissioner or any deputy commissioner to such a financial institution or subsidiary, directly or contingently by way of guaranty, endorsement, or otherwise, or which renew or modify existing obligations shall be reported by the individual concerned to the Attorney General in writing, within ten days after the execution thereof, showing the nature of the undertaking and the amount and terms of the loan or other transaction. All credit obligations of a similar nature to those set forth above on the part of any other department employee with financial institution or licensee supervisory responsibilities or examiner shall be reported to the commissioner within ten days after the execution thereof.

(d) Nothing in this Code section shall prohibit the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or any examiner of the department from maintaining a deposit in any financial institution, purchasing banking services other than credit services, or owning a single share in a credit union in the ordinary course of business and under rates and terms generally available to other customers of the financial institution. The provisions of this Code section shall not be applicable in the cases of a lender credit card obligation to a financial institution where the maximum outstanding credit may not exceed...
nor to any other credit obligation fully secured by the pledge of a deposit account in the lending institution, provided that the financial institution is not within the employee's assigned examination authority and provided that the rates and terms of all such obligations are not preferential in comparison to similar obligations of the financial institution's other customers. Such exempt obligations shall, however, be reported as provided in subsection (c) of this Code section, be reported to the commissioner within ten days of execution of the credit obligation if the financial institution is regulated or examined by the department, and the employee shall be disqualified from any dealings with the obligee financial institution."

"(g) The commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibility, or any examiner shall not directly or indirectly:

(1) Receive any money or property as a loan from any department licensee or any director, officer, agent, employee, or attorney of a department licensee, unless such employee does not examine or exercise supervisory responsibility over that licensee:

Any debt owed by a deputy commissioner, department employee with financial institution or licensee supervisory responsibility, or examiner of a department licensee must be reported to the commissioner. Reporting by the commissioner shall be made to the Attorney General;

(2) Receive any money or property as a gift from any department licensee or any director, officer, agent, employee, or attorney of a department licensee, unless consistent with the ethics in government policy of this state;

(3) Give any money or property as a gift to any department licensee or any director, officer, agent, employee, or attorney of a department licensee, unless consistent with the ethics in government policy of this state; or

(4) Engage in the business of a department licensee."
SECTION 2.

Said chapter is further amended by revising Code Section 7-1-230, relating to definitions relative to change in control of financial institutions, as follows:

"7-1-230.

As used in this part, the term:

(1) 'Concert with one or more persons' includes, but is not limited to, the following persons and relationships:

(A) A company and any controlling shareholder, partner, trustee, or management official of the company if both the company and the individual own voting securities of the financial institution;

(B) An individual and the individual's immediate family;

(C) Companies under common control;

(D) Persons that are parties to any agreement, contract, understanding, or other arrangement, whether written or otherwise, regarding the acquisition, voting, or transfer of control of voting securities of a financial institution;

(E) Persons that have made, or propose to make, a joint filing under Section 13 or 14 of the Securities Exchange Act of 1934 and the rules promulgated thereunder by the United States Securities and Exchange Commission; and

(F) A person and any trust for which the person serves as trustee.

(2) 'Control' means the power directly or indirectly to direct the management or policies of a financial institution or to vote 25 percent or more of any class of voting securities of a financial institution.

(2) 'Person' means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed in this paragraph.

(4) 'Presumption of control' means a person which directly or indirectly owns, controls, or has the power to vote more than 10 percent but less than 25 percent of any class of
voting securities of a financial institution if no other persons will own, control, or hold
the power to vote a greater percentage of that class of voting securities immediately after
the transaction."

SECTION 3.
Said chapter is further amended by revising Code Section 7-1-231, relating to acquisition of
control without permission prohibited, as follows:

"7-1-231.
(a) For purposes of this Code section, the term 'financial institution' shall include any 'bank
holding company' as such term is defined in subsection (a) of Code Section 7-1-605.
(b) It shall be unlawful for a person, acting directly or indirectly or through concert with
one or more persons, to acquire control or the presumption of control of any financial
institution through a purchase, assignment, pledge, or other disposition of voting stock of
such institution, except with the approval of the department or as otherwise permitted by
this part."

SECTION 4.
Said chapter is further amended by revising subsection (b) of Code Section 7-1-232, relating
to notice of proposed acquisition required, approval or disapproval by department, and
judicial review, as follows:

"(b) The department shall be given at least 60 days’ prior written notice of any such
proposed acquisition. The department may if the department does not issue a notice
disapproving the proposed acquisition within that time or extend the period during which
a disapproval may issue for another 30 days, the proposed acquisition shall stand approved.
The period for disapproval may be further extended only if the department determines that
any acquiring party has not furnished all the information required under Code Section
7-1-233 or that in its judgment any material information submitted is substantially
inaccurate. An acquisition may be made prior to expiration of the disapproval period if the
department issues written notice of its intent not to disapprove the action."

SECTION 5.
Said chapter is further amended by revising paragraph (5) of Code Section 7-1-233, relating
to contents of notice, as follows:
"(5) Any plans or proposals which any acquiring party making the acquisition may have
to liquidate the bank financial institution, to sell its assets or merge it with any company,
or to make any other major change in its business or corporate structure or management;"

SECTION 6.
Said chapter is further amended by revising paragraphs (3) and (4) of Code Section 7-1-234,
relating to grounds for disapproving proposal, as follows:
"(3) The financial condition of any acquiring person is such as might jeopardize the
financial stability of the bank financial institution or prejudice the interests of the
depositors of the bank financial institution;
(4) The competence, experience, or integrity of any acquiring person or of any of the
proposed management personnel indicates that it would not be in the interest of the
depositors of the bank financial institution or in the interest of the public to permit such
person to control the bank financial institution;"

SECTION 7.
Said chapter is further amended by revising Code Section 7-1-236, relating to report of
change in control, as follows:
"7-1-236.
Whenever a change occurs in the ownership of or right to vote the outstanding shares of
any bank or trust company which will result in the control or a change in the control of the
bank or trust company, the president or other officer of such bank or trust company shall, within ten days after knowledge thereof, report such facts to the department. Notwithstanding Code Section 7-1-230, as used in this Code section, the term 'control' means the power to direct or cause, directly or indirectly, the direction of the management or policies of the institution. If there is any doubt as to whether a change in the ownership or voting rights of such shares is sufficient to result in control thereof or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the department."

SECTION 8. Said chapter is further amended by revising subsections (b) and (g) of Code Section 7-1-530, relating to authority to merge, consolidate, or exchange shares and requirements relative to merger and consolidation of state banks and trust companies, as follows:

"(b) A corporation or limited liability company other than a bank or trust company may be merged into or consolidated with, or may enter into a share exchange with, a bank or trust company, provided that:

(1) The resulting institution of the merger or consolidation is a bank or trust company;
(2) The resulting institution of the merger or consolidation, or the acquired bank or trust company in a share exchange, holds only assets and liabilities and is engaged only in activities which may be held or engaged in by a bank or trust company; and
(3) The merger, share exchange, or consolidation is not otherwise unlawful."

"(g) Subject to the provisions of this part, this Code section does not limit the power of a corporation or limited liability company other than a bank or trust company to acquire all or part of the shares of one or more classes or series of a bank or trust company through a voluntary exchange of shares or otherwise."
SECTION 9.
Said chapter is further amended by replacing the term "shareholders" with "shareholders or members" wherever such term occurs in Code Section 7-1-531, relating to requirements for merger, share exchange, or consolidation plan, adoption of plan, and modification of plan.

