

Senate Bill 70

By: Senators Hamrick of the 30th, Hudgens of the 47th, Thompson of the 33rd, Murphy of the 27th, Tarver of the 22nd and others

AS PASSED

AN ACT

To amend Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial institutions generally, so as to update the banking laws in order to reflect changes in federal law and for other purposes; to exclude the value of good will in certain transactions; to regulate real estate loans; to allow for the electronic transmission of proxy; to allow for share exchange in mergers or consolidations; to define share exchange; to change the qualifications for check sellers; to require background checks on employees and agents of check sellers; to provide for registration and testing of check sellers who are not licensed; to provide for a bond to be posted by check sellers; to provide for a cease and desist order to be issued against noncompliant licensees; to provide a penalty for withholding or falsifying information submitted to the department; to provide for registered check cashers; to provide for background checks for check cashers; to place a limit on check-cashing fees; to provide for background checks for mortgage lenders or mortgage brokers; to provide for advertising restrictions; to provide for related matters; to provide an effective date; 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 generally, is amended by revising subparagraph (A) of paragraph (35) of Code Section 7-1-4, relating to definitions, as follows:

"(A) The sum of the capital stock, the paid-in capital, the appropriated retained earnings, and the capital debt of a bank or trust company less any amount of good will, core deposit intangibles, or other intangible assets related to the purchase, acquisition, or merger of a bank charter; or"

SECTION 2.

Said chapter is further amended in Code Section 7-1-286, relating to real estate loans, by revising subsection (a) in its entirety as follows:

"(a) A bank shall make loans secured by improved or unimproved real estate (including a leasehold) subject to the provisions of Part 365 of the Federal Deposit Insurance Corporation's rules and regulations, including 12 C.F.R. 365.1 and 365.2 and the Interagency Guidelines for Real Estate Lending Policies in Appendix A and 12 C.F.R. 208.51 and the guidelines contained in 12 C.F.R. Part 208 in the case of Federal Reserve member banks. Such loans shall also be subject to the additional provisions and exceptions as set forth in the rules of the department."

SECTION 3.

Said chapter is further amended in Code Section 7-1-437, relating to proxies, by revising subsection (a) as follows:

"(a) Unless otherwise unlawful, a person or corporation who is entitled to attend a shareholders' meeting, to vote thereat, or to execute consents, waivers, or releases may be represented at such meeting or vote thereat, and execute consents, waivers, and releases, and exercise any of his or her other rights, by one or more agents, who may be either an individual or individuals or any domestic or foreign corporation, authorized by a written proxy or electronic transmission of proxy executed by such person or by his or her attorney in fact."

SECTION 4.

Said chapter is further amended by revising Code Section 7-1-530, relating to authority to merge or consolidate and merger or consolidation across state lines, as follows:

"7-1-530.

(a) Upon compliance with the requirements of this part and other applicable laws and regulations, including any branching and minimum age laws and regulations, one or more banks or trust companies may merge or consolidate, provided that an institution exercising trust powers alone may merge or consolidate only with another such trust company. Upon compliance with the requirements of this part and other applicable laws and regulations, including any branching and minimum age laws and regulations, a corporation other than a bank or trust company may acquire all of the outstanding shares of one or more classes or series of one or more banks or trust companies through a share exchange.

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

(1) The resulting institution of the merger or consolidation is a bank or trust company;

- (2) The resulting institution of the merger or consolidation, or the acquired bank or trust company in a share exchange, holds only assets and liabilities and is engaged only in activities which may be held or engaged in by a bank or trust company; and
- (3) The merger, share exchange, or consolidation is not otherwise unlawful.
- (c) A merger, share exchange, or consolidation pursuant to subsection (b) of this Code section shall be made by compliance with the requirements of this part. Title 14 shall not be applicable to such a merger, share exchange, or consolidation.
- (d) A merger, share exchange, or consolidation across state lines involving one or more banks or trust companies shall also be subject to the provisions of Part 20 of this article.
- (e) In the case of a merger of a Georgia state bank with any other bank or banks, with the Georgia bank as the resulting bank, any assets, lines of business, activities, or powers which may accrue to the resulting bank which would not be allowed for a Georgia state bank 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.
- (f) As used in this part, the term 'share exchange' means a plan of exchange of all of the outstanding shares of one or more classes or series of shares in accordance with this part.
- (g) Subject to the provisions of this part, this Code section does not limit the power of a corporation other than a bank or trust company to acquire all or part of the shares of one or more classes or series of a bank or trust company through a voluntary exchange of shares or otherwise."

SECTION 5.

Said chapter is further amended in Code Section 7-1-531, relating to requirements for merger or consolidation plan and modification of the plan, by revising subsection (a) as follows:

"(a) The requirements for a merger, share exchange, or consolidation which must be satisfied by the parties thereto are as follows:

- (1) The parties shall adopt a plan stating the method, terms, and conditions of the merger, share exchange, or consolidation, including the rights under the plan of the shareholders of each of the parties and any agreement concerning the merger, share exchange, or consolidation. Said plan shall specify:

- (A) The name that such bank or trust company shall have upon and after such merger, share exchange, or consolidation, which may be the name of any one of the institutions or the combined names of two or more of the institutions or such other name as stated;
 - (B) The persons who shall constitute the board of directors of the bank or trust company after the merger, share exchange, or consolidation;
 - (C) In the case of a merger or consolidation, the manner and basis of converting the shares of each merged or consolidated institution into shares or other securities or obligations of the surviving bank or trust company and, if any shares of any of the merged or consolidated institutions are not to be converted solely into shares or other securities of the surviving bank or trust company, the amount of cash or securities of any other corporation, or combination of cash and such securities, which is to be paid or delivered to the holders of such shares in exchange for or upon the surrender of such shares, which cash or securities may be in addition to or in lieu of the shares or other securities of the surviving bank or trust company;
 - (D) In the case of a share exchange, the terms and conditions of the share exchange and the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or in part; and
 - (E) Such other provisions with respect to the proposed merger or consolidation as are deemed desirable.
- (2) Adoption of the plan by each party thereto shall require the affirmative vote of at least:
- (A) A majority of the directors; and
 - (B) The shareholders entitled to cast two-thirds of the votes which all shareholders are entitled to cast thereon and, if any class of shares is entitled to vote thereon as a class, the holders of at least two-thirds of the outstanding shares of such class, at a meeting of shareholders.
- (3) The notice shall include a copy or summary of the plan and a full statement of the rights and remedies of dissenting shareholders, the method of exercising them, and the limitations on such rights and remedies."

