House Bill 185 (AS PASSED HOUSE AND SENATE)
By: Representatives Williamson of the 115th 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 change certain definitions; to provide certain restrictions on the commissioner of banking and finance, deputy commissioners, and examiners; to eliminate the expense fund requirements from various provisions; to provide additional grounds for the department to disapprove of any proposed acquisition; to eliminate appropriated retained earnings requirements from various provisions; to change certain provisions related to investigations to approve of a trust company; to eliminate various provisions related to charging losses sustained by a bank or trust company to paid-in capital; to amend certain provisions relating to the right of a shareholder to dissent; to change provisions related to formations of bank holding companies; to change requirements as to the proposed bylaws and the organizational meeting of directors of a credit union; to change provisions relating to the powers and membership of a credit union; to provide for a policy on expulsion based on nonparticipation by a member in the affairs of the credit union; to provide for audit committees instead of supervisory committees; to allow for certain provisions for state-chartered credit unions in the case of a merger; to provide for additional exemptions from licensing requirements relative to the sale of payment instruments; to change the time frame in which the department may conduct investigations or examinations related to the sale or cashing of payment instruments; to provide the scope of activities permitted under a mortgage lender license; to provide authority for the department to promulgate certain rules and regulations related to mortgage loan originators; to change certain provisions related to the inactive status and suspension of mortgage loan originators; to change certain provisions related to investigations and examinations by the department; 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 paragraphs (3), (21), and (25) of Code Section 7-1-4, relating to definitions relative to financial institutions, as follows:

"(3)  'Appropriated retained earnings' means that portion of the retained earnings of a bank or trust company set aside by resolution of the board of directors as unavailable for the payment of dividends or other distribution to shareholders. Reserved."

"(21) 'Financial institution' means:

(A) A bank;

(B) A trust company;

(C) Reserved;

(D) A credit union;

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

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

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

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

(i) Code Section 7-1-2, relating to findings of the General Assembly;

(ii) Code Section 7-1-8, relating to supplementary principles of law;

(iii) Code Section 7-1-37, relating to restrictions on officials and personnel;

(iv) Code Section 7-1-70, relating to disclosure of information;

(v) Code Section 7-1-90, relating to judicial review of department actions;

(vi) Code Sections 7-1-111 and 7-1-112, relating to emergency closings and business restrictions;

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

(viii) Code Section 7-1-840, relating to criminal prosecutions; and

(ix) Code Section 7-1-841, relating to application of Title 16 provisions;

(I) A bank holding company as defined in Code Section 7-1-605 for the purposes of Code Sections 7-1-61, 7-1-71, and 7-1-91;
(J) Banks chartered by states other than Georgia for the purposes of paragraph (10) of Code Section 7-1-261, relating to agency relationships; and

(K) Federal credit unions for the purposes of Part 6 of Article 2 of this chapter, relating to deposits, safe-deposit agreements, and money received for transmission, and Article 8 of this chapter, relating to multiple-party accounts; and

(L) Banks and credit unions chartered by states other than Georgia, national banks, federal credit unions, and federal savings and loan associations for the purposes of paragraph (1) of Code Section 7-1-650, provided that such institutions have federal deposit insurance.

"(25) 'Paid-in capital' means the sum of the considerations received in the sale or exchange of shares of a bank or trust company in excess of the amount of the capital stock and the expense fund required by Code Section 7-1-396 and includes the surplus, if any, created by or arising out of a reduction of the capital stock of such financial institution effected in a manner permitted by law, any amounts properly regarded as surplus of such financial institution on April 1, 1975, and any amounts transferred from the expense fund as permitted by Code Section 7-1-412."

SECTION 2.