SECTION 10.
Said chapter is further amended by revising subsection (b) of Code Section 7-1-535, relating to federal approval or disapproval and issuance of certificate of merger, share exchange, or consolidation, as follows:

"(b) If all the taxes, fees, and charges required by law shall have been paid and if the name of the resulting bank or trust company in a merger or consolidation continues to be reserved or is available on the records of the Secretary of State, upon receipt of the written approval of the department, the Secretary of State shall issue to the resulting bank or trust company or the acquiring corporation or limited liability company in a share exchange a certificate of merger, share exchange, or consolidation with the approved articles of merger or consolidation attached thereto and shall retain a copy of such certificate, articles, and approval by the department."

SECTION 11.
Said chapter is further amended by revising Code Section 7-1-590, relating to definitions relative to representative offices and registration, as follows:

"7-1-590.
As used in this part, the term:
(1) 'Bank' and 'bank holding company' shall have the same meaning as in Part 18 of this article. A 'banking business' is the business which a bank is authorized to do pursuant to this title. The power to receive deposits or the performance of any transaction directly
or through an affiliate or agent relative to a deposit account shall be presumed to constitute a banking business.

(2) 'Deposit production office' means a form of a representative office with the authority to solicit deposits, provide information about deposit products, and assist consumers to complete the application forms to open deposit accounts, provided that such office does not open deposit accounts, take deposits, or conduct any other banking business.

(3) 'Domicile' means the home state as defined in paragraph (12) of Code Section 7-1-621 where a bank is chartered or where a bank holding company is incorporated.

(4) 'Loan production office' is a form of a representative office, where the solicitation of loans or of leases of personal property may occur, but not the closing of loans, the disbursement of loan proceeds nor any other banking business. It shall be established and registered as a representative office.

(5) 'Representative office' is an office established by a bank, a bank holding company, or an agent or subsidiary of either for the purpose of conducting business activities other than a banking business and includes, but is not limited to, deposit production offices, loan production offices, and trust production offices. It shall not be considered to be a branch office or main office.

(6) 'Trust production office' means a trust sales office of a qualifying individual or corporate fiduciary which office is not performing fiduciary activities. The trust institution desiring to establish such an office in this state must apply to the department on forms provided by the department, must be approved by the commissioner to engage in sales activities in this state, and must register and pay any fees required for a representative office under Code Section 7-1-593. Sales activities shall consist primarily of marketing or soliciting in this state using mail, telephone, or electronic means or in person to act or propose to act as a fiduciary outside of this state. The department shall be permitted to examine such trust production offices to ascertain whether they are limiting their activities as prescribed."
SECTION 12.

Said chapter is further amended by revising subsection (a) of Code Section 7-1-591, relating to establishment of representative office by bank or bank holding company domiciled in state and out of state activities, as follows:

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

SECTION 13.

Said chapter is further amended by revising Code Section 7-1-592, relating to establishment of representative office by bank or holding company domiciled in state or outside of state and conformance with requirements of primary regulator, as follows:

"7-1-592.

A bank or bank holding company domiciled in this state and operating under the laws of the United States or domiciled outside this state and operating under the laws of such other state or territory or of the United States, or its subsidiary or agent, may establish representative offices anywhere in this state, provided that such bank or bank holding company conforms to the requirements of its primary regulator. The permissible activities conducted at such a representative office are governed by federal law if the bank is a national bank or by the law of the state or territory where the bank is domiciled if chartered by another state, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation of the commissioner."
SECTION 14.

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

"(a) A bank or bank holding company domiciled in this state and having a representative office shall register such representative office with the department. Prior to closing a representative office, such a bank, or bank holding company, or a subsidiary of a bank or bank holding company shall post notice of the closing as required by Code Section 7-1-110.1."

SECTION 15.

Said chapter is further amended by revising subsection (a) and paragraph (3) of subsection (c) of Code Section 7-1-605, relating to bank holding companies, definitions, and when company deemed to control shares, as follows:

"(a)(1) Except as provided in paragraph (5) of this subsection, 'bank holding company' means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this part.

(2) Any company has 'control' over a bank or over any company if:

(A) The company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or company;

(B) The company controls in any manner the election of a majority of the directors or trustees of the bank or company; or

(C) The commissioner determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company; or
(D) The company directly or indirectly owns, controls, or has power to vote more than
10 percent but less than 25 percent of any class of voting securities of the bank or
company if no other company or person will own, control, or hold the power to vote a
greater percentage of that class of voting securities immediately after the transaction.

(3) For the purposes of any proceeding under subparagraph (C) of paragraph (2) of this
subsection, there is a presumption that any company which directly or indirectly owns,
controls, or has power to vote less than 5 percent of any class of voting securities of a
given bank or company does not have control over that bank or company.

(4) In any administrative or judicial proceeding under this part, other than a proceeding
under subparagraph (C) of paragraph (2) of this subsection, a company may not be held
to have had control over any given bank or company at any given time unless that
company, at the time in question, directly or indirectly owned, controlled, or had power
to vote 5 percent or more of any class of voting securities of the bank or company, or had
already been found to have control in a proceeding under subparagraph (C) of
paragraph (2) of this subsection.

(5) Notwithstanding any other provision of this subsection:

(A) No bank and no company owning or controlling voting shares of a bank is a bank
holding company by virtue of its ownership or control of shares in a fiduciary capacity,
except as provided in paragraphs (2) and (3) of subsection (c) of this Code section. For
the purpose of the preceding sentence, bank shares shall not be deemed to have been
acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary
authority to exercise voting rights with respect thereto, except that this limitation is
applicable in the case of a bank or company acquiring such shares prior to July 1, 1976,
only if the bank or company has the right, consistent with its obligations under the
instrument, agreement, or other arrangement establishing the fiduciary relationship, to
divest itself of such voting rights and fails to exercise that right to divest within a
reasonable period not to exceed one year after July 1, 1976; and
(B) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith until two years after the date of acquisition.

(6) For the purposes of this part, any successor to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor company became a bank holding company."

"(3) Shares transferred after July 1, 1976, by any bank holding company (or by the company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the commissioner, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee."

SECTION 16.

Said chapter is further amended by revising Code Section 7-1-606, relating to bank holding companies, actions unlawful without prior approval of commissioner, and exceptions, as follows:

"7-1-606.

(a)(1) On and after July 1, 1976, it shall be unlawful, except with the prior approval of the commissioner:

(A) For any action to be taken that causes any company to become a bank holding company;

(B) For any action to be taken that causes a bank to become a subsidiary of a bank holding company;
(C) For any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control 5 percent or more of the voting shares of such bank;

(D) For any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank;

(E) For any bank holding company to merge or consolidate with, or enter into a share exchange with, any other bank holding company; or

(F) For any bank holding company to take any action which would violate the federal Bank Holding Company Act of 1956, as amended.

(2) Notwithstanding paragraph (1) of this subsection, this prohibition shall not apply to:

(A) Shares acquired by a bank:

(i) In good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in paragraph (2) of subsection (b) of Code Section 7-1-605 and except as provided in paragraphs (2) and (3) of subsection (c) of Code Section 7-1-605; or

(ii) In the regular course of securing or collecting a debt previously contracted in good faith, but any shares acquired after July 1, 1976, such shares in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired;

(B) Additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition; or

(C) A bank holding company of a national bank with its main office in Georgia acquiring a Georgia bank holding company, as such term is defined in paragraph (10) of Code Section 7-1-621, shall notify the department upon filing an application with the appropriate federal or state financial regulator. The notification requirements of this
subparagraph shall be satisfied by furnishing the department with a copy of the application or applications filed with applicable bank supervisory agencies seeking approval for the proposed transaction and such other information as the department may request. In addition, the parties shall file with the department and the Secretary of State a certificate of approval of the acquisition by the appropriate supervisory agencies prior to consummation of the transaction. The department may, for good cause shown, object to the transaction by letter to the bank holding company of a national bank with its main office in Georgia, the Georgia bank holding company, and to the appropriate federal or state financial regulator before consummation of the transaction. In the event of such objection, the acquisition cannot be consummated without the parties obtaining the approval of the department; or

(D) Transactions for which the department has established by rule, regulation, or written policy a streamlined or alternative procedure, if such procedure specifically dispenses with the need for approval by the commissioner.