SECTION 6.

Said chapter is further amended by revising Code Section 7-1-532, relating to execution, contents, and filing of articles of merger or consolidation, as follows:

"7-1-532.

(a) Upon adoption of the plan of merger, share exchange, or consolidation as provided in Code Section 7-1-531, the parties to the merger, share exchange, or consolidation shall file in duplicate with the department articles of a merger, share exchange, or consolidation as required by this Code section, together with the fee required by Code Section 7-1-862.

(b) The articles of merger, share exchange, or consolidation shall be signed by two duly authorized officers of each party to the plan under their respective seals and shall contain:

(1) The names of the parties to the plan and of the resulting bank or trust company or the acquiring corporation in a share exchange;

(2) The street address and county of the location of the main office and registered agent and registered office of each;

(3) The votes by which the plan was adopted and the time, place, and notice of each meeting in connection with such adoption;

(4) The names and addresses of the first directors of the resulting bank or trust company or the directors of the acquired corporation in a share exchange;

(5) In the case of a merger, any amendment of the articles of the resulting bank or trust company;

(6) In the case of a consolidation, the provisions required in articles of a new bank or trust company by paragraphs (4), (5), (6), (7), and (10) of subsection (a) of Code Section 7-1-392; and

(7) The plan.

(c) Together with the articles of merger, share exchange, or consolidation, the parties shall deliver to the department a copy of the notice of merger, share exchange, or consolidation and an undertaking, which may appear in the articles of merger, share exchange, or consolidation or be set forth in a letter or other instrument executed by an officer or any person authorized to act on behalf of such bank or trust company, that the request for publication of a notice of filing the articles of merger, share exchange, or consolidation and payment therefor will be made as required by subsection (d) of this Code section.

(d) No later than the next business day after filing the articles of merger, share exchange, or consolidation with the department, the parties shall mail or deliver to the publisher of a newspaper which is the official organ of the county where the main office of each party is located a notice which shall contain a statement that the articles of merger, share exchange, or consolidation have been filed with the department, the names of the institutions which are parties to the proposed merger, share exchange, or consolidation, and in the case of a merger the proposed name of the surviving bank or trust company, and

shall designate a place where a copy of the articles of merger, share exchange, or consolidation may be examined. Subsections (b) and (c) of Code Section 7-1-7 shall also apply to the notice.

(e) The request for publication of the notice shall be accompanied by a check, draft, or money order in the proper amount in payment of the cost of publication. The notice shall be published once a week for two consecutive weeks commencing within ten days after receipt of the notice by the newspaper.

(f) In the event the plan is amended as provided in Code Section 7-1-531, the parties shall promptly file in duplicate with the department an amendment to the articles of consolidation, share exchange, or merger reflecting such amendment of the plan."

SECTION 7.

Said chapter is further amended by revising Code Section 7-1-533, relating to additional filings with plans of merger or consolidation, as follows:

"7-1-533.

The parties to the plan shall also file with the department:

- (1) An application and information desired by the department in order to evaluate the proposed merger, share exchange, or consolidation, which shall be made available in the form specified by the department;
- (2) Applicable fees established by regulation of the department to defray the expenses of the investigation required by Code Section 7-1-534; and
- (3) If the merger, share exchange, or consolidation involves the adoption of a new name, a certificate of the Secretary of State reserving said name under Code Section 7-1-131.

SECTION 8.

Said chapter is further amended by revising Code Section 7-1-534, relating to approval or disapproval of articles of consolidation or merger by department, as follows:

"7-1-534.

(a) Upon receipt of the articles of consolidation, share exchange, or merger and the filings required by Code Section 7-1-533, the department shall conduct such investigation as it may deem necessary to ascertain whether:

- (1) The articles of merger, share exchange, or consolidation and supporting items satisfy the requirements of this chapter;
- (2) The plan and any modification thereof adequately protect the interests of depositors, other creditors, and shareholders;

- (3) The requirements for a merger, share exchange, or consolidation under all applicable laws have been satisfied and the resulting bank or trust company or the acquired bank or trust company in a share exchange would satisfy the requirements of this chapter applicable to it; and
- (4) The merger, share exchange, or consolidation would be consistent with adequate and sound banking or fiduciary practice and in the public interest on the basis of:
- (A) The financial history and condition of the parties to the plan;
 - (B) Their prospects;
 - (C) The character of their management; and
 - (D) The convenience and needs of the area primarily to be served by the resulting institution, or by the acquiring corporation and the acquired bank or trust company in a share exchange.
- (b) Within 90 days after receipt of the articles of merger, share exchange, or consolidation, the notice of merger or share exchange, and the filings required by Code Section 7-1-533, or within an additional period of not more than 30 days after an amendment to the application is received within the initial 90 day period, the department shall, in its discretion, approve or disapprove the articles on the basis of its investigation and the criteria set forth in subsection (a) of this Code section. Except as provided in Code Section 7-1-535, the department shall give the Secretary of State written notice of its approval with a copy of the articles of merger, share exchange, or consolidation and a copy of the notice of merger or share exchange attached. The department shall also give the parties to the plan written notice of its decision and, in the event of disapproval, a statement in general of the reasons for its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code Section 7-1-90."

SECTION 9.

Said chapter is further amended by revising Code Section 7-1-535, relating to procedure after approval of articles by department and the issuance of a certificate of merger or consolidation, as follows:

"7-1-535.

- (a) If the laws of the United States require the approval of the merger, share exchange, or consolidation by any federal agency, the department may, at its option, after its approval, retain its notice to the Secretary of State until it receives notice of the decision of such agency. If such agency shall refuse to give its approval, the department may, at its option, notify the parties to the plan that the department's approval has been rescinded for that

reason. If such agency gives its approval, the department shall deliver its written approval to the Secretary of State for issuance of a certificate of merger, share exchange, or consolidation by the Secretary of State and shall notify the parties to the plan.

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

SECTION 10.

Said chapter is further amended by revising Code Section 7-1-536, relating to the effect of merger or consolidation, as follows:

"7-1-536.

(a) As of the issuance of the certificate of merger, share exchange, or consolidation by the Secretary of State, the merger, share exchange, or consolidation shall be effective.

(b) The certificate of merger, share exchange, or consolidation shall be conclusive evidence of the performance of all conditions precedent to the merger, share exchange, or consolidation and of the existence or creation of the bank or trust institution, except as against the state.

