

House Bill 192 (AS PASSED HOUSE AND SENATE)

By: Representatives Beskin of the 54th, Williamson of the 115th, Hatchett of the 150th, Willard of the 51st, Powell of the 171st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 12 of Article 2 of Chapter 1 of Title 7 and Article 8 of Chapter 2 of Title 14
2 of the Official Code of Georgia Annotated, relating to management of bank and trust
3 companies and directors and officers of corporations, respectively, so as to change provisions
4 relating to the responsibilities and standard of care of directors and officers of banks, trust
5 companies, and corporations; to clarify the ability of directors and officers to rely on other
6 individuals in the performance of their duties; to provide for a rebuttable presumption when
7 directors and officers are acting in good faith; to provide for related matters; to provide for
8 applicability; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Part 12 of Article 2 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated,
12 relating to management of bank and trust companies, is amended by revising Code Section
13 7-1-490, relating to the responsibilities of directors and officers, as follows:

14 "7-1-490.

15 (a) Directors and officers of a bank or trust company shall discharge the duties of their
16 respective positions in good faith and with ~~that~~ the degree of diligence, care, and skill
17 which an ordinarily prudent ~~men~~ person would exercise under similar circumstances ~~in like~~
18 ~~positions.~~

19 ~~(b) In performing his or her~~ In discharging his duties, a director or officer, ~~when acting in~~
20 ~~good faith, shall~~ may be entitled to rely upon information, opinions, reports, or statements,
21 ~~including financial statements and other financial data, in each case prepared or presented~~
22 ~~by:~~

23 (1) ~~Other officers, employees, or agents~~ One or more officers or employees of the bank
24 or trust company whom the director or officer reasonably ~~believes~~ believed to be reliable
25 and competent in the ~~matters presented;~~ functions performed; and

26 (2) Information, data, opinions, reports, or statements provided by other officers,
 27 employees, agents of the bank or trust company, legal counsel ~~Counsel~~, public
 28 accountants, investment bankers, or other persons as to matters ~~which the director or~~
 29 ~~officer reasonably believes to be~~ involving the skills, expertise, or knowledge reasonably
 30 believed to be reliable and within such person's professional or expert competence; ~~or,~~
 31 (3) ~~A committee of the board upon which the director or officer does not serve, duly~~
 32 ~~designated in accordance with a provision of the articles of incorporation or the bylaws,~~
 33 ~~as to matters within that committee's designated authority, which committee the director~~
 34 ~~or officer reasonably believes to merit confidence;~~
 35 ~~but such director or officer shall not be considered to be acting in good faith if he has~~
 36 ~~knowledge concerning the matter in question that would cause such reliance to be~~
 37 ~~unwarranted. A director or officer who so performs his duties shall have no liability by~~
 38 ~~reason of being or having been a director or officer of the bank or trust company.~~
 39 (c) There shall be a presumption that the process directors and officers followed in arriving
 40 at decisions was done in good faith and that such directors and officers have exercised
 41 ordinary care; provided, however, that this presumption may be rebutted by evidence that
 42 such process constitutes gross negligence by being a gross deviation of the standard of care
 43 of a director or officer in a like position under similar circumstances.
 44 (b)(d) A bank, through its board of directors, may delegate to a correspondent bank the
 45 power to determine, within the limits set by law, the investments in which its assets,
 46 including reserve assets, may be held, provided that the bank must obtain the prior written
 47 approval of the department for such delegation.
 48 (e) Nothing in this Code section shall:
 49 (1) In any instance when fairness is at issue, such as consideration of the fairness of a
 50 transaction to the bank or trust company as evaluated under paragraph (3) of subsection
 51 (b) of Code Section 14-2-861, alter the burden of proving the fact or lack of fairness
 52 otherwise applicable;
 53 (2) Alter the fact or lack of liability of a director or officer under the Official Code of
 54 Georgia Annotated, including Code Sections 7-1-492 and 7-1-494;
 55 (3) Affect any rights to which the bank or trust company or its shareholders may be
 56 entitled under another law of this state or of the United States; or
 57 (4) Deprive a director or officer of the applicability, effect, or protection of the business
 58 judgment rule."

59 **SECTION 2.**

60 Article 8 of Chapter 2 of Title 14 of the Official Code of Georgia Annotated, relating to
61 directors and officers of corporations, is amended by revising Code Section 14-2-830,
62 relating to general standards of conduct for directors, as follows:

63 "14-2-830.