For the purpose of this paragraph, bank shares acquired after July 1, 1976, shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; but, in such instances, acquisitions may be made without prior approval of the commissioner if the commissioner, upon application filed within 90 days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

(b)(1) The commissioner shall not approve nor shall any other procedure authorize:

(A) Any acquisition or merger or share exchange or consolidation under this Code section which would result in a monopoly or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the State of Georgia; or
(B) Any other proposed acquisition or merger or share exchange or consolidation under
this Code section whose effect in any section of the state may be substantially to lessen
competition, or to tend to create a monopoly, or which in any other manner would be
in restraint of trade, unless it finds that the anticompetitive effects of the proposed
transaction are clearly outweighed in the public interest by the probable effect of the
transaction in meeting the convenience and needs of the community to be served.

(2) In every case, the department shall take into consideration the financial and
managerial resources and future prospects of the company or companies and the banks
concerned and the convenience and needs of the community to be served.

(c) Nothing contained in this Code section shall affect the obligation of any person or
company to comply with the provisions of any order of any court or of the commissioner
entered prior to July 1, 1976. Reserved.

(d) The commissioner shall not grant any such contemplated approval until he or she shall
first cause reasonable public notice of the proposed action to be given in the area to be
affected and until he or she shall first afford to the public an opportunity to submit, for the
commissioner's consideration, information, objections, and opinions as to the proposed
action and its effect. The notice requirement may not apply in the case of a streamlined
procedure where the holding company meets certain qualifying criteria established by rule,
regulation, or written policy of the department.

(e) Notwithstanding any other provisions of this part, a bank holding company which
lawfully controls a bank or has received the requisite approvals under this Code section to
acquire control of a bank may, with the approval of the commissioner, or as otherwise
provided in this chapter or by departmental rule or regulation, either at the time such
control is obtained or at any time thereafter, merge or consolidate such bank with another
of such bank holding company's banking subsidiaries or have another of such bank holding
company's banking subsidiaries acquire all or substantially all of the assets of such bank
and consequently operate as a branch office of such other banking subsidiary. Nothing in
this subsection shall be deemed to supersede, rescind, or modify any provision, requirement, or condition of this Code section which would otherwise be applicable to any acquisition of a banking subsidiary by a bank holding company under this Code section, nor shall it be deemed to supersede, rescind, or modify any provision, requirement, or condition of Part 14, 15, 16, 19, or 20 of this article which would otherwise be applicable to the merger of banks or the acquisition or sale of all or substantially all of the assets of a bank."

SECTION 17.
Said chapter is further amended by revising subsection (a) of Code Section 7-1-607, relating to bank holding companies that control a bank, registration, reporting, examinations, and control, as follows:

"(a) On July 1, 1976, and annually thereafter on dates established by the commissioner an annual basis, each bank holding company that controls a bank chartered by the department shall register with the commissioner on forms provided or prescribed by him or her, which may include such information with respect to the financial condition, operation, management, and intercompany relationships of the bank holding company and its subsidiaries and related matters as the commissioner may deem necessary or appropriate to carry out the purposes of this part."

SECTION 18.
Said chapter is further amended by revising subsections (b) and (c) of Code Section 7-1-622, relating to provisions applicable to interstate acquisitions or mergers by bank holding companies, eligibility of applicants, and commissioner's ruling required, as follows:

"(b) Notwithstanding anything contained in subsection (a) of this Code section and subject to the permitted acquisitions of subsection (b) of Code Section 7-1-608, no bank or bank holding company may:
(1) Directly or indirectly acquire a Georgia bank unless such bank has been in existence and continuously operated or incorporated as a bank for a period of three years or more prior to the date of acquisition. Notwithstanding the foregoing, nothing shall prohibit an out-of-state bank holding company from acquiring all or substantially all of the shares of a Georgia bank organized solely for the purpose of facilitating the acquisition of a bank which has been in existence and continuously operated as a bank for the requisite three-year period; or

(2) Directly or indirectly acquire a bank having banking offices in Georgia if:

(A) Immediately before the consummation of the acquisition for which an application is filed, the applicant (including any insured depository institution affiliate of the applicant) controls any insured depository institution or any branch of an insured depository institution in this state; and

(B) The applicant (including all insured depository institutions which are affiliates of the applicant), upon consummation of the acquisition, would control 30 percent or more of the total amount of deposits of insured depository institutions in this state. The commissioner may by regulation adopt a procedure whereby the foregoing limitations on concentration of deposits may be waived upon showing of good cause. This restriction shall not apply, in the discretion of the commissioner, to transactions complying with paragraph (1) of subsection (b) of Code Section 7-1-623.

(c) The commissioner must rule on any application seeking approval to engage in a transaction under this Code section not later than 90 days following the date of submission of a completed application seeking such approval. If the commissioner decides to hold a public hearing in connection with the application, the time limit specified may be extended to 30 days after the conclusion of the hearing. If the commissioner fails to rule on the application within the requisite period, the proposed transaction shall stand approved.
SECTION 19.

Said chapter is further amended by revising Code Section 7-1-623, relating to acquisitions not requiring department approval, as follows:

"7-1-623.

(a) Subject to any applicable restrictions or exceptions provided for in subsection (b) of Code Section 7-1-622, a an out-of-state bank holding company having a bank subsidiary with banking offices in Georgia may acquire a bank that does not have banking offices in this state, and a an out-of-state bank holding company may acquire an out-of-state bank with branch offices in Georgia without the approval of the department, but shall notify the department at least 30 days prior to the consummation of the proposed transaction. The notification requirements of this subsection shall be satisfied by furnishing the department with a copy of the application or applications filed with applicable bank supervisory agencies seeking approval for the proposed transaction and such other information as the department shall request. In lieu of furnishing the entire application, the applicant may submit to the department a description of the transaction within the same time frame. In this event, the department shall request further information only if needed. The department may, for good cause shown, object to the transaction by letter to the bank holding company and to the appropriate federal or state regulator before consummation of the transaction.

(b) A bank holding company may engage in the transactions described in paragraphs (1) and (2) of this subsection without the necessity of complying with Code Section 7-1-622, provided that it notifies the department not less than 30 days following the consummation of the transaction.

(1) The acquisition of a Georgia bank, if such acquisition has been consummated with assistance from the Federal Deposit Insurance Corporation under Section 13(c) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. Section 1823(c); or

(2) The acquisition of a Georgia bank, if such acquisition has been consummated in the regular course of securing or collecting a debt previously contracted in good faith, as
provided in and subject to the requirements of Section 3(a) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1842(a). If the bank acquired under this provision has banking offices in Georgia, the bank or bank holding company must divest the securities or assets acquired within two years of the date of acquisition. The department may, in its discretion, permit the bank or bank holding company to retain such interest for up to three additional periods of one year each.

(c) An out-of-state bank holding company acquiring a Georgia bank holding company or Georgia state bank shall notify the department upon filing an application with the appropriate federal or state financial regulator. The notification requirements of this subsection shall be satisfied by furnishing the department with a copy of the application or applications filed with applicable bank supervisory agencies seeking approval for the proposed transaction and such other information as the department shall request. In addition, the parties shall file with the department and the Secretary of State a certificate of approval of the acquisition by the appropriate supervisory agencies prior to consummation of the transaction. The department may, for good cause shown, object to the transaction by letter to the out-of-state bank holding company, the Georgia bank holding company, and to the appropriate federal or state financial regulator before consummation of the transaction. In the event of such objection, the acquisition cannot be consummated without the parties obtaining the approval of the department.