(c) When a merger or consolidation becomes effective, each party to the plan, except the resulting bank or trust company, shall cease to exist as a separate entity but shall continue in, and the parties to the plan shall be, a single corporation which shall be the bank or trust company and which shall have, without further act or deed, all the property, rights, powers, trusts, duties, and obligations of each party to the plan. When a share exchange becomes effective, the shares of each acquired bank or trust company are exchanged as provided in the plan, and the former holders of the shares are entitled only to the share exchange rights provided in the plan of share exchange or to their rights under Code Section 7-1-537.

(d) The articles of the resulting bank or trust company shall be, in the case of a merger, the same as its articles prior to the merger with any change stated in the articles of merger or, in the case of a consolidation, the provisions stated in the articles of consolidation.

(e) The resulting bank or trust company, or the acquired bank or trust company in a share exchange, shall have the authority to engage only in such business and exercise only such powers as are then permissible upon original incorporation under this chapter and shall be

subject to the same prohibitions and limitations as it would then be subject to upon original incorporation. It may, however, subject to permission of the department as set out in Code Sections 7-1-530 and 7-1-555, engage in any business and exercise any right that any bank or trust company which is a party to the plan could lawfully exercise or engage in immediately prior to the merger, share exchange, or consolidation.

(f) No liability of any party to the plan or of its shareholders, directors, or officers shall be affected nor shall any lien on any property of a party to the plan be impaired by the merger, share exchange, or consolidation. Any claim existing or action pending by or against any party to the plan may be prosecuted to judgment as if the merger, share exchange, or consolidation had not taken place or the resulting bank or trust company may be substituted in its place."

SECTION 11.

Said chapter is further amended by revising Code Section 7-1-537, relating to rights of dissenting shareholders and the surrender of stock certificates, as follows:

"7-1-537.

(a) A shareholder of a bank or trust company which is a party to a plan of proposed merger, share exchange, or consolidation under this part who objects to the plan shall be entitled to the rights and remedies of a dissenting shareholder as determined under Chapter 2 of Title 14, known as the 'Georgia Business Corporation Code.'

(b) The bank or trust company into which the other or others have been merged or consolidated, or the acquiring corporation in a share exchange, as the case may be, shall have the right to require the return of the original certificates of stock held by each shareholder in each or either of the institutions and in lieu thereof:

(1) To issue to each shareholder new certificates for such number of shares of the institution into which the others shall have been merged or consolidated or of the acquiring corporation in a share exchange; or

(2) To cause to be paid or delivered to each shareholder the amount of cash or securities of any other corporation or combination of cash and such securities as, under the plan of merger, share exchange, or consolidation, the said shareholder may be entitled to receive."

SECTION 12.

Said chapter is further amended by revising Code Section 7-1-557, relating to merger or consolidation of nonbank corporations into national banks, as follows:

"7-1-557.

A national bank located in this state may merge or consolidate with, or enter into a share exchange with, a corporation other than a bank or trust company, provided that:

- (1) Such merger, share exchange, or consolidation is permitted by the laws of the United States and such laws are complied with;
- (2) The laws governing the merger, share exchange, or consolidation of such corporation are complied with;
- (3) The resulting institution of the merger or consolidation, or the acquired bank in a share exchange, is a national bank;
- (4) The resulting institution of the merger or consolidation, or the acquired bank in a share exchange, holds only assets and liabilities and engages only in activities which may be held or engaged in by a national bank located in this state; and
- (5) The merger, share exchange, or consolidation is not otherwise unlawful."

SECTION 13.

Said chapter is further amended in Code Section 7-1-601, relating to branch offices, by revising paragraph (2) of subsection (a) as follows:

"(2) New or additional branch offices may be established through merger, share exchange, consolidation, or sale of assets pursuant to Part 14, 15, 16, 19, or 20 of this article;"

SECTION 14.

Said chapter is further amended in Code Section 7-1-606, relating to unlawful actions by bank holding companies unless prior approval of commissioner is received, by revising subparagraphs (a)(1)(E), (b)(1)(A), and (b)(1)(B) as follows:

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

"(A) Any acquisition or merger or share exchange or consolidation under this Code section which would result in a monopoly or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the State of Georgia; or

(B) Any other proposed acquisition or merger or share exchange or consolidation under this Code section whose effect in any section of the state may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed

transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served."

SECTION 15.

Said chapter is further amended in Code Section 7-1-608, relating to lawful and unlawful acquisitions, formations, and mergers by bank holding companies, by revising paragraph (3) of subsection (b) 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 16.

Said chapter is further amended in Code Section 7-1-670, relating to third-party payment services offered by credit unions, by revising subsection (c) as follows:

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

SECTION 17.

Said chapter is further amended by revising Code Section 7-1-681, relating to license required for selling checks, as follows:

"7-1-681.

No person or corporation, other than a bank or trust company, a credit union, a savings and loan association, or a savings bank, whether state or federally chartered, the deposits of which are federally insured, the authorized agent of a licensee, or the United States Postal Service shall engage in the business of selling or issuing checks without having first obtained a license under this article. This restriction applies to any nonresident person or corporation that engages in this state in the business of selling or issuing checks through

a branch, subsidiary, affiliate, or agent in this state. A license for the sale of checks or money orders shall also qualify as a license for the business of money transmission. The provisions of this article shall also apply to the business of money transmission unless specifically excluded."

SECTION 18.

Said chapter is further amended by revising Code Section 7-1-682, relating to qualifications of licensees to sell checks or money orders, as follows:

"7-1-682.

(a) In order to qualify for a license under this article, an applicant shall:

(1) Satisfy the department that it is financially sound and responsible and appears able to conduct the business of selling checks in an honest and efficient manner and with confidence and trust of the community; and

(2) Comply with the bonding requirements, furnish the statements, and pay the fees prescribed in this article. In the case of a money transmitter, the department may in its discretion require only a bond.

(b) In addition to the qualifications set forth in subsection (a) of this Code section, the department may require a licensee to maintain investments having an aggregate market value at least equal to the amount of outstanding checks issued or sold. The department may promulgate regulations establishing those investments which shall be deemed permissible investments for the purpose of complying with this subsection. Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding checks in the event of bankruptcy of the licensee.

