

House Bill 15 (AS PASSED HOUSE AND SENATE)

By: Representatives Williamson of the 112<sup>th</sup>, Williams of the 148<sup>th</sup>, Douglas of the 78<sup>th</sup>,  
Dickey of the 134<sup>th</sup>, Ridley of the 6<sup>th</sup>, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance,  
2 so as to update terminology; to revise procedures concerning incorporators of credit unions;  
3 to revise requirements of articles of incorporation of credit unions; to revise licensure  
4 requirements for money transmissions, cashing payment instruments, mortgage lenders and  
5 mortgage brokers, foreign banking institutions, and installment loans; to provide for revised  
6 auditing procedures for mortgage lenders and mortgage brokers; to provide for corporate  
7 governance requirements for mortgage lenders and mortgage brokers; to provide for liquidity  
8 requirements for mortgage lenders and mortgage brokers; to revise requirements for  
9 applications to relocate for foreign banking institutions; to revise background check  
10 procedures for merchant acquirer limited purpose banks; to provide for regulation by the  
11 Department of Banking and Finance of installment loans and merchant acquirer limited  
12 purpose banks; to revise deposit requirements for merchant acquirer limited purpose banks;  
13 to provide for definitions; to revise cross-references; to provide for related matters; to repeal  
14 conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16

**SECTION 1.**

17 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is  
 18 amended in Article 1 of Chapter 1, relating to department of banking and finance and  
 19 financial institutions generally, by revising Code Section 7-1-235, relating to part  
 20 inapplicable to bank holding company transactions, as follows:

21 "7-1-235.

22 Except for the provisions of Code Sections 7-1-231 and 7-1-232, this This part shall not  
 23 apply to a transaction subject to Code Sections 7-1-605 through 7-1-608, relating to bank  
 24 holding companies."

25

**SECTION 2.**

26 Said title is further amended in Article 2 of Chapter 1, relating to banks and trust companies,  
 27 by revising subsection (c) of Code Section 7-1-392, relating to articles of incorporation,  
 28 advertisement of articles or notice of application, and naming registered agent, as follows:

29 "(c) The incorporators shall file with the department the articles, together with the fee  
 30 required by Code Section 7-1-862. Such filing shall constitute an application for a  
 31 certificate of incorporation. Immediately upon the filing of the articles, the department  
 32 shall certify a copy thereof and return it to the applicants, who shall, in conformity with  
 33 Code Section 7-1-7 and ~~on~~ no later than the next business day following the filing of the  
 34 articles, transmit for publication a copy of the articles or, in lieu thereof, a statement in  
 35 substantially the following form:

36 'An application for a certificate of incorporation of a (bank, trust company, or bank  
 37 and trust company) to be known as the \_\_\_\_\_ and to be located  
 38 at \_\_\_\_\_ in \_\_\_\_\_ County, Georgia, will be made to the  
 39 Secretary of State of Georgia by (names and ~~addresses~~ counties of residence of  
 40 incorporators) in accordance with Chapter 1 of Title 7 of the Official Code of Georgia  
 41 Annotated, the "Financial Institutions Code of Georgia." A copy of the articles of

42 incorporation of such proposed (bank, trust company, or bank and trust company) and  
 43 the application have been filed with the Department of Banking and Finance. The  
 44 following persons have been proposed as the initial directors: (names and ~~addresses~~  
 45 counties of residence of proposed directors).'  
 46 to the newspaper which is the official organ of the county where the main office will be  
 47 located. The articles or statement must be published once a week for two consecutive  
 48 weeks with the first publication occurring within ten days of receipt by the newspaper of  
 49 the articles or statement."

50 **SECTION 3.**

51 Said title is further amended by revising paragraph (2) of subsection (b) of Code Section  
 52 7-1-606, relating to prohibited activities of bank holding company or subsidiary and  
 53 exceptions, as follows:

54 "(2) In every case, the department shall take into consideration the financial and  
 55 managerial resources, including the competence, character, and experience of  
 56 management, and future prospects of the company or companies and the banks  
 57 concerned."

58 **SECTION 4.**

59 Said title is further amended in Article 3 of Chapter 1, relating to credit unions, by revising  
 60 Code Section 7-1-630, relating to subscribers, articles, filings, fee, and directors, as follows:

61 "7-1-630.

62 (a) Any number of persons, not less than eight, having a common bond, as defined in  
 63 subsection (b) of this Code section, may incorporate for the purpose of organizing a credit  
 64 union in accordance with this article. The persons so desiring to become incorporated shall  
 65 execute articles which shall set forth the following:

66 (1) The name of the proposed credit union;

- 67 (2) The territory in which it will operate;
- 68 (3) The location where its initial registered office will be located;
- 69 (4) The names and ~~addresses~~ counties of residence of the subscribers, their occupation,  
70 length of service, and that each has subscribed to one share and paid for same;
- 71 (5) The names and ~~addresses~~ counties of residence of the original directors;
- 72 (6) The proposed field of membership specified in detail and having the same common  
73 bond as the subscribers;
- 74 (7) That the purpose and nature of the business are to conduct a credit union with the  
75 rights and powers granted by this article; and
- 76 (8) The term of the existence of the credit union, which shall be perpetual unless  
77 otherwise limited.
- 78 (b) For purposes of this article, 'common bond' means that specific relationship of  
79 occupation, association, or interest; residence or employment within a well-defined  
80 neighborhood, community, or rural district; employees of a common employer; or members  
81 of a bona fide cooperative, educational, fraternal, professional, religious, rural, or similar  
82 organization which tends to create a mutual interest between persons sharing the  
83 relationship. Persons related by blood, adoption, or marriage to or living in the same  
84 household with a person within such common bond and the surviving spouses of deceased  
85 members shall also be considered within the common bond.
- 86 (c) The subscribers shall file the articles with the department together with the fee  
87 specified in Code Section 7-1-862. ~~The department shall certify a copy of the articles and~~  
88 ~~return it to the subscribers.~~ Such filing shall constitute an application for a certificate of  
89 incorporation. Immediately upon the filing of the articles, the department shall certify a  
90 copy of the articles and return it to the subscribers, who shall, in conformity with Code  
91 Section 7-1-7 and no later than the next business day following the filing of the articles,  
92 transmit for publication a copy of the articles or, in lieu thereof, a statement in substantially  
93 the following form:

94 'An application for a certificate of incorporation of a credit union to be known as the  
95 \_\_\_\_\_ and to be located at \_\_\_\_\_ in  
96 \_\_\_\_\_ County, Georgia, will be made to the Secretary of State of Georgia by  
97 (names and counties of residence of subscribers) in accordance with Chapter 1 of  
98 Title 7 of the Official Code of Georgia Annotated, the "Financial Institutions Code  
99 of Georgia." A copy of the articles of incorporation of such proposed credit union and  
100 the application have been filed with the Department of Banking and Finance. The  
101 following persons have been proposed as the initial directors: (names and counties of  
102 residence of proposed directors).'  
103 to the newspaper which is the official organ of the county where the main office will be  
104 located. The articles or statement must be published once a week for two consecutive  
105 weeks with the first publication occurring within ten days of receipt by the newspaper of  
106 the articles or statement.

107 (d) The subscriber shall file with the department a certificate from the Secretary of State  
108 attesting that the name of the proposed credit union has been reserved as authorized by  
109 Code Section 7-1-131.

110 (e) The subscriber shall file with the department a copy of the proposed bylaws setting  
111 forth the following:

112 (1) The date of the annual meeting, the manner of conducting the same, the number of  
113 members constituting a quorum and regulations as to voting, and the manner of  
114 notification of the meeting, which shall comply with Code Section 7-1-6;

115 (2) The number of directors, which shall be not less than five nor more than 25, all of  
116 whom shall be members, and their powers and duties, together with the duties of the  
117 executive officers elected by the board of directors;

118 (3) The qualifications for membership of those coming within the initial common bond  
119 as required by this article;

120 (4) The conditions under which deposits are received and withdrawn; and

121 (5) The charges which shall be made, if any, for failure to meet obligations punctually;  
122 whether or not the credit union shall have the power to borrow; and such other matters  
123 consistent with this article as may be requisite to the organization and operation of the  
124 proposed credit union.

125 (f) The subscriber shall pay such fee as shall be established by regulation of the  
126 department to defray the cost of the investigation required by Code Section 7-1-632,  
127 provided that the department shall not be required to set such fee if in its judgment the fee  
128 would discourage the organization of credit unions under this article.

129 (g) The subscriber shall select at least five qualified persons who agree to serve on the  
130 board of directors. A signed agreement to serve in these capacities until the first annual  
131 meeting or until the election of their successors, whichever is later, shall be executed by  
132 those who so agree and filed with the department along with the proposed bylaws.

133 (h) For the purposes of this article, the term 'executive officer' means an individual who  
134 performs significant managerial, supervisory, or policy-making functions on behalf of a  
135 credit union, including, but not limited to, the chief executive officer, president, chief  
136 financial officer, chief operating officer, and other individuals who perform such  
137 functions."