Said chapter is further amended by revising subsection (a) of Code Section 7-1-37, relating to restrictions on commissioner, deputy commissioners, and examiners, as follows:

"(a) Except as provided in subsections (c), (d), and (e) of this Code section, the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or any examiner employed by the department shall not directly or indirectly:

(1) Receive any money or property as a loan from or become indebted to any financial institution or from or to any director, officer, agent, employee, attorney, or subsidiary of a financial institution, unless such employee does not examine or exercise supervisory responsibility over any financial institution;

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

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

(4) Own any share in or securities of a financial institution or otherwise have an ownership interest in a financial institution; or

(5) Engage in the business of a financial institution."
SECTION 3.
Said chapter is further amended by revising subsection (a) of Code Section 7-1-113, relating to voluntary dissolution prior to commencement of business, failure to properly file articles of dissolution, and power of department to seek dissolution, as follows:

“(a) A financial institution which has not transacted any business as a financial institution other than organizational business may propose to dissolve by the affirmative vote of shareholders entitled to cast at least two-thirds of the votes which all shareholders are entitled to cast on the plan and by delivering to the department articles of dissolution which shall be executed by two duly authorized officers or shareholders under the seal of the financial institution and which shall contain:

(1) The date of incorporation of the financial institution;
(2) A statement that it has not transacted any business as a financial institution other than organizational business;
(3) A statement that all liabilities of the financial institution have been paid or provided for;
(4) A statement that all amounts received on account of capital stock, and paid-in capital, and expense fund, less amounts disbursed for expenses, have been returned to the persons entitled thereto; and
(5) The number of shares entitled to vote on the dissolution and the number of shares voted for and against it, respectively.”

SECTION 4.
Said chapter is further amended by revising Code Section 7-1-234, relating to grounds for disapproving a proposed acquisition, as follows:

“7-1-234.
The department may disapprove any proposed acquisition if:

(1) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in any part of this state;
(2) The effect of the proposed acquisition of control in any section of this state may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade and the anticompetitive effects of the proposed acquisition of control are not 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;
(3) The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;
(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 or in the interest of the public to permit such person to control the bank; or

(5) Any acquiring person neglects, fails, or refuses to furnish the department all the information required by it;

(6) In the case of trust companies, any acquiring person or an individual that is a director or officer of such person has unsatisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation. The department shall be authorized to obtain conviction data with respect to any acquiring person or an individual that is a director or officer of such person, and such acquiring person or an individual that is a director or officer of such person shall provide express written consent to the department to conduct a criminal background check and to use all information necessary to run such check, including, but not limited to, a classifiable set of fingerprints. The acquiring person or an individual that is a director or officer of such person shall be responsible for all fees associated with the performance of such criminal background check; or

(7) In the case of trust companies, any acquiring person or an individual that is a director or officer of such person has failed to demonstrate financial responsibility, character, and general fitness. The department shall be authorized to obtain personal history and work experience and other 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(f) with respect to such acquiring person and an individual that is a director or officer of such person.

SECTION 5.

Said chapter is further amended by revising subsection (c) of Code Section 7-1-291, relating to borrowings, liabilities not subject to restrictions, restrictions, and borrowing for emergencies, as follows:

“(c) A bank that wishes to borrow from sources other than those listed in subsection (b) of this Code section may borrow an aggregate amount which exceeds the sum of twice its unimpaired capital stock plus 100 percent of its unimpaired paid-in capital, appropriated retained earnings, and retained earnings, provided that the bank's board of directors has approved a comprehensive written funding plan that addresses the following safety and soundness concerns:

(1) The plan must contain a detailed evaluation of the bank's management expertise and information systems to support the plan; and
(2) The plan must contain adequate asset and liability, liquidity, and funds management policies and procedures to specifically address the use of borrowings as an alternate funding source."

SECTION 6.
Said chapter is further amended by revising subsection (a) of Code Section 7-1-394, relating to investigation, approval or disapproval by department, and abbreviated procedures, as follows:

"(a) Upon receipt of the articles and the filings and fees from the incorporators as required by Code Section 7-1-393, the department shall conduct such investigation as it may deem necessary to ascertain whether it should approve the proposed bank or trust company. The department shall approve the bank or trust company if and only if it determines in its discretion that:

(1) The articles and supporting items satisfy the requirements of this chapter;
(2) The convenience and needs of the public will be served by the proposed bank or trust company;
(3) There is a reasonable promise of adequate support for the bank or trust company in the light of:
   (A) The competition offered by existing banks and trust companies and other financial institutions;
   (B) The previous financial history of the community as to banks, trust companies, and other financial institutions;
   (C) As to banks, the opportunities for profitable employment of bank funds as indicated by the average demand for credit, the number of potential depositors, the volume of bank transactions, and the businesses and industries of the community with particular regard to their stability, diversification, and size; and
   (D) As to trust companies, the opportunities for profitable employment of fiduciary or other representative services;
(4) The character and fitness of the incorporators, of the directors, and of the proposed officers are such as to command the confidence of the community and to warrant the belief that the business of the proposed bank or trust company will be honestly and efficiently conducted;
(5) There has not been any material violation of Code Section 7-1-391, so that approving the articles would, in the opinion of the department, impair the policy manifested by that provision;
(6) The capital structure of the proposed bank or trust company is adequate in relation to the amount and character of the anticipated business of the bank or trust company and the safety of prospective depositors; and

