

House Bill 185 (AS PASSED HOUSE AND SENATE)

By: Representatives Williamson of the 115<sup>th</sup> and Frazier of the 126<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to  
2 financial institutions, so as to change certain definitions; to provide certain restrictions on the  
3 commissioner of banking and finance, deputy commissioners, and examiners; to eliminate  
4 the expense fund requirements from various provisions; to provide additional grounds for the  
5 department to disapprove of any proposed acquisition; to eliminate appropriated retained  
6 earnings requirements from various provisions; to change certain provisions related to  
7 investigations to approve of a trust company; to eliminate various provisions related to  
8 charging losses sustained by a bank or trust company to paid-in capital; to amend certain  
9 provisions relating to the right of a shareholder to dissent; to change provisions related to  
10 formations of bank holding companies; to change requirements as to the proposed bylaws  
11 and the organizational meeting of directors of a credit union; to change provisions relating  
12 to the powers and membership of a credit union; to provide for a policy on expulsion based  
13 on nonparticipation by a member in the affairs of the credit union; to provide for audit  
14 committees instead of supervisory committees; to allow for certain provisions for  
15 state-chartered credit unions in the case of a merger; to provide for additional exemptions  
16 from licensing requirements relative to the sale of payment instruments; to change the time  
17 frame in which the department may conduct investigations or examinations related to the sale  
18 or cashing of payment instruments; to provide the scope of activities permitted under a  
19 mortgage lender license; to provide authority for the department to promulgate certain rules  
20 and regulations related to mortgage loan originators; to change certain provisions related to  
21 the inactive status and suspension of mortgage loan originators; to change certain provisions  
22 related to investigations and examinations by the department; to provide for related matters;  
23 to repeal conflicting laws; and for other purposes.

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

25 **SECTION 1.**

26 Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial  
 27 institutions, is amended by revising paragraphs (3), (21), and (25) of Code Section 7-1-4,  
 28 relating to definitions relative to financial institutions, as follows:

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

32 "(21) 'Financial institution' means:

33 (A) A bank;

34 (B) A trust company;

35 (C) Reserved;

36 (D) A credit union;

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

39 (F) Business development corporations existing on April 1, 1975, pursuant to the  
 40 former 'Georgia Business Development Corporation Act of 1972,' approved April 3,  
 41 1972 (Ga. L. 1972, p. 798), or organized pursuant to Article 6 of this chapter;

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

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

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

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

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

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

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

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

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

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

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

59 (I) A bank holding company as defined in Code Section 7-1-605 for the purposes of  
 60 Code Sections 7-1-61, 7-1-71, and 7-1-91;

61 (J) Banks chartered by states other than Georgia for the purposes of paragraph (10) of  
 62 Code Section 7-1-261, relating to agency relationships; ~~and~~  
 63 (K) Federal credit unions for the purposes of Part 6 of Article 2 of this chapter, relating  
 64 to deposits, safe-deposit agreements, and money received for transmission, and  
 65 Article 8 of this chapter, relating to multiple-party accounts; and  
 66 (L) Banks and credit unions chartered by states other than Georgia, national banks,  
 67 federal credit unions, and federal savings and loan associations for the purposes of  
 68 paragraph (1) of Code Section 7-1-650, provided that such institutions have federal  
 69 deposit insurance."  
 70 "(25) 'Paid-in capital' means the sum of the considerations received in the sale or  
 71 exchange of shares of a bank or trust company in excess of the amount of the capital  
 72 stock ~~and the expense fund required by Code Section 7-1-396~~ and includes the surplus,  
 73 if any, created by or arising out of a reduction of the capital stock of such financial  
 74 institution effected in a manner permitted by law, any amounts properly regarded as  
 75 surplus of such financial institution on April 1, 1975, ~~and any amounts transferred from~~  
 76 ~~the expense fund as permitted by Code Section 7-1-412."~~

## 77 SECTION 2.

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

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

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

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

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

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

96 (5) Engage in the business of a financial institution."