138 **SECTION 5.**

139 Said title is further amended in said article by revising Code Section 7-1-632, relating to  
140 approval or disapproval by department and certificate of incorporation, as follows:

141 "7-1-632.

142 (a) The department shall make an appropriate investigation of the articles and bylaws for  
143 the purpose of determining:

144 (1) Whether the articles and bylaws conform to this article;

- 145 (2) The general character and qualifications of the subscribers, the proposed directors,  
146 and the executive officers and the financial stability and future prospects of the  
147 sponsoring company, if any;
- 148 (3) The economic advisability of establishing the proposed credit union and such other  
149 facts and circumstances bearing on the proposed credit union as in the opinion of the  
150 department may be relevant;
- 151 (4) That a common bond exists in accordance with Code Section 7-1-630; ~~and~~
- 152 (5) That the subscribers and person or corporation sponsoring the credit union are in  
153 agreement as to the services, if any, that the sponsor will provide;
- 154 (6) Whether the convenience and needs of the public will be served by the proposed  
155 credit union; and
- 156 (7) Whether the capital structure of the proposed credit union is adequate in relation to  
157 the amount and character of the anticipated business of the credit union and the safety of  
158 prospective members.
- 159 (b) If the department determines to its satisfaction that the proposed credit union meets the  
160 criteria set forth above, it shall, within 90 days from receipt of the articles and in  
161 compliance with Code Section 7-1-630, send a copy of the articles and written approval of  
162 the articles to the Secretary of State after making such changes in the articles or bylaws  
163 consistent with this article and with the consent of the subscribers that it deems appropriate;  
164 provided, however, that, if the approval of a federal public body is also required with  
165 respect to the proposed credit union, then the department may elect to not act on the  
166 application until after such approval is given. Such approval shall indicate any changes  
167 made to the articles including changes from the proposed field of membership. If the  
168 department shall disapprove the articles, the procedures of subsection (b) of Code Section  
169 7-1-635 shall be followed.

170 (c) Upon receipt of the approval of the department, the Secretary of State shall thereupon  
 171 issue a certificate attesting to the incorporation of the credit union. The credit union shall,  
 172 however, confine itself to organizational activities until it receives a permit to do business."

173 **SECTION 6.**

174 Said title is further amended in said article by revising paragraph (3) of subsection (b) of  
 175 Code Section 7-1-658, relating to loans, as follows:

176 "(3) In lieu of a credit committee, the board of directors may appoint one or more loan  
 177 officers and delegate to such persons the power to approve or disapprove loans to a  
 178 borrower that do not in the aggregate exceed 5 percent of the net worth of the credit union  
 179 subject to such limitations or conditions set forth in this Code section for loans generally  
 180 and such further limitations and conditions as the board may prescribe. All other duties  
 181 of the credit committee as described in this article shall become the duties of the board  
 182 of directors. Records of loans approved shall be maintained by the loan officers in such  
 183 form as the board shall prescribe and ~~a listing of all loans made, including the name of~~  
 184 ~~the borrower and the amount of the loan, shall be submitted to the board at each meeting~~  
 185 shall be made available to the board upon request; and"

186 **SECTION 7.**

187 Said title is further amended in Article 4 of Chapter 1, relating to money transmission, by  
 188 adding a new paragraph to Code Section 7-1-680, relating to definitions, to read as follows:

189 "(8.1) 'Disqualifying crime' means any felony, as defined in Code Section 16-1-3,  
 190 involving conversion, theft, money laundering, bribery, dishonesty, false statements or  
 191 omissions, perjury, extortion, breach of trust, forgery, counterfeiting, embezzlement,  
 192 insider trading, tax evasion, kickbacks, identity theft, cyber attacks, social engineering,  
 193 fraud, including but not limited to check fraud, credit card fraud, mortgage fraud, medical  
 194 fraud, corporate fraud, bank account fraud, payment (point of sale) fraud, currency fraud,

195 bank fraud, and securities fraud or a felony directly related to the financial services  
196 business."

197 **SECTION 8.**

198 Said title is further amended in said article by adding a new subsection to Code Section  
199 7-1-683, relating to requirements for licensure, fees, and rules and regulations, to read as  
200 follows:

201 "(e) The department may issue a notice of intent to administratively withdraw an  
202 application for a license under this article if an applicant submits a deficient license  
203 application by failing to provide any information required by the department. If the  
204 applicant fails to provide the requested information within 30 days of the date of issuance  
205 of such notice, the application may be administratively withdrawn. The notice shall be  
206 deemed provided to the applicant when:

- 207 (1) Sent via email to the applicant's email address, as provided on the application; or  
208 (2) Posted by the department on the Nationwide Multistate Licensing System and  
209 Registry."

210 **SECTION 9.**

211 Said title is further amended in said article by revising subsection (c) of Code Section  
212 7-1-684, relating to investigation of applicants for licensure and background checks on  
213 employees and others, as follows:

214 "(c) The department shall not issue a license or may revoke a license if it finds that the  
215 applicant, licensee, or authorized agent; any person who is a director, officer, partner,  
216 covered employee, or ultimate equitable owner of the applicant, licensee, or authorized  
217 agent; or any individual who directs the affairs of or controls or establishes policy for the  
218 applicant, licensee, or authorized agent has been convicted of a felony in any jurisdiction

219 or of a crime which, if committed within this state, would constitute a felony under the  
220 laws of this state;

221 (1) Within the previous seven years; or

222 (2) At any time, if such felony is a disqualifying crime.

223 For the purposes of this article, a person shall be deemed to have been convicted of a crime  
224 if such person shall have pleaded guilty or nolo contendere to a charge thereof before a  
225 court or federal magistrate or shall have been found guilty thereof by the decision or  
226 judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the  
227 pronouncement of sentence or the suspension thereof and regardless of whether first  
228 offender treatment without adjudication of guilt pursuant to the charge was entered or an  
229 adjudication or sentence was otherwise withheld or not entered on that charge, unless and  
230 until such plea of guilty or such decision, judgment, or verdict shall have been set aside,  
231 reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or  
232 both probation and sentence of a first offender without adjudication of guilt have been  
233 successfully completed and documented or unless the person convicted of the crime shall  
234 have received a pardon therefor from the President of the United States or the governor or  
235 other pardoning authority in the jurisdiction where the conviction occurred."

236 **SECTION 10.**

237 Said title is further amended in Article 4A of Chapter 1, relating to cashing of payment  
238 instruments, by adding a new paragraph to Code Section 7-1-700, relating to definitions, to  
239 read as follows:

240 "(8.1) 'Disqualifying crime' means any felony, as defined in Code Section 16-1-3,  
241 involving conversion, theft, money laundering, bribery, dishonesty, false statements or  
242 omissions, perjury, extortion, breach of trust, forgery, counterfeiting, embezzlement,  
243 insider trading, tax evasion, kickbacks, identity theft, cyber attacks, social engineering,  
244 fraud, including but not limited to check fraud, credit card fraud, mortgage fraud, medical

245 fraud, corporate fraud, bank account fraud, currency fraud, bank fraud, and securities  
246 fraud or a felony directly related to the financial services business."

247 **SECTION 11.**

248 Said title is further amended in said article by adding a new subsection to Code Section  
249 7-1-702, relating to requirements for licensure, to read as follows:

250 "(e) The department may issue a notice of intent to administratively withdraw an  
251 application for a license under this article if an applicant submits a deficient license  
252 application by failing to provide any information required by the department. If the  
253 applicant fails to provide the requested information within 30 days of the date of issuance  
254 of such notice, the application may be administratively withdrawn. The notice shall be  
255 deemed provided to the applicant when:

- 256 (1) Sent via email to the applicant's email address, as provided on the application; or  
257 (2) Posted by the department on the Nationwide Multistage Licensing System and  
258 Registry."

259 **SECTION 12.**

260 Said title is further amended in said article by revising subsection (c) of Code Section  
261 7-1-703, relating to investigation of applicants and background checks of employees and  
262 others, as follows:

263 "(c) The department shall not issue a license or may revoke a license if it finds that the  
264 applicant or licensee; any person who is a director, officer, partner, covered employee, or  
265 ultimate equitable owner of the applicant or licensee; or any individual who directs the  
266 affairs of or controls or establishes policy for the applicant or licensee has been convicted  
267 of a felony in any jurisdiction or of a crime which, if committed within this state, would  
268 constitute a felony under the laws of this state;

- 269 (1) Within the previous seven years; or

270 (2) At any time, if such felony is a disqualifying crime.

271 For the purposes of this article, a person shall be deemed to have been convicted of a crime  
272 if such person shall have pleaded guilty or nolo contendere to a charge thereof before a  
273 court or federal magistrate or shall have been found guilty thereof by the decision or  
274 judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the  
275 pronouncement of sentence or the suspension thereof and regardless of whether first  
276 offender treatment without adjudication of guilt pursuant to the charge was entered or an  
277 adjudication or sentence was otherwise withheld or not entered on that charge, unless and  
278 until such plea of guilty or such decision, judgment, or verdict shall have been set aside,  
279 reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or  
280 both probation and sentence of a first offender without adjudication of guilt have been  
281 successfully completed and documented or unless the person convicted of the crime shall  
282 have received a pardon therefor from the President of the United States or the governor or  
283 other pardoning authority in the jurisdiction where the conviction occurred."