(c) The department shall not issue such license or may revoke a license if it finds that the applicant or licensee, any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant or licensee, or any individual who directs the affairs or establishes policy for the applicant or licensee has been convicted of a felony involving moral turpitude in any jurisdiction or of a crime which, if committed within this state, would constitute a felony involving moral turpitude under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, unless such plea of guilty or such

decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction was had, or shall have received an official certification or pardon granted by the State Board of Pardons and Paroles which removes the legal disabilities resulting from such conviction and restores civil and political rights in this state.

(d) The department shall be authorized to obtain conviction data with respect to any applicant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant or licensee or any individual who directs the affairs or establishes policy for the applicant or licensee. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an applicant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant or licensee or any individual who directs the affairs or establishes policy for the applicant or licensee has a criminal record in a state other than Georgia, the department shall submit to the Georgia Crime Information Center two complete sets of fingerprints of such applicant or such person, the required records search fees, and such other information as may be required. Fees for background checks that the department administers shall be submitted to the department by applicants and licensees together with two completed sets of fingerprint cards. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department shall be used by the department for the exclusive purpose of carrying out its responsibilities under this article, shall not be a public record, shall be privileged, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect the file. All such records shall be maintained by the department pursuant to laws regarding such records and the rules and

regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable. As used in this subsection, 'conviction data' means a record of a finding, verdict, or plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(e) Every applicant and licensee shall be authorized and required to obtain and maintain the results of background checks on employees and agents working in or for the applicant or licensee. Such background checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. Applicants and licensees shall be responsible for any applicable fees charged by the Georgia Crime Information Center. An applicant or licensee shall only employ a person whose background data has been checked and been found to be satisfactory prior to the initial date of hire. This provision does not apply to directors, officers, partners, agents, or ultimate equitable owners of 10 percent or more or to persons who direct the company's affairs or establish policy, whose background must have been investigated through the department before taking office, beginning employment, or securing ownership. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an employee has a criminal record in any state other than Georgia, the employer shall submit to the department two complete sets of fingerprints of such person, together with the applicable fees and any other required information. The department shall then submit such fingerprints as provided in subsection (d) of this Code section.

(f) Such license issued by the department shall be kept conspicuously posted in the place of business of the licensee. Such license shall not be transferable, assignable, or subject to a change of ownership."

SECTION 19.

Said chapter is further amended by revising Code Section 7-1-683, relating to license application for check sellers, as follows:

"7-1-683.

(a) Each application for a license shall be in writing and under oath to the department, in such form as it may prescribe, and shall include the following:

- (1) The legal name and principal office address of the corporation applying for the license;
- (2) The name, residence, and business address of each director or equivalent official and of each officer who will be involved in selling checks in this state;

- (3) The date and place of incorporation;
 - (4) If the applicant has one or more branches, subsidiaries, affiliates, agents, or other locations at or through which the applicant proposes to engage in the business of selling or issuing checks within the State of Georgia, the complete name of each and the address of each such location;
 - (5) The location where its initial registered office will be located in this state; and
 - (6) Such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, branches, subsidiaries, affiliates, or agents and any individual who directs the affairs or establishes policy for the applicant or licensee.
- (b) The application shall be filed together with the following financial requirements:
- (1) An investigation and supervision fee established by regulation of the department, which shall not be refundable but which, if the license is granted, shall satisfy the fee requirement for the first license year or the remaining part thereof; and
 - (2) A corporate surety bond issued by a bonding company or insurance company authorized to do business in this state and approved by the department. The bond for check sellers shall be in the principal sum of \$100,000.00, and the bond for money transmitters shall be in the principal sum of \$50,000.00. The amount of this bond shall be increased by an additional \$5,000.00 for each location, other than the licensee's primary place of business, at or through which the applicant proposes to engage in the business of selling or issuing checks in this state, until the principal sum of the bond shall total a maximum of \$250,000.00. In addition to the coverage provided for in this Code section, the department may require additional coverage for the adequate protection of check holders if the average daily balances outstanding for check sellers or, if the outstanding orders to transmit not yet paid for money transmitters, exceed \$250,000.00. Written reports that reveal a licensee's level of holdings shall be made at intervals during the year as required by regulations. If required by the department the additional coverage shall be limited to \$1,250,000.00 or the amount of the average daily balances or orders outstanding in the State of Georgia for the preceding year, whichever is less. The total maximum amount of such bond coverage under this paragraph and paragraph (1) of this subsection will be \$1,500,000.00. The bond shall be in a form satisfactory to the department and shall run to the State of Georgia for the benefit of any check holders against the licensee or his or her agents. The condition of the bond shall be that the licensee will pay any and all moneys that may become due and owing any creditor of or claimant against the licensee arising out of the licensee's business of selling or issuing

checks in this state, whether through its own act or the acts of an agent. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. Claimants against the licensee may themselves bring an action directly on the bond. The liability arising under this paragraph shall be limited to the receipt, handling, transmission, and payment of money arising out of the licensee's business of selling or issuing checks in this state.

(c) As an option to the bond for check sellers, provided the department approves, in lieu of such corporate surety bond or bonds or of any portion of the principal thereof, the applicant may deposit with a Georgia state-chartered bank or trust company located in this state, as such applicant may designate and the department may approve, certificates of deposit insured by a federal agency, bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof or guaranteed by the United States or of the State of Georgia to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the required corporate surety bond or portion thereof. These assets shall be held to secure the same obligations as would the surety bond and must be dedicated by the licensee solely for the purpose of meeting the financial obligations required to maintain the check seller license in this state and may not be dedicated to meet check seller licensing requirements for other jurisdictions; but the licensee shall be entitled to receive all interest thereon and shall have the right, with the approval of the department, to substitute other assets approved by this Code section for those deposited and shall be required to do so on written order of the department made for good cause shown; provided, however, if the licensee substitutes assets more than once during the license period the department may charge a fee for the processing of such substitution to be prescribed by regulations of the department. In the event of the failure or insolvency of such licensee, the assets, any proceeds therefrom, and the funds deposited pursuant to this Code section shall be applied to the payment in full of claims arising out of transactions in this state for the sale or issuance of checks. Failure to properly maintain dedicated assets for the purpose of meeting the financial requirements for licensure may result in a fine, or the revocation or suspension of the license, at the discretion of the department. This subsection shall apply to check sellers only and not to money transmitters."

SECTION 20.