97

**SECTION 3.**

98 Said chapter is further amended by revising subsection (a) of Code Section 7-1-113, relating  
 99 to voluntary dissolution prior to commencement of business, failure to properly file articles  
 100 of dissolution, and power of department to seek dissolution, as follows:

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

107 (1) The date of incorporation of the financial institution;

108 (2) A statement that it has not transacted any business as a financial institution other than  
 109 organizational business;

110 (3) A statement that all liabilities of the financial institution have been paid or provided  
 111 for;

112 (4) A statement that all amounts received on account of capital stock; and paid-in capital,  
 113 ~~and expense fund~~; less amounts disbursed for expenses, have been returned to the persons  
 114 entitled thereto; and

115 (5) The number of shares entitled to vote on the dissolution and the number of shares  
 116 voted for and against it, respectively."

117

**SECTION 4.**

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

120 "7-1-234.

121 The department may disapprove any proposed acquisition if:

122 (1) The proposed acquisition of control would result in a monopoly or would be in  
 123 furtherance of any combination or conspiracy to monopolize or attempt to monopolize  
 124 the business of banking in any part of this state;

125 (2) The effect of the proposed acquisition of control in any section of this state may be  
 126 substantially to lessen competition or to tend to create a monopoly or the proposed  
 127 acquisition of control would in any other manner be in restraint of trade and the  
 128 anticompetitive effects of the proposed acquisition of control are not clearly outweighed  
 129 in the public interest by the probable effect of the transaction in meeting the convenience  
 130 and needs of the community to be served;

131 (3) The financial condition of any acquiring person is such as might jeopardize the  
 132 financial stability of the bank or prejudice the interests of the depositors of the bank;

133 (4) The competence, experience, or integrity of any acquiring person or of any of the  
 134 proposed management personnel indicates that it would not be in the interest of the  
 135 depositors of the bank or in the interest of the public to permit such person to control the  
 136 bank; or

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

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

150 (7) In the case of trust companies, any acquiring person or an individual that is a director  
 151 or officer of such person has failed to demonstrate financial responsibility, character, and  
 152 general fitness. The department shall be authorized to obtain personal history and work  
 153 experience and other information, including, but not limited to, independent credit reports  
 154 obtained from a consumer reporting agency described in the federal Fair Credit Reporting  
 155 Act, 15 U.S.C. Section 1681a(f) with respect to such acquiring person and an individual  
 156 that is a director or officer of such person."

157 **SECTION 5.**

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

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

167 (1) The plan must contain a detailed evaluation of the bank's management expertise and  
 168 information systems to support the plan; and

169 (2) The plan must contain adequate asset and liability, liquidity, and funds management  
170 policies and procedures to specifically address the use of borrowings as an alternate  
171 funding source."

172 **SECTION 6.**

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

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

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

203 (6) The capital structure of the proposed bank or trust company is adequate in relation  
 204 to the amount and character of the anticipated business of the bank or trust company and  
 205 the safety of prospective depositors; and

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

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

218 (9) In the case of trust companies, the incorporators, directors, and proposed officers  
 219 have demonstrated financial responsibility, character, and general fitness. The  
 220 department shall be authorized to obtain personal history and work experience and other  
 221 information, including, but not limited to, independent credit reports obtained from a  
 222 consumer reporting agency described in the federal Fair Credit Reporting Act, 15 U.S.C.  
 223 Section 1681a(f) with respect to any person that is an incorporator, director, or proposed  
 224 officer of the proposed trust company."

225 **SECTION 7.**

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

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

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

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

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

236 ~~(C)~~(B) The proceeds of subordinated securities, if any, which were considered part of  
 237 the capital structure of the bank or trust company by the department under Code Section  
 238 7-1-419 in giving its approval of the proposed institution;

- 239 (2) All of the directors have taken the oath or affirmation required by Code Section  
 240 7-1-484;
- 241 (3) The bylaws of the bank or trust company have been filed with the department;
- 242 (4) The bank or trust company has designated its registered agent and registered office  
 243 pursuant to Code Section 7-1-132;
- 244 (5) The bank or trust company has been organized and is ready to begin the business for  
 245 which it was incorporated;
- 246 (6) All conditions imposed by the department in giving its approval of the proposed bank  
 247 or trust company under Code Section 7-1-394 have been satisfied; and
- 248 (7) The department has received an affidavit signed by the president or secretary and by  
 249 at least a majority of the directors of the bank or trust company to the effect that all of the  
 250 foregoing requirements of this subsection have been satisfied."