284 **SECTION 13.**

285 Said title is further amended in Article 13 of Chapter 1, relating to foreign banking  
286 institutions, by revising Code Section 7-1-1000, relating to definitions, as follows:

287 "7-1-1000.

288 As used in this article, the term:

289 (1) 'Affiliate' or 'person affiliated with' means, when used with reference to a specified  
290 person, a person who directly, indirectly, or through one or more intermediaries controls,  
291 is controlled by, or is under common control with the person specified. Any beneficial  
292 owner of 10 percent or more of the securities of a person or any executive officer,  
293 director, trustee, joint venturer, or general partner of a person is an affiliate of such person  
294 unless the shareholder, executive officer, director, trustee, joint venturer, or general

295 partner shall prove that he or she in fact does not control, is not controlled by, or is not  
296 under common control with such person.

297 (1.1) 'Allowable assets for liquidity' means:

298 (A) Unrestricted cash and cash equivalents; and

299 (B) Unencumbered investment grade assets held for sale or trade; mortgage-backed  
300 securities or other obligations of government sponsored entities and obligations of the  
301 United States Department of Treasury.

302 (2) 'Audited financial statement' means the product of the examination of financial  
303 statements in accordance with generally accepted auditing standards by an independent  
304 certified public accountant, which product consists of an opinion on the financial  
305 statements indicating their conformity with generally accepted accounting principles.

306 (2.1) 'Board of directors' means the formal body established by a licensee that is  
307 responsible for corporate governance and compliance with this article.

308 (3) 'Commissioner' means the commissioner of banking and finance.

309 (4) 'Commitment' or 'commitment agreement' means a statement by a lender required to  
310 be licensed under this article that sets forth the terms and conditions upon which the  
311 lender is willing to make a particular mortgage loan to a particular borrower.

312 (5) 'Control,' including 'controlling,' 'controlled by,' and 'under common control with,'  
313 means the direct or indirect possession of the power to direct or cause the direction of the  
314 management and policies of a person, whether through the ownership of voting or  
315 nonvoting securities, by contract, or otherwise.

316 (5.1) 'Corporate governance' means the structure of a licensee and how it is managed  
317 including the corporate rules, policies, processes, and practices used to oversee and  
318 manage the licensee.

319 (5.2) 'Covered employee' means any employee of a mortgage lender or mortgage broker  
320 who is involved in residential mortgage loan related activities for property located in  
321 Georgia and includes, but is not limited to, a mortgage loan originator, processor, or

322 underwriter, or other employee who has access to residential mortgage loan origination,  
323 processing, or underwriting information.

324 (5.3) 'Covered servicer' means a mortgage lender with a servicing portfolio of 2,000 or  
325 more residential mortgage serviced or subserviced loans as reported in the mortgage  
326 lender's Mortgage Call Report as of the most recent calendar year end, excluding whole  
327 loans owned, reverse mortgages that are serviced or subserviced for others, and loans  
328 being interim serviced prior to sale.

329 (6) 'Department' means the Department of Banking and Finance.

330 (7) 'Depository institution' has the same meaning as in Section 3 of the Federal Deposit  
331 Insurance Act, 12 U.S.C. Section 1813(c), and includes any credit union.

332 (7.1) 'Disqualifying crime' means any felony, as defined in Code Section 16-1-3,  
333 involving conversion, theft, money laundering, bribery, dishonesty, false statements or  
334 omissions, perjury, extortion, breach of trust, forgery, counterfeiting, embezzlement,  
335 insider trading, tax evasion, kickbacks, identity theft, cyber attacks, social engineering,  
336 fraud, including but not limited to check fraud, credit card fraud, mortgage fraud, medical  
337 fraud, corporate fraud, bank account fraud, payment (point of sale) fraud, currency fraud,  
338 bank fraud, and securities fraud, or a felony directly related to the financial services  
339 business.

340 (8) 'Dwelling' means a residential structure that contains one to four units, whether or not  
341 that structure is attached to real property pursuant to Regulation Z Section 226.2(a)(19).  
342 The term includes an individual condominium unit, cooperative unit, mobile home, and  
343 trailer if it is used as a residence.

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

349 (9.1) 'External audit' means a formal report prepared by an independent certified public  
350 accountant expressing an opinion on whether a licensee's financial statements are  
351 presented fairly, in all material aspects, in accordance with the applicable financial  
352 reporting framework, and is inclusive of an evaluation of the adequacy of a licensee's  
353 internal control structure.

354 (10) 'Extortionate means' means the use or the threat of violence or other criminal means  
355 to cause harm to the person, reputation of the person, or property of the person.

356 (11) 'Federal banking agencies' means the Comptroller of the Currency, the National  
357 Credit Union Administration, and the Federal Deposit Insurance Corporation. Such term  
358 shall also include the Board of Governors of the Federal Reserve System.

359 (12) 'Georgia Residential Mortgage Act' means this article, which also includes certain  
360 provisions in order to implement the federal Secure and Fair Enforcement for Mortgage  
361 Licensing Act of 2008.

362 (12.1) 'Government sponsored entity' means a quasi-public entity that facilitates credit  
363 access in the residential mortgage market, including but not limited to, the Federal  
364 National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the  
365 Government National Mortgage Association.

366 (13) 'Individual' means a natural person.

367 (13.1) 'Interim serviced prior to sale' means the activity of collecting a limited number  
368 of contractual mortgage payments immediately after origination on loans held for sale but  
369 prior to the loans being sold into the secondary market.

370 (13.2) 'Internal audit' means a licensee's internal activity of performing independent,  
371 objective assurance and consulting to evaluate and improve the effectiveness of the  
372 licensee's processes related to operations, risk management, internal controls, and  
373 governance.

374 (14) 'License' means a license issued by the department under this article to act as a  
375 mortgage loan originator, mortgage lender, or mortgage broker.

376 (14.1) 'Liquidity' means access to unrestricted cash and cash equivalents, capacity to  
377 obtain funds at a reasonable cost, and the ability to meet obligations as they become due.  
378 In the case of a licensee that services mortgage loans, such term encompasses the  
379 financial resources necessary to manage liquidity risk arising from servicing functions  
380 required in acquiring and financing mortgage servicing rights; hedging costs, including  
381 margin calls, associated with the mortgage servicing rights and financing facilities; and  
382 advances or costs of advance financing for principal, interest, taxes, insurance, and any  
383 other servicing related advances.

384 (15) 'Loan processor or underwriter' means an individual who performs clerical or  
385 support duties as an employee at the direction of and subject to the supervision and  
386 instruction of a person licensed or exempt from licensing. For purposes of this paragraph,  
387 the term 'clerical or support duties' may include, subsequent to the receipt of an  
388 application, the receipt, collection, distribution, and analysis of information common for  
389 the processing or underwriting of a residential mortgage loan; and communicating with  
390 a consumer to obtain the information necessary for the processing or underwriting of a  
391 loan, to the extent that such communication does not include offering or negotiating loan  
392 rates or terms or counseling consumers about residential mortgage loan rates or terms.  
393 An individual engaging solely in loan processor or underwriter activities shall not  
394 represent to the public, through advertising or other means of communicating or  
395 providing information, including the use of business cards, stationery, brochures, signs,  
396 rate lists, or other promotional items, that such individual can or will perform any of the  
397 activities of a mortgage loan originator.

398 (16) 'Lock-in agreement' means a written agreement whereby a lender or a broker  
399 required to be licensed under this article guarantees for a specified number of days or  
400 until a specified date the availability of a specified rate of interest for a mortgage loan,  
401 a specified formula by which the rate of interest will be determined, or a specific number

402 of discount points if the mortgage loan is approved and closed within the stated period  
403 of time.

404 (17) 'Makes a mortgage loan' means to advance funds, offer to advance funds, or make  
405 a commitment to advance funds to an applicant for a mortgage loan.

406 (18) 'Misrepresent' means to make a false statement of a substantive fact. Misrepresent  
407 may also mean to intentionally engage in any conduct which leads to a false belief which  
408 is material to the transaction.

409 (18.1) 'Mortgage-backed security' means a financial instrument, including, but not  
410 limited to, an asset backed security, that is secured by residential property.

411 (19)(A) 'Mortgage broker' means any person who directly or indirectly solicits,  
412 processes, places, or negotiates mortgage loans for others; offers to solicit, process,  
413 place, or negotiate mortgage loans for others; or closes mortgage loans which may be  
414 in the mortgage broker's own name with funds provided by others, and which loans are  
415 assigned to the mortgage lenders providing the funding of such loans within 24 hours  
416 of the funding.