Said chapter is further amended in Code Section 7-1-686, relating to notice of action against licensees or change in number of locations, by revising subsection (b) as follows:

"(b) A licensee shall give notice to the department by registered or certified mail or statutory overnight delivery of the name and address of any new or additional locations at which it engages in the business of selling or issuing checks over the number previously reported in either its original or renewal application and shall show to the department that the bond or assets required under Code Section 7-1-683 have been increased accordingly. This notice shall be given to the department by the licensee as follows:

- (1) For the period January 1 through June 30 of each year, on the first business day of September; and
- (2) For the period July 1 through December 31 of each year, on the first business day of March.

Failure to provide such notice shall be punished with a fine, other administrative action, or both. At any time the department is shown that a licensee has decreased the number of locations at or through which it proposes to engage in the business, the department may decrease the bond or security requirements accordingly."

SECTION 21.

Said chapter is further amended by revising Code Section 7-1-687, relating to agents of licensees, as follows:

"7-1-687.

A licensee may conduct its business at one or more locations in this state, so long as such locations have been included in the licensee's application and reports under Code Sections 7-1-683 and 7-1-686, and through such agents as it may designate. The department may within ten days after application, for cause, refuse to approve a licensee's designation of an agent or, for cause, suspend a licensee's designation of an agent. In such cases the agent shall have the same procedural rights as are provided in this article for the denial, suspension, or revocation of a licensee's license. No additional license other than that obtained by the licensee shall be required of any duly reported agent of a licensee. An agent of a licensee shall sell or issue checks only at the location designated in the licensee's report to the department or at other locations of which the department first has been notified in writing."

SECTION 22.

Said chapter is further amended in Code Section 7-1-689, relating to denial, suspension, and revocation of license or designation of agent, by revising subsections (a) and (b) as follows:

"(a) The department may suspend or revoke an original or renewal license or the designation of an agent of a licensee on any ground on which it might refuse to issue an original license or for a violation of any provision of this article or any rule or regulation issued under this article or for failure of the licensee to pay, within 30 days after it becomes final, a judgment recovered in any court within this state by a claimant or creditor in an action arising out of the licensee's business in this state of selling or issuing checks. If a cease and desist order is issued by the department to a licensee who has been sent a notice of bond cancellation and if the required bond is reinstated or replaced and such documentation is delivered to the department within the 30 day period following the date of issuance of the order, the order shall be rescinded. If the notice of reinstatement of the bond is not received by the department within the 30 days, the license shall expire at the end of the 30 day period and the licensee shall be required to make a new application for a license and pay all applicable fees.

(b) Notice of the department's intention to enter an order denying an application for a license under this article or of an order suspending or revoking a license under this article shall be given to the applicant or licensee in writing, sent by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant or licensee. 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 or licensee 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 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 or licensee. 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."

SECTION 23.

Said chapter is further amended in Code Section 7-1-689.1, relating to issuance of cease and desist order for noncompliance by licensee, by revising subsections (a), (b), (c), and (e) as follows:

"(a) Whenever it shall appear to the department that any person has violated any law of this state or any order or regulation of the department under this article or is operating without a required license, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices. Such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request for a hearing within such 20 day period. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' A cease and desist order issued to an unlicensed person that orders such person to cease doing business without the appropriate license shall be final 30 days from the date of issuance and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption for the time period cited in the order is obtained within the 30 day period, the order shall be rescinded by the department. Any cease and desist order sent to the person at both his or her personal and business addresses pursuant to this Code section that is returned to the department as 'refused' or 'unclaimed' shall be deemed as received and sufficiently served.

(b) Whenever a person shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department may, through the Attorney General and upon notice of three days to such person, petition the principal court for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition the court shall allow a motion to show cause why it should not be granted. After a hearing upon the merits or after failure of such person to appear when ordered, the court shall grant the petition of the department upon a finding that the order of the department was properly issued.

(c) Any person who violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00. Each day the violation continues shall constitute a separate offense. In determining the amount of a penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department

may at its discretion compromise, modify, or refund any penalty which is subject to being imposed or has been imposed pursuant to this Code section. Any person assessed pursuant to this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the licensee involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90."

"(e) For purposes of this Code section, the term 'person' includes an individual, any entity required to be licensed, and a licensee, officer, director, employee, agent, or other person participating in the conduct of the affairs of the person subject to the orders issued pursuant to this Code section."

SECTION 24.

Said chapter is further amended in Code Section 7-1-692, relating to prohibited transactions, by adding a new subsection to read as follows:

"(c) No person required to be licensed under this article shall purposely withhold, delete, destroy, or alter information requested by an examiner or other official of the department or make false statements or material misrepresentations to the department."

SECTION 25.

Said chapter is further amended by revising Code Section 7-1-700, relating to definitions relevant to check cashers, as follows:

"7-1-700.

As used in this article, the term:

- (1) 'Check casher' means an individual, partnership, association, or corporation engaged in cashing checks, money orders, or other drafts for a fee. Such fee may be payable in cash, in the form of exchange of value in excess of regular retail value, in the form of mandatory purchase of goods or services by patrons, or in the form of the purchase of catalog items or coupons or other items indicating the ability to receive goods, services, or catalog items.
- (2) 'Licensed casher of checks' means any individual, partnership, association, or corporation duly licensed by the Department of Banking and Finance to engage in business pursuant to the provisions of this article.
- (3) 'Licensee' means a licensed casher of checks, drafts, or money orders.
- (4) 'Registered casher of checks' or 'registrant' means any individual, partnership, association, or corporation engaged in cashing checks, money orders, or other drafts for a fee limited to the greater of \$2.00 or 2 percent of the face amount of the check. Such

fee may be payable in cash, in the form of exchange of value in excess of regular retail value, in the form of mandatory purchase of goods or services by patrons, or in the form of the purchase of catalog items or coupons or other items indicating the ability to receive goods, services, or catalog items. A registered casher of checks shall not advertise its check cashing services and shall be duly registered by the Department of Banking and Finance to engage in business pursuant to the provisions of this article."

SECTION 26.

Said chapter is further amended by revising Code Section 7-1-701, relating to licensure of check cashers, as follows:

"7-1-701.

(a) No person, partnership, association, or corporation shall engage in the business of cashing checks, drafts, or money orders for a consideration without first obtaining a license or registration under this article. The term 'consideration' shall include any premium charged for the sale of goods in excess of the cash price of such goods.

(b) Each application for a license or registration shall be in writing and under oath to the department, in such form as the department may prescribe, and shall include the following:

(1) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;

(2) The location where the initial registered office of the applicant will be located in this state;

(3) The complete address of any other locations at which the applicant proposes to engage in cashing checks; and

(4) Such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, or agents.