251 **SECTION 8.**

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

254 "7-1-398.

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

262 **SECTION 9.**

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

265 "7-1-411.

266 ~~Losses sustained by a bank or trust company in excess of retained earnings may be charged~~  
 267 ~~to paid-in capital or to appropriated retained earnings, provided that a bank or trust~~  
 268 ~~company shall not pay any dividends so long as its paid-in capital and appropriated~~  
 269 ~~retained earnings do not, in combination, equal at least 20 percent of its capital stock.~~  
 270 ~~Earnings shall, not later than the end of each fiscal year, be transferred to appropriated~~  
 271 ~~retained earnings until such required 20 percent margin is obtained~~ Reserved."



272 **SECTION 10.**

273 Said chapter is further amended by revising Code Section 7-1-412, relating to beginning  
274 business expense fund, as follows:

275 "7-1-412.

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

282 **SECTION 11.**

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

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

294 **SECTION 12.**

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

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

301 **SECTION 13.**

302 Said chapter is further amended by revising subsection (a) of Code Section 7-1-460, relating  
303 to restrictions on payment of dividends and limitation of actions for dividends or  
304 distributions, as follows:

305 "(a) The board of directors of a bank or trust company may, from time to time, declare and  
 306 the bank or trust company thereupon shall pay dividends on its outstanding shares in cash,  
 307 property, or its own shares, except when the bank or trust company is insolvent or when  
 308 the payment thereof would render the bank or trust company insolvent or when the  
 309 declaration or payment thereof would be contrary to any restrictions contained in the  
 310 articles, and subject to the following provisions:

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

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

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

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

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

#### 333 SECTION 14.

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

336 "7-1-461.

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

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

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

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

351 **SECTION 15.**

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

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

363 **SECTION 16.**

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

366 "7-1-572.

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

375 **SECTION 17.**

376 Said chapter is further amended by revising paragraph (3) of subsection (b) of Code Section  
377 7-1-608, relating to lawful and unlawful acquisitions, formations, and mergers and waivers  
378 related to bank holding companies, as follows:

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

386 **SECTION 18.**

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

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

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

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

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

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

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

408 **SECTION 19.**

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

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

418 **SECTION 20.**

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

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

428 **SECTION 21.**

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

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

437 **SECTION 22.**

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

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

450

### SECTION 23.

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

455 "(c) At the organizational meeting and at its first meeting after each annual meeting of the  
 456 members, the board of directors shall appoint a ~~supervisory~~ an audit committee, credit  
 457 committee, chairperson, president, secretary, and such other officers consistent with the  
 458 bylaws as the board deems desirable. No member of the ~~supervisory~~ audit committee may  
 459 serve as a member of the credit committee or as an officer, unless the board of directors  
 460 functions as the credit committee as provided for in subsection (f) of Code Section 7-1-658.  
 461 (d) The chairman of the credit and ~~supervisory~~ audit committees shall be appointed by the  
 462 board from among its number. Both the credit and ~~supervisory~~ audit committees shall be  
 463 accountable to the board and members of such committees may be removed by the board."

464

### SECTION 24.

465 Said chapter is further amended by revising paragraph (5) of subsection (a), paragraph (2)  
 466 of subsection (b), and subsection (e) of Code Section 7-1-656, relating to duties of directors,  
 467 meetings, prohibited activities, eligibility to vote, applicability of Code Section 7-1-490, and  
 468 appointment of honorary director or director emeritus relative to credit unions, as follows:

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

471 "(2) The board of directors may designate three or more of its number to constitute a  
 472 credit committee, ~~supervisory~~ audit committee, or other committees which, to the extent  
 473 provided in a resolution, shall have and exercise the authority of the board of directors  
 474 with regard to the business of a credit union; and"

475 "(e) The provisions of Code Section 7-1-490 relative to the responsibilities of directors and  
 476 officers and the delegation of investment decisions shall be applicable to the duties of  
 477 directors, credit and ~~supervisory~~ audit committee members, and officers of credit unions."