417 (B) The term does not include a retailer or retail broker of a manufactured or mobile  
418 home as defined in Code Section 8-2-131 or a residential industrialized building as  
419 defined in Code Section 8-2-111:

420 (i) Whose residential mortgage loan activities are limited to compiling and  
421 transmitting residential mortgage loan applications along with related supporting  
422 documentation to mortgage lenders who are licensed or exempt from the licensing  
423 provisions of this article or communicating with residential mortgage loan applicants  
424 as necessary to obtain additional documents that complete the residential mortgage  
425 loan application to those licensed or exempt mortgage lenders; and

426 (ii) Who does not receive any payment or fee from any person for assisting the  
427 applicant to apply for or obtain financing to purchase the manufactured home, mobile  
428 home, or residential industrialized building.

429 (C) The term does not include an employee of a retailer or retail broker of a  
 430 manufactured or mobile home as defined in Code Section 8-2-131 or a residential  
 431 industrialized building as defined in Code Section 8-2-111 who:

432 (i) Satisfies the requirements set forth in paragraph (B) of this paragraph;

433 (ii) Is acting within the scope of employment and under the supervision of the retailer  
 434 or retail broker as an employee and not as an independent contractor;

435 (iii) Is employed by only one such retailer or retail broker and shall be at all times  
 436 eligible for employment in compliance with the provisions and prohibitions of Code  
 437 Section 7-1-1004;

438 (iv) Has not been issued a cease and desist order in the past five years if such order  
 439 was based on a violation of Code Section 7-1-1002 or 7-1-1013; and

440 (v) Has not had a mortgage lender, mortgage broker, or mortgage loan originator  
 441 license revoked within the past five years.

442 (19.1) 'Mortgage Call Report' means the quarterly or annual report of residential  
 443 mortgage loan origination, servicing, and financial information completed by licensees  
 444 pursuant to subsection (b) of Code Section 7-1-1004.1.

445 (20) 'Mortgage lender' means any person who directly or indirectly makes, originates,  
 446 underwrites, holds, or purchases mortgage loans or who services mortgage loans.

447 (21) 'Mortgage loan' means a loan or agreement to extend credit made to a natural  
 448 person, which loan is secured by a deed to secure debt, security deed, mortgage, security  
 449 instrument, deed of trust, or other document representing a security interest or lien upon  
 450 any interest in one-to-four family residential property located in Georgia, regardless of  
 451 where made, including the renewal or refinancing of any such loan.

452 (22) 'Mortgage loan originator' means an individual who for compensation or gain or in  
 453 the expectation of compensation or gain takes a residential mortgage loan application or  
 454 offers or negotiates terms of a residential mortgage loan. Generally, this does not include  
 455 an individual engaged solely as a loan processor or underwriter except as otherwise

456 provided in subsection (a.1) of Code Section 7-1-1002; a person or entity that only  
457 performs real estate brokerage activities and is licensed in accordance with Georgia law  
458 unless the person or entity is compensated by a mortgage lender, mortgage broker, or  
459 other mortgage loan originator or by any agent of such mortgage lender, mortgage broker,  
460 or other mortgage loan originator; and does not include a person or entity solely involved  
461 in extensions of credit relating to time-share plans, as that term is defined in 11 U.S.C.  
462 Section 101(53D).

463 (22.1) 'Mortgage servicing rights' means the contractual right to service mortgage loans  
464 on behalf of the owner of the associated mortgage in exchange for specified  
465 compensation in accordance with the servicing contract.

466 (22.2) 'Mortgage servicing rights investor' or 'master servicer' means a person that invests  
467 in and owns mortgage servicing rights and relies on subservicers to administer the loans  
468 on such person's behalf.

469 (23) 'Nationwide Multistate Licensing System and Registry' means a mortgage licensing  
470 system developed and maintained by the Conference of State Bank Supervisors and the  
471 American Association of Residential Mortgage Regulators for the licensing and  
472 registration of licensed mortgage loan originators, mortgage loan brokers, and mortgage  
473 loan lenders, or its successor.

474 (23.1) 'Net worth' means:

475 (A) With respect to a mortgage broker or a mortgage lender that is not a covered  
476 servicer, the total equity less receivables due from related entities less goodwill and  
477 other intangibles less pledged assets; and

478 (B) With respect to a mortgage lender that is a covered servicer, shall have the same  
479 meaning as provided in Federal Housing Finance Agency's Eligibility Requirements for  
480 Enterprise Single-Family Seller/Servicer.

481 (24) 'Nontraditional mortgage product' means any mortgage product other than a 30 year  
482 fixed rate mortgage.

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

485 (26) 'Real estate brokerage activity' means any activity that involves offering or  
486 providing real estate brokerage services to the public, including acting as a real estate  
487 agent or real estate broker for a buyer, seller, lessor, or lessee of real property; bringing  
488 together parties interested in the sale, purchase, lease, rental, or exchange of real  
489 property; negotiating, on behalf of any party, any portion of a contract relating to the sale,  
490 purchase, lease, rental, or exchange of real property, other than in connection with  
491 providing financing with respect to any such transaction; engaging in any activity for  
492 which a person engaged in the activity is required to be registered or licensed as a real  
493 estate agent or real estate broker under any applicable law; and offering to engage in any  
494 activity or act in any capacity described herein.

495 (27) 'Registered mortgage loan originator' means any individual who meets the definition  
496 of mortgage loan originator, is registered with and maintains a unique identifier through  
497 the Nationwide Multistate Licensing System and Registry, and is an employee of:

498 (A) A depository institution;

499 (B) A subsidiary that is:

500 (i) Owned and controlled by a depository institution; and

501 (ii) Regulated by a federal banking agency; or

502 (C) An institution regulated by the Farm Credit Administration.

503 (28) Reserved.

504 (29) 'Residential property' means improved real property used or occupied, or intended  
505 to be used or occupied, as the primary residence of a natural person. Such term does not  
506 include rental property or second homes. A natural person can have only one primary  
507 residence.

508 (30) 'Residential mortgage loan' means any loan primarily for personal, family, or  
509 household use that is secured by a mortgage, deed of trust, or other equivalent consensual

510 security interest on a dwelling, as defined in 15 U.S.C. Section 1602 of the Truth in  
511 Lending Act, or residential real estate upon which is constructed or intended to be  
512 constructed a dwelling.

513 (31) 'Residential real estate' means any real property located in Georgia upon which is  
514 constructed or intended to be constructed a dwelling.

515 (31.1) 'Reverse mortgage' means a loan collateralized by residential real estate, typically  
516 made to borrowers over 55 years of age, that does not require contractual monthly  
517 payments and is typically repaid upon the death of the borrower through the sale of the  
518 real estate or through refinancing of the loan by the borrower's heirs.

519 (31.2) 'Risk management assessment' means the functional evaluations of a licensee  
520 performed under a risk management program and the corresponding reports provided to  
521 the licensee's board of directors under the relevant governance framework.

522 (31.3) 'Risk management program' means the policies and procedures of a licensee that  
523 are designed to identify, measure, monitor, and mitigate risk and that are sufficient for  
524 the level of sophistication of the licensee.

525 (32) 'Service a mortgage loan' means the collection or remittance or the right to collect  
526 or remit payments of principal, interest, trust items such as insurance and taxes, and any  
527 other payments pursuant to a mortgage loan.

528 (32.1) 'Servicer' means a person that services a mortgage loan.

529 (32.2) 'Servicing portfolio' means the specific portfolio or portfolios of mortgage loans  
530 for which a licensee is contractually responsible to the owner or owners of the mortgage  
531 loans for the defined servicing activities.

532 (32.3) 'Subserviced for others' means the contractual activities performed by subservicers  
533 on behalf of a servicer or a mortgage servicing rights investor.

534 (32.4) 'Subservicer' means a person performing routine administration of mortgage loans  
535 as an agent of a servicer or mortgage serving rights investor under the terms of a  
536 subservicing contract.

537 (33) 'Ultimate equitable owner' means a natural person who, directly or indirectly, owns  
538 or controls an ownership interest in a corporation or any other form of business  
539 organization, regardless of whether such natural person owns or controls such ownership  
540 interest through one or more natural persons or one or more proxies, powers of attorney,  
541 nominees, corporations, associations, limited liability companies, partnerships, trusts,  
542 joint-stock companies, other entities or devices, or any combination thereof.

543 (34) 'Unique identifier' means a number or other identifier assigned by protocols  
544 established by the Nationwide Multistate Licensing System and Registry.

545 (35) 'Whole loans' mean those loans where a mortgage and the underlying credit risk is  
546 owned and held on the balance sheet of the person with all ownership rights associated  
547 with the loans."

548 **SECTION 14.**

549 Said title is further amended in said article by adding a new subsection to Code Section  
550 7-1-1003, relating to applications for licenses, to read as follows:

551 "(d) The department may issue a notice of intent to administratively withdraw an  
552 application for a license under this article if an applicant submits a deficient license  
553 application by failing to provide any information required by the department. If the  
554 applicant fails to provide the requested information within 30 days of the date of issuance  
555 of such notice, the application may be administratively withdrawn. The notice shall be  
556 deemed provided to the applicant when:

557 (1) Sent via email to the applicant's email address, as provided on the application; or  
558 (2) Posted by the department on the Nationwide Multistage Licensing System and  
559 registry."