SECTION 20.

Said chapter is further amended by revising Code Section 7-1-625, relating to provisions applicable to, and qualification of, bank holding companies in state, reciprocal agreements, and confidentiality of reports, as follows:

(a) Any Georgia bank holding company controlling a bank having banking offices in Georgia and any out-of-state bank holding company controlling a Georgia state bank shall
be subject to the provisions of Code Sections 7-1-605 through 7-1-612 and the rules and
regulations of the department applicable to bank holding companies.

(b) Any out-of-state bank holding company that has a bank subsidiary with banking offices
in Georgia that is not otherwise organized under the laws of this state or qualified to do
business in this state shall qualify to do business in this state as a foreign corporation. Such
bank holding company shall agree to be bound by all the provisions of Code Sections
7-1-605 through 7-1-612 and by the provisions of this part. Any bank holding company
having a Georgia bank subsidiary shall promptly advise the department of any changes in
its registered office and agent.

(c) The department may enter into cooperative and reciprocal agreements with the bank
regulatory authorities of any state or the United States for the periodic examination of bank
holding companies and may accept reports of examination and other records from such
authorities in lieu of conducting its own examinations. The department may enter into joint
actions with other regulatory bodies having concurrent jurisdiction or may enter into such
actions independently to carry out its responsibilities under this title and assure compliance
with the laws of this state. Any examinations or reports originated by Georgia or by
another bank supervisory agency shall be deemed and treated as confidential according to
Georgia law, and such confidentiality shall not be affected by the sharing of the
examinations or reports. The department shall not be obligated to provide or disclose such
examinations and reports to any third party. Agreements to share such examinations or
reports shall contain provisions for dealing with confidentiality and subpoenas."

SECTION 21.

Said chapter is further amended by revising subsection (b) of Code Section 7-1-628, relating
to purpose and scope of part, as follows:

"(b) The scope of this part covers mergers where, upon consummation of the interstate
merger transaction, the resulting bank will have banking locations in Georgia and at least
Mergers involving banks having present and resulting branches located only in this state are governed by Part 14 of this article. To the extent a bank participating in an interstate merger transaction is owned or controlled by a bank holding company, the applicable provisions of Part 19 of this article shall also apply.

SECTION 22.

Said chapter is further amended by revising subsection (b) of Code Section 7-1-628.4, relating to permissible interstate merger transactions, as follows:

"(b) An out-of-state bank may enter into an interstate merger transaction with a Georgia bank, and an out-of-state bank resulting from such transaction may maintain and operate branches in Georgia. The requirements of Code Section 7-1-628.5 shall be met by the resulting bank. In order to consummate such a merger with a resulting out-of-state state bank, a Georgia state bank shall comply with Code Sections 7-1-531 through 7-1-533 and 7-1-537, except that the format of the articles of merger submitted in accordance with Code Section 7-1-532 may be in conformity with the resulting bank's home state law if such law requires a format different from that specified by Code Section 7-1-532. A Georgia state bank shall comply with Code Section 7-1-556 if a national bank or a federal savings bank is to be the resulting bank."

SECTION 23.

Said chapter is further amended by revising subsection (a) of Code Section 7-1-633, relating to organizational meeting of directors and commencing of business for credit unions, as follows:

"(a) Within 30 days after receipt of the certificate of incorporation from the Secretary of State, an organizational meeting of the board of directors named in the articles of incorporation shall be held for the purpose of accepting the certificate and bylaws,
appointing a credit committee or, in lieu thereof, loan officers and an audit committee, naming the president, and electing or appointing the officers, as provided in Code Section 7-1-655, who shall serve until the first directors' meeting after the first annual meeting. Notice of the meeting shall be given at least five days prior to the date of the meeting.”

SECTION 24.

Said chapter is further amended by revising paragraphs (1), (12), and (13) and adding new paragraphs in Code Section 7-1-650, relating to powers of credit unions, as follows:

“(1) Receive funds from its members or other financial institutions in the form of shares and deposits on accounts or as evidenced by certificates of deposit issued by the credit union but shall not have the power to offer third-party payment services except as authorized under Code Section 7-1-670,“

“(12) Provide, in its articles of incorporation approved by a majority of its membership present and voting, for the elimination or limitation of personal liability of a director to the credit union or its members in their capacity as shareholders of the credit union to the same extent as a bank or trust company operating under the provisions of this chapter; and

(13) Subject to any rules and regulations enacted by the department and in compliance with federal law and applicable provisions regarding insurable interests in Chapter 24 of Title 33, purchase, hold, or fund insurance on the life of any of its directors, officers, or employees, or any other person whose death might cause financial loss to the credit union, or, pursuant to any contract lawfully obligating the credit union as guarantor or surety, on the life of the principal obligor;

(14) Provide third-party payment services to its members; and

(15) Provide check-cashing services, sale of payment instruments, or sale of international remittances to those consumers eligible for membership.”
SECTION 25.

Said chapter is further amended by revising subparagraph (b)(1)(B) of Code Section 7-1-651.1, relating to in person annual meetings, requirements for remote options, and impact of emergency declaration, as follows:

"(B) Enable members to vote or grant proxies at such meetings by means of electronic communication. Such measures may include, but are not limited to, telephonic or internet voting; and"

SECTION 26.

Said chapter is further amended by revising subsection (c) of Code Section 7-1-655, relating to boards of directors, credit and audit committees, officers, oaths of officials, removal from office, suspension of member, filling of vacancies, and notification to department of change in president or chief executive officer, as follows:

"(c) At the organizational meeting and at its first meeting after each annual meeting of the members, the board of directors shall appoint an audit committee, credit committee, chairperson, president, secretary, and such other officers consistent with the bylaws as the board deems desirable. No member of the audit committee may serve as a member of the credit committee or as an officer, unless the board of directors functions as the credit committee as provided for in subsection (f) of Code Section 7-1-658."

SECTION 27.

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

"(a) The board of directors shall be responsible for the affairs, funds, and records of the credit union and shall meet as often as necessary, but the board of directors shall meet at least once during ten different months of each calendar year unless an alternative
schedule is approved in writing by the department, but in no event shall the board meet less
frequently than once in each calendar quarter. Unless the bylaws specifically reserve any
or all of the duties to the members, it shall be the special duty of the directors:
(1) To act upon all applications for membership or approve the actions of an officer
without loan granting authority, designated by the board of directors to approve
applications for membership;
(2) To determine from time to time rates of interest and dividends which shall be allowed
on deposits and charged on loans consistent with this article and other applicable laws
and to authorize any interest refunds on such classes of loans and under such conditions
as the board prescribes;
(3) To fix the amount of the fidelity bond which shall be required of all officers,
employees, agents, or members having custody of funds, properties, or records; provided,
however, that the amount of such fidelity bond shall not be less than such minimum
requirements as shall be prescribed by regulation of the department and shall be in such
form as may from time to time be approved by the department;
(4) To fix within the restrictions imposed by statute the maximum amount of deposits
which may be made by and the maximum amount that may be loaned to any one member;
(5) To fill vacancies on the board of directors, credit committee, and audit committee
until the election and qualification of a successor;
(6) To have charge of the investment of funds of the credit union other than loans to
members within the restrictions imposed by statute or delegate investment authority to
a qualified committee or officer as designated by the board of directors;
(7) To appoint any committees deemed necessary; and
(8) To perform such other duties as the members may from time to time authorize.”
SECTION 28.