(7) In the case of trust companies, the proposed company will have sufficient personnel with adequate knowledge and experience to administer fiduciary accounts;

(8) In the case of trust companies, the incorporators, directors, and proposed officers have satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation. The department shall be authorized to obtain conviction data with respect to any person that is an incorporator, director, or proposed officer of the proposed trust company. Each incorporator, director, or proposed officer of a trust company shall provide express written consent to the department to conduct the criminal background check and to use all information necessary to run such check, including, but not limited to, a classifiable set of fingerprints. The proposed trust company shall be responsible for all fees associated with the performance of such criminal background check; and

(9) In the case of trust companies, the incorporators, directors, and proposed officers have demonstrated financial responsibility, character, and general fitness. The department shall be authorized to obtain personal history and work experience and other 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(f) with respect to any person that is an incorporator, director, or proposed officer of the proposed trust company.

SECTION 7.

Said chapter is further amended by revising subsection (d) of Code Section 7-1-396, relating to effect of certificate of incorporation and permit to begin business, as follows:

“(d) The department shall issue to a bank or trust company a permit to begin business when:

(1) Capital stock of the bank or trust company shall have been fully paid in, in cash, and in no event in an amount less than the minimum capital stock for banks or trust companies under Code Section 7-1-410, and, in addition, there shall have been paid in:

(A) Paid-in capital in an amount not less than 20 percent of the capital stock; and

(B) An expense fund in an amount fixed by the department which shall not be less than 5 percent of the capital stock; and

(C) The proceeds of subordinated securities, if any, which were considered part of the capital structure of the bank or trust company by the department under Code Section 7-1-419 in giving its approval of the proposed institution;
(2) All of the directors have taken the oath or affirmation required by Code Section 7-1-484;
(3) The bylaws of the bank or trust company have been filed with the department;
(4) The bank or trust company has designated its registered agent and registered office pursuant to Code Section 7-1-132;
(5) The bank or trust company has been organized and is ready to begin the business for which it was incorporated;
(6) All conditions imposed by the department in giving its approval of the proposed bank or trust company under Code Section 7-1-394 have been satisfied; and
(7) The department has received an affidavit signed by the president or secretary and by at least a majority of the directors of the bank or trust company to the effect that all of the foregoing requirements of this subsection have been satisfied."

SECTION 8.
Said chapter is further amended by revising Code Section 7-1-398, relating to liability for premature business, as follows:

"7-1-398.
Incorporators and other persons who organize a bank or trust company which transacts business before its capital stock, and paid-in capital, and expense fund as required by Code Section 7-1-396 have been paid in shall be jointly and severally liable to depositors and other creditors to make good the amounts not paid in by subscribers or otherwise deficient. Such liability shall be deemed as an asset of the bank or trust company and may be enforced by it, its successors or assignees, or by a shareholder suing derivatively, or by a receiver appointed under this chapter."

SECTION 9.
Said chapter is further amended by revising Code Section 7-1-411, relating to paid-in capital and appropriated retained earnings, as follows:

"7-1-411.
Losses sustained by a bank or trust company in excess of retained earnings may be charged to paid-in capital or to appropriated retained earnings, provided that a bank or trust company shall not pay any dividends so long as its paid-in capital and appropriated retained earnings do not, in combination, equal at least 20 percent of its capital stock. Earnings shall, not later than the end of each fiscal year, be transferred to appropriated retained earnings until such required 20 percent margin is obtained Reserved."
SECTION 10.
Said chapter is further amended by revising Code Section 7-1-412, relating to beginning business expense fund, as follows:

"7-1-412. The expense fund required under Code Section 7-1-396 shall be created out of amounts paid for shares of common stock which are in excess of 120 percent of the par value of such shares. Such expense fund may be charged for expenses incurred by the bank or trust company in connection with its incorporation and operation, and any balance in such fund at any time after the expiration of one year from the issuance of a permit to begin business may be credited to paid-in capital Reserved."