560 **SECTION 15.**

561 Said title is further amended in said article by revising subsections (e) and (i) of Code Section  
562 7-1-1004, relating to investigation of applicant, requirements for applicant, and denial and  
563 revocation of license, as follows:

564 "(e) Upon receipt of an application for a mortgage loan originator license, the department  
565 shall conduct such investigation as it deems necessary to determine that the mortgage loan  
566 originator applicant:

567 (1) Has never had a mortgage loan originator license revoked in any governmental  
568 jurisdiction, except that a subsequent formal vacation of such revocation shall not be  
569 deemed a revocation;

570 (2) Has not been convicted of, or pleaded guilty or nolo contendere to, a felony in a  
571 domestic, foreign, or military court, regardless of whether first offender treatment without  
572 adjudication of guilt was entered:

573 (A) Within the previous seven years; or

574 (B) At any time, if such felony is a disqualifying crime;

575 provided, however, that any pardon of a conviction shall not be a conviction for purposes  
576 of this subsection;

577 (3) Has demonstrated financial responsibility, character, and general fitness such as to  
578 command the confidence of the community and to warrant a determination that the  
579 mortgage loan originator will operate honestly, fairly, and efficiently within the purposes  
580 of this article;

581 (4) Has completed the prelicensing education requirement described in subsection (f) of  
582 this Code section; and

583 (5) Has passed a written test that meets the test requirement described in subsection (h)  
584 of this Code section."

585 "(i) The department shall not issue or may revoke a license if it finds that the mortgage  
586 loan originator, mortgage broker, or mortgage lender applicant or licensee, or any person

587 who is a director, officer, partner, covered employee, or ultimate equitable owner of 10  
588 percent or more of the mortgage broker or mortgage lender applicant or licensee or any  
589 individual who directs the affairs or establishes policy for the mortgage broker or mortgage  
590 lender applicant or licensee, has been convicted of a felony in any jurisdiction or of a crime  
591 which, if committed within this state, would constitute a felony under the laws of this state.  
592 Other than a mortgage loan originator, for the purposes of this article, a person shall be  
593 deemed to have been convicted of a crime if such person shall have pleaded guilty or nolo  
594 contendere to a charge thereof before a court or federal magistrate or shall have been found  
595 guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict  
596 of a jury; within the previous seven years or at any time, if such felony is a disqualifying  
597 crime, irrespective of the pronouncement of sentence or the suspension thereof, and  
598 regardless of whether first offender treatment without adjudication of guilt pursuant to the  
599 charge was entered, or an adjudication or sentence was otherwise withheld or not entered  
600 on the charge, unless and until such plea of guilty, or such decision, judgment, or verdict,  
601 shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or  
602 until probation, sentence, or both probation and sentence of a first offender without  
603 adjudication of guilt have been successfully completed and documented, or unless the  
604 person convicted of the crime shall have received a pardon therefor from the President of  
605 the United States or the governor or other pardoning authority in the jurisdiction where the  
606 conviction occurred. For purposes of ~~this article~~ subsection (e) of this Code section, a  
607 mortgage loan originator shall be deemed to have been convicted of a crime if he or she has  
608 pleaded guilty to, been found guilty of, or entered a first offender or nolo contendere plea  
609 to a felony in a domestic, foreign, or military court; provided, however, that any pardon of  
610 a conviction shall not be a conviction."

611 **SECTION 16.**

612 Said title is further amended in said article by revising Code Section 7-1-1004.1, relating to  
 613 reports of condition, as follows:

614 "7-1-1004.1.

615 Each mortgage broker and mortgage lender shall submit to the Nationwide Multistate  
 616 Licensing System and Registry:

617 (1) Reports reports of condition, which shall be in such form and shall contain such  
 618 information as the department and the Nationwide Multistate Licensing System and  
 619 Registry may require; and

620 (2) Quarterly and annual reports of residential mortgage loan origination, servicing, and  
 621 financial information in such form as required by the department and the Nationwide  
 622 Multistate Licensing System and Registry."

623 **SECTION 17.**

624 Said title is further amended in said article by revising Code Section 7-1-1010, relating to  
 625 annual financial statements, as follows:

626 "7-1-1010.

627 ~~(a) If a mortgage broker is a United States Department of Housing and Urban~~  
 628 ~~Development loan correspondent, such broker shall also submit to the department the audit~~  
 629 ~~that is required for the United States Department of Housing and Urban Development.~~

630 Mortgage brokers shall, at least once each year, submit to the department a financial  
 631 statement that is unaudited and prepared in accordance with generally accepted accounting  
 632 principles and certified by the licensee; provided, however, that mortgage brokers may  
 633 elect to submit to the department an audited financial statement to satisfy this requirement.

634 In the event that the mortgage broker submits to the department an unaudited financial  
 635 statement prepared in accordance with generally accepted accounting principles in lieu of  
 636 an audited financial statement, the ~~The~~ department may require the mortgage broker to

637 have ~~made~~ an audit of the books and affairs of the licensed business and submit to the  
 638 department an audited financial statement if the department finds that such an audit is  
 639 necessary to determine whether the mortgage broker is complying with the provisions of  
 640 this article and the rules and regulations adopted in furtherance of this article.

641 (b)(1) Each mortgage lender licensed under this article shall, at least once each year,  
 642 have ~~made~~ an external audit of the books and affairs of the licensed business, including  
 643 ~~and submit to the department at renewal~~ an audited financial statement, except that a  
 644 mortgage lender licensed under this article which is a subsidiary shall comply with this  
 645 provision by annually providing a consolidated audited financial statement of its parent  
 646 company and a financial statement, which may be unaudited, of the licensee ~~which that~~  
 647 is prepared in accordance with generally accepted accounting principles. The external  
 648 audit and audited financial statement shall be made available to the department as  
 649 required by the department except as provided in paragraph (2) of this subsection. A  
 650 ~~lender who utilizes a bond in lieu of an audit need not supply such audit, unless specially~~  
 651 ~~required by the department. An audit shall be less than 15 months old to be acceptable.~~  
 652 (2) Based on the total assets of the mortgage lender, the complexity of the mortgage  
 653 lender, the number of loans made by the mortgage lender, or other factors, the department  
 654 may enact rules and regulations authorizing certain mortgage lenders to provide financial  
 655 statements under paragraph (1) of this subsection that are unaudited.  
 656 (c) The department may by regulation establish additional minimum standards for audits  
 657 and reports under this Code section."

658 **SECTION 18.**

659 Said title is further amended in said article by revising subparagraph (1)(B) of Code Section  
 660 7-1-1016, relating to regulations relative to advertising, as follows:

661 "(B) An advertisement shall not include an individual's loan number, loan amount, or  
 662 other publicly available information unless it is clearly and conspicuously stated in

663 boldface type at the beginning of the advertisement that the person disseminating it is  
664 not authorized by, in sponsorship with, or otherwise affiliated with the individual's  
665 lender, ~~which shall be identified by name~~. Such an advertisement shall also state that  
666 the loan information contained therein was not provided by the recipient's lender; and"

667 **SECTION 19.**

668 Said title is further amended in said article by adding a new Code section to read as follows:

669 "7-1-1022.

670 (a) Mortgage lenders and mortgage brokers must maintain capital, net worth, and liquidity  
671 in compliance with this Code section. For entities within a holding company or affiliated  
672 group of companies, compliance with these requirements shall be measured solely at the  
673 licensee level.

674 (b) For the purposes of complying with the capital, net worth, and liquidity requirements  
675 of this Code section, all financial data must be reported in accordance with generally  
676 accepted accounting principles.

677 (c) Capital, minimum net worth, and liquidity, to the extent applicable, shall be  
678 continuously maintained by licensees in the following amounts:

679 (1) If the licensee is a mortgage broker, then it shall maintain a net worth of at least  
680 \$50,000.00;

681 (2) If the licensee is a mortgage lender that is not a covered servicer, then it shall  
682 maintain a net worth of at least \$100,000.00 and evidence of liquidity of \$1 million which  
683 may include a warehouse line of credit; and

684 (3) If the licensee is a mortgage lender that is a covered servicer, then it shall maintain  
685 capital, net worth, and liquidity that meets the Federal Housing Finance Agency  
686 Eligibility Requirements for Enterprise Single-Family Seller/Servicer, regardless of  
687 whether the covered servicer is approved for government sponsored enterprise servicing.

688 (d) Mortgage lenders and mortgage brokers shall maintain written policies and procedures  
689 implementing the applicable capital, net worth, and liquidity requirements of this Code  
690 section. Such policies and procedures shall include a sustainable written methodology for  
691 satisfying the requirements of subsection (c) of this Code section and be made available to  
692 the department upon request.

693 (e) In addition to the amounts required for liquidity under subsection (c) of this Code  
694 section, covered servicers shall maintain sufficient liquidity to cover normal business  
695 operations.

696 (f) Mortgage lenders shall have in place sound cash management and business operating  
697 plans that match the size and sophistication of the mortgage lender to ensure normal  
698 business operations. Management shall develop, establish, and implement plans, policies,  
699 and procedures for maintaining liquidity sufficient for the ongoing operational needs of the  
700 mortgage lender. Such plans, policies, and procedures shall contain sustainable, written  
701 methodologies for maintaining sufficient liquidity for operations of the licensee and be  
702 made available to the department upon request."