(c) The application for license or registration shall be filed together with an investigation and supervision fee established by regulation which shall not be refundable but which, if the license or registration is granted, shall satisfy the fee requirement for the first licensed or registered year or the remaining part thereof."

SECTION 27.

Said chapter is further amended by revising Code Section 7-1-702, relating to background investigation of applicants for check cashier's licenses, as follows:

"7-1-702.

(a) The department shall conduct an investigation of every applicant for license or registration to determine the financial responsibility, experience, character, and general fitness of the applicant. If the department determines to its general satisfaction:

(1) That the applicant is financially responsible and appears to be able to conduct the business of cashing checks in an honest, fair, and efficient manner and with the confidence and trust of the community; and

(2) That the granting of such application will promote the convenience and advantage of the area in which the business is to be conducted,

the department shall issue the applicant a license or registration to engage in the business of cashing checks.

(b) The department shall not issue such a license or registration or may revoke a license or registration if it finds that the applicant, licensee, or registrant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant, licensee, or registrant or any individual who directs the affairs or establishes policy for the applicant, licensee, or registrant has been convicted of a felony involving moral turpitude in any jurisdiction or of a crime which, if committed within this state, would constitute a felony involving moral turpitude under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, unless such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction was had, or shall have received an official certification or pardon granted by the State Board of Pardons and Paroles which removes the legal disabilities resulting from such conviction and restores civil and political rights in this state.

(c) The department shall be authorized to obtain conviction data with respect to any applicant, licensee, or registrant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant, licensee, or registrant or any individual who directs the affairs or establishes policy for the applicant, licensee, or registrant. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an applicant, licensee, or registrant or any person who is a director, officer, partner, agent, employee, or ultimate equitable owner of 10 percent or more of the applicant, licensee, or registrant or any individual who directs the affairs or establishes policy for the applicant, licensee, or registrant has a criminal record in a state other than Georgia, the department shall submit to the Georgia Crime Information Center two complete sets of fingerprints of such applicant or such person, the required records search fees, and such other information as may be required. Fees for background checks that the department administers shall be submitted to the department by applicants, licensees, or registrants together with two complete sets of fingerprints. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department shall be used by the department for the exclusive purpose of carrying out its responsibilities under this article, shall not be a public record, shall be privileged, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect the file. All such records shall be maintained by the department pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable. As used in this subsection, 'conviction data' means a record of a finding, verdict, or plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(d) Every applicant, licensee, and registrant shall be authorized and required to obtain and maintain the results of background checks on employees working in the licensed business. Such background checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. Applicants, licensees, and registrants shall be responsible for any applicable fees charged by the Georgia Crime Information Center. An applicant, licensee,

or registrant may only employ a person whose background data has been checked and been found to be satisfactory prior to the initial date of hire. This provision does not apply to directors, officers, partners, agents, or ultimate equitable owners of 10 percent or more or to persons who direct the company's affairs or establish policy, whose background must have been investigated through the department before taking office, beginning employment, or securing ownership. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an employee has a criminal record in any state other than Georgia, the employer shall submit to the department two complete sets of fingerprints for such person, together with the applicable fees and any other required information. The department shall submit such fingerprints as provided in subsection (c) of this Code section.

(e) Such license or registration shall be kept conspicuously posted in the place of business of the licensee or registrant. Such license or registration shall not be transferable, assignable, or subject to a change of ownership without prior application to and approval by the department.

(f) Except as otherwise specifically provided in this article, all licenses and registrations issued pursuant to this article shall expire on September 30 of each year, and application for renewal shall be made annually on or before August 1 of each year. Any new license or registration granted after July 1 in any year will not be required to be renewed until the next calendar year renewal period."

SECTION 28.

Said chapter is further amended in Code Section 7-1-704, relating to rules and regulations for enforcement of article and the examination of books and records of licensees, by revising subsections (b) through (d) as follows:

"(b) To assure compliance with the provisions of this article and in consideration of any application to renew a license or registration pursuant to the provisions of Code Section 7-1-703, the department or its designated agent may examine the books and records of any licensee or registrant to the same extent as it is authorized to examine financial institutions under this chapter. Each licensee or registrant shall pay an examination fee as established by regulations of the department to cover the cost of such examination.

(c) To assure compliance with the provisions of this article, the department may review the fees charged and fee income of any person cashing checks for a fee who claims exemption from licensing or claims to be a registered cashier of checks. Each person who is reviewed shall pay an hourly fee as provided in departmental regulations when the

review requires more than four examiner hours and the review results in a finding that a license or registration is required. The department, in its discretion, may permit the party claiming exemption or registration to supply to the department the necessary books and records for its review at department headquarters.

(d) The department shall remit all examination fees paid by licensees and registrants in accordance with Code Section 7-1-43, net of any cost paid to third parties authorized by the department to perform such examination services."

SECTION 29.

Said chapter is further amended by revising Code Section 7-1-705, relating to notice to be posted by licensee, record-keeping requirements, and check cashing procedures, as follows:

"7-1-705.

(a) In every location licensed or registered under this article, there shall be conspicuously posted and at all times displayed a notice stating the charges for cashing checks.

(b) Each licensee or registrant shall keep and use in its business such books, accounts, and records as the department may require to carry into effect the provisions of this article and the rules and regulations. Every licensee or registrant shall preserve such books, accounts, and records for at least two years.

(c) Before a licensee or registrant shall deposit with any bank a check, draft, or money order cashed by such licensee or registrant, the same must be endorsed with the actual name under which such licensee or registrant is doing business.

(d)(1) No licensee or registrant shall receive any check, draft, or money order with payment deferred pending collection. Payment shall be made immediately in cash for every check, draft, or money order accepted by the licensee or registrant.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, drafts may be accepted for collection with payment deferred where the licensee or registrant has posted a surety bond in the same manner as prescribed for check sales licensees under Code Section 7-1-683. The amount of the surety bond shall be \$10,000.00 for each location operated by the licensee or registrant if the licensee or registrant operates three or fewer locations. For a fourth or fifth location operated by a licensee or registrant, the amount of the surety bond shall be \$5,000.00 for each such location. For each location operated by a licensee or registrant in excess of a fifth location, the amount of the surety bond shall be \$1,000.00. In no event shall payment of a draft be deferred past the time that the licensee or registrant has collected on the draft. Upon collection, payment shall be made immediately to the party from whom the licensee or registrant accepted the draft.