SECTION 11.
Said chapter is further amended by revising subsection (a) of Code Section 7-1-415, relating to consideration for shares, as follows:

"(a) Except as provided in subsection (b) of this Code section and in the case of a distribution of shares under subsection (e) of Code Section 7-1-488 or incident to a merger, consolidation, or other corporate reorganization or rehabilitation authorized by this chapter, shares of a bank or trust company may be issued only for cash in an amount which shall be at least the aggregate par value of the share, unless otherwise approved by the department with the demonstration of good cause, plus such amounts, if any, necessary to assure that after issuance of the shares the bank or trust company will have the paid-in capital required by Code Section 7-1-411 and, in the case of a new bank or trust company, the expense fund required by Code Section 7-1-396."

SECTION 12.
Said chapter is further amended by revising subsection (b) of Code Section 7-1-419, relating to subordinated securities, as follows:

"(b) The aggregate amount of the obligations of a bank or trust company in the form of subordinated securities shall at no time exceed 50 percent of the sum of the unimpaired capital stock, and unimpaired paid-in capital, and appropriated retained earnings of the bank or the trust company."

SECTION 13.
Said chapter is further amended by revising subsection (a) of Code Section 7-1-460, relating to restrictions on payment of dividends and limitation of actions for dividends or distributions, as follows:
"(a) The board of directors of a bank or trust company may, from time to time, declare and
the bank or trust company thereupon shall pay dividends on its outstanding shares in cash,
property, or its own shares, except when the bank or trust company is insolvent or when
the payment thereof would render the bank or trust company insolvent or when the
declaration or payment thereof would be contrary to any restrictions contained in the
articles, and subject to the following provisions:

(1) Dividends may be declared and paid in cash or property only out of the retained
earnings of the bank or trust company unless otherwise approved in advance by the
department on terms consistent with standards of safety and soundness;

(2) Dividends may not be declared or paid at any time that the bank or trust company
does not have the paid-in capital and appropriated retained earnings required by Code
Section 7-1-411, except the The department may approve the payment of dividends by
a Subchapter S bank, prior to cumulative profitability, for the sole purpose of providing
its shareholders with a source of funds to pay federal and state income taxes on the
Subchapter S bank's income that is taxable to those shareholders;

(3) Dividends may not be paid without the prior approval of the department in excess of
specified amounts as may be fixed by regulations of the department to assure that banks
and trust companies maintain an adequate capital structure;

(4) Dividends may be declared and paid in lawfully held treasury shares or in authorized
but unissued shares, provided that, in the case of a dividend of authorized but previously
unissued shares, there shall be transferred to capital stock an amount equal to the
aggregate par value of the shares distributed and, after payment of the dividend, the bank
or trust company continues to maintain the paid-in capital and appropriated retained
earnings required by Code Section 7-1-411; and

(5) No dividends payable in shares of any class shall be paid in respect to shares of any
other class unless the articles so provide or unless such payment is authorized by the
affirmative vote or the written consent of the holders of a majority of the outstanding
shares of the class in which the payment is to be made."

SECTION 14.

Said chapter is further amended by revising Code Section 7-1-461, relating to distribution
upon reduction of capital stock or paid-in capital, as follows:

"7-1-461.

(a) Upon the decrease of capital stock of a bank or trust company pursuant to amendment
of its articles as provided in this chapter, the board of directors, subject to restrictions of
the articles, may distribute to the shareholders of the bank or trust company an amount in
cash equal to all or part of the amount of the decrease in capital stock, if immediately after

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such distribution the bank or trust company would have the capital stock required by this chapter and would have the paid-in capital and appropriated retained earnings required by Code Section 7-1-411.

(b) Any portion of the amount of a decrease in capital stock which is not distributed to shareholders in accordance with this Code section shall be transferred to paid-in capital.

c) A bank or trust company, by resolution of its board of directors, may distribute to its shareholders amounts representing a reduction in its paid-in capital, provided that after such distribution the institution shall continue to have the paid-in capital and appropriated retained earnings required by Code Section 7-1-411 and provided that such distribution shall first be approved in writing by the department.”