703 **SECTION 20.**

704 Said title is further amended in said article by adding a new Code section to read as follows:

705 "7-1-1023.

706 (a) Mortgage brokers and mortgage lenders shall establish and maintain a board of  
707 directors.

708 (b) Except for covered servicers that are approved to service loans by government  
709 sponsored entities and that have not been granted approval by such federal agencies for the  
710 creation of an alternative body to that of a board of directors, mortgage lenders and  
711 mortgage brokers may establish a similar body to that of the board of directors for the  
712 purpose of exercising oversight and fulfilling the board of directors' responsibilities set  
713 forth in subsection (c) of this Code section.

714 (c) The board of directors shall be responsible for:

715 (1) Establishing a written corporate governance framework appropriate for the size,  
716 complexity, and risk profile of the mortgage lender or mortgage broker, including internal  
717 controls designed to monitor corporate governance and assess compliance with the  
718 corporate governance framework, and making such framework available to the  
719 department upon request;

720 (2) Monitoring and ensuring licensee's compliance with the corporate governance  
721 framework and with the provisions of this article; and

722 (3) Accurate and timely regulatory reporting, including the requirements for filing the  
723 Mortgage Call Report.

724 (d) The board of directors shall establish internal audit requirements that are appropriate  
725 for the size, complexity, and risk profile of the mortgage lender or mortgage broker, with  
726 appropriate independence to provide a reliable evaluation of the licensee's internal control  
727 structure, risk management, and corporate governance. Such internal audit requirements  
728 and the results of internal audits shall be made available to the department upon request.

729 (e) Mortgage lenders and mortgage brokers shall establish a risk management program  
730 appropriate for the size, complexity, and risk profile of the licensee that identifies,  
731 measures, monitors, and controls risk sufficient for the level of sophistication of the  
732 licensee. Such risk management program shall have appropriate processes and models in  
733 place to measure, monitor, and mitigate financial risks and changes to the risk profile of  
734 the licensee; be under the oversight of the board of directors; and be available to the  
735 department upon request.

736 (f) Mortgage lenders and mortgage brokers shall conduct a risk management assessment  
737 on an annual basis concluding with a formal report to the board of directors, which shall  
738 be made available to the department upon request. Evidence of risk management activities  
739 throughout the year must be maintained and made part of the report, including findings of  
740 issues and the response to address such findings.

741 (g) The department shall have the following authority to address risk in mortgage lenders  
 742 and mortgage brokers as necessary:

743 (1) Where risk is determined by a formal review of a specific mortgage lender or  
 744 mortgage broker to be extremely high, the department may order or direct the mortgage  
 745 lender or mortgage broker to satisfy additional conditions necessary to ensure that the  
 746 mortgage lender or mortgage broker will continue to operate in a safe and sound manner  
 747 and remain in compliance with state and federal law, including applicable state and  
 748 federal regulations;

749 (2) Where risk is determined by a formal review of a particular or multiple mortgage  
 750 lenders or mortgage brokers to be extremely low, the department may provide notice that  
 751 all or part of this Code section and related rules are not applicable to those mortgage  
 752 lenders or mortgage brokers; and

753 (3) Where economic, environmental, or societal events are determined to be of such  
 754 severity to warrant a temporary suspension of all or certain sections of this Code section  
 755 and related rules, the department may provide public notice of such temporary  
 756 suspension.

757 (h) Mortgage brokers and mortgage lenders may utilize a third party to assist with  
 758 satisfying some or all of the requirements of this Code section."

759 **SECTION 21.**

760 Said title is further amended in Article 14, relating to foreign banking institutions, by revising  
 761 paragraph (28) of Code Section 7-1-1100, relating to definitions, as follows:

762 "(28) 'State' means a state of the United States or the District of Columbia."

763 **SECTION 22.**

764 Said title is further amended in said article by revising Code Section 7-1-1110, relating to  
 765 service of process, as follows:

766 "7-1-1110.

767 Except as provided in Code Sections ~~7-1-1109~~ 7-1-1108, 7-1-1112, 7-1-1127, and  
 768 7-1-1135, a foreign bank operating in this state at a branch, agency, or representative office  
 769 shall be subject to service of process at such location."

770 **SECTION 23.**

771 Said title is further amended in said article by revising subsection (b) of Code Section  
 772 7-1-1111, relating to application procedures, as follows:

773 "(b) The department may adopt rules and regulations prescribing abbreviated application  
 774 or notice procedures and standards applicable to ~~applications by~~ foreign banks to establish  
 775 additional Georgia state branches or Georgia state agencies that have already established  
 776 an initial Georgia state branch or Georgia state agency."

777 **SECTION 24.**

778 Said title is further amended in said article by revising subsection (b) of Code Section  
 779 7-1-1118, relating to amending license and requirements, as follows:

780 "(b) The requirements with respect to the form and contents of an application or notice  
 781 under subsection (a) of this Code section, the manner of its execution, the issuance of an  
 782 amended license, and the effect of the amended license shall be ~~the same as in the case of~~  
 783 ~~an initial application for a license to establish and maintain a Georgia state branch or~~  
 784 ~~Georgia state agency~~ in the form and manner as required by the department."

785 **SECTION 25.**

786 Said title is further amended in said article by revising subsection (b) of Code Section  
 787 7-1-1119, relating to act of relocating and notice, as follows:

788 "(b) A foreign bank ~~may~~ shall submit a ~~letter form application~~ notification to the  
 789 department of its intent to relocate an existing Georgia state branch or Georgia state agency

790 no less than 30 days in advance of such relocation. The department may require an  
 791 application for such relocation if the notification raises supervisory concerns. Unless the  
 792 department denies the application, the approval to relocate an existing Georgia state branch  
 793 or Georgia state agency under this Code section shall be effective at the earlier of:  
 794 (1) ~~The date of an approval letter from the department; or~~  
 795 (2) ~~Ten business days following the date of the department's acknowledged receipt of the~~  
 796 ~~application."~~

797 **SECTION 26.**

798 Said title is further amended in said article by revising Code Section 7-1-1121, relating to  
 799 notice of uninsured deposits, as follows:

800 "7-1-1121.

801 Each foreign bank licensed to establish and maintain a Georgia state branch or Georgia  
 802 state agency shall give clear and conspicuous notice ~~consistent with 12 C.F.R. 347.207~~ that  
 803 deposits and credit balances in the Georgia state branch or Georgia state agency are not  
 804 insured by the Federal Deposit Insurance Corporation."

805 **SECTION 27.**

806 Said title is further amended in said article by revising Code Section 7-1-1123, relating to  
 807 value of assets and deposits, minimum requirements, and reporting, as follows:

808 "7-1-1123.

809 (a) A foreign bank licensed to establish and maintain a Georgia state branch or Georgia  
 810 state agency shall be required to ~~keep dollar deposits or investment securities, with pledge~~  
 811 assets that are held by unaffiliated banks in this state that the foreign bank designates and  
 812 the department approves, ~~or money and securities pledged to the department~~ in an  
 813 aggregate amount to be determined by the department, valued at the lower of principal  
 814 amount or market value, consisting of:

- 815 (1) United States dollar deposits;
- 816 (2) Bonds, notes, debentures, or other legally created, general obligations of a state, an  
817 agency or political subdivision of a state, the United States, or an instrumentality of the  
818 United States;
- 819 (3) Securities that this state, an agency or political subdivision of this state, the United  
820 States, or an instrumentality of the United States has unconditionally agreed to purchase,  
821 insure, or guarantee;
- 822 (4) Certificates of deposit, payable in the United States, and bankers' acceptances,  
823 provided that, in either case, the issuer has an adequate capacity to meet financial  
824 commitments, meaning the risk of default by the obligor is low and the full and timely  
825 repayment of principal and interest is expected, for the projected life of the asset or  
826 exposure expected;
- 827 (5) Repurchase agreements; or
- 828 (6) Other assets as may be permitted by rule.
- 829 (b) The aggregate amount of ~~deposited investment securities and dollar deposits~~ pledged  
830 assets for each Georgia state branch or Georgia state agency established and operating  
831 under this Code section shall be not less than the greater of:
- 832 (1) That amount of capital which would be required of a Georgia state bank under Code  
833 Section 7-1-410; or
- 834 (2) One percent of the total liabilities of such Georgia state branch or Georgia state  
835 agency, including acceptances, but excluding accrued expenses and amounts due and  
836 other liabilities to offices, branches, agencies, affiliates, and subsidiaries of such foreign  
837 bank.
- 838 Notwithstanding ~~the above deposit requirement~~ subsection (b) of this Code section, the  
839 department is authorized to enact rules and regulations pursuant to this article to establish  
840 a maximum dollar amount of ~~deposited investment securities and dollar deposits~~ pledged  
841 assets for certain highly rated foreign banks. For prudential or supervisory reasons, the

842 department may require that a foreign bank has ~~deposited investment securities and dollar~~  
843 ~~deposits~~ pledged assets above the minimum amount.