64 (a) A director shall ~~discharge his~~ perform his or her duties as a director, ~~including his~~
65 ~~duties as a member of a committee:~~

66 (1) ~~In a manner he believes in good faith to be in the best interests of the corporation;~~
67 ~~and with the degree of~~

68 (2) ~~With the care an ordinarily prudent person in a like position would exercise under~~
69 ~~similar circumstances.~~

70 (b) In ~~discharging his~~ performing his or her duties a director is ~~entitled to rely on~~
71 ~~information, opinions, reports, or statements, including financial statements and other~~
72 ~~financial data, if prepared or presented by~~ may rely upon:

73 (1) Other officers, employees, or agents ~~One or more officers or employees of the~~
74 ~~corporation whom the director reasonably believes~~ believed to be reliable and competent
75 in the ~~matters presented;~~ functions performed; and

76 (2) Information, data, opinions, reports, or statements provided by officers, employees,
77 agents of the corporation, legal ~~Legal~~ counsel, public accountants, investment bankers,
78 or other persons as to matters ~~the director reasonably believes are within the~~ involving
79 the skills, expertise, or knowledge reasonably believed to be reliable and within such
80 person's professional or expert competence; ~~or~~

81 (3) ~~A committee of the board of directors of which he is not a member if the director~~
82 ~~reasonably believes the committee merits confidence.~~

83 (c) There shall be a presumption that the process a director followed in arriving at
84 decisions was done in good faith and that such director has exercised ordinary care;
85 provided, however, that this presumption may be rebutted by evidence that such process
86 constitutes gross negligence by being a gross deviation of the standard of care of a director
87 in a like position under similar circumstances. ~~In the instances described in subsection (b)~~
88 ~~of this Code section, a director is not entitled to rely if he has knowledge concerning the~~
89 ~~matter in question that makes reliance otherwise permitted by subsection (b) of this Code~~
90 ~~section unwarranted.~~

91 (d) Nothing contained in this Code section shall: ~~A director is not liable to the corporation~~
92 ~~or to its shareholders for any action taken as a director, or any failure to take any action,~~
93 ~~if he performed the duties of his office in compliance with this Code section.~~

94 (1) In any instance when fairness is at issue, such as consideration of the fairness of a
95 transaction to the corporation as evaluated under paragraph (3) of subsection (b) of Code

96 Section 14-2-861, alter the burden of proving the fact or lack of fairness otherwise
 97 applicable;
 98 (2) Alter the fact or lack of liability of a director under the Official Code of Georgia
 99 Annotated, including the governance of the consequences of an unlawful distribution
 100 under Code Section 14-2-832 or a conflicting interest transaction under Code Section
 101 14-2-861;
 102 (3) Affect any rights to which the corporation or its shareholders may be entitled under
 103 another law of this state or of the United States; or
 104 (4) Deprive a director of the applicability, effect, or protection of the business judgment
 105 rule."

106 SECTION 3.

107 Said article is further amended by revising Code Section 14-2-842, relating to standards of
 108 conduct for officers, as follows:

109 "14-2-842.

110 (a) An officer ~~with discretionary authority shall discharge his~~ shall perform his or her
 111 duties under that authority:

112 (1) ~~In a manner he believes in good faith to be in the best interests of the corporation;~~
 113 and with the degree of care which

114 (2) ~~With the care an ordinarily prudent person in a like position would exercise use~~ under
 115 similar circumstances.

116 (b) In ~~discharging his performing his or her~~ duties an officer is ~~entitled to rely on~~
 117 ~~information, opinions, reports, or statements, including financial statements and other~~
 118 ~~financial data, if prepared or presented by~~ may rely upon:

119 (1) Other officers, employees, or agents ~~One or more officers or employees of the~~
 120 ~~corporation whom the officer reasonably believes~~ believed to be reliable and competent
 121 in the ~~matters presented; or~~ functions performed; and

122 (2) Information, data, opinions, reports, statements provided by officers, employees, or
 123 agents of the corporation, legal ~~Legal~~ counsel, public accountants, investment bankers,
 124 or other persons as to matters ~~the officer reasonably believes are within the~~ involving the
 125 skills, expertise, or knowledge reasonably believed to be reliable and within such person's
 126 professional or expert competence.

127 (c) There shall be a presumption that the process an officer followed in arriving at
 128 decisions was done in good faith and that such officer has exercised ordinary care;
 129 provided, however, that this presumption may be rebutted by evidence that such process
 130 constitutes gross negligence by being a gross deviation of the standard of care of an officer
 131 in a like position under similar circumstances. ~~In the instances described in subsection (b)~~

132 ~~of this Code section, an officer is not entitled to rely if he has knowledge concerning the~~
133 ~~matter in question that makes reliance otherwise permitted by subsection (b) of this Code~~
134 ~~section unwarranted.~~

135 ~~(d) Nothing contained in this Code section shall: An officer is not liable to the corporation~~
136 ~~or to its shareholders for any action taken as an officer, or any failure to take any action,~~
137 ~~if he performed the duties of his office in compliance with this Code section.~~

138 ~~(1) In any instance when fairness is at issue, such as consideration of the fairness of a~~
139 ~~transaction to the corporation as evaluated under paragraph (3) of subsection (c) of Code~~
140 ~~Section 14-2-864, alter the burden of proving the fact or lack of fairness otherwise~~
141 ~~applicable;~~

142 ~~(2) Alter the fact or lack of liability of an officer under the Official Code of Georgia~~
143 ~~Annotated, including the governance of the consequences of a transactional interest under~~
144 ~~Code Section 14-2-864;~~

145 ~~(3) Affect any rights to which the corporation or its shareholders may be entitled under~~
146 ~~another law of this state or of the United States; or~~

147 ~~(4) Deprive an officer of the applicability, effect, or protection of the business judgment~~
148 ~~rule."~~

149 **SECTION 4.**

150 This Act shall apply only to causes of action arising on or after July 1, 2017.

151 **SECTION 5.**

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