SECTION 15.

Said chapter is further amended by revising subsection (a) of Code Section 7-1-463, relating to preferred share acquisition, as follows:

“(a) Unless otherwise provided in its articles, a bank or trust company, by resolution of its board of directors and with the prior approval of the department, may redeem or otherwise acquire preferred shares; if immediately after the redemption or other acquisition the bank or trust company would have the paid-in capital and appropriated retained earnings required by Code Section 7-1-411. In determining whether or not to give its approval under this subsection, the department shall give primary consideration to the question of whether or not, after the cancellation of the preferred shares, the capital accounts of the bank or trust company would be adequate to support its anticipated deposit or trust business.”

SECTION 16.

Said chapter is further amended by revising Code Section 7-1-572, relating to right of shareholder to dissent, as follows:

“7-1-572.

A shareholder of a bank or trust company shall have the right to dissent from any sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a bank or trust company pursuant to Code Section 7-1-571, except for a sale wholly for cash where the shareholders' approval thereof is conditional upon the distribution of pursuant to a plan by which all, or substantially all, of the net proceeds of the sale will be distributed to the shareholders in accordance with their respective interests within one year after the date of the sale. The shareholders' right of dissent shall be exercised as provided in Chapter 2 of Title 14, known as the 'Georgia Business Corporation Code.'”
SECTION 17.

Said chapter is further amended by revising paragraph (3) of subsection (b) of Code Section 7-1-608, relating to lawful and unlawful acquisitions, formations, and mergers and waivers related to bank holding companies, as follows:

“(3) A bank holding company registered with the department and lawfully owning a bank or a branch of a bank which was formed by the acquisition and subsequent merger of or share exchange with a Georgia bank, which bank or branch does a lawful banking business in this state; may acquire control through formation of a de novo bank in Georgia, provided that departmental approval and any required federal approvals are obtained. No out-of-state bank holding company may enter Georgia to do a banking business by formation of a de novo bank; and”

SECTION 18.

Said chapter is further amended by revising subsection (e) of Code Section 7-1-630, relating to initial subscribers, contents and filing of articles, other required filings, fee for investigation and selection of initial directors, as follows:

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

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

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

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

(4) The conditions under which shares may be issued, paid for, transferred, and withdrawn; deposits are received and withdrawn; loans made and repaid; and funds otherwise invested; and

(5) The charges which shall be made, if any, for failure to meet obligations punctually; whether or not the credit union shall have the power to borrow; the method of receiving for money; the manner of accumulating a reserve; the manner of determining and paying interest and dividends; and such other matters consistent with this article as may be requisite to the organization and operation of the proposed credit union.”
SECTION 19.

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, 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, 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 20.

Said chapter is further amended by revising subparagraph (D) of paragraph (4) of Code Section 7-1-650, relating to powers of a credit union, as follows:

“(D) By depositing its funds in banks, savings and loan associations, and credit unions; by purchasing certificates of deposit and savings certificates which such financial institutions are authorized to issue; and by selling or purchasing federal or correspondent (daily) funds, whole loans, or loan participations through such financial institutions; and by selling or purchasing whole loans or loan participations. The authorizations in this subparagraph shall be subject to limitations prescribed in regulations issued by the department; and”

SECTION 21.

Said chapter is further amended by adding a new subsection to Code Section 7-1-651, relating to membership and shares of a credit union, to read as follows:

“(d) Customers of a bank that have been acquired by a credit union as a result of a merger or purchase and where the bank will cease to exist, due to a voluntary or involuntary dissolution, shall become members of the credit union upon the effective date of the underlying transaction; provided, however, that nothing herein shall be deemed as permitting a public body to be a member of a credit union. As used in this subsection, the term ‘public body’ shall have the same meaning as provided in Code Section 45-8-1.”

SECTION 22.

Said chapter is further amended by adding a new subsection to Code Section 7-1-653, relating to expulsions and withdrawals, dispositions of deposits, interest, shares, or dividends, and reinstatement relative to credit unions, to read as follows:

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"(c) In addition to the other powers set forth in this Code section, the board of directors may, by a two-thirds' vote of the directors, adopt and enforce a policy with respect to expulsion from membership based on nonparticipation by a member in the affairs of the credit union. In establishing its policy, the board of directors should consider a member's failure to maintain deposits or shares with the credit union and whether the member has a loan with the credit union. If such a policy is adopted, written notice of the policy and the effective date of such policy shall be provided to each member of the credit union not less than 30 days prior to the effective date of such policy. In addition, each new member shall be provided written notice of any such policy prior to or upon applying for membership."