844 (c) The assets ~~deposited~~ pledged and the amount of the assets to be maintained under  
845 subsection (a) of this Code section are subject to the conditions and limitations the  
846 department considers necessary or desirable for the maintenance of a sound financial  
847 condition; the protection of depositors, creditors, and the public interest in this state; and  
848 the support of public confidence in the business of the Georgia state branch or Georgia  
849 state agency.

850 (d) A foreign bank shall require its depository bank to segregate its ~~dollar deposits and~~  
851 ~~deposited investment securities~~ pledged assets on the depository bank's books and records.  
852 The funds ~~deposited~~ pledged and obligations referred to in subsection (a) of this Code  
853 section that are placed in safekeeping at a depository bank:

854 (1) Shall not be reduced in value below the minimum required for that Georgia state  
855 branch or Georgia state agency without the prior approval of the department, but in no  
856 event below the minimum amount required under Code Section 7-1-410;

857 (2) Shall be maintained pursuant to an agreement prescribed by the department that shall  
858 be a written agreement entered into with the department; and

859 (3) Shall be free from any lien, charge, right of setoff, credit, or preference in connection  
860 with any claim of the depository bank against the foreign bank.

861 (e) Each Georgia state branch or Georgia state agency shall file with the department such  
862 reports as required by rule or regulation to determine compliance with this Code section."

863 **SECTION 28.**

864 Said title is further amended in said article by revising Code Section 7-1-1132, relating to  
865 location and authority of offices and relocation, as follows:

866 "7-1-1132.

867 A Georgia state representative office may engage in the activities authorized by this article  
 868 at each location registered with the department as a representative office. A Georgia state  
 869 representative office may change its location in this state by filing a ~~letter form application~~  
 870 notification with the department containing the street address and mailing address of the  
 871 new location no less than 30 days in advance of relocation. The department may require  
 872 an application for such relocation if the notification raises supervisor concerns. ~~Unless the~~  
 873 ~~department denies the application, the approval to relocate an existing Georgia state~~  
 874 ~~representative office under this Code section will be effective at the earlier of:~~

875 (1) ~~The date of an approval letter from the department; or~~

876 (2) ~~Ten business days following the date of the department's acknowledged receipt of the~~  
 877 ~~application.~~

878 All relocations shall include a notice to customers posted in a conspicuous place of the  
 879 affected location as well as on the bank's website at least 30 days before relocating."

880 **SECTION 29.**

881 Said title is further amended in said article by revising Code Section 7-1-1138, relating to  
 882 continuing registration, as follows:

883 "7-1-1138.

884 ~~Every Georgia state representative office registered with the department under the~~  
 885 ~~provisions of Code Section 7-1-721 as of June 30, 2023, shall remain registered and be~~  
 886 ~~allowed to conduct business in Georgia. Such Georgia state representative offices shall~~  
 887 ~~comply with this part and Part 1 of this article. Reserved.~~"

888 **SECTION 30.**

889 Said title is further amended in Article 1 of Chapter 3, relating to general provisions, by  
 890 adding a new paragraph to Code Section 7-3-3, relating to definitions, as follows:

891 "(3.1) 'Disqualifying crime' means any felony, as defined in Code Section 16-1-3,  
892 involving conversion, theft, money laundering, bribery, dishonesty, false statements or  
893 omissions, perjury, extortion, breach of trust, forgery, counterfeiting, embezzlement,  
894 insider trading, tax evasion, kickbacks, identity theft, cyber attacks, social engineering,  
895 fraud, including but not limited to check fraud, credit, card fraud, mortgage fraud, medical  
896 fraud, corporate fraud, bank account fraud, payment (point of sale) fraud, currency fraud,  
897 bank fraud, and securities fraud or a felony directly related to the financial services  
898 business."

899 **SECTION 31.**

900 Said title is further amended in Article 3 of Chapter 3, relating to licensing, by adding a new  
901 subsection to Code Section 7-3-20, relating to licensing application and fee, to read as  
902 follows:

903 "(c) The department may issue a notice of intent to administratively withdraw an  
904 application for a license under this article if an applicant submits a deficient license  
905 application by failing to provide any information required by the department. If the  
906 applicant fails to provide the requested information within 30 days of the date of issuance  
907 of such notice, the application may be administratively withdrawn. The notice shall be  
908 deemed provided to the applicant when:

- 909 (1) Sent via email to the applicant's email address, as provided on the application; or  
910 (2) Posted by the department on the Nationwide Multistate Licensing System and  
911 Registry."

912 **SECTION 32.**

913 Said title is further amended in Article 5 of Chapter 3, relating to regulation by department,  
914 by revising subsection (a) of Code Section 7-3-42, relating to felony convictions and criminal  
915 background checks, as follows:

916 "7-3-42.

917 (a) The department shall not issue a license and may revoke a license if it finds that the  
918 applicant or licensee or any director, trustee, owner, executive officer, or covered employee  
919 of the applicant or licensee has been convicted of a felony in any jurisdiction or of a crime  
920 which, if committed within this state, would constitute a felony under the laws of this state:

921 (1) Within the previous seven years; or

922 (2) At any time, if such felony is a disqualifying crime.

923 For the purposes of this article, a person shall be deemed to have been convicted of a crime  
924 if such person shall have pleaded guilty or nolo contendere to a charge thereof before a  
925 court or federal magistrate or shall have been found guilty thereof by the decision or  
926 judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the  
927 pronouncement of sentence or the suspension thereof and regardless of whether first  
928 offender treatment without adjudication of guilt pursuant to the charge was entered or an  
929 adjudication or sentence was otherwise withheld or not entered on that charge, unless and  
930 until such plea of guilty or nolo contendere or such decision, judgment, or verdict shall  
931 have been set aside, reversed, or otherwise abrogated by lawful judicial process or until  
932 probation, sentence, or both probation and sentence of a first offender without adjudication  
933 of guilt have been successfully completed and documented or unless the person convicted  
934 of the crime shall have received a pardon therefor from the President of the United States  
935 or the governor or other pardoning authority in the jurisdiction where the conviction  
936 occurred."

937 **SECTION 33.**

938 Said title is further amended in Chapter 9, relating to Georgia merchant acquirer limited  
939 purpose bank, by revising Code Section 7-9-7, relating to investigation and requirements and  
940 procedure for background checks, as follows:

941 "7-9-7.

942 (a)(1) Upon receipt of the articles of incorporation and the filings and fees from the  
943 applicant as required under this chapter, the department shall conduct such investigation  
944 as it may deem necessary to ascertain whether it should approve the proposed merchant  
945 acquirer limited purpose bank. The department shall approve the charter of a merchant  
946 acquirer limited purpose bank if it determines in its discretion that:

947 (A) The articles of incorporation and supporting items satisfy the requirements of this  
948 chapter;

949 (B) The character and fitness of the applicant, directors, and proposed officers are such  
950 as to warrant the belief that the business of the proposed merchant acquirer limited  
951 purpose bank will be honestly and efficiently conducted; and

952 (C) The capital structure of the merchant acquirer limited purpose bank is adequate in  
953 relation to the amount and character of the anticipated business of the merchant acquirer  
954 limited purpose bank.

955 (2) Within 90 days after receipt of the articles of incorporation and the filings and fees  
956 from the applicant as required by this chapter, the department shall approve or disapprove  
957 the charter of the proposed merchant acquirer limited purpose bank. The department may  
958 impose conditions to be satisfied prior to the issuance of its approval of the charter of a  
959 merchant acquirer limited purpose bank. If the department, in its discretion, approves the  
960 charter of the proposed merchant acquirer limited purpose bank with or without  
961 conditions, it shall deliver its written approval of the articles of incorporation and charter  
962 to the Secretary of State and notify the applicant of its action. If the department, in its  
963 discretion, disapproves the charter of the proposed merchant acquirer limited purpose  
964 bank, it shall notify the applicant of its disapproval of the charter and state generally the  
965 unfavorable factors influencing its decision. The decision of the department shall be  
966 conclusive, except that it may be subject to judicial review as provided in Code Section  
967 7-1-90.