478

### SECTION 25.

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

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

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

500

### SECTION 26.

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

503 "(h) In the case of a merger of a Georgia state-chartered credit union with any other credit  
 504 union, with the Georgia state-chartered credit union as the continuing credit union, any  
 505 assets, lines of business, activities, or powers which may accrue to the continuing credit  
 506 union which would not be allowed for a Georgia state-chartered credit union shall be  
 507 provided for in the plan of merger. Such plan shall include the proposal for holding or  
 508 disposal of such assets or the continuation or termination of such line of business, activity,  
 509 or power. The department shall review the plan to determine whether, in the interest of

510 safety and soundness and consistent with the other objectives of Code Section 7-1-3, the  
 511 activity, power, asset, or line of business should be approved, denied, or phased out within  
 512 a reasonable period of time to be determined by the department."

513 **SECTION 27.**

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

516 "7-1-682.

517 The requirement for licensure set forth in this article shall not apply to:

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

520 (2) Any authorized agent of a licensee;

521 (3) The United States Postal Service;

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

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

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

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

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

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

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

540 ~~(6)~~(11) An individual employed by a licensee or any person exempted from the licensing  
 541 requirements of this article when acting within the scope of employment and under the  
 542 supervision of the licensee or exempted person as an employee and not as an independent  
 543 contractor."



544

**SECTION 28.**

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

549 "(d) The department shall investigate and examine the affairs, business, premises, and  
 550 records of any licensee or authorized agent pertaining to the sale of payment instruments  
 551 or money transmission. The department may conduct such investigations or examinations  
 552 at least once every ~~24~~ 60 months. The department may accept examination reports  
 553 performed and produced by other state or federal agencies in satisfaction of this  
 554 requirement unless the department determines that the examinations are not available or  
 555 do not provide information necessary to fulfill the responsibilities of the department under  
 556 this article."

557

**SECTION 29.**

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

562 "(d) The department shall investigate and examine the affairs, business, premises, and  
 563 records of any licensee pertaining to cashing payment instruments. The department may  
 564 conduct such investigations or examinations at least once every ~~24~~ 60 months. The  
 565 department may accept examination reports performed and produced by other state or  
 566 federal agencies in satisfaction of this requirement unless the department determines that  
 567 the examinations are not available or do not provide information necessary to fulfill the  
 568 responsibilities of the department under this article."

569

**SECTION 30.**

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

574 "(d) If any board of directors, director, or officer of any financial institution is required by  
 575 the department, ~~or the Federal Deposit Insurance Corporation, the National Credit Union~~  
 576 Administration, or any other federal ~~bank~~ financial institution supervisory agency to  
 577 provide any such regulatory ~~agency~~ entity or the fidelity bond carrier with any information  
 578 regarding the appearance or suspicion of criminal activity involving any director, officer,

579 agent, employee, or customer of such financial institution, such board of directors, director,  
 580 or officer shall not incur any civil liability for providing such information unless the  
 581 information is false and such board of directors, director, or officer knows that it is false  
 582 and provides it with actual malice."

583 **SECTION 31.**

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

587 "(30) 'Residential mortgage loan' means any loan primarily for personal, family, or  
 588 household use that is secured by a mortgage, deed of trust, or other equivalent consensual  
 589 security interest on a dwelling, as defined in ~~Section 103(v)~~ 15 U.S.C. Section 1602 of  
 590 the Truth in Lending Act, or residential real estate upon which is constructed or intended  
 591 to be constructed a dwelling."

592 **SECTION 32.**

593 Said chapter is further amended by revising the introductory paragraph to subsection (a) of  
 594 Code Section 7-1-1001, relating to exemption for certain persons and entities and registration  
 595 requirements relative to mortgage loan originators, mortgage brokers, and mortgage lenders,  
 596 and adding a new subsection to read as follows:

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

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

604 **SECTION 33.**

605 Said chapter is further amended by revising subsections (a) and (b) of Code Section  
 606 7-1-1001.1, relating to requirement for mortgage loan originator license and application to  
 607 sellers of mobile homes, as follows:

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

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

620 **SECTION 34.**

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

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

631 (g) The department may adopt procedures for the reinstatement of expired licenses  
 632 consistent with the standards established by the Nationwide Multistate Licensing System  
 633 and Registry."