**SECTION 23.**

Said chapter is further amended by revising subsections (c) and (d) of Code Section 7-1-655, relating to boards of directors, credit and supervisory committees, officers, oaths of officials, removal from office, suspension of member, filling of vacancies, notification to department of change in president or chief executive officer relative to credit unions, 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 a supervisory audit committee, credit committee, chairperson, president, secretary, and such other officers consistent with the bylaws as the board deems desirable. No member of the supervisory 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.

(d) The chairman of the credit and supervisory audit committees shall be appointed by the board from among its number. Both the credit and supervisory audit committees shall be accountable to the board and members of such committees may be removed by the board."

**SECTION 24.**

Said chapter is further amended by revising paragraph (5) of subsection (a), paragraph (2) of subsection (b), and subsection (e) 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 relative to credit unions, as follows:

"(5) To fill vacancies on the board of directors, credit committee, and supervisory audit committee until the election and qualification of a successor;"

"(2) The board of directors may designate three or more of its number to constitute a credit committee, supervisory audit committee, or other committees which, to the extent provided in a resolution, shall have and exercise the authority of the board of directors with regard to the business of a credit union; and"
"(e) The provisions of Code Section 7-1-490 relative to the responsibilities of directors and
officers and the delegation of investment decisions shall be applicable to the duties of
directors, credit and supervisory audit committee members, and officers of credit unions."

SECTION 25.

Said chapter is further amended by revising subsections (a) and (b) of Code Section 7-1-657,
relating to duties of supervisory committee, inspections, comprehensive annual audits, and
use of independent accountants relative to credit unions, as follows:

(a) The supervisory audit committee shall be responsible for securing a comprehensive
audit of the credit union at least once each year unless such time period is modified
pursuant to the rules and regulations of the department. Except as provided for in
subsection (c) of this Code section, the committee shall employ the services of a licensed,
independent certified public accountant or firm of such accountants to make such
comprehensive audit. The results of the audit shall be submitted to the board, and the
committee shall present a summary of the results of the audit to the membership. The
committee shall make recommendations to the board for the correction of any deficiencies
disclosed by the audit. The annual audit shall include a confirmation of the share, deposit,
and loan accounts of the members and such other procedures as the department might
require. The annual audit shall be preserved with the records of the credit union, and a
copy of such audit shall be filed with the department upon request by the department.

(b) The supervisory audit committee, from time to time, may conduct or cause to be
conducted other audit functions or reviews of operations or may make or cause to be made
an inspection of the assets and the liabilities of the credit union. The committee shall report
the results of any such reviews to the board of directors and shall be responsible for making
specific recommendations to the board regarding any unsafe, unsound, or unauthorized
activities discovered."

SECTION 26.

Said chapter is further amended by adding a new subsection to Code Section 7-1-667,
relating to mergers of credit unions, to read as follows:

"(h) In the case of a merger of a Georgia state-chartered credit union with any other credit
union, with the Georgia state-chartered credit union as the continuing credit union, any
assets, lines of business, activities, or powers which may accrue to the continuing credit
union which would not be allowed for a Georgia state-chartered credit union shall be
provided for in the plan of merger. Such plan shall include the proposal for holding or
disposal of such assets or the continuation or termination of such line of business, activity,
or power. The department shall review the plan to determine whether, in the interest of
safety and soundness and consistent with the other objectives of Code Section 7-1-3, the
activity, power, asset, or line of business should be approved, denied, or phased out within
a reasonable period of time to be determined by the department.”

SECTION 27.