Said chapter is further amended by revising subsection (g) of Code Section 7-1-658, relating to loans, as follows:

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

1) Obligations of and obligations guaranteed by:

(A) The United States;

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

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

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

2) Obligations to the extent secured by:

(A) Obligations fully guaranteed by the United States;

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

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

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

4) A renewal or restructuring of a loan as a new loan or extension of credit following the exercise by the credit union of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limits of this Code section, unless:
(A) New funds are advanced by the credit union to the borrower, except as permitted under this Code section; (B) A new borrower replaces the original borrower; or (C) The department determines that a renewal or restructuring was undertaken as a means to evade the credit union's lending limit; and

(5) Unsecured obligations below the unsecured legal lending limit in conjunction with secured obligations below the secured legal lending limit so long as the total aggregate liability for both secured and unsecured obligations is $50,000.00 or less."

SECTION 29.
Said chapter is further amended by repealing and reserving Code Section 7-1-670, relating to third-party payment services, as follows:

"7-1-670.

(a) Any credit union may apply to the department for permission to offer third-party payment services to its members. The department shall exercise its discretion in determining whether to approve such request but shall not grant its approval until it is satisfied that:

(1) The convenience and need of the membership will be served by the proposed change;

(2) There is reasonable promise of adequate support of the program in light of:

(A) The competition offered by existing financial institutions; (B) The financial history of the credit union and its membership; and

(C) The opportunities for profitable employment of depositors' funds as indicated by the average demand for credit, the number of potential depositors, the volume of transactions, and stability of the common bond;

(3) The managerial resources, internal controls, and operating procedures of the credit union are sufficient to administer the program in a safe and sound manner; and
(4) The capital and reserves of the credit union are adequate in light of current economic
economic conditions and asset quality of the credit union.

(b) A credit union meeting certain financial and managerial criteria specified by
department rule, regulation, or policy shall be exempt from the need for prior approval:
Prior notice of intent to offer third-party payment services will be provided to the
department:

c) Upon the commencement of third-party payment services, a credit union shall be
subject to Code Sections 7-1-287, pertaining to investment securities; 7-1-288, pertaining
to corporate stock and securities; 7-1-371, pertaining to legal reserve requirements; and
rules and regulations of the department relating to the foregoing Code sections of law and
shall not pay a greater rate of interest on third-party payment accounts than is allowed to
be paid by commercial banks.

d) A credit union that is approved to offer third-party payment services may apply to the
department to offer other services, such as check-cashing services, sale of payment
instruments, or international remittances, which services are determined by the department
to be safe, sound, convenient, and necessary and responsive to those consumers eligible for
membership. The department may impose restrictions on these services if approved.

e) Authority to offer third-party payment services may be suspended or revoked in
accordance with Code Section 7-1-91 Reserved.

SECTION 30.

Said chapter is further amended by revising paragraphs (5), (8), and (24) and adding new
paragraphs in Code Section 7-1-680, relating to definitions relative to the sale of payment
instruments, as follows:

"(5) 'Control,' 'controlling,' 'controlled by,' or 'under common control with' means the
direct or indirect possession of power to direct or cause the direction of the management
and policies of a person or the direct or indirect possession of power to elect or appoint

H. B. 891
- 29 -
a majority of executive officers or other persons exercising managerial authority of a
person."

"(8) 'Executive officer' means the chief executive officer, president, chief financial
officer, chief operating officer, each vice president officer with responsibility involving
policy-making functions for a significant aspect of a person's business, secretary,
treasurer, or any other person individual performing similar managerial or supervisory
functions with respect to any organization, whether incorporated or unincorporated."

"(14.1) 'Multistate licensing process' means any licensing agreement entered into by and
among state agencies that regulate money transmitters and sellers of payment
instruments."

"(16.1) 'Passive investor' means a person that:

(A) Owns, directly or indirectly, at least 10 percent but less than 25 percent interest in
or voting shares of a licensee or person in control of a licensee;

(B) Does not have the power to elect a majority of the members of the board of
directors of a licensee;

(C) Is not employed by and does not perform any managerial duties for the licensee or
person in control of a licensee; and

(D) Does not have the power to exercise, directly or indirectly, a controlling influence
over the management or policies of a licensee or person in control of a licensee."

"(24) 'Ultimate equitable owner' means a person that:

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

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

(C) Exerts control, directly or indirectly, over a corporation or any other form of
business organization, regardless of whether such person owns or controls such interest
directly or indirectly, through one or more natural persons or one more proxies, powers of attorney,
nominees, corporations, associations, limited liability companies, partnerships, trusts, joint stock companies, other entities or devices, or any combination thereof.

For purposes of determining ultimate equitable ownership by an individual, the individual's interest shall be aggregated with the interest of any other immediate family member, including the individual's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other individual who shares such individual's home."

SECTION 31.

Said chapter is further amended by revising subsections (a), (d), and (e) of Code Section 7-1-687, relating to notice of action against licensee by creditor or claimant and other notification requirements, as follows:

"(a) A licensee shall give written notice to the department by registered or certified mail of any action which may be brought against it by any creditor or claimant where such action relates to the activities authorized under this article or involves a claim against the bond filed with the department under Code Section 7-1-683.2. The notice shall provide details sufficient to identify the action and shall be sent within 30 days after the commencement of any such action. The licensee shall also give written notice to the department by registered or certified mail within 30 days of the entry of any judgment entered against the licensee."

"(d) A licensee shall give written notice to the department by registered or certified mail within ten days of the following:

(1) Any knowledge or discovery of an act prohibited by Code Section 7-1-684 or 7-1-691 or subsection (a) of Code Section 7-1-692;

(2) The discharge of any employee for actual or suspected misrepresentations, dishonest acts, or fraudulent acts;
(3) Any knowledge or discovery of the discharge of a covered employee or an authorized agent for actual or suspected misrepresentations, dishonest acts, or fraudulent acts;

(4) Any knowledge or discovery of an administrative, civil, or criminal action initiated by any government entity against the licensee or an authorized agent; any director, officer, partner, or ultimate equitable owner of the licensee or authorized agent; or any individual who directs the affairs of or controls or establishes policy for the licensee or authorized agent; or

(5) The filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Sections 101 through 110, for bankruptcy reorganization or the filing of a petition by or against the licensee for receivership or the making of a general assignment for the benefit of its creditors.

(e) Unless prior approval of a change in executive officer is required under Code Section 7-1-688 and notwithstanding subsection (e) of Code Section 7-1-684 requiring a criminal background check prior to the initial date of hire, a licensee shall notify the department in writing of any change of executive officer in such a manner that the notice is received by the department no later than ten business days after the effective date of the change. In the event of such change, the licensee shall initiate a criminal background check no later than ten business days after the effective date of the change. If the department determines that an executive officer does not meet the requirements of subsections (a) or (b) of Code Section 7-1-684, the department may disapprove the notice of change, and the licensee shall remove the individual from the executive officer position upon receipt of the disapproval.

SECTION 32.

Said chapter is further amended by adding a new subsection to Code Section 7-1-688, relating to approval required of new ultimate equitable owner, other change of control, or executive officer of licensee, and denial of application, to read as follows:

H. B. 891
- 32 -
(d) The application provisions of this Code section shall not apply to:

(1) An acquisition by a passive investor, provided that such person submits documentation to the department, in a form prescribed by the department, establishing that such person meets the criteria for a passive investor prior to such acquisition. The failure to provide acceptable documentation establishing that the person qualifies as a passive investor or to continuously satisfy the passive investor requirements shall require the filing of a change of control application; or

(2) An acquisition of a licensee by a person licensed by the department under this article, provided that:

(A) The person has not had a license revoked or suspended in any jurisdiction;

(B) The person is well-managed and has received at least a satisfactory rating for compliance and supervision at its most recent examination by the department or a state agency whose money transmitter regulatory program has been accredited by the appropriate governing authority;

(C) The resulting entity or entities are projected to meet the financial condition requirements established by this article;

(D) Neither the person nor the licensee to be acquired will implement any material changes to their respective business plans as a result of the acquisition; and

(E) The person provides the department with prior notice of the acquisition and attests to the requirements provided in this paragraph in a form prescribed by the department.