(e) No licensee or registrant shall cash a check, draft, or money order made payable to a payee other than a natural person unless such licensee or registrant has previously obtained appropriate documentation from the executive entity of such payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.

(f) No licensee or registrant shall cash checks without identification of the bearer of such check, and any person seeking to cash a check shall be required to submit such reasonable identification as shall be prescribed by the department; provided, however, the provisions of this subsection shall not prohibit a licensee or registrant from cashing a check simultaneously with the verification and establishment of the identity of the presenter by means other than the presentation of identification.

(g) Within five business days after being advised by the payor financial institution that a check, draft, or money order has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or represents the proceeds of illegal activity, the licensee or registrant shall notify the department and the district attorney for the judicial circuit in which the check was received. In the event a check, draft, or money order is returned to the licensee or registrant by the payor financial institution for any of the aforementioned reasons, the licensee or registrant may not release the check, draft, or money order without the consent of the district attorney or other investigating law enforcement authority."

SECTION 30.

Said chapter is further amended in Code Section 7-1-706, relating to check-cashing fees, by designating the existing text as subsection (a) and by adding a new subsection to read as follows:

"(b) No registered casher of checks shall charge check-cashing fees, except as otherwise provided in this Code section, in excess of 2 percent of the face amount of the check or draft or \$2.00, whichever is greater."

SECTION 31.

Said chapter is further amended by revising Code Section 7-1-707, relating to suspension or revocation of check casher's license, as follows:

"7-1-707.

(a) The department may suspend or revoke any license or registration issued pursuant to this article if:

(1) It shall find that the licensee or registrant has:

- (A) Committed any fraud, engaged in any dishonest activities, or made any misrepresentation;
- (B) Violated any provisions of the banking law or any regulation issued pursuant thereto or has violated any other law in the course of its, his, or her dealings as a licensed or registered casher of checks;
- (C) Made a false statement in the application for such license or registration or failed to give a true reply to a question in such application;
- (D) Demonstrated his, her, or its incompetency or untrustworthiness to act as a licensed or registered casher of checks;
- (E) Purposely withheld, deleted, destroyed, or altered information requested by an examiner of the department or made false statements or material misrepresentations to the department; or
- (F) Charged check-cashing fees, exclusive of direct costs of verification, in unconscionable amounts which do not adequately reflect:
 - (i) The level of risk associated with the cashing of checks of a particular class using ordinary prudence and commercially reasonable standards of identification and acceptance;
 - (ii) The cost of funds necessary to operate a check-cashing business; and
 - (iii) The extraordinary costs for security safeguards associated with the business location of the licensee or registrant; or

(2) It shall find that any ground or grounds exist which would require or warrant the refusal of an application for the issuance of the license if such an application were then before it.

(b) 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.

(c) A decision of the department denying a license or registration, original or renewal, shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90. A decision of the department suspending or revoking a license or registration shall be subject to judicial review in the same manner as a decision of the department to take possession of the assets and business of a bank under Code Section 7-1-155.

(d) The provisions of this Code section shall not apply when a license is denied or suspended as provided in Code Section 7-1-707.1.

(e)(1) Whenever it shall appear to the department that any person has violated any law of this state or any order or regulation of the department under this article, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices. Such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request within such 20 day period for a hearing. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' A cease and desist order to an unlicensed or unregistered person that orders such person to cease doing a check-cashing business without the appropriate license or registration shall be final 30 days from the date of issuance, and there shall be no opportunity for an administrative hearing. If the proper license or registration or evidence of exemption is obtained within the 30 day period, the order shall be rescinded by the department. Any cease and desist order sent to the person at both his or her personal and business addresses pursuant to this Code section that is returned to the department as 'refused' or 'unclaimed' shall be deemed as received and sufficiently served.

(2) Whenever a person shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department, upon notice of three days to such person, may, through the Attorney General, petition the principal court

for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why it should not be granted. Whenever, after a hearing upon the merits or after failure of such person to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(3) Any person who violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed \$1,000.00. Each day the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. Any person assessed as provided in this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the licensee or registrant involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(4) Initial judicial review of the decision of the department entered pursuant to this Code section shall be available solely in the superior court of the county of domicile of the department.

(5) For purposes of this Code section, the term 'person' includes an individual, any entity required to be licensed or registered, licensees, registrants, or an officer, director, employee, agent, or other person participating in the conduct of the affairs of the person subject to the orders issued pursuant to this Code section.

(6) In addition to any other administrative penalties authorized by this article, the department may, by regulation, prescribe administrative fines for violations of this article and of any rules promulgated by the department pursuant to this article."

SECTION 32.

Said chapter is further amended in Code Section 7-1-709, relating to applicability of article, by striking subsection (c) in its entirety and by revising subsection (b) in its entirety as follows:

"(b) This article shall not apply to any individual, partnership, association, or corporation which cashes checks for which no fee is charged."

SECTION 33.

Said chapter is further amended in Code Section 7-1-1001, relating to exemption for certain persons and entities from obtaining a mortgage broker or mortgage lender license, by revising paragraph (13) as follows:

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

SECTION 34.

Said chapter is further amended in Code Section 7-1-1004, relating to investigation of applicant for mortgage broker license, by revising subsections (f) and (i) as follows:

"(f) Every licensee and applicant shall be authorized and required to obtain background checks on covered employees. Such background checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. Licensees and applicants shall be responsible for any applicable fees charged by the center. A background check must be initiated for a person in the employ of a licensee or applicant within ten days of the date of initial hire and be completed with satisfactory results within the first 90 days of employment. This provision does not apply to directors, officers, partners, agents, or ultimate equitable owners of 10 percent or more or to persons who direct the company's affairs or establish policy, whose background must have been investigated through the department before taking office, beginning employment, or securing ownership. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an employee has a criminal record in any state other than Georgia, the employer shall submit to the department two complete sets of fingerprints of such person, together with the applicable fees and any other required information. The department shall submit such fingerprints as provided in subsection (e) of this Code section."

"(i) The department may not issue a license to and may revoke a license from an applicant or licensee if such person employs any other person against whom a final cease and desist order has been issued within the preceding five years, if such order was based on a violation of Code Section 7-1-1013 or based on the conducting of a mortgage business

without a required license, or whose license has been revoked within five years of the date such person was hired. Each applicant and licensee shall, before hiring an employee, examine the department's public records to determine that such employee is not subject to the type of cease and desist order described in this subsection."