Said chapter is further amended by revising Code Section 7-1-682, relating to exemption
from licensing requirements relative to the sale of payment instruments, as follows:

“7-1-682.
The requirement for licensure set forth in this article shall not apply to:

(1) Any state or federally chartered bank, trust company, credit union, savings and loan
association, or savings bank with deposits that are federally insured;

(2) Any authorized agent of a licensee;

(3) The United States Postal Service;

(4) A state or federal governmental department, agency, authority, or instrumentality and
its authorized agents;

(5) Any foreign bank that establishes a federal branch pursuant to the International Bank
Act, 12 U.S.C. Section 3102; or

(6) A wholly owned subsidiary of a state or federally chartered bank, trust company,
credit union, savings and loan association, or savings bank with deposits that are federally
insured;

(7) A registered futures commission merchant under the federal commodities laws to the
extent of its operation as such a futures commission merchant;

(8) A person that provides clearance or settlement services pursuant to a registration as
a clearing agency or an exemption from such registration granted under the federal
securities laws to the extent of its operation as such a provider;

(9) An operator of a payment system to the extent that it provides processing, clearing,
or settlement services, between or among persons exempted by this section, in connection
with wire transfers, credit card transactions, debit card transactions, stored value
transactions, automated clearing house transfers, or similar fund transfers;

(10) A person registered as a securities broker-dealer under federal or state securities
laws to the extent of its operation as such a broker-dealer; or

(11) An individual employed by a licensee or any person exempted from the licensing
requirements of this article 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.”
SECTION 28.

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

"(d) The department shall investigate and examine the affairs, business, premises, and records of any licensee or authorized agent pertaining to the sale of payment instruments or money transmission. The department may conduct such investigations or examinations at least once every 24 months. The department may accept examination reports performed and produced by other state or federal agencies in satisfaction of this requirement unless the department determines that the examinations are not available or do not provide information necessary to fulfill the responsibilities of the department under this article."

SECTION 29.

Said chapter is further amended by revising subsection (d) of Code Section 7-1-706, relating to record keeping obligations, investigations and examinations by the department, examination fees, administration of oaths and issuing of subpoenas, confidentiality, and civil liability relative to the cashing of payment instruments, as follows:

"(d) The department shall investigate and examine the affairs, business, premises, and records of any licensee pertaining to cashing payment instruments. The department may conduct such investigations or examinations at least once every 24 months. The department may accept examination reports performed and produced by other state or federal agencies in satisfaction of this requirement unless the department determines that the examinations are not available or do not provide information necessary to fulfill the responsibilities of the department under this article."

SECTION 30.

Said chapter is further amended by revising subsection (d) of Code Section 7-1-840, relating to institution of criminal prosecutions, assistance to state and federal law enforcement agencies, and providing information to financial institutions considering employment of suspected person, as follows:

"(d) If any board of directors, director, or officer of any financial institution is required by the department, or the Federal Deposit Insurance Corporation, the National Credit Union Administration, or any other federal financial institution supervisory agency to provide any such regulatory entity or the fidelity bond carrier with any information regarding the appearance or suspicion of criminal activity involving any director, officer,
agent, employee, or customer of such financial institution, such board of directors, director, or officer shall not incur any civil liability for providing such information unless the information is false and such board of directors, director, or officer knows that it is false and provides it with actual malice."

SECTION 31.
Said chapter is further amended by revising paragraph (30) of Code Section 7-1-1000, relating to definitions relative to the licensing of mortgage lenders and mortgage brokers, as follows:

"(30) 'Residential mortgage loan' means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in Section 103(v) of the Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed a dwelling."

SECTION 32.
Said chapter is further amended by revising the introductory paragraph to subsection (a) of Code Section 7-1-1001, relating to exemption for certain persons and entities and registration requirements relative to mortgage loan originators, mortgage brokers, and mortgage lenders, and adding a new subsection to read 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, unless otherwise provided if registration of such persons is required by this article:"

"(c) A licensed mortgage lender is authorized to engage in all activities that are authorized for a mortgage broker and, as a result, shall not be required to obtain a mortgage broker license."

SECTION 33.
Said chapter is further amended by revising subsections (a) and (b) of Code Section 7-1-1001.1, relating to requirement for mortgage loan originator license and application to sellers of mobile homes, as follows:

"(a) Effective August 1, 2010, it shall be prohibited for any person to engage in the activities of a mortgage loan originator without first obtaining and maintaining a mortgage loan originator license as set forth in this article. All provisions within this article that relate to the licensing requirements and associated duties and responsibilities of mortgage loan originators shall be effective as of August 1, 2010.