If the department does not approve such notice of acquisition within 30 days of the date on which the notice was determined by the department to be complete, the notice is deemed approved. If the department disapproves such notice of acquisition, the acquiring person shall be required to file a change of control application."
SECTION 33.

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

"(f) In addition to any other authority set forth under this article, the department shall be authorized to conduct investigations and examinations of applicants, licensees, and authorized agents as follows:

(1) The department shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:

(A) Criminal, civil, and administrative history information, including nonconviction data;

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

(C) For an individual who has resided outside of the United States, an international investigative background report prepared by a competent independent search firm, which shall include, at a minimum, comprehensive credit, criminal, employment, media, and financial services regulatory history information; and

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

(2) The department may review, investigate, or examine any licensee or person subject to this article as often as necessary in order to carry out the purposes of this article;

(3) Each licensee or person subject to this article shall make available to the department, upon request, any books and records relating to the activities of selling payment instruments or the transmission of money;
(4) No licensee or person subject to investigation or examination under this article shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, documents, files, computer records, evidence, or other information; and

(5) In order to carry out the purposes of this Code section, the department may:

(A) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, documents, records, information, or evidence or by utilizing standardized or uniform methods or procedures;

(B) Accept and rely on examination or investigation reports made by other government officials within or outside this state, including, but not limited to, investigations pursuant to a multistate licensing process; and

(C) Accept audit reports or portions of audit reports made by an independent certified public accountant on behalf of the licensee or person subject to this article covering the same general subject matter as the audit and may incorporate the audit report in the report of examination, report of investigation, or other writing of the department; and

(D) Use, hire, contract, or employ analytical systems, methods, or software."

SECTION 34.

Said chapter is further amended by revising subsections (a) and (b) of Code Section 7-1-705, relating to written notice of claims against licensee, judgments, or other misconduct by employees, directors, or others and written notice of change of executive officer relative to cashing of payment instruments, as follows:

"(a) A licensee shall give written notice to the department by registered or certified mail of any action which may be brought against it by any creditor or claimant where such action relates to activities authorized under this article or involves a claim against the bond filed with the department under subsection (c) of Code Section 7-1-707. The notice shall provide details sufficient to identify the action and shall be sent within 30 days after the...
commencement of any such action. The licensee shall also give written notice to the
department by registered or certified mail within 30 days of the entry of any judgment
against the licensee.

(b) A licensee shall give written notice to the department by registered or certified mail
within ten days of the following:

1) Any knowledge or discovery of an act prohibited by Code Section 7-1-703 or
7-1-707 or subsection (a) of Code Section 7-1-708;

2) The discharge of any employee for actual or suspected misrepresentations, dishonest
acts, or fraudulent acts; or

3) Any knowledge or discovery of an administrative, civil, or criminal action initiated
by any government entity against the licensee; or any of the licensee's directors, officers,
partners, ultimate equitable owners, or any individual who directs the affairs of or
controls or establishes policy for the licensee."

SECTION 35.
Said chapter is further amended by revising subsection (a) and adding a new subsection in
Code Section 7-1-1001, relating to exemption for certain persons and entities, registration
requirements, and authorized actions of licensed mortgage lenders, as follows:

"(a) The following persons shall not be required to obtain a mortgage loan originator,
mortgage broker, or mortgage lender license and shall not be subject to the provisions of
this article but may be subject to registration requirements, if registration of such persons
is required by this article:

1) Any lender authorized to engage in business as a bank, credit card bank, savings
institution, or credit union under the laws of the United States, any state or territory of the
United States, or the District of Columbia, the deposits of which are federally insured;
Any wholly owned subsidiary of any lender described in paragraph (1) of this subsection. Any subsidiary that violates any applicable law of this article may be subject to a cease and desist order as provided for in Code Section 7-1-1018;

(2.1) Any wholly owned subsidiary of any bank holding company; provided, however, that such subsidiary shall be subject to registration requirements in order to facilitate the department's handling of consumer inquiries. Such requirements are contained in Code Section 7-1-1003.3;

(3) Registered mortgage loan originators, when acting for an entity described in paragraph (1) or (2) of this subsection. To qualify for this exemption, an individual shall be registered with and maintain a unique identifier through registration with the Nationwide Multistate Licensing System and Registry;

(4) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of such individual. For purposes of this exemption, the term 'immediate family member' means a spouse, child, sibling, parent, grandparent, or grandchild. Immediate family members shall include stepparents, stepchildren, stepsiblings, and adoptive relationships;

(5) An attorney licensed to practice law in Georgia who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(6) A Georgia licensed real estate broker or real estate salesperson not actively engaged in the business of negotiating mortgage loans or a Georgia licensed real estate salesperson providing information to a lender or its agent related to an existing or potential short sale transaction in which a separate fee is not received by such real estate broker or real estate salesperson; provided, however, that such real estate broker or real estate salesperson who
directly or indirectly negotiates, places, or finds a mortgage for others shall not be exempt
from the provisions of this article;
(7) Any person performing any act relating to mortgage loans under order of any court;
(8) Any natural person or the estate of or trust created by a natural person making a
mortgage loan with his or her own funds for his or her own investment, including those
natural persons or the estates of or trusts created by such natural persons who make a
purchase money mortgage for financing sales of their own property;
(9) Any agency, division, or instrumentality of: the federal government of the United
States of America; the government of the State of Georgia; the government of any other
state of the United States; or any county or municipal government of the State of Georgia.
This includes, but is not limited to, the Georgia Housing and Finance Authority, the
Georgia Development Authority, the Federal National Mortgage Association (FNMA),
the Federal Home Loan Mortgage Corporation (FHLMC), the Government National
Mortgage Association (GNMA), the United States Department of Housing and Urban
Development (HUD), the Federal Housing Administration (FHA), the Department of
Veterans Affairs (VA), the Farmers Home Administration (FmHA), and the Farm Credit
Administration and its chartered agricultural credit associations;
(10) Any individual who offers or negotiates terms of a residential mortgage loan
secured by a dwelling that serves as the individual's residence;
(11) Any person who makes a mortgage loan to an employee of such person as an
employment benefit;
(12) Any licensee under Chapter 3 of this title, the 'Georgia Installment Loan Act,'
provided that any mortgage loan made by such licensee is for $3,000.00 or less;
(13) Nonprofit corporations making mortgage loans to promote home ownership or
improvements for the disadvantaged;
(14) A natural person employed by a licensed or registered mortgage broker, a licensed
or registered mortgage lender, or any person exempted from the mortgage broker or
mortgage lender licensing requirements of this article when acting within the scope of employment and under the supervision of the mortgage broker or mortgage lender or exempted person as an employee and not as an independent contractor, except those natural persons exempt from licensure as a mortgage broker or mortgage lender under paragraph (17) of this subsection. To be exempt from licensure as a mortgage broker or mortgage lender, a natural person shall be employed by only one such employer and shall be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004. Such natural person, who meets the definition of mortgage loan originator provided in paragraph (22) of Code Section 7-1-1000, shall be subject to mortgage loan originator licensing requirements. A natural person against whom a cease and desist order has become final shall not qualify for this exemption while under the employment time restrictions of subsection (o) of Code Section 7-1-1004 if such order was based on a violation of Code Section 7-1-1002 or 7-1-1013 or whose license was revoked within five years of the date such person was hired;

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

(16) Any natural person who makes five or fewer mortgage loans in any one calendar year. A person other than a natural person who makes five or fewer mortgage loans in any one calendar year shall not be exempt from the licensing requirements of this article;

(17)(A) A natural person otherwise required to be licensed as a mortgage lender or mortgage broker, who is under an exclusive written independent contractor agreement with any person that is a wholly owned subsidiary of a financial holding company or bank holding company, savings bank holding company, or thrift holding company, which subsidiary licensed mortgage broker, so long as such licensed mortgage broker also meets the following requirements, subject to the review and approval of the department:
(i) The subsidiary has provided an undertaking of accountability supported by a surety bond equal to the lesser of $1 million or as required by Code Section 7-1-1003.2 in the amount of $150,000.00 plus $50,000.00 per exempt natural person, not to exceed a maximum of $2 million to cover its activities as well as the activities of all of its natural persons exempted by this paragraph; that includes full and direct financial responsibility for the mortgage broker activities of each such exempted person, and also provides for the education of the exempt persons, the handling of consumer complaints related to the exempt persons, and the supervision of the mortgage broker activities of the exempt persons.