SECTION 35.

Said chapter is further amended in Code Section 7-1-1006, relating to contents of a mortgage broker's license and posting requirements, by revising subsections (e) and (f) as follows:

"(e) Each licensee shall notify the department in writing of any change in the address of the principal place of business or of any additional location of business in Georgia, any change in registered agent or registered office, any change of executive officer, contact person for consumer complaints, or ultimate equitable owner of 10 percent or more of any corporation or other entity licensed under this article, or of any material change in the licensee's financial statement. Notice of changes must be received by the department no later than 30 business days after the change is effective.

(f) No licensee shall open a new additional office in Georgia without prior approval of the department. Applications for such additional office shall be made in writing on a form prescribed by the department and shall be accompanied by payment of a \$350.00 nonrefundable application fee. The application shall be approved unless the department finds that the applicant has not conducted business under this article efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the department to the applicant within 45 days of the date the application is received by the department."

SECTION 36.

Said chapter is further amended in Code Section 7-1-1008, relating to acquisition of 25 percent or more of the voting shares or of the ownership of any other entity licensed to conduct business under the mortgage lenders and mortgage brokers article, is revised in the introductory language of subsection (a) as follows:

"(a) Except as provided in this Code section, no person shall acquire directly or indirectly 10 percent or more of the voting shares of a corporation or 10 percent or more of the ownership of any other entity licensed to conduct business under this article unless it first:"

SECTION 37.

Said chapter is further amended in Code Section 7-1-1009, relating to maintenance of books, accounts, and records; and investigation and examination of licensees and registrants by the department, by revising subsection (a) and the introductory language of subsection (f) as follows:

"(a) Any person required to be licensed or registered under this article shall maintain at its offices or such other location as the department shall permit such books, accounts, and records as the department may reasonably require in order to determine whether such person is complying with the provisions of this article and rules and regulations adopted in furtherance thereof. Such books, accounts, and records shall be maintained separately and distinctly from any other personal or unrelated business matters in which the person is involved."

"(f) Examinations and investigations conducted under this article and information obtained by the department in the course of its duties under this article are confidential, except as provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70 and in paragraphs (3) and (4) of subsection (c) of this Code section, the department is authorized to share information obtained under this article with other state and federal regulatory agencies or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. The commissioner or an examiner specifically designated may disclose such limited information as is necessary to conduct a civil or administrative investigation or proceeding. The department shall compile information on the number of written complaints received on all licensees. The department shall annually disclose to the public the number of such complaints together with the number of Georgia residential mortgage loans made during the same period. In preparing the disclosure, the department shall be authorized to rely upon the number of mortgage loans reported to it in the mortgage license renewal application. Information contained in the records of the department which is not confidential and may be made available to the public either on the department's website or upon receipt by the department of a written request shall include:"

SECTION 38.

Said chapter is further amended in Code Section 7-1-1016, relating to regulations relative to advertising, by revising paragraphs (1) and (2) as follows:

"(1)(A) Advertisements for loans regulated under this article may not be false, misleading, or deceptive. No person whose activities are regulated under this article may advertise in any manner so as to indicate or imply that its interest rates or charges for loans are in any way 'recommended,' 'approved,' 'set,' or 'established' by the state or this article;

(B) An advertisement shall not include an individual's loan number, loan amount, or other publicly available information unless it is clearly and conspicuously stated in bold-faced type at the beginning of the advertisement that the person disseminating it is not authorized by, in sponsorship with, or otherwise affiliated with the individual's lender, which shall be identified by name. Such an advertisement shall also state that the loan information contained therein was not provided by the recipient's lender.

(2) All advertisements disseminated by a licensee or a registrant in this state by any means shall contain the name, license number, and an office address of such licensee or registrant, which shall conform to a name and address on record with the department; and"

SECTION 39.

Said chapter is further amended in Code Section 7-1-1017, relating to suspension or revocation of licenses of mortgage lenders or mortgage brokers, by revising paragraph (1) of subsection (a) and subsection (b) as follows:

"(a)(1) The department may suspend or revoke an original or renewal license, registration, or mortgage broker education approval on any ground on which it might refuse to issue an original license, registration, or approval or for a violation of any provision of this article or of Chapter 6A of this title or any rule or regulation issued under this article or under Chapter 6A of this title, including failure to provide fees on a timely basis, or for failure of the licensee or registrant to pay, within 30 days after it becomes final, a judgment recovered in any court within this state by a claimant or creditor in an action arising out of the licensee's or registrant's business in this state as a mortgage lender or mortgage broker or for violation of a final order previously issued by the department."

"(b) 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."

SECTION 40.

Said chapter is further amended in Code Section 7-1-1018, relating to cease and desist orders against noncompliant mortgage lenders or mortgage brokers, by revising subsections (a) and (f) as follows:

"(a) Whenever it shall appear to the department that any person required to be licensed or registered or required to file a notification statement under this article or employed by a licensee or registrant pursuant to Code Section 7-1-1001 or who would be covered by the prohibitions in Code Section 7-1-1013 has violated any law of this state or any order or regulation of the department, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices. Such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request within such 20 day period for a hearing. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' A cease and desist order to an unlicensed person that orders them to cease doing a mortgage business without the appropriate license shall be final 30 days from the date of issuance, and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption or valid employment status during the time of the alleged offense is delivered to the department within the 30 day period, the order shall be

rescinded by the department. If a cease and desist order is issued to a person who has been sent a notice of bond cancellation and if the bond is reinstated or replaced and such documentation is delivered to the department within the 30 day period following the date of issuance of the order, the order shall be rescinded. If the notice of reinstatement of the bond is not received within the 30 days, the license shall expire at the end of the 30 day period and the person shall be required to make a new application for license and pay the applicable fees. In the case of an unlawful purchase of mortgage loans, such initial cease and desist order to a purchaser shall constitute the knowledge required under subsection (b) of Code Section 7-1-1002 for any subsequent violations. Any cease and desist order sent to the person at both his or her personal and business addresses pursuant to this Code section that is returned to the department as 'refused' or 'unclaimed' shall be deemed as received and sufficiently served."

"(f) For purposes of this Code section, the term 'person' also includes any officer, director, employee, agent, or other person participating in the conduct of the affairs of the person subject to the orders issued pursuant to this Code section."

SECTION 41.

This Act shall become effective on July 1, 2007.

SECTION 42.

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