968 (b) No charter shall be issued if the department finds that the applicant, or any holding  
969 company, control person, director, officer, partner, or employee of the applicant, has been  
970 convicted of a felony in any jurisdiction or of a crime which, if committed within this state,  
971 would constitute a felony under the laws of this state. No control person, director, officer,  
972 partner, or employee of a merchant acquirer limited purpose bank shall have been  
973 convicted of a felony in any jurisdiction or of a crime which, if committed within this state,  
974 would constitute a felony under the laws of this state. For any merchant acquirer limited  
975 purpose bank that is transacting business under a charter approved by the department, the  
976 department shall have the suspension and removal powers provided for in Code Section  
977 7-1-71 with respect to any control person, director, officer, partner, or employee of the  
978 merchant acquirer limited purpose bank who has been convicted of a felony in any  
979 jurisdiction or of a crime which, if committed within this state, would constitute a felony  
980 under the laws of this state. For the purposes of this article, a person shall be deemed to  
981 have been convicted of a crime if such person shall have pleaded guilty or nolo contendere  
982 to a charge thereof before a court or federal magistrate or shall have been found guilty  
983 thereof by the decision or judgment of a court or federal magistrate or by the verdict of a  
984 jury, irrespective of the pronouncement of sentence or the suspension thereof, and  
985 regardless of whether first offender treatment without adjudication of guilt pursuant to the  
986 charge was entered, or an adjudication or sentence was otherwise withheld or not entered  
987 on that charge, unless and until such plea of guilty or such decision, judgment, or verdict  
988 shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or  
989 until probation, sentence, or both probation and sentence of a first offender have been  
990 successfully completed and documented, or unless the person convicted of the crime shall  
991 have received a pardon thereon from the President of the United States or the governor or  
992 other pardoning authority in the jurisdiction where the conviction occurred, ~~or shall have~~  
993 ~~received an official certification of pardon granted by the state's pardoning body where the~~

994 ~~conviction occurred which removes the legal disabilities resulting from such conviction and~~  
995 ~~restores civil and political rights.~~

996 (c) As used in this Code section, the term 'conviction data' means a record of a finding,  
997 verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of  
998 whether an appeal of the conviction has been sought. The department shall be authorized  
999 to obtain conviction data with respect to any applicant, holding company, merchant  
1000 acquirer limited purpose bank, or person who is a control person, director, officer, partner,  
1001 or employee of the applicant or merchant acquirer limited purpose bank. ~~The department~~  
1002 ~~may directly submit to the Georgia Crime Information Center two complete sets of~~  
1003 ~~fingerprints of such person, together with the required records search fees and such other~~  
1004 ~~information as may be required. Fees for background checks that the department~~  
1005 ~~administers shall be sent to the department by applicants and merchant acquirer limited~~  
1006 ~~purpose banks together with such fingerprints. Criminal history checks may be requested~~  
1007 ~~by the department through the Georgia Crime Information Center and the Federal Bureau~~  
1008 ~~of Investigation. The department shall have the authority to receive the results of such~~  
1009 ~~checks. Fees required for a criminal history record check by the Georgia Crime~~  
1010 ~~Information Center or the Federal Bureau of Investigation shall be paid by the applicant or~~  
1011 ~~the merchant acquirer limited purpose bank.~~

1012 (d) Upon request by the department, each applicant, holding company, or merchant  
1013 acquirer limited purpose bank or any person who is a control person, director, officer,  
1014 partner, or employee of the applicant or merchant acquirer limited purpose bank shall  
1015 submit to the department ~~two complete sets of~~ fingerprints, the required records search  
1016 fees, and such other information as may be required. Fees for background checks that the  
1017 department administers shall be submitted to the department by applicants and merchant  
1018 acquirer limited purpose banks together with ~~two complete sets of~~ fingerprints, and the  
1019 department is authorized to net such fees to recover any costs incurred by the department  
1020 related to running the background checks. Upon receipt of fingerprints, fees, and other

1021 required information from the department, the Georgia Crime Information Center shall  
1022 promptly transmit ~~one set of~~ fingerprints to the Federal Bureau of Investigation for a search  
1023 of bureau records and an appropriate report and ~~shall retain the other set and~~ promptly  
1024 conduct a search of its own records and records to which it has access. The Georgia Crime  
1025 Information Center shall notify the department in writing of any derogatory finding,  
1026 including, but not limited to, any conviction data regarding the fingerprint records check,  
1027 or if there is no such finding. All conviction data received by the department ~~or by the~~  
1028 ~~applicant or merchant acquirer limited purpose bank~~ shall be used by the party requesting  
1029 ~~such data~~ department for the exclusive purpose of carrying out the responsibilities of this  
1030 article, shall not be a public record, shall be confidential, and shall not be disclosed to any  
1031 other person or agency except to any person or agency which otherwise has a legal right  
1032 to inspect the file. All such records shall be maintained by the department ~~and the~~  
1033 ~~applicant or merchant acquirer limited purpose bank~~ pursuant to laws regarding such  
1034 records and the rules and regulations of the Federal Bureau of Investigation and the  
1035 Georgia Crime Information Center, as applicable.

1036 (e) Every applicant and merchant acquirer limited purpose bank shall be authorized and  
1037 required to obtain and maintain the results of criminal background checks on employees.  
1038 Such criminal background checks shall be ~~handled by the Georgia Crime Information~~  
1039 ~~Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia~~  
1040 ~~Crime Information Center~~ commercial background checks. Applicants and merchant  
1041 acquirer limited purpose banks shall be responsible for any applicable fees charged by the  
1042 ~~Georgia Crime Information Center~~ company performing the background check. An  
1043 applicant or merchant acquirer limited purpose bank may only employ a person whose  
1044 background data has been checked and been found to be in compliance with all lawful  
1045 requirements prior to the initial date of hire. This provision does not apply to control  
1046 persons, directors, officers, or partners, whose backgrounds have been investigated through  
1047 the department before taking office, beginning employment, or securing ownership. ~~Upon~~

1048 receipt of information from the Georgia Crime Information Center that is incomplete or  
1049 that indicates an employee has a criminal record in any state other than Georgia, the  
1050 employer shall submit to the department two complete sets of fingerprints for such person,  
1051 together with the applicable fees and any other required information. The department shall  
1052 submit such fingerprints as provided in subsection (d) of this Code section. The  
1053 department shall be entitled to review the files of any applicant or merchant acquirer  
1054 limited purpose bank to determine whether the required commercial background checks  
1055 have been conducted and whether all employees are qualified. Notwithstanding the  
1056 requirement that applicants and merchant acquirer limited purpose banks conduct such  
1057 commercial background checks, the department shall retain the right to obtain conviction  
1058 data of employees of applicants and merchant acquirer limited purpose banks.

1059 (f) Upon request by the department, an applicant or merchant acquirer limited purpose  
1060 bank must take all steps necessary to have an international criminal history background  
1061 check performed on any control person, director, officer, partner, or employee. The results  
1062 of such international criminal history background check must be provided to the  
1063 department.

1064 (g) ~~Applicants and merchant acquirer limited purpose banks shall have the primary~~  
1065 ~~responsibility for obtaining background checks on employees. The department shall be~~  
1066 ~~entitled to review the files of any applicant or merchant acquirer limited purpose bank to~~  
1067 ~~determine whether the required background checks have been run and whether all~~  
1068 ~~employees are qualified. The department shall be authorized to discuss the status of~~  
1069 ~~employee background checks with applicants or merchant acquirer limited purpose banks.~~  
1070 ~~Notwithstanding any other provisions in this article, the department shall retain the right~~  
1071 ~~to obtain conviction data on employees of applicants and merchant acquirer limited~~  
1072 ~~purpose banks~~ Reserved.

1073 (h) In the event the department denies an application to charter a merchant acquirer limited  
1074 purpose bank or an application to own or control a merchant acquirer limited purpose bank,

1075 the applicant may submit a new application at any time following notice of final denial.  
1076 The applicant shall not be prejudiced by any prior denials by the department."

1077 **SECTION 34.**

1078 Said title is further amended in said chapter by revising subsection (b) of and adding a new  
1079 subsection to Code Section 7-9-12.1, relating to treatment of merchant funds, to read as  
1080 follows:

1081 "(b) All merchant funds shall be deposited immediately ~~by the merchant acquirer limited~~  
1082 ~~purpose bank~~ and shall remain in an account at a financial institution that is federally  
1083 insured and authorized to do business in this state until paid over to the individual  
1084 merchant; provided, however, that nothing in this Code section shall preclude a merchant  
1085 acquirer limited purpose bank from making appropriate deductions for chargebacks, fees,  
1086 reserves, and other costs related to providing authorized merchant acquiring services owed  
1087 by the individual merchant prior to remitting the net amount to the individual merchant.  
1088 At the time of deposit into the account, the funds of the individual merchant in the account  
1089 shall be deemed to be the property of the individual merchant. The merchant acquirer  
1090 limited purpose bank shall maintain or cause to be maintained account records that identify  
1091 individual merchants and the total amount held for each individual merchant. Such records  
1092 shall be maintained in good faith and in the ordinary course of business and in a manner  
1093 that can be readily ascertained.

1094 (c) Notwithstanding subsection (b) of this Code section, the department may, by regulation  
1095 or otherwise, authorize the merchant acquirer limited purpose bank to receive and hold  
1096 merchant funds in accordance with alternative safeguarding arrangements designed to  
1097 protect merchant funds."

1098 **SECTION 35.**

1099 Said title is further amended in said chapter by revising subsection (a) of Code Section  
1100 7-9-13, relating to regulation and enforcement by department and rules and regulations, as  
1101 follows:

1102 "(a) All merchant acquirer limited purpose banks chartered by the department shall be  
1103 subject to supervision, regulation, and examination by the department, including, but not  
1104 limited to, the examination powers as provided in Code Sections 7-1-64 through 7-1-73,  
1105 and the department shall have all enforcement powers provided in this title, including, but  
1106 not limited to, the enforcement powers provided in Code Section 7-1-92 and Part 7 of  
1107 Article 1 of Chapter 1 of this title."

1108 **SECTION 36.**

1109 All laws and parts of laws in conflict with this Act are repealed.