(ii) The subsidiary licensee has applied for and been granted a mortgage broker or mortgage lender license, consistent with the provisions of this article and renewable annually; and

(iii) The subsidiary licensee has paid applicable fees for this license, which license fees shall be the lesser of one half of the sum of the cost of the individual licenses mortgage broker license fees if each exempt natural person received a mortgage broker license; or $100,000.00.

(iv) The licensee has full and direct financial responsibility for the mortgage activities of such natural person and full and direct responsibility for the proper education of such natural person, the handling of consumer complaints related to such natural person, and the supervision of the mortgage activities of such natural person. The licensee shall supervise such natural person on an ongoing and regular basis and shall be accountable for the mortgage activities of such natural person;

(v) The licensee or the parent company if the licensee is a wholly owned subsidiary:

(I) Files reports under Section 13(a) or 15(d) of the Securities Exchange Act of 1934;

(II) Has a market capitalization in excess of $4 billion at the time of the initial application for a mortgage broker license based on the number of outstanding shares.
at the end of the quarter as disclosed in the most recent Form 10-Q filed with the
United States Securities and Exchange Commission; and

(III) Has equity securities that are listed on the New York Stock Exchange, the
National Association of Securities Dealers Automated Quotations, or other stock
market approved by the department in writing;

(vi) At the time of the initial application for a mortgage broker license, the licensee
has never had a mortgage lender license or mortgage broker license revoked or
suspended in Georgia or any other state;

(vii) The licensee, the parent company if the licensee is a wholly owned subsidiary,
or an affiliate of the licensee if both the affiliate and licensee are wholly owned
subsidiaries of the same parent company, is licensed by the office of the
Commissioner of Insurance as an insurance company or is registered with the
Secretary of State as a broker-dealer;

(viii) The licensee is licensed as a mortgage lender or mortgage broker in ten or more
states; and

(ix) At the time of the initial application for a mortgage broker license, the licensee
has received at least a satisfactory evaluation in the most recent examination
conducted by the majority of the states in which it has a mortgage broker or mortgage
lender license and has adequately addressed with the department any unsatisfactory
evaluations in the most recent examination conducted by any state in which it has a
mortgage broker or mortgage lender license.

(B) To maintain the exemption, a natural person shall:

(i) Solicit, process, place, or negotiate a mortgage loan to be made brokered only by
the licensed subsidiary licensee or its affiliate; and

(ii) Be at all times in compliance with this article, including the provisions and
prohibitions of Code Section 7-1-1013, and the provisions and prohibitions applicable
to employees under Code Section 7-1-1004, and the department's rules and
regulations:

(iii) Be licensed as a mortgage loan originator in Georgia and work exclusively for
the licensee, the parent company if the licensee is a wholly owned subsidiary, or an
affiliate of the licensee if both the affiliate and licensee are wholly owned subsidiaries
of the same parent company; and

(iv) Be licensed as an insurance agent with the office of the Commissioner of
Insurance or registered as a broker-dealer agent with the Secretary of State on behalf
of the licensee, the parent company of the licensee if the licensee is a wholly owned
subsidiary of the parent company, or an affiliate of the licensee if both the affiliate
and licensee are wholly owned subsidiaries of the same parent company.

(C) For purposes of this paragraph, the term "financial holding company" means a
financial holding company as defined in the Bank Holding Company Act of 1956, as
amended.

(D) The commissioner shall provide by rule or regulation for the implementation of
this paragraph; or

(18)(A) An employee of a bona fide nonprofit corporation who acts as a mortgage loan
originator only with respect to his or her work duties with the bona fide nonprofit
corporation and who acts as a mortgage loan originator only with respect to mortgage
loans with terms that are favorable to the borrower shall be exempt from obtaining a
mortgage loan originator license. In order for a corporation to be considered a bona
fide nonprofit corporation under this paragraph, the department shall determine, under
criteria and pursuant to processes established by the department, that the nonprofit
corporation:

(i) Has the status of a tax-exempt organization under Section 501(c)(3) of the Internal
Revenue Code of 1986;

(ii) Promotes affordable housing;
(iii) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;
(iv) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;
(v) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;
(vi) Provides or identifies for the borrower mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs. In order for mortgage loans to have terms that are favorable to the borrower, the department shall determine that the terms are consistent with loan origination in a public or charitable context, rather than in a commercial context; and
(vii) Satisfies the exemption from licensure set forth in paragraph (13) of this subsection.

(B) The department shall periodically examine the books and activities of an organization it has previously identified as a bona fide nonprofit corporation for purposes of this paragraph in order to determine if it continues to meet the criteria for such status under subparagraph (A) of this paragraph. In conducting such an examination, the department shall have all of the powers set forth in Code Section 7-1-1009. In the event the nonprofit corporation no longer qualifies for such status, then the employee exemption from having a mortgage loan originator license shall no longer be applicable; or

(19) Any person who purchases or holds closed mortgage loans for the sole purpose of securitization into a secondary market, provided that such person holds the individual loans for less than seven days."

"(d) Any violation of this article or the rules and regulations of the department by a natural person exempted pursuant to paragraph (17) of subsection (a) of this Code section shall be
deemed to be a violation by both the licensee and the exempt natural person for purposes of the enforcement provisions of this article.”

SECTION 36.

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

"(a) A licensee shall give written notice to the department by registered or certified mail or statutory overnight delivery of any action which may be brought against it by any creditor or borrower where such action is brought under this article, involves a claim against the bond filed with the department for the purposes of compliance with Code Section 7-1-1003.2 or 7-1-1004, or involves a claim for damages in excess of $25,000.00 for a mortgage broker or mortgage loan originator and $250,000.00 for a lender and of any judgment which may be entered against it by any creditor or any borrower or prospective borrower, with details sufficient to identify the action or judgment, within 30 days after the commencement of any such action or the entry of any such judgment."

SECTION 37.

Chapter 3 of Title 7 of the Official Code of Georgia Annotated, relating to installment loans, is amended by revising paragraphs (2) and (6) of Code Section 7-3-3, relating to definitions, as follows:

"(2) 'Covered employee' means any employee of a licensee engaged in any function related to making installment loans or servicing installment loans made by others, excluding loans made by affiliated entities."

"(6) 'Installment lender' or 'lender' means any person that advertises, solicits, offers, or makes installment loans or services installment loans made by others, excluding loans made by affiliated entities."
SECTION 38.

Said chapter is further amended by revising Code Section 7-3-4, relating to licensing requirement and exemptions, as follows:

"7-3-4.

(a) No person shall engage in the business of making installment loans or acting as an installment lender in this state unless such person is licensed in accordance with this chapter or exempt from licensure as provided in subsection (b) of this Code section. No person within the operation of this chapter shall charge, contract for, or receive directly or indirectly on or in connection with any loan, any interest, charge, fee, compensation, or consideration which is greater than the rates for same provided in this chapter.