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(b) The department shall have the broad administrative authority to administer, interpret, and enforce this article and the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and promulgate rules or regulations implementing it, in order to carry out the intentions of the federal legislation. Such administrative authority of the department shall include, but shall not be limited to, the authority to promulgate rules and regulations to implement the provisions of such federal legislation related to the temporary authority of mortgage loan originators."

SECTION 34.

Said chapter is further amended by revising subsection (f) of Code Section 7-1-1005, relating to renewal of licenses and registrations and expiration, and adding a new subsection to read as follows:

"(f) A mortgage loan originator license shall become inactive in the event that the mortgage loan originator is no longer sponsored by a mortgage lender or mortgage broker that is licensed. A mortgage loan originator shall not act as a mortgage loan originator in this state while the license is inactive. A mortgage loan originator license shall remain in inactive status until the license expires pursuant to subsection (a) of this Code section, the licensee surrenders the license, the license is revoked or suspended, or the licensee obtains sponsorship.

(g) The department may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Multistate Licensing System and Registry."
performed and produced by other state or federal agencies, unless the department
determines that the examinations are not available or do not provide the information
necessary to fulfill the responsibilities of the department under this article.
Notwithstanding the provisions of this subsection, the department has the discretion to
examine a mortgage broker or mortgage lender less frequently, provided that its record of
complaints, comments, or other information demonstrates that mortgage broker's or
mortgage lender's ability to meet the standards of Code Sections 7-1-1003, 7-1-1003.2, and
7-1-1004 may alter the frequency or scope of investigations and examinations through rules
and regulations prescribed by the department. If the department determines, based on the
records submitted to the department and past history of operations of the licensee in the
state, that such investigations or examinations are unnecessary, then the department may
waive such investigations and examinations. In the case of registrants, the department shall
not be required to conduct such examinations if it determines that the registrant has been
adequately examined by another bank regulatory agency. In order to avoid unnecessary
duplication of examinations, the department may accept examination reports performed and
produced by other state or federal agencies, unless the department determines that the
examinations are not available or do not provide information necessary to fulfill the
responsibilities of the department under this article.

SECTION 36.

Said chapter is further amended by revising subsection (b) of Code Section 7-1-1017, relating
to suspension or revocation of licenses, registrations, or mortgage broker education approval,
notice, judicial review, and effect on preexisting contract, as follows:

"(b)(1) Notice of the department's intention to enter an order denying an application for
a license or registration under this article or of an order suspending or revoking a license
or registration under this article shall be given to the applicant, licensee, or registrant in
writing, sent by registered or certified mail or statutory overnight delivery addressed to
the principal place of business of such applicant, licensee, or registrant. Within 20 days
of the date of the notice of intention to enter an order of denial, suspension, or revocation
under this article, the applicant, licensee, or registrant may request in writing a hearing
to contest the order. If a hearing is not requested in writing within 20 days of the date of
such notice of intention, the department shall enter a final order regarding the denial,
suspension, or revocation. Any final order of the department denying, suspending, or
revoking a license or registration shall state the grounds upon which it is based and shall
be effective on the date of issuance. A copy thereof shall be forwarded promptly by
registered or certified mail or statutory overnight delivery addressed to the principal place
of business of such applicant, licensee, or registrant. If a person refuses to accept service
of the notice or order by registered or certified mail or statutory overnight delivery, the
notice or order shall be served by the commissioner or the commissioner's authorized
representative under any other method of lawful service; and the person shall be
personally liable to the commissioner for a sum equal to the actual costs incurred to serve
the notice or order. This liability shall be paid upon notice and demand by the
commissioner or the commissioner's representative and shall be assessed and collected
in the same manner as other fees or fines administered by the commissioner.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the department
may issue a notice of intent to suspend license to a mortgage loan originator when such
mortgage loan originator is no longer sponsored by a licensed or registered mortgage
broker or lender. If the mortgage loan originator is sponsored by a licensed or registered
mortgage broker or lender within 30 days of the date of issuance of the notice of intent
to suspend, such notice shall be rescinded. If the mortgage loan originator is not
sponsored by a licensed or registered mortgage broker or lender within 30 days of the
date of such issuance, the mortgage loan originator license shall automatically expire
after 30 days and the person shall not act as a mortgage loan originator unless a new
license application is submitted, all applicable fees are paid, and a license is issued by the
department.”

SECTION 37.

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