634 **SECTION 35.**

635 Said chapter is further amended by revising subsection (b) of Code Section 7-1-1009, relating  
 636 to maintenance of books, accounts, and records, investigation and examination of licensees  
 637 and registrants by the department, confidentiality, and exemptions from civil liability, as  
 638 follows:

639 "~~(b) The department may, by its designated officers and employees, as often as it deems~~  
 640 ~~necessary, but at least once every 24 months, shall~~ investigate and examine the affairs,  
 641 business, premises, and records of any mortgage broker or mortgage lender required to be  
 642 licensed or registered under this article insofar as such affairs, business, premises, and  
 643 records pertain to any business for which a license or registration is required by this article.  
 644 The department may conduct such investigations and examinations as often as it deems  
 645 necessary in order to carry out the purposes of this article, but shall conduct such  
 646 investigations and examinations at least once every 60 months. In order to avoid  
 647 unnecessary duplication of examinations, the department may accept examination reports

648 performed and produced by other state or federal agencies, unless the department  
 649 determines that the examinations are not available or do not provide the information  
 650 necessary to fulfill the responsibilities of the department under this article.  
 651 Notwithstanding the provisions of this subsection, the department ~~has the discretion to~~  
 652 ~~examine a mortgage broker or mortgage lender less frequently, provided that its record of~~  
 653 ~~complaints, comments, or other information demonstrates that mortgage broker's or~~  
 654 ~~mortgage lender's ability to meet the standards of Code Sections 7-1-1003, 7-1-1003.2, and~~  
 655 ~~7-1-1004~~ may alter the frequency or scope of investigations and examinations through rules  
 656 and regulations prescribed by the department. If the department determines, based on the  
 657 records submitted to the department and past history of operations of the licensee in the  
 658 state, that such investigations or examinations are unnecessary, then the department may  
 659 waive such investigations and examinations. In the case of registrants, the department shall  
 660 not be required to conduct such examinations if it determines that the registrant has been  
 661 adequately examined by another bank regulatory agency. ~~In order to avoid unnecessary~~  
 662 ~~duplication of examinations, the department may accept examination reports performed and~~  
 663 ~~produced by other state or federal agencies, unless the department determines that the~~  
 664 ~~examinations are not available or do not provide information necessary to fulfill the~~  
 665 ~~responsibilities of the department under this article."~~

666

### SECTION 36.

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

670 "(b)(~~†~~) Notice of the department's intention to enter an order denying an application for  
 671 a license or registration under this article or of an order suspending or revoking a license  
 672 or registration under this article shall be given to the applicant, licensee, or registrant in  
 673 writing, sent by registered or certified mail or statutory overnight delivery addressed to  
 674 the principal place of business of such applicant, licensee, or registrant. Within 20 days  
 675 of the date of the notice of intention to enter an order of denial, suspension, or revocation  
 676 under this article, the applicant, licensee, or registrant may request in writing a hearing  
 677 to contest the order. If a hearing is not requested in writing within 20 days of the date of  
 678 such notice of intention, the department shall enter a final order regarding the denial,  
 679 suspension, or revocation. Any final order of the department denying, suspending, or  
 680 revoking a license or registration shall state the grounds upon which it is based and shall  
 681 be effective on the date of issuance. A copy thereof shall be forwarded promptly by  
 682 registered or certified mail or statutory overnight delivery addressed to the principal place  
 683 of business of such applicant, licensee, or registrant. If a person refuses to accept service

684 of the notice or order by registered or certified mail or statutory overnight delivery, the  
685 notice or order shall be served by the commissioner or the commissioner's authorized  
686 representative under any other method of lawful service; and the person shall be  
687 personally liable to the commissioner for a sum equal to the actual costs incurred to serve  
688 the notice or order. This liability shall be paid upon notice and demand by the  
689 commissioner or the commissioner's representative and shall be assessed and collected  
690 in the same manner as other fees or fines administered by the commissioner.

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

702

### SECTION 37.

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