(b) This chapter shall not apply to:

(1) Businesses chartered or licensed under the authority of any law of this state or of the United States as banks, trust companies, savings and loan associations, savings banks, or credit unions or to the transactions of such businesses;

(2) Banks or credit unions chartered under the authority of any state which have deposits that are federally insured or to the transactions of such businesses;

(3) Pawnbrokers, as defined in Code Section 44-12-130, or to the transactions of pawnbrokers;

(4) The University System of Georgia or its educational units, private colleges and universities in this state and associations thereof, or student loan transactions of such educational entities; or

(5) An individual employed by a licensee or any person exempted from the licensing requirements of this chapter when acting within the scope of employment and under the supervision of the licensee or exempted person as an employee and not as an independent contractor;

(6) Any agency, division, or instrumentality of the federal government of the United States of America; the government of the State of Georgia or the government of any other...
state; or any county or municipal government in the State of Georgia; and the transactions
of all such governmental entities;
(7) Retail installment transactions engaged in by retail installment sellers, as those terms
are defined in Code Section 10-1-31;
(8) Retail installment transactions engaged in by retail sellers, as those terms are defined
in Code Section 10-1-2; or
(9) Transactions in which a lender offers a consumer a line of credit of more than
$3,000.00 but the consumer utilizes $3,000.00 or less of such line of credit so long as
there are no restrictions in place that would limit the consumer’s ability to utilize more
than $3,000.00 of the line of credit at any one time.”

SECTION 39.
Said chapter is further amended by revising the undesignated paragraph at the beginning of
Code Section 7-3-11, relating to maximum loan amount, period, and charges and deferments,
as follows:

“Every authorized licensee location under this chapter may lend any sum of money not
exceeding to exceed $3,000.00, with the term for any individual loan not to exceed for a
period of 36 months and 15 days or less and may charge, contract for, collect, and receive
interest and fees and may require the fulfillment of conditions on such loans as provided
in this Code section:”

SECTION 40.
Said chapter is further amended by repealing and reenacting Code Section 7-3-16, relating
to tax on interest, levy, and penalty for tax to charges, as follows:

“7-3-16.
(a) On and after July 1, 2022, in addition to all other fees, license fees, fines, or other
charges now or hereafter levied or assessed, there is imposed on each loan made pursuant

H. B. 891
- 46 -
to this chapter a fee of 0.125 percent of the gross loan amount. Such per loan fee shall become due on the making of any such loan, including, but not limited to, the closing of a loan, the renewal or refinancing of a loan, or a modification of a loan which results in the execution of a new or amended loan agreement.

(b) Such per loan fee is levied and assessed against the person so licensed and shall be paid by such person and shall not be added in any manner as an additional fee or charge against the borrower. Such per loan fee shall be remitted to the department at the time and in the manner specified by rules and regulations of the department.

(c) In the event any person fails or refuses to remit the fees required by this Code section within the time prescribed, the fees shall bear interest at the rate of 1 percent per month. Interest shall begin to accrue from the date the fees are due until the date the fees are paid. For purposes of this Code section, any period of less than one month shall be considered to be one month.

d) In the event any person fails or refuses to remit the per loan fees required by this Code section within the time prescribed, there shall be added to the fees a penalty equivalent to 25 percent of the fees due, but in no case shall the penalty so added be less than $5.00. In the event any person fraudulently remits the incorrect fees, there shall be added to the fees a penalty equivalent to 50 percent of the fees due, but in no case shall the penalty so added be less than $5.00.

(e) The 2022 revisions of Code Sections 7-3-16, 7-3-17, and 7-3-18 shall not affect the fees, taxes, and related interest and penalties owed pursuant to the earlier versions of such Code sections for any time prior to the effective date of this Act.

(f) The department and its authorized examiners and employees shall have the right to inspect all records of any person licensed pursuant to this chapter, and the department is authorized to promulgate rules and regulations relative to the enforcement of this Code section.”
SECTION 41.
Said chapter is further amended by repealing and reserving Code Section 7-3-17, relating to tax on interest, payment, inspection of records, and rules and regulations, as follows:

"7-3-17.
The tax provided for in Code Section 7-3-16 shall be remitted to the department at the time and in the manner specified by rules and regulations of the department. The department and its authorized examiners and employees shall have the right to inspect all records of any person so licensed, and the department is authorized to promulgate rules and regulations relative to the enforcement of Code Section 7-3-16, this Code section, and Code Section 7-3-18 Reserved."

SECTION 42.
Said chapter is further amended by repealing and reserving Code Section 7-3-18, relating to tax on interest and penalties for late or fraudulent tax payments, as follows:

"7-3-18.
(a) In the event any person fails or refuses to remit the tax required by Code Sections 7-3-16 and 7-3-17 within the time prescribed, the tax shall bear interest at the rate of 1 percent per month. Interest shall begin to accrue from the date the tax is due until the date the tax is paid. For the purposes of this Code section, any period of less than one month shall be considered to be one month:
(b) In the event any person fails or refuses to remit the tax required by Code Sections 7-3-16 and 7-3-17 within the time prescribed, there shall be added to the tax a penalty equivalent to 25 percent of the tax but in no case shall the penalty so added be less than $5.00. In the event any person fraudulently remits the incorrect tax, there shall be added to the tax a penalty equivalent to 50 percent of the tax but in no case shall the penalty so added be less than $5.00. The amounts so added as penalties shall be collected as a part of the tax Reserved."
SECTION 43.

Said chapter is further amended by revising subsection (c) of Code Section 7-3-21, relating to bonds required, as follows:

"(c) Payments due under the bond shall include money owed to the department for fees, taxes and related interest and penalties under Code Sections Section 7-3-16, 7-3-17, and 7-3-18, and fines or penalties for noncompliance of the licensee with this chapter or rules, regulations, or orders issued pursuant to this chapter."

SECTION 44.

Said chapter is further amended by revising subsections (c) and (d) of Code Section 7-3-31, relating to required notifications to be provided by licensee, bond company requirement of notification, and method for providing notice, as follows:

"(c) The corporate surety that issued a licensee a bond pursuant to Code Section 7-3-21 shall send written notice to the department via registered or certified mail or statutory overnight delivery within ten days of paying any claim or judgment to any creditor or claimant with details sufficient to identify the claimant and the claim or judgment so paid.

(d) Any notice sent pursuant to this Code section shall be sent by registered or certified mail or statutory overnight delivery and include sufficient details for the department to identify any relevant creditor or claimant, claim, cause of action, judgment, payment, or prohibited act."

SECTION 45.

Said chapter is further amended by revising paragraph (8) of subsection (b) of Code Section 7-3-43, relating to suspension or revocation of licenses, as follows:

"(8) Failed or refused to remit the tax fee required by Code Section 7-3-16 within the required time period."
SECTION 46.

Said chapter is further amended by revising paragraph (1) of subsection (a) of Code Section 7-3-45, relating to cease and desist orders, hearings, and reviews, as follows:

"(1) Except as provided in paragraphs (2) and (3) of this subsection, a person has violated any law of this state or any rule, regulation, or order of the department. This includes, but is not limited to, a person engaging in any activity that would subject a licensee to suspension or revocation of its license under Code Section 7-3-43, whether or not such person is licensed. Such cease and desist order shall be final 20 days from the date of issuance unless the person to whom it is issued requests a hearing in writing within such 20 day period;"

SECTION 47.

Chapter 6A of Title 7 of the Official Code of Georgia Annotated, relating to the "Georgia Fair Lending Act," is amended by revising subparagraph (a) of paragraph (17) of Code Section 7-6A-2, relating to definitions, as follows:

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

SECTION